
ONLINE PROSTITUTION AND TRAFFICKING

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You are not safer because you work indoors. Craigslist is just the “internet streets,” where the same predators and hustlers are meeting you with the same intentions except they look like straight people who go to medical school and have Blackberrys.

I consider myself in the same risk and danger zones as a street worker. I am an upper working class anonymous client worker.¹

I. INTRODUCTION

The use of Internet technologies to traffic women and children to prostitution will be described in this article. We will summarize the history of online trafficking and the remarkably effective use of the Internet for advertising prostitution locally, regionally, and internationally beginning with the development of social networking sites, discussion forums, message boards and online chats. Examples of sex buyers’, pimps’, and traffickers’ use of the Internet and online classified advertising sites will be provided.

We will also summarize the empirical evidence for the psychological and physical harms of trafficking for prostitution and will discuss the risks of compartmentalizing arms of the sex trafficking industry that are in fact elements of multinational, constantly expanding, businesses. False distinctions have been

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¹ Marikopassion, *An Outlaw’s Insurance Policy*, BOUND, NOT GAGGED (Mar. 7, 2010), <http://deephroated.wordpress.com/2010/03/07/an-outlaws-insurance-policy/>.

erected between online and offline prostitution, child and adult prostitution, indoor and outdoor prostitution, pornography and prostitution, legal and illegal prostitution, and prostitution and trafficking.

We will discuss what is known about the involvement of organized crime in online trafficking, and summarize several successful cases brought against online traffickers. We describe public campaigns and educational boycotts against online traffickers and the development of online alternatives to the sex trafficking industry. There has been a range of legal responses to the crimes of prostitution and trafficking. Prosecutorial challenges in this newly developing field include the anonymity of the Internet, blurred jurisdictional boundaries, reluctance to prosecute prostitution cases where there is no evidence of physical coercion, and a very slowly increasing number of cases brought using existing legislation, in part because of the need for special training of criminal justice personnel. Nonetheless, there are tools available that provide both criminal and civil remedies.

Compartmentalization of the various arms of the sex industry, regardless of their location or legal status, has confused and sometimes derailed policymakers, the public, and law enforcement and has resulted in a failure to understand prostitution and trafficking as crimes against vulnerable women and children. Prostitution is the sale of a sex act.² Payment for sexual use is usually made in cash but can also be made in housing, food, drugs, clothes, gas, or other basic needs.³ For young women with few alternatives, Internet prostitution is a portal into the sex trafficking industry.⁴ Prostitution is glamorized and mainstreamed for women who believe the recruitment messaging, “prostitution is fun!” “sexy!” and “you make tons of money!”⁵ Online classified websites

² Slight variations on that definition occur by state. For example, Nevada defines prostitution as follows: “Prostitution’ means engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value.” NEV. REV. STAT. ANN. § 201.295(5) (Lexis-Nexis 2014).

³ See, e.g., Stephanie Mencimer, *Brave New Welfare*, MOTHER JONES, Jan.–Feb. 2009, at 40, 45, available at <http://www.motherjones.com/politics/2009/01/brave-new-welfare>; Nathan Hardin, *Woman Charged with Prostituting for Gas*, SALISBURY POST, (Jan. 15, 2012, 12:20 AM), <http://www.salisburypost.com/Crime/072111-WEBcouplechargedwithprostitution-qcd>.

⁴ See Bill McAllister, *From Streetwalking to the Information Superhighway: The New Method in Prostitution*, POLICE PROSTITUTION & POL. (July 30, 2011, 2:17 PM), <http://goo.gl/KoussU>.

⁵ See, e.g., Phoebe Kay, *On the Wrong Side of a Craigslist Ad*, SALON (Sept. 8, 2010, 9:01 PM), http://www.salon.com/life/sex_work/?story=/mwt/feature/2010/09/08/i_was_craigslist_

Backpage, myredbook, escortpost, theeroticreview and others have sections advertising prostitution—thus functioning as online brothels. Craigslist was described as “training wheels” for selling sex.⁶ In third world or recessionary economies, prostitution is a last-ditch survival option for poor young women or for women who are marginalized because of racism.⁷ Korean women, for example, are recruited by traffickers for prostitution in the United States via Internet advertising.⁸ An advertisement aimed at financially vulnerable women on the cafedaum.net website read: “We know that in Korea these days, unemployment, the recession and the Special Law on Prostitution make it hard to earn even half of what you made before.”⁹ Enticing the women into prostitution, the traffickers then specify how much money can be made in a bar or massage parlor, declaring: “Advances possible. We take care of visas and bad credit.”¹⁰

Most contemporary legal definitions of trafficking do not require physical movement, but rather coercion, force, fraud, or abuse of power to trap a victim in an exploitive situation. In some international legal definitions, consent is irrelevant.¹¹ For the purposes of this article, we will use a definition of trafficking like that used in the Trafficking Victims Protection Act: “[T]he recruitment, [enticement,] harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act.”¹²

Prostitution often meets the legal definition of human trafficking in that pimping or third-party control of a prostituted person cannot be distinguished from the identical crimes perpetrated in trafficking.¹³ According to estimates from eighteen sources

escort.

⁶ Nick Lucchesi, *Cops Pimp Slap Craigslist on 'Erotic Services' Listings*, RFT BLOGS, (Nov. 7, 2008, 3:18 PM), http://blogs.riverfronttimes.com/stlog/2008/11/cops_pimp_slap_craigslist_on_erotic_services_listings_prostitution_rings_internet_prostitutes.php.

⁷ TIMOTHY C. LIM, *THE DYNAMICS OF TRAFFICKING, SMUGGLING AND PROSTITUTION: AN ANALYSIS OF KOREAN WOMEN IN THE U.S. COMMERCIAL SEX INDUSTRY 1* (2008), available at http://instructional1.calstatela.edu/tclim/articles/Final_report_Lim2.pdf.

⁸ *Id.* at 21.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See, e.g., Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Annex 2, art. 3(b), Nov. 15, 2000, 2237 U.N.T.S. 319 (“The consent of a victim of trafficking in persons . . . shall be irrelevant . . .”).

¹² 22 U.S.C. § 7102(9) (2012).

¹³ Noting the impossibility of separating prostitution from trafficking in the real world, a 2006 report by Sigma Huda, United Nations Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children noted that

including research studies, government reports, and nongovernmental agencies, on average 84% of women in prostitution are under third-party control or pimped or trafficked.¹⁴

prostitution as it is practiced “usually does satisfy the elements of trafficking.” U.N. Econ. & Soc. Council, Comm. on Human Rights, *Integration of the Human Rights of Women and a Gender Perspective: Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children*, ¶42, U.N. Doc. E/CN.4/2006/62 (Feb. 20, 2006).

¹⁴ To calculate the number 84% as an estimate of those who were under third-party control, pimped, or trafficked we used either whole number estimates or whole numbers based on the midpoint of a given estimated range. In the United States, 80–90% of those in prostitution had pimps. See JACQUELINE B. HELFGOTT, CRIMINAL BEHAVIOR: THEORIES, TYPOLOGIES, AND CRIMINAL JUSTICE 301 (2008); Jean Faugier and Mary Sargeant, *Boyfriends, Pimps’ and Clients*, in RETHINKING PROSTITUTION: PURCHASING SEX IN THE 1990S 119–34 (Graham Scambler & Annette Scambler eds., 1997). In New York City, a pimp estimated that “70% of women working in New York City as prostitutes are being compelled to do so by pimps who use beatings and drugs, and most importantly the threat of jail, to keep their girls in line.” *Prostitution—Legalize or Decriminalize?*, DAVIS2013.COM (July 30, 2012), <http://davis2013.com/prostitution-legalize-or-decriminalize/>. In Italy, the European Union estimated that 80 % of those in prostitution were trafficked. SCELLES FOUNDATION, SEXUAL EXPLOITATION: PROSTITUTION AND ORGANIZED CRIME 173 (2012), http://www.fondationscelles.org/pdf/rapport_mondial/sexual_exploitation_prostitution_Fondation_Scelles.pdf. In Poland, 90% of prostitution along the roads was assumed to be controlled by organized criminal groups. *Id.* at 233. In Amsterdam 50 to 90% of women in prostitution in the red-light district were considered likely victims of Turkish, Hungarian, Romanian, and Bulgarian human trafficking networks, including those working in legal clubs and brothels, according to the Dutch national police *Korps Landelijke Politiediensten* (KLPD). *Id.* at 211. In Spain, more than 90% of women in prostitution were victims of human trafficking. *Id.* at 268. In Bulgaria, RiskMonitor Foundation estimated that more than 95% of those in prostitution have pimps linked to organized crime. *Id.* at 64. In Germany SOLWODI estimated that 80% of women in prostitution are placed “under strong pressure and have no alternatives. This pressure may come from a partner or even their family, who send them abroad to work and send money back.” Eur. Consult. Ass., *Prostitution, Trafficking and Modern Slavery in Europe*, Doc. No. 13446, at 12 (2014). In Germany, policy analyst Barbara Yondorf estimated that 80–95% of women in prostitution have pimps. KATHLEEN BARRY, FEMALE SEXUAL SLAVERY 130 (1979). In San Francisco, 80% of women in prostitution interviewed by Marilyn Neckes and Theresa Lynch had pimps. *Id.* at 119. In Oregon, 84% of women who had escaped prostitution had previously been controlled by pimps. Susan Kay Hunter, *Prostitution is Cruelty and Abuse to Women and Children*, 1 MICH. J. GENDER & L. 91, 101 (1993). In Ireland, Ruhama estimated that 80% of women in prostitution were under third-party control. E-mail from Sarah Benson, CEO of Ruhama, to Melissa Farley (April 10, 2014) (on file with the Albany Law Review). In the United States, a study of women prostituted in hotels estimated that more than 80% were controlled by pimps. ROBERT PRUS & STYLLIANOSS IRINI, HOOKERS, ROUNDERS, AND DESK CLERKS 11 (1980). Kathleen Barry noted that 80 to 95 % of all prostitution is pimp-controlled. KATHLEEN BARRY, THE PROSTITUTION OF SEXUALITY 198 (1995). Ninety-five to 99% of women in German prostitution were under the control of others. Manfred Paulus, *Out of Control: On Liberties and Criminal Developments in the Redlight Districts of the Federal Republic of Germany*, PROSTITUTION RESOURCES (May 6, 2014), <http://ressourcesprostitution.wordpress.com/2014/05/06/m-paulus-out-of-control-on-liberties-and-criminal-developments-in-the-redlight-districts-of-the-federal-republic-of-germany/>. Eighty-six percent of Nepali women delivered to brothels in India did not know they were going to be prostituted when they left home. LOUISE BROWN, SEX SLAVES: THE TRAFFICKING

Fifty years ago pimps coerced women to solicit on the street where they were advertised to the relatively limited marketplace of sex buyers who evaluated the women's physical appearances and made selections on the street corner. Prostitution is now a business that is advertised on the Internet, expanding the reach of pimps to a wider market of potential sex buyers. Women can be sold for 15 minutes or for a week for johns' sexual use, selected and purchased online like a rental car. As the following evidence shows, the vast majority of prostitution today takes place online. Police in Syracuse, New York estimated that 90% of that city's prostitution trade had gone online between 2009 and 2011.¹⁵ Eighty-eight percent of sex buyers in a 2011 research study had bought women and children for sexual use indoors via Internet-advertised escort agencies, strip clubs, gentlemen's clubs, brothels, and massage parlors.¹⁶ In the early 2000s, about half of all searches on the Internet search engine AltaVista were related to the business of sexual exploitation.¹⁷

The Internet and computer technology have been developed and exploited by sex businesses to offer prostitution to men across the globe.¹⁸ Internet websites provide contact information, specifics on sexual acts that will be performed, pornography of the woman to be sold for sex, coded prices, and reviews by sex buyers.¹⁹ Technology, smartphones and other digital devices make it possible to conduct business, advertise, and increase earnings from women who have for the most part been trafficked or coerced by a combination of

OF WOMEN IN ASIA 66 (2000). Cambodian Women's Crisis Centre found that 86% of women rescued from Phnom Penh brothels by police had been tricked or sold into prostitution. *Id.* at 89.

¹⁵ Douglas Dowty, *Syracuse Police Charge 36 in Prostitution Sting Originating on Internet*, SYRACUSE.COM (Dec. 7, 2012, 12:18 PM), http://www.syracuse.com/news/index.ssf/2011/04/syracuse_police_charge_36_in_p.html.

¹⁶ See MELISSA FARLEY ET AL., *COMPARING SEX BUYERS WITH MEN WHO DON'T BUY SEX* 15 (2011), <http://www.prostitutionresearch.com/pdfs/Farleyetal2011ComparingSexBuyers.pdf>.

¹⁷ See LEWIS PERDUE, *EROTICABIZ: HOW SEX SHAPED THE INTERNET* 57 (2002).

¹⁸ See Kristie R. Blevins & Thomas J. Holt, *Examining the Virtual Subculture of Johns*, 38 J. CONTEMP. ETHNOGRAPHY 619, 620 (2009).

¹⁹ See Tammy Castle & Jennifer Lee, *Ordering Sex in Cyberspace: A Content Analysis of Escort Websites*, 11 INT'L J. CULTURAL STUD. 107, 118 (2008); Thomas J. Holt & Kristie R. Blevins, *Examining Sex Work from the Client's Perspective: Assessing Johns Using On-Line Data*, 28 DEVIANT BEHAV. 333, 342, 345-47 (2007); see also Matthew V. Pruitt, *Online Boys: Male-For-Male Internet Escorts*, 38 SOC. FOCUS 189, 193 (2005) (describing how sex is sold online by prostituted men). Of course sex buyers don't call themselves sex buyers. They refer to themselves as "johns," "hobbyists," "mongers" (abbreviated from "whoremonger"), "punters," "clients," or "customers."

joblessness, poverty, racism, and sexism into sex businesses.²⁰ Bitcoin,²¹ an unregulated online currency that unlike credit cards provides the anonymity of cash, is being used to pay for web access to sites containing extremely violent or illegal images of real women and children, including online auctions of them.²² Adapted by traffickers, pimps, and pornographers, the global reach of the Internet has facilitated sex buyers' access to prostituted women and children, thereby increasing sex trafficking.²³ The Internet has facilitated prostitution's shift from the street to indoor locations: to massage parlors, residential brothels, hotels,²⁴ call girl or escort prostitution (more accurately described as cell phone prostitution), and strip club or gentlemen's club prostitution.²⁵ Although there is a myth that indoor prostitution is safer than street prostitution, little evidence for this exists. Instead, the evidence of physical and emotional harm caused by prostitution holds constant wherever it happens.²⁶

The development of the Internet requires new prosecutorial strategies for arresting pimps, traffickers, and sex buyers—a challenge that requires law enforcement officials and prosecutors to keep up with traffickers' familiarity with, and skills in, web technologies. Online prostitution provides greater anonymity for

²⁰ See DANAH BOYD ET AL., HUMAN TRAFFICKING AND TECHNOLOGY: A FRAMEWORK FOR UNDERSTANDING THE ROLE OF TECHNOLOGY IN THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., 1 (2011), <http://research.microsoft.com/en-us/collaboration/focus/education/htframework-2011.pdf>.

²¹ See generally BITCOIN, <https://bitcoin.org/en/> (last visited June 14, 2014) (explaining the Bitcoin payment system).

²² See BOYD ET AL., *supra* note 20, at 6.

²³ See Brief of Coalition Against Trafficking in Women as Amicus Curiae Supporting Plaintiff at 4–5, *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961 (N.D. Ill. 2009) (No. 09 CV 1385). A study conducted by the Sex Trafficking Intervention Research Office of Arizona State University's School of Social Work estimated that an average of 5% of men in fifteen cities used online prostitution ads, ranging from 0.6% in San Francisco to 21.4% in Houston. DOMINIQUE ROE-SEPOWITZ ET AL., ARIZ. STATE UNIV. SCH. OF SOC. WORK, INVISIBLE OFFENDERS: A STUDY ESTIMATING ONLINE SEX CUSTOMERS 8–9 (2013).

²⁴ In April 2011, a Travelodge motel was seized as part of an indictment against a prostitution ring in California. Press Release, Fed. Bureau of Investigation, Members and Associates of Oceanside Crip Street Gangs and One Hotel Charged with Racketeering Conspiracy Relating to Prostitution of Minors and Adults and Other Crimes and Criminal Forfeiture (Apr. 18, 2011), available at <http://www.fbi.gov/sandiego/press-releases/2011/sd041811.htm>.

²⁵ See Melissa Farley, *Prostitution Harms Women Even if Indoors*, 11 VIOLENCE AGAINST WOMEN 950, 952 (2005).

²⁶ See *id.* at 955–62; Melissa Farley, “Bad for the Body, Bad for the Heart”: Prostitution Harms Women Even if Legalized or Decriminalized, 10 VIOLENCE AGAINST WOMEN 1087, 1099–1117 (2004).

johns and pimps and it blurs jurisdictional boundaries since Internet content can be accessed and published anywhere. Social networking media such as Facebook, classified advertising websites such as Backpage, message boards, and dating sites all provide platforms for prostitution marketing with relative anonymity and impunity. Sex buyers and traffickers benefit from the relative lack of accountability of Internet service providers for their websites' content, despite token gestures described below. At the same time, online prostitution results in an online record that can be used as evidence in prosecutions.

II. MARKETING PROSTITUTION: ORGANIZED CRIMINALS' USE OF WEB TECHNOLOGY FOR THE PURPOSE OF TRAFFICKING WOMEN

Advertising women for johns' sexual use is essential to pimps and traffickers.

The truth is that a lot of deep marketing-thought goes into the sex industry, whether the entity being sold is an independent escort's companionship or couples' porn. . . . Mainstream ad agencies deal with versions of this problem all the time as they market brands and lifestyles, but sex workers tangle with it in a different way, because the thing on the market block is them.²⁷

[I]nternet access has proved to be far more about men's access to the bodies of women and girls, than about women's and girls' access to resources, education, employment, empowerment. . . . The vulgarisation of privilege that Engels foresaw has taken strange new directions; every man wealthy enough to own a computer and pay an ISP can enjoy an infinite virtual harem in the seclusion of his home.²⁸

"Advertisement is the most important part of the business," said a member of the Mafia crime family, referring to Internet advertising in a case involving organized criminals' use of the Internet to traffic women.²⁹ Escort agencies, brothels, and strip clubs are advertised

²⁷ AUDACIA RAY, *NAKED ON THE INTERNET: HOOKUPS, DOWNLOADS, AND CASHING IN ON INTERNET SEXPLORATION* 178 (2007).

²⁸ D. A. Clarke, *Prostitution for Everyone: Feminism, Globalization, and the 'Sex' Industry*, in *NOT FOR SALE: FEMINISTS RESISTING PROSTITUTION AND PORNOGRAPHY* 149, 176 (Rebecca Whisnant & Christine Stark eds., 2004).

²⁹ See Press Release, Fed. Bureau of Investigation, Manhattan U.S. Attorney Charges 14 Gambino Crime Family Associates with Racketeering, Murder, Sex Trafficking, and Other Crimes (Apr. 20, 2010), available at <http://www.fbi.gov/newyork/press->

on websites and chat rooms, enabling pimps and traffickers to sell women for sex. Furthermore, the Mafia understood that pimps need a flexible business model and that advertising online attracts sex buyers who may be seeking one type of sex business but who can be enticed via the web into buying prostitution in some other form. For example, a sex buyer may first look at free pornography downloads, then be offered hardcore pornography for sale, and then he might see a pop-up advertisement for prostitution in his zip code. Web-based advertising happens daily in all areas of business enterprise on the World Wide Web. While traffickers use the same online sales model as other businesses, they also use Internet technologies usually not accessed by other businesses such as online forums, Skype, and gaming technology such as “Xbox Live, Sony Online Entertainment, or [real-time games such as] World of Warcraft.”³⁰ Gaming technologies are used to facilitate trafficking since they permit midgame user-to-user communication.³¹

Organized crime is an essential element in the sex trafficking industry.³² Profits from the business of selling sex “contribute to the expansion of organized crime in the United States and worldwide.”³³ “Trafficking in persons is often [facilitated] by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law.”³⁴ Russian and Balkan organized criminals’ trafficking of women on the Internet was noted in 2000 when gangs placed ads in an Internet magazine *Streetwalking the World* which was aimed at sex buyer markets in Europe, the United States, and Australia.³⁵ “The fact that they can put these human beings out for viewing not only shows how they regard the women, but also underlines how strong the market is,” said a UK police

releases/2010/nyfo042010.htm. The indictment included the crimes of murder, assault, witness tampering, extortion, narcotics, mail fraud, loan sharking, and gambling in addition to sex trafficking. Sealed Indictment at 1–49, *United States v. Marino*, S1 09 Cr. 1243 (LAK) (S.D.N.Y. June 20, 2010).

³⁰ BOYD ET AL., *supra* note 21, at 7.

³¹ *Id.*

³² See, e.g., Gillian Caldwell et al., *Capitalizing on Transition Economies: The Role of the Russian Mafia in Trafficking Women for Forced Prostitution*, in *ILLEGAL IMMIGRATION AND COMMERCIAL SEX: THE NEW SLAVE TRADE* 42, 42–43 (Phil Williams ed., 1999); cf. 22 U.S.C. § 7101(b)(8) (2012) (“Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises.”).

³³ 22 U.S.C. § 7101(b)(8).

³⁴ *Id.*

³⁵ Stuart Millar, *Sex Gangs Sell Prostitutes over the Internet*, *OBSERVER* (July 15, 2000), <http://www.guardian.co.uk/technology/2000/jul/16/internetnews.theobserver1>.

officer.³⁶

The trade is fuelled by the insatiable appetite of punters for “new” girls and by the need for pimps to cater for more extreme sexual demands, such as torture, as well as unprotected sex. The trade in imported women is slowly spreading across the UK, centering on cities where there is a major off-street sex industry, such as Glasgow. According to sources in the trade, one flat in the city connected to a sauna offers eastern European women for clients with “exotic” tastes.

In Edinburgh, three Lithuanian women were deported after police discovered they had been put to work in the city’s sex trade by a Russian gang. Two worked in a sauna and the other in a lap-dancing bar, but information that they were working against their will soon went round the city’s small but highly competitive industry and police were called in.³⁷

Organized crime operates in similar ways regardless of the criminals’ national or ethnic origins. Criminal gangs in Taipei used hundreds of websites to advertise the sale of young women to sex buyers and used online chat rooms to lure teenagers into prostitution with bribes of money and free drugs.³⁸ Four United States criminal cases from 2011 illustrate organized criminals’ commitment to the use of online technologies for trafficking. Nine men from the Gambino organized crime family in New York were convicted and sentenced for sex trafficking, murder, racketeering, extortion, and wire fraud.³⁹ The men trafficked young women for sexual use by advertising their prostitution on Craigslist.⁴⁰ The trafficked women were offered to gamblers in the Mafia’s high-stakes poker businesses.⁴¹ A second case from Atlanta included indictments for kidnapping, sex trafficking, and transporting women across state lines for prostitution.⁴² The male and female

³⁶ *Id.*

³⁷ *Id.*

³⁸ See Joseph Yeh, *Groups Highlight Risks of Online Sex Trade*, CHINA POST (Aug. 3, 2011, 11:50 PM), <http://www.chinapost.com.tw/taiwan/national/national-news/2011/08/03/312070/Groups-highlight.htm>.

³⁹ Press Release, U.S. Attorney, S. Dist. of N.Y., *Nine Gambino Crime Family Members Sentenced in Manhattan Federal Court for Racketeering, Murder Conspiracy, Extortion, Sex Trafficking, and Other Crimes* (May 12, 2011), *available at* <http://www.justice.gov/usao/nys/pressreleases/May11/marinodanieletalsentencingspr.pdf>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Press Release, U.S. Attorney, N. Dist. of Ga., *Pair Charged in Sex Trafficking Ring* (May

defendants recruited young women into prostitution on Internet sites Craigslist and Backpage, then terrorized them (for example binding them with duct tape and imprisoning them in a closet; forcibly addicting them to cocaine, and handcuffing them to beds) and sold them in various cities to sex buyers.⁴³ A multistate sex trafficking gang's use of the Internet triggered a third 2011 organized crime case.⁴⁴ The Internet was the prostitution ring's primary marketing tool with online ads for prostitution in Tennessee, North Carolina, New Mexico, and Ohio.⁴⁵ One of the traffickers took photos of the women and posted them to Backpage, USAsexguide, Preferred 411, Date Check and other websites offering "adult services" or "escort" services that included pornography of the prostituting women.⁴⁶ In a fourth case, police discovered an online prostitution ring, Escorts.com, in Pennsylvania.⁴⁷ Evidence used against the companies was based on fees and payments from website users including money orders, checks and credit cards, and numerous accounts at various financial institutions, funds, and financial services.⁴⁸ In 2011, the companies who controlled the prostitution ring pled guilty to money laundering and agreed to pay \$6.4 million for developing and operating Escorts.com, which was subsequently shut down.⁴⁹ The organized crime groups kept numerous accounts at various financial institutions, funds, and financial services.⁵⁰ After the link to the online prostitution ring was uncovered, the FBI, State Police, IRS and city police raided the corporate offices and found eighty boxes of evidence.⁵¹

18, 2011), available at <http://www.justice.gov/usao/gan/press/2011/05-18-11.html>.

⁴³ *Id.*

⁴⁴ Press Release, U.S. Attorney, W. Dist. of N.C., California Man Sentenced to 18 Months in Prison for Prostitution-Related Charges (July 25, 2012), available at <http://www.justice.gov/usao/ncw/pressreleases/Charlotte-2012-07-25-rodgers.html>.

⁴⁵ *FBI's Charlotte Division Arrests Multi-State 'Online' Prostitution Ring*, CRIMEINCHARLOTTE.COM (May 18, 2011), <http://www.crimeincharlotte.com/fbis-charlotte-division-arrests-multi-state-online-prostitution-ring/#.Uv1SmCiJV0x>.

⁴⁶ Cleve R. Wootson Jr., *Man Accused of Running Online Prostitution Ring*, WOPULAR (May, 17, 2011), <http://www.wopular.com/man-accused-running-online-prostitution-ring-0>.

⁴⁷ Wendy Ruderman & Barbara Laker, *Porn King's Empire Pays Feds \$6.4M Penalty*, PHILLY.COM (Nov. 2, 2011), <http://www.philly.com/philly/news/133042343.html?cmpid=1558579>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* According to *The Vienna Forum to Fight Human Trafficking*, E-business including electronic banking, benefits organized criminals: it provides "virtual identities" on the internet, disguises financial activities and allows the exchange of money and services with

Alternatives to classified advertising sites such as Craigslist and Backpage have begun to appear. Geebo.com is a website aimed at providing safe and socially responsible classified advertising.⁵² During the period of time that consciousness about online trafficking was increasing, from January 2009 to June 2010, Geebo's revenue increased 300%.⁵³ Despite this innovative trend, sex industry businessmen continue to use online technologies for the purpose of paid sexual exploitation and abuse.

III. THE HARMS OF PROSTITUTION AND TRAFFICKING

For most of the world's prostituted women, prostitution is the experience of being hunted, dominated, harassed, assaulted, and battered. Prostitution is a gendered survival strategy that requires the person in it to assume unreasonable risks.⁵⁴ Most people would not be willing to assume these risks. Prostitution formalizes women's subordination by sex, race, and class and thus poverty, racism, and sexism are inextricably connected in prostitution.⁵⁵ Women are prostituted because they are vulnerable as a result of poverty, a lack of educational options, lack of employment opportunities, and as a result of previous physical and emotional harm. They are purchased on the basis of race as well as sex stereotypes.

Childhood abuse is such a common precursor to prostitution that it is nearly universal among those in prostitution. Survivors link

anonymity. The Internet permits rapid global movement of money. Some internet payment options allow the payer the same anonymity as with cash, but with the ability to conduct global transfers of funds. See U.N. GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, THE VIENNA FORUM TO FIGHT HUMAN TRAFFICKING 13–15 FEBRUARY 2008, at 5 (Austria Ctr. Vienna Background Paper, 2008), <http://www.unodc.org/documents/human-trafficking/2008/BP017TechnologyandHumanTrafficking.pdf>.

⁵² *Our Commitment to Social Responsibility*, GEEBO, http://geebo.com/pages/view/id/5-social_responsibility/ (last visited June 8, 2014).

⁵³ E-mail from Greg Collier, Chief Executive Officer, Geebo, to Melissa Farley (Aug. 13, 2011) (on file with author).

Geebo was started with the commitment to provide safe and socially responsible classified advertising. As a result, the website never had an "adult services" or "erotica" section, and has both automated and manual screening of all ads before they are posted. In addition, Geebo does not allow users to change ads once they are posted to the site in order to prevent criminals from circumventing their screening process. Geebo.com has become a model for online classifieds who want to avoid trafficking and sexual exploitation.

Telephone Interview with Greg Collier, Chief Executive Officer, Geebo (Aug. 13, 2011).

⁵⁴ ANDREA DWORKIN, *Prostitution and Male Supremacy*, in LIFE AND DEATH 139, 139, 141 (1997).

⁵⁵ *Id.* at 141.

physical, sexual, and emotional abuse as children to later prostitution.⁵⁶ Seventy percent of the adult women in prostitution in one study stated that childhood sexual assault was responsible for their entry into prostitution.⁵⁷ Family abuse and neglect not only caused direct physical and emotional harm, but also created a cycle of victimization that affected their futures.⁵⁸ Familial sexual abuse functions as a training ground for prostitution.⁵⁹ One young woman said, "I started turning tricks to show my father what he made me."⁶⁰ Dworkin described sexual abuse of children as "boot camp" for prostitution.⁶¹ These histories make girls and young women particularly susceptible to the manipulations of traffickers who often lure their victims by initially providing a supportive family-like environment, housing and food, protection from others who have exploited them and special gifts like clothing and jewelry. Adolescence is the most frequently reported age of entry into any type of prostitution. Boyer and colleagues interviewed sixty women prostituting in escort, street, strip club, phone sex, and massage parlors (brothels) in Seattle, Washington.⁶² All of them began prostituting between the ages of twelve and fourteen.⁶³

Childhood abuse has been shown to increase the likelihood of online sexual victimization.⁶⁴ Adolescents who have been victims of childhood physical or sexual abuse and/or neglect are at risk because they are more likely to visit chat rooms,⁶⁵ be solicited sexually online and offline,⁶⁶ and receive aggressive sexual solicitations⁶⁷ than their nonabused peers. Moreover, childhood

⁵⁶ Mimi H. Silbert & Ayala M. Pines, *Sexual Child Abuse as an Antecedent to Prostitution*, 5 CHILD ABUSE & NEGLECT 407, 410 (1981).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ DWORKIN, *supra* note 54, at 143.

⁶⁰ Mimi H. Silbert & Ayala M. Pines, *Entrance into Prostitution*, 13 YOUTH & SOCIETY 471, 488 (1982).

⁶¹ DWORKIN, *supra* note 54, at 143.

⁶² DEBRA BOYER, ET AL., SURVIVAL SEX IN KING COUNTY: HELPING WOMEN OUT (1993).

⁶³ *Id.*

⁶⁴ Jennie G. Noll, et al., *Childhood Abuse, Avatar Choices, and Other Risk Factors Associated with Internet-Initiated Victimization of Adolescent Girls*, 123 PEDIATRICS 1078, 1078 (2009), available at <http://pediatrics.aappublications.org/content/123/6/e1078.full.pdf+html>.

⁶⁵ Timothy J. Beebe et al., *Heightened Vulnerability and Increased Risk-Taking Among Adolescent Chat Room Users: Results from a Statewide School Survey*, 35 J. ADOLESCENT HEALTH 116, 119 (2004).

⁶⁶ Kimberly J. Mitchell et al., *Youth Internet Users at Risk for the Most Serious Online Sexual Solicitations*, 32 AM. J. PREVENTIVE MED. 532, 535 (2007).

⁶⁷ Melissa Wells & Kimberly J. Mitchell, *How Do High-Risk Youth Use the Internet?*

abuse victims are likely to experience physical and sexual revictimization and exploitation.⁶⁸

A number of authors have described and summarized the sexual and physical violence that is the norm for women in prostitution.⁶⁹

Characteristics and Implications for Prevention, 13 CHILD MALTREATMENT 227, 231–32 (2008).

⁶⁸ David Finkelhor et al., *Re-Victimization Patterns in a National Longitudinal Sample of Children and Youth*, 31 CHILD ABUSE & NEGLECT 479, 492 (2007); Terri L. Messman-Moore & Patricia J. Long, *The Role of Childhood Sexual Abuse Sequelae in the Sexual Revictimization of Women: An Empirical Review and Theoretical Reformulation*, 23 CLINICAL PSYCHOL. REV. 537, 538 (2003).

⁶⁹ For some authors providing authoritative data on the violence of prostitution see KATHLEEN BARRY, FEMALE SEXUAL SLAVERY 40 (1979); KATHLEEN BARRY, THE PROSTITUTION OF SEXUALITY 36 (1995); BOYER ET AL., *supra* note 62; ANDREA DWORKIN, LIFE AND DEATH 141 (1997) [hereinafter DWORKIN, LIFE AND DEATH]; ANDREA DWORKIN, PORNOGRAPHY: MEN POSSESSING WOMEN 203–04 (1981) [hereinafter DWORKIN, PORNOGRAPHY]; ANDREA DWORKIN, SCAPEGOAT: THE JEWS, ISRAEL, AND WOMEN'S LIBERATION 330–31 (2000) [hereinafter DWORKIN, SCAPEGOAT]; CECILIE HØIGÅRD & LIV FINSTAD, BACKSTREETS: PROSTITUTION, MONEY AND LOVE 115 (1996); SHEILA JEFFREYS, THE IDEA OF PROSTITUTION 254–55, 259 (1997); CATHARINE A. MACKINNON & ANDREA DWORKIN, IN HARM'S WAY: THE PORNOGRAPHY CIVIL RIGHTS HEARINGS 333–34 (1997); MIMI H. SILBERT ET AL., SEXUAL ASSAULT OF PROSTITUTES: PHASE ONE 119 (1980); INE VANWESENBEECK, PROSTITUTES WELL-BEING AND RISK 108 (1994); D. KELLY WEISBERG, CHILDREN OF THE NIGHT: A STUDY OF ADOLESCENT PROSTITUTION 108–10 (1985); Margaret A. Baldwin, "A Million Dollars and an Apology": *Prostitution and Public Benefits Claims*, 10 HASTINGS WOMEN'S L.J. 189, 192–93 (1999); Margaret A. Baldwin, *Strategies of Connection: Prostitution and Feminist Politics*, 1 MICH. J. GENDER & L. 65, 71–72 (1993); Devon D. Brewer et al., *Extent, Trends, and Perpetrators of Prostitution-Related Homicide in the United States*, 51 J. FORENSIC SCI. 1101, 1107 (2006) (estimating that 2.7% of female homicide victims in the United States were prostituted women—the highest rate of victimization for any group of women previously studied); Phyllis Chesler, *A Woman's Right to Self-Defense: The Case of Aileen Carol Wuornos*, 66 ST. JOHN'S L. REV. 933, 948–53 (1993); Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, in PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS 60 (Melissa Farley ed., 2003) [hereinafter, Farley et al., *Nine Countries*]; Melissa Farley et al., *Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder*, 8 FEMINISM & PSYCHOL. 405, 406 (1998); Melissa Farley et al., *Prostitution in Vancouver: Violence and the Colonization of First Nations Women*, 42 TRANSCULTURAL PSYCHIATRY 242, 243 (2005); Evelina Giobbe, *An Analysis of Individual, Institutional, and Cultural Pimping*, 1 MICH. J. GEND. & L. 33, 49–50 (1993); Evelina Giobbe, *Prostitution: Buying the Right to Rape*, in RAPE AND SEXUAL ASSAULT III: A RESEARCH HANDBOOK 147–48 (Ann Wolbert Burgess ed., 1991); Susan Kay Hunter, *Prostitution is Cruelty and Abuse to Women and Children*, 1 MICH. J. GEND. & L. 91, 92–94 (1994); Quarraisha Abdool Karim et al., *Reducing the Risk of HIV Infection among South African Sex Workers: Socioeconomic and Gender Barriers*, 85 AM. J. PUB. HEALTH 1521, 1523 (1995); Dorchen Leidholdt, *Prostitution: A Violation of Women's Human Rights*, 1 CARDOZO WOMEN'S L.J. 133, 138 (1993); Catharine A. MacKinnon, *Prostitution and Civil Rights*, 1 MICH. J. GEND. & L. 13, 13 (1993); Jody Miller & Martin D. Schwartz, *Rape Myths and Violence Against Street Prostitutes*, 16 DEVIANT BEHAV. 1, 7–8 (1995); John J. Potterat et al., *Mortality in a Long-term Open Cohort of Prostitute Women*, 159 AM. J. EPIDEMIOLOGY 778, 782–84 (2004) (concluding, based on a study of prostituted women in Colorado Springs, Colo., that no population of women studied previously has had a crude mortality rate, standardized mortality ratio, or percentage of deaths due to murder even approximating those observed in the study cohort); Janice G. Raymond, *Prostitution as Violence Against Women: NGO*

Silbert and Pines reported that 70% of women suffered rape in prostitution with 65% having been physically assaulted by customers and 66% assaulted by pimps.⁷⁰ The Council for Prostitution Alternatives in Portland reported that prostituted women were raped an average of once a week.⁷¹ In the Netherlands, 60% of prostituted women suffered physical assaults; 70% experienced verbal threats of physical assault; 40% experienced sexual violence; and 40% had been forced into prostitution and/or sexual abuse by acquaintances.⁷² Most young women in prostitution were abused or beaten by pimps as well as johns.⁷³ Eighty-five percent of prostituting women in Minnesota had been raped in prostitution.⁷⁴ Of 854 people in prostitution in nine countries (Canada, Colombia, Germany, Mexico, South Africa, Thailand, Turkey, United States, and Zambia), 71% had experienced physical assaults in prostitution and 62% had been raped in prostitution.⁷⁵ Eighty-nine percent of those people stated that they wished to leave prostitution but did not have other options.⁷⁶ In another study 94% of those in street prostitution had experienced sexual assault and 75% had been raped by one or more johns.⁷⁷

Prostitution can be lethal.⁷⁸ A Canadian commission found that

Stonewalling in Beijing and Elsewhere, 21 WOMEN'S STUD. INT'L F. 1, 1 (1998); Silbert & Pines, *Entrance into Prostitution*, *supra* note 60, at 490; Mimi H. Silbert & Ayala M. Pines, *Victimization of Street Prostitutes*, 7 VICTIMOLOGY 122, 127–28, 130 (1982); DEBRA BOYER, SEATTLE HUMAN SERVS. DEPT., WHO PAYS THE PRICE? ASSESSMENT OF YOUTH INVOLVEMENT IN PROSTITUTION IN SEATTLE 27, 37 (2008), http://www.seattle.gov/humanservices/domesticviolence/report_youthinprostitution.pdf; Donna M. Hughes, *Pimps and Predators on the Internet: Globalizing the Sexual Exploitation of Women and Children*, U. OF R.I. (1999), <http://www.uri.edu/artsci/wms/hughes/pprep.htm>.

⁷⁰ See Silbert & Pines, *Victimization of Street Prostitutes*, *supra* note 69, at 127–28; see generally Mimi H. Silbert & Ayala M. Pines, *Sexual Child Abuse as an Antecedent to Prostitution*, 5 CHILD ABUSE & NEGLECT 407, 409 (1981) (identifying high levels of childhood sexual abuse among women in street prostitution).

⁷¹ See Hunter, *supra* note 69, at 92–93.

⁷² See VANWESENBEECK, *supra* note 69, at 91.

⁷³ See BARRY, THE PROSTITUTION OF SEXUALITY, *supra* note 69, at 36; HOIGARD & FINSTAD, *supra* note 69, at 115; JEFFREYS, *supra* note 69, at 254–55, 259; MACKINNON & DWORKIN, *supra* note 69, at 333–34.

⁷⁴ Ruth Parriott, Health Experiences of Twin Cities Women Used in Prostitution (1994) (unpublished manuscript) (commissioned by Women Hurt in Systems of Prostitution Engaged in Revolt (WHISPER)).

⁷⁵ See Farley, *supra* note 26, at 1095.

⁷⁶ *Id.*

⁷⁷ See Miller & Schwartz, *supra* note 69, at 7–8.

⁷⁸ See Potterat et al., *supra* note 69, at 782; see also Nancy Erbe, *Prostitutes: Victims of Men's Exploitation and Abuse*, 2 LAW & INEQ. 609, 618–19 (1984) (recounting a number of horrendous murders of women in prostitution).

the death rate of women in prostitution was forty times higher than that of the general population.⁷⁹ A study of Vancouver prostitution reported a 36% incidence of attempted murder.⁸⁰ An occupational survey noted that 99% of women in prostitution were victims of violence, with more frequent injuries “than workers in [those] occupations considered . . . most dangerous, like mining, forestry and fire fighting.”⁸¹

Two factors are associated with greater violence in prostitution. The greater the poverty, the greater the violence, and the longer one is in prostitution, the more likely one is to experience violence.⁸²

Posttraumatic stress disorder (PTSD) commonly occurs among prostituted women and is indicative of their extreme emotional distress. PTSD is characterized by anxiety, anhedonia, depression, insomnia, irritability, flashbacks, emotional numbing, and hypervigilance.⁸³ In nine countries researchers found that 68% of those in prostitution met criteria for a diagnosis of PTSD,⁸⁴ a prevalence that was comparable to battered women seeking shelter,⁸⁵ rape survivors seeking treatment,⁸⁶ and survivors of state-sponsored torture.⁸⁷ Across widely varying cultures on five

⁷⁹ SPECIAL COMM. ON PORNOGRAPHY AND PROSTITUTION, PORNOGRAPHY AND PROSTITUTION IN CANADA 350 (1985).

⁸⁰ Leonard Cler-Cunningham & Christine Christenson, *Studying Violence to Stop It: Canadian Research on Violence Against Women in Vancouver's Street Level Sex Trade*, 4 RES. FOR SEX WORK 25, 26 (2001).

⁸¹ Erin Gibbs Van Brunshot et al., *Images of Prostitution: The Prostitute and Print Media*, 10 WOMEN & CRIM. JUST. 47, 61–62 (1999).

⁸² See VANWESENBECK, *supra* note 69, at 95. A helpful paradigm for understanding the harm of prostitution is that of domestic violence. Prostitution is domestic violence. Giobbe compared pimps and batterers and found similarities in the ways they used extreme physical violence to control women, the ways they forced women into social isolation, used minimization and denial, threats, intimidation, verbal and sexual abuse, and had an attitude of ownership. Giobbe, *Prostitution: Buying the Right to Rape*, *supra* note 69, at 151. The techniques of physical violence used by pimps are often the same as those used by torturers. Harvey Schwartz et al., *Pimp Subjugation of Women by Mind Control*, in PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS 51–52 (Melissa Farley ed., 2007).

⁸³ AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS § 309.81 (5th ed. 2013)

⁸⁴ See Farley et al., *Nine Countries*, *supra* note 69, at 44.

⁸⁵ See Beth M. Houskamp & David W. Foy, *The Assessment of Posttraumatic Stress Disorder in Battered Women*, 6 J. INTERPERSONAL VIOLENCE 367, 371 (1991) (citing 45%); Anita Kemp et al., *Post-Traumatic Stress Disorder (PTSD) in Battered Women: A Shelter Sample*, 4 J. TRAUMATIC STRESS 137, 143 (1991) (citing 84%).

⁸⁶ See I.T. Bownes et al., *Assault Characteristics and Posttraumatic Stress Disorder in Rape Victims*, 83 ACTA PSYCHIATRICA SCANDINAVICA 27, 28 (1991) (citing 70%).

⁸⁷ See Rosalind Ramsay et al., *Psychiatric Morbidity in Survivors of Organised State Violence Including Torture: A Retrospective Series*, 162 BRIT. J. PSYCHIATRY 55, 56 (1993) (citing 51%).

continents, the traumatic consequences of prostitution were similar.⁸⁸ Vanwesenbeeck found anxiety and hypervigilance among 90% of a sample of women in legal Dutch prostitution (brothels, windows, and clubs).⁸⁹ Two studies of prostituted Korean women reflect the women's intense psychological distress with PTSD prevalence rates of 78% and 80%.⁹⁰ Web-based pornography of women trafficked in prostitution increases their vulnerability and increases their emotional distress and traumatic stress.⁹¹

The assault on women's sexuality in prostitution is overwhelming, yet invisible to most people. Survivors describe prostitution as a process whereby they are turned into objects into which men masturbate causing great psychological harm to the woman acting as receptacle.⁹² Dissociation is a response to overwhelming and uncontrollable traumatic events in which the mind detaches from one's current emotional or physical state.⁹³ Dissociation occurs during extreme stress among prisoners of war who are tortured, among children who are being sexually assaulted, and among women being battered, raped, or prostituted.⁹⁴ Dissociative disorders, depression and other mood disorders are common among prostituted women in street, escort, and strip club prostitution.⁹⁵ Dissociation in prostitution results from both childhood sexual violence and sexual violence in adult prostitution. The dissociation necessary to survive rape in prostitution is much like the dissociation that enables a victim to endure familial sexual assault.⁹⁶ Vanwesenbeeck noted that a "dissociative proficiency"

⁸⁸ See Farley et al., *Nine Countries*, *supra* note 69, at 55–56.

⁸⁹ Vanwesenbeeck found that 90% of women who were prostituted primarily in clubs, brothels, and windows reported "extreme nervousness." VANWESENBEECK, *supra* note 69, at 82.

⁹⁰ Melissa Farley & Sungjean Seo, *Prostitution and Trafficking in Asia*, 8 HARV. ASIA PAC. REV. 9, 10 (2006).

⁹¹ Melissa Farley, "Renting an Organ for 10 Minutes:" *What Tricks Tell Us About Prostitution, Pornography, and Trafficking*, in PORNOGRAPHY: DRIVING THE DEMAND FOR INTERNATIONAL SEX TRAFFICKING 148 (David E. Guinn & Julie DiCaro eds., 2007).

⁹² HØIGÅRD & FINSTAD, *supra* note 69, at 95–96.

⁹³ JUDITH LEWIS HERMAN, TRAUMA AND RECOVERY 1–2 (1992).

⁹⁴ *Id.* at 2–3; HARVEY L. SCHWARTZ, DIALOGUES WITH FORGOTTEN VOICES: RELATIONAL PERSPECTIVES ON CHILD ABUSE TRAUMA AND TREATMENT OF DISSOCIATIVE DISORDERS 5–6 (2000).

⁹⁵ Melissa Farley, *Prostitution and the Invisibility of Harm*, in WOMEN WITH VISIBLE AND INVISIBLE DISABILITIES: MULTIPLE INTERSECTIONS, MULTIPLE ISSUES, MULTIPLE THERAPIES 265 (Martha E. Banks & Ellyn Kaschak eds., 2003); Colin A. Ross et al., *Dissociation and Abuse Among Multiple-Personality Patients, Prostitutes, and Exotic Dancers*, 41 HOSP. & COMMUNITY PSYCHIATRY 382, 328–330 (1990).

⁹⁶ ELEANOR M. MILLER, STREET WOMAN 114–15 (1986); Giobbe, *Prostitution: Buying the*

contributed to the professional attitudes among women in prostitution in the Netherlands.”⁹⁷ A Thai woman said, “You make yourself empty inside.”⁹⁸

IV. COMPARTMENTALIZATION AND FALSE DISTINCTIONS

While theory about prostitution as a “choice” abounds,⁹⁹ it is impossible to distinguish prostitution from trafficking in most cases.¹⁰⁰ Thus conceptual walls between prostitution and trafficking limit enforcement and prosecutorial options that are available. Noting the impossibility of separating prostitution from trafficking in the real world, a 2006 report by Sigma Huda, United Nations Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children noted that prostitution as it is practiced “usually does satisfy the elements of trafficking”¹⁰¹ and therefore, legalization of prostitution is “to be discouraged.”¹⁰² The Special Rapporteur observed that “[t]he issue of demand is of crucial importance in addressing trafficking,”¹⁰³ noting that, “[b]y engaging in the act of commercial sex, the prostitute-user is . . . directly inflicting an additional and substantial harm upon the trafficking victim, tantamount to rape, above and beyond the harmful means used by others to achieve her entry or maintenance in prostitution.”¹⁰⁴ Pimp-controlled

Right to Rape, *supra* note 69, at 151–58.

⁹⁷ VANWESENBEECK, *supra* note 69, at 107.

⁹⁸ RYAN BISHOP & LILLIAN S. ROBINSON, NIGHT MARKET: SEXUAL CULTURES AND THE THAI ECONOMIC MIRACLE 47 (1998).

⁹⁹ SHANNON BELL, READING, WRITING, AND REWRITING THE PROSTITUTE BODY 1–4 (1994); *see, e.g.*, Celine Parrenas Shimizu, *Master-Slave Sex Acts: Mandingo and the Race/Sex Paradox*, 21 WIDE ANGLE 42, 43 (1999) (noting the “paradox of pleasure and violence in racial subjection,” Shimizu explores the rapes of slaves by their masters and recommends that we not prematurely dismiss “a telling of slavery from the point of view of slave sexual contentment”); Celine Parrenas Shimizu, *Sex for Sale: Queens of Anal, Double, Triple, and the Gang Bang: Producing Asian/American Feminism in Pornography*, 18 YALE J.L. & FEMINISM 235, 235–36 (2006) (discussing some Asian American women’s pornography that expresses racialized and sexual degradation); Audrey Extavasia & Tessa Dora Addison, *Fucking (with Theory) for Money: Toward an Interrogation of Escort Prostitution*, 2 POSTMODERN CULTURE (1992), available at <http://www3.iath.virginia.edu/pmc/text-only/issue.592/add-ext.592>.

¹⁰⁰ Catherine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 299–300 (2011); *see supra* note 13.

¹⁰¹ *Id.* at 300; *see* Comm’n on Human Rights, Rep. on its 62nd Sess., Feb. 20, 2006, U.N. Doc. E/CN.4/2006/62, at 9 (2006) (by Sigma Huda).

¹⁰² Comm’n on Human Rights, *supra* note 101, at 17.

¹⁰³ *Id.* at 7.

¹⁰⁴ *Id.* at 12. The Special Rapporteur noted that “[t]he terms ‘sex work’, ‘sex worker’ and ‘client’ wrongly suggest that prostitution, as currently practised, does not typically fall within

prostitution is indistinguishable from trafficking. Seeking to be qualified as an expert witness, a New York pimp argued that beatings of prostituted women are simply “part of the pimp-prostitute relationship.”¹⁰⁵

Compartmentalization of what is actually a global trafficking industry is both a factual and a strategic error that functions as a barrier to the prosecution of pimps, traffickers, and sex buyers. There are no boundaries in the sex trafficking industry that distinguish physically coerced from psychologically coerced victims. Confusion reigns regarding techniques of mental control used by pimps and traffickers whereby victims appear to collude happily in their own victimization.¹⁰⁶ There is also a failure by many—the public, law enforcement, NGOs, health care personnel—to recognize the coercive force of a history of abuse, neglect, racism, sexism, and poverty in channeling women into prostitution. False distinctions create legal and conceptual confusion about the nature of the sex trafficking industry. The following conceptual distinctions are based on myths rather than empirical data: trafficking versus prostitution, adult versus child prostitution, domestic versus international prostitution, legal versus illegal prostitution, indoor versus outdoor prostitution, street versus escort prostitution, and voluntary versus involuntary prostitution.¹⁰⁷ The United States Department of Health and Human Services acknowledged that trafficking victims are located not only in street and brothel prostitution but also in pornography, strip clubs, massage parlors, spas, live video-cam sex shows, mail-order bride or servile marriage services, military prostitution, and sex tourism or prostitution tourism.¹⁰⁸

Compartmentalization of the sex industry into illegal versus

the category of trafficking.” *Id.* at 10.

¹⁰⁵ *Pimp Denied “Expert” Status at Trial*, MYFOXNY.COM (Nov. 22, 2011, 6:06 AM), <http://www.myfoxny.com/story/17442950/pimp-denied-expert-status-at-trial>.

¹⁰⁶ Schwartz et al., *supra* note 82, at 51–59 (describing brainwashing and other techniques used by pimps and torturers to control and manipulate their victims).

¹⁰⁷ See MacKinnon, *supra* note 100, at 272, Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order To Keep the Business of Sexual Exploitation Running Smoothly*, 18 YALE J.L. & FEMINISM 109, 111 (2006) [hereinafter Farley, *What We Must Not Know*], Melissa Farley, *Theory Versus Reality: Commentary on Four Articles About Trafficking for Prostitution*, 32 WOMEN’S STUD. INT’L FORUM, 311, 311 (2009), and Schwartz et al., *supra* note 106, at 52–59, for further discussions of conceptual confusions regarding trafficking.

¹⁰⁸ *Sex Trafficking Fact Sheet*, U.S. DEP’T OF HEALTH & HUM. SERVS., http://www.acf.hhs.gov/sites/default/files/orr/fact_sheet_sex_trafficking.pdf (last visited June 9, 2014).

quasi-legal prostitution benefits pimps and traffickers in that it frequently avoids accountability for criminal acts. The goal of pimps' lawyers appears to be to legally blur any distinction between prostitution and not-prostitution. For example, an attorney for seekingarrangement.com argued that prostitution is simply the sale of sex with no emotional relationship.¹⁰⁹ The lawyer failed to note that in today's prostitution market GFE (girlfriend experience), which his client's website advertised, is precisely that: purchased sex with the veneer of a "girlfriend experience."¹¹⁰ His strategy was to carve out an area of the sex industry that would be difficult to prosecute as prostitution. The seekingarrangement website's goal is to create what the site's pimps describe as mutually beneficial relationships between two people, usually a man willing to pay for sex with a woman.¹¹¹ The same strategy is used in online advertisements for escort prostitution. Payment is alleged to be for companionship.¹¹² If sex occurs, it is alleged to be outside the scope of the financial agreement. Similarly, in strip clubs, pimps allege that the \$500 payment for private time in a back room is for the bottle of champagne not for the woman's performance of a sex act on a john.

Some assume that men in strip clubs watch women dance on a stage and chat with them afterward. Today, strip clubs are where prostitution happens.¹¹³ As a Gambino organized crime family member said, "If I'm gonna build a fucking hooker business, I'm gonna hang out in strip clubs."¹¹⁴ Today "sex shows" and "strip shows" are forms of online pornography (private strip prostitution) as well as a means of trafficking women.¹¹⁵ Strip clubs are advertised online.¹¹⁶ A lap dance, available in all strip clubs, is a

¹⁰⁹ *Is It Prostitution? Website Helps Female Students Pay Off Debts By Dating 'Sugar Daddies'*, MAILONLINE (Aug 1, 2011, 7:00 AM), <http://www.dailymail.co.uk/news/article-2021003/Is-prostitution-Sugar-daddy-dating-site-accused-targeting-debt-laden-college-students.html>.

¹¹⁰ *See id.*

¹¹¹ *What's an Arrangement?*, SEEKINGARRANGEMENT, <https://www.seekingarrangement.com/arrangement.php> (last visited June 9, 2014).

¹¹² *Id.*

¹¹³ *See* Dana DiFilippo & Phillip Lucas, *Dirty Dancing: Strippers Bring Prostitution, Violence, Cops Say* (Mar. 28, 2012), PHILLY.COM, http://www.philly.com/philly/news/20120328_Dirty_Dancing_Strippers_bring_prostitution_violence_cops_say.html.

¹¹⁴ *See* Sealed Indictment, *United States v. Marino*, No. 1:09-cr-01243-LAK (S.D.N.Y. Apr. 19, 2010).

¹¹⁵ DiFilippo & Lucas, *supra* note 113.

¹¹⁶ For example, Sapphire's in Las Vegas offers free transportation if payment is made in advance online. *See* SAPPHIRE, <http://www.sapphirelasvegas.com> (last visited June 9, 2014).

form of prostitution in which a man is masturbated by a woman's body to ejaculation even though it may not be named as prostitution by men who purchase those sex acts or by the club's attorneys. A recent case against a pimp demonstrates the lack of difference between prostitution in strip clubs and prostitution elsewhere. Corey Davis was "charged in a fifteen-count Superseding Indictment with charges including sex trafficking, forced labor, kidnapping, and violations of the Mann Act," to which he later "pled guilty to a single count of sex trafficking."¹¹⁷ The Grand Jury Superseding Indictment detailed how he pimped minor girls and adult women between a Queens, NY home (where he kept them locked up) and Connecticut strip clubs.¹¹⁸ Davis used physical violence and psychological coercion to force his victims to engage in prostitution at the strip clubs and collected their earnings.¹¹⁹ A 2011 police undercover operation in North Carolina investigated prostitution on backpage.com,¹²⁰ which published a job advertisement that was a virtual shout-out to Eastern European and United States pimps.¹²¹ The South 13 Gentlemen's Club posted "Currently hiring entertainers. . . . Must . . . have . . . a willing and motivated work ethic. . . . [S]eeking select Eastern European ladies and Southern Cuties that may be willing to relocate"¹²²

Like other multinational businesses, the sex trafficking industry has many interconnections. Local businesses are connected with national and international distributors of women and children in prostitution. One arm of the sex trafficking business fosters and expands another and can eventually morph into a new enterprise. Online pornography encourages viewers to take the additional step of searching for women in prostitution after seeing their photos. For example, a sex buyer who was arrested for attempting to buy a

¹¹⁷ See *United States v. Davis*, No. 3:07-cr-11 (JCH), 2008 U.S. Dist. LEXIS 99802, at *1–2 (D. Conn. Nov. 26, 2008).

¹¹⁸ *United States v. Davis*, Case No. 3:07cr11, Grand Jury B-06-1, at 1–23 (D. CT), available at <http://www.scribd.com/doc/48989066/Corey-Davis-Indictment> (last visited June 14, 2014) [hereinafter *Davis Indictment*]. The strip clubs were named Pleasant Moments and Bishop's Corner Cafe. *Id.* at 5, 7.

¹¹⁹ See *id.* at 4.

¹²⁰ *Undercover Operation at Gentleman's Clubs Yields 9 Arrests*, WMBF NEWS (Oct. 15, 2012), <http://www.wmbfnews.com/story/15132069/undercover-operation-at-gentlemans-clubs-yields-9-arrests>.

¹²¹ *South 13 Gentlemen's Club of Greenville NC—34*, BACKPAGE.COM (Apr. 28, 2011), <http://myrtlebeach.backpage.com/Strippers/south-13-gentlemans-club-of-greenville-nc-34/3997007>.

¹²² *Id.*

woman in prostitution said, “I’m watching a little porn at home, so I get a little horny and decide I want a blow job’ ‘I head to the Tenderloin [district] . . . and *bang!* The bitch is a cop.”¹²³ Prostitution is advertised online, where it is indistinguishable from pornography. Pornography is one specific means of trafficking women for the purpose of selling women into prostitution.¹²⁴ On pornography/prostitution websites, women are for rent and sale. One of the world’s largest pornography sites with 10 million users worldwide, located in China and the United States, was busted in 2011.¹²⁵ The site used a typical online sex trafficking business model: in addition to selling pornography, the site also advertised prostitution.¹²⁶ Visual pornography is a record of prostitution or trafficking. Pornography is a document of what men’s domination of women in prostitution looks like in all its sexist, racist, and classist specificity. Pornography is a documentary of specific women’s abuses in prostitution, and its consumers obtain pornography as a filmed document of a woman’s sexual humiliation.¹²⁷ A Danish website advertised “real life amateur slaves,” encouraging men to “submit a slave to the picture farm.”¹²⁸ Sex buyers use pornography to solicit children for prostitution.¹²⁹ Both prostitution survivors and the men who buy them understand that pornography is prostitution with a camera.¹³⁰ “Yes, the woman in pornography is a prostitute,” said a sex buyer, “They’re prostituting before the cameras.”¹³¹ A number of courts have understood that making pornography is an act of prostitution.¹³² Pimps make more money from sex buyers when they advertise women in prostitution as “adult film stars” who are available as

¹²³ VICTOR MALAREK, *THE JOHNS: SEX FOR SALE AND THE MEN WHO BUY IT* 253 (2009).

¹²⁴ Catharine A. MacKinnon, *Pornography as Trafficking*, 26 MICH. J. INT’L L. 993, 993 (2005).

¹²⁵ Wang Qingchu, *Biggest Chinese Porn Site Busted by Police in China and US*, SHANGHAI DAILY.COM (Aug. 25, 2011), <http://www.shanghaidaily.com/national/Biggest-Chinese-porn-site-busted-by-police-in-China-and-US/shdaily.shtml>.

¹²⁶ *Id.*

¹²⁷ CLARKE, *supra* note 28, at 151–54.

¹²⁸ Maggie Easter, *Sex Trafficking and the Internet*, URBANETTE MAGAZINE, <http://www.urbanette.com/sex-trafficking-and-the-internet/> (last visited June 14, 2014).

¹²⁹ See, e.g., Tom Haydon, *Old Bridge Man Charged with Showing Porn to 14-Year-Old Boy, Offering to Pay for Sex*, NJ.COM (Feb. 10, 2011, 5:01 PM), http://www.nj.com/news/index.ssf/2011/02/old_bridge_man_charged_with_sh.html.

¹³⁰ Farley, *What We Must Not Know*, *supra* note 106, at 127.

¹³¹ *Id.* at 127–28 (quoting Farley, *supra* note 91, at 147).

¹³² CATHARINE A. MACKINNON, *SEX EQUALITY* 1524 (2001).

“escorts.”¹³³ Exploiting women’s poverty, pornographers use prostituted women from Eastern Europe, where “[t]hey cost less and do more,” said one German producer.¹³⁴

Pornographers are indistinguishable from other pimps.¹³⁵ Both exploit women’s and girls’ economic and psychological vulnerabilities or coerce them to get into and stay in the sex industry. Pornographers and pimps both take pictures to advertise their “products,” suggest specific abuses for johns to perpetrate against women and minimize the resulting harms. Eliminating the imagined boundary between pornography and prostitution, a pornographer advertised that he was “in the business of degrading whores for your viewing pleasure.”¹³⁶

Web-based, video, and print pornography are inseparable from the rest of the sex industry, with crossovers from prostitution to pornography to sex trafficking. Nevada pimps declared their interest in “cross-fertiliz[ing]” legal brothels with other arms of the sex trafficking industry—strip clubs, escort prostitution, websites, and pornography.¹³⁷ A strip club website telegraphed the intimate connection between stripping and pornography by advertising, “Breeding pornstars one showgirl at a time!!!”¹³⁸ New York Elites, an escort prostitution agency, was busted for numerous offenses including promoting prostitution by flying pornography stars to many locations in the United States for “dates.”¹³⁹

Police in Las Vegas located a multi-use sex industry operation that included online prostitution, illustrating the interconnectedness of different arms of the sex trafficking

¹³³ Thomas Zambito, *2 Plead Guilty in 13M Prosty Ring*, N.Y. DAILY NEWS (Jan. 7, 2006, 12:00 AM), <http://www.nydailynews.com/archives/news/2-plead-guilty-13m-prosty-ring-article-1.627326>.

¹³⁴ *Giving the Customer What He Wants*, ECONOMIST (Feb. 12, 1998), <http://www.economist.com/node/113208> (reporting that pornographers and pimps pay women much less for excruciating and/or humiliating sex acts when economies are in dire straits).

¹³⁵ See, e.g., AKIYUKI NOZAKA, *THE PORNOGRAPHERS* (Michael Gallagher trans., Alfred A. Knopf, Inc., 1968) (telling the story of threats against a pornographer by thieves, the government, and his family).

¹³⁶ Robert Jensen, *The Paradox of Pornography*, OPEDNEWS (Feb. 1, 2006, 7:55 AM), http://www.opednews.com/articles/opedne_robert_j_060201_the_paradox_of_porno.htm (internal quotation marks omitted).

¹³⁷ Kathryn Hausbeck & Barbara G. Brents, *Inside Nevada’s Brothel Industry*, in *SEX FOR SALE: PROSTITUTION, PORNOGRAPHY, AND THE SEX INDUSTRY* 217, 237 (Ronald Weitzer ed., 2000).

¹³⁸ STRIPCLUBNETWORK.COM, <http://tour.stripclubnetwork.com/> (last visited Feb. 22, 2014).

¹³⁹ Mark Jacobson, *The \$2,000 an-Hour Woman*, N.Y. MAG., <http://nymag.com/nymetro/nightlife/sex/features/12193/> (last visited June 14, 2014).

industry.¹⁴⁰ Looking like a small office complex from the street, the business functioned simultaneously as Internet pornography production, cyber-peepshow or webcam prostitution, and a location out of which women in escort prostitution were pimped to Las Vegas hotels and to an illegal brothel.¹⁴¹

Live video technology enables johns to obtain prostitution online that is indistinguishable from filmed sexual assaults of children and trafficking. Writing in 2004, Peter Landesman described the evolving sameness of Internet pornography, prostitution, trafficking, and slavery:

Immigration and Customs Enforcement agents at the Cyber Crimes Center in Fairfax, Va., are . . . tracking a clear spike in the demand for harder-core pornography on the Internet. . . Cybernetworks like KaZaA and Morpheus through which you can download and trade images and videos—have become the Mexican border of virtual sexual exploitation. . . [A website selling sex slaves showed] thumbnail images of young women of every ethnicity in obvious distress, bound, gagged, contorted. The agents in the room pointed out probable injuries from torture. Cyberauctions for some of the women were in progress; one had exceeded \$300,000. “With new Internet technology,” [ICE Special Agent Perry] Woo said, “pornography is becoming more pervasive. With Web cams we’re seeing more live molestation of children.”¹⁴²

V. ORIGINS OF ONLINE PROSTITUTION

Beginning with websites¹⁴³ and email, online technologies have enabled pimps to sell women in prostitution by using new forms of sexual exploitation. Bulletin boards were used to download pornography in the 1970s before the advent of the Internet. The use of credit card payments was pioneered by bulletin board

¹⁴⁰ Conversation with Ttwo Las Vegas Police Department Vice Detectives, (June 29, 2005) (on file with the author).

¹⁴¹ *Id.*

¹⁴² Peter Landesman, *The Girls Next Door*, N.Y. TIMES (Jan. 25, 2004), <http://www.nytimes.com/2004/01/25/magazine/25SEXTRAFFIC.html>.

¹⁴³ “.xxx” domains went on sale in 2011, however, there were already numerous platforms where pimps could sell women in prostitution. See *Website Names Ending in .xxx Go on Sale*, CBCNEWS (Dec. 6, 2011, 12:55 PM), <http://www.cbc.ca/news/canada/ottawa/story/2011/12/06/technology-xxx-domain-names.html?cmp=rss>.

pornographers.¹⁴⁴ Since 1990 pagers and cell phones have been used as the principal technology for escort or call girl prostitution.¹⁴⁵ A pimp who advertised men and women for sale for sex explained that the online sex trafficking industry was constantly evolving and regrouping, “[b]efore Craigslist, there was Yahoo Groups; before Yahoo there was AOL.”¹⁴⁶ Next came live video chat, web cam prostitution, and message boards.

With the development of Netscape’s Web browser in 1994, transmission of Web pages with text, images, sounds, and video made it possible to traffic women on the World Wide Web. “The first web-based prostitution business, A Personal Touch Services, from Seattle, WA, U.S.A., appeared in late September, 1994” and was described as the year’s “most significant Internet marketing innovation.”¹⁴⁷ The Internet Business Journal’s endorsement of the sex industry’s marketing approach “was an early indication of the mutually beneficial relationship between” web technology businesses and sex trafficking industries.¹⁴⁸

Sex industry entrepreneurs developed the ability to “pagejack” web urls by 1999.¹⁴⁹ In this process, when a web user enters a web address, a criminal has rewritten the html code (usually by one character) and inserted it into, for example, a skateboard video website. When the user attempts to go to the website a hardcore pornography site pops up instead. Often, it is impossible to backtrack and the browser must be shut down to exit the pornography site. While incurring the wrath of some, this method generates enough new customers that sex industry web developers continue to use it.¹⁵⁰

Today, cell phones permit web browsing of prostitution websites and applications bring the sex buyer in more contact with the pimp

¹⁴⁴ PERDUE, *supra* note 17, at 117–20.

¹⁴⁵ James F. Quinn & Craig J. Forsyth, *Describing Sexual Behavior in the Era of the Internet: A Typology for Empirical Research*, 26 *DEVIANT BEHAV.* 191, 197 (2005).

¹⁴⁶ Jessie Pounds, *Craigslist Is Hotbed of Online Prostitution: Crackdown in Progress; Sellers, Clients Trying to Stay a Step Ahead*, KNOXNEWS.COM (Oct. 5, 2008, 12:00 AM), <http://www.knoxnews.com/news/2008/oct/05/craigslist-is-hotbed-of-online-prostitution/> (internal quotation marks omitted).

¹⁴⁷ Donna M. Hughes, *The Internet and Sex Industries: Partners in Global Sexual Exploitation*, *TECH & SOC’Y MAG.* (2000), available at <http://www.uri.edu/artsci/wms/hughes/siii.htm>.

¹⁴⁸ Donna M. Hughes, *Prostitution Online*, in *PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS*, *supra* note 69, at 115, 117.

¹⁴⁹ PERDUE, *supra* note 17, at 97.

¹⁵⁰ *See id.* at 99.

and the woman being sold. A 2011 iPhone application advertised “SugarSugar.com is for generous men looking to spoil, and dynamic women looking for financial support with bills, or who just need some excitement in life! . . . SugarSugar.com . . . provides a staff of sugar dating experts to help you find the perfect mutually beneficial arrangement.”¹⁵¹

VI. SEX BUYERS’, TRAFFICKERS’, AND PIMPS’ USE OF THE INTERNET

A. Social Networking Sites

Social networking websites allow users to create a personal profile that they share with friends, other users, or the public at large. Social networking site users stay in touch with existing friends but also bring online acquaintances into the real world for in-person meetings,¹⁵² thereby providing an opportunity for traffickers to use the Internet for recruitment to prostitution. Pimps brag about using these sites to traffic women and children. “It’s Y2K pimpin,” wrote a pimp in an online chat log seized by police.¹⁵³ A pimp sentenced in 2010 for trafficking children into prostitution had initially contacted and then recruited them on MySpace.¹⁵⁴ A U.K. pimp used MySpace to recruit women for an escort prostitution agency and created new profiles if the more blatant advertisements for prostitution were deleted.¹⁵⁵ Pimps easily recruit via Facebook as well. For example, a woman was arrested in Jakarta on suspicion of running a prostitution business involving seven junior high school girls, who had been recruited and then sold on Facebook.¹⁵⁶ Such comments serve as a document of

¹⁵¹ SUGARSUGAR, <http://www.sugarsugar.com>; see also Stephen J. Vaughan-Nichols, *Hire a Hooker? There’s an App for That*, ZDNET (May 11, 2011, 11:00 AM) <http://www.zdnet.com/blog/networking/hire-a-hooker-theres-an-app-for-that/1040>.

¹⁵² Danah M. Boyd & Nicole B. Ellison, *Social Network Sites: Definition, History, and Scholarship*, 13 J. COMPUTER-MEDIATED COMM. 210, 221 (2008); M. Alexis Kennedy & Melanie A. Taylor, *Online Harassment and Victimization of College Students*, 7 JUST. POL’Y J., Spring 2010, at 1, 9.

¹⁵³ Kevin Poulsen, *Pimps Go Online to Lure Kids into Prostitution*, WIRED (Feb. 25, 2009, 8:30 PM), <http://www.wired.com/threatlevel/2009/02/pimping/> (internal quotation marks omitted).

¹⁵⁴ Press Release, FBI, L.A. Div., Man Pleads Guilty and Is Sentenced to 17 1/2 Years in Fed. Prison for Sex Trafficking of Minors (June 10, 2010), available at <http://www.fbi.gov/losangeles/press-releases/2010/la061010.htm>.

¹⁵⁵ Helen Croydon, *Undercover with the Escorts Trying to Recruit Through MySpace*, MIRROR (Mar. 25, 2009), <http://www.mirror.co.uk/news/technology-science/technology/undercover-with-the-escorts-trying-to-recruit-through-384307>.

¹⁵⁶ *Woman Arrested for Running Prostitution Ring Through Facebook*, JAKARTA POST (Jan.

illegal use of the Internet, enabling discovery of evidence for prosecution.

About half of all Internet users are estimated to be using social media sites.¹⁵⁷ MySpace and Facebook, the two largest social networking Internet sites promote casual, anonymous social interactions. Facebook was developed in 2004 for college students but soon expanded to include high school students and the general public.¹⁵⁸ In December 2010 MySpace had 50 million U.S. visitors and Facebook had 153.9 million U.S. visitors.¹⁵⁹ Globally, Facebook had 500 million users by mid-2010—if it were a country, Facebook “would be the third most populous nation in the world after China and India.”¹⁶⁰ Facebook easily accommodated advertisements for prostitution. In a 2011 survey, 83% of prostituted women in New York City had a Facebook page¹⁶¹ despite the Facebook advertising and safety policies prohibiting “[a]ds for adult friend finders or dating sites with a sexual emphasis.”¹⁶² When teen users of Facebook began to exit for Twitter, Facebook loosened restrictions to protect minors from advertiser—and pimp—manipulation, granting thirteen to seventeen year olds the ability to post not just to friends but to everyone, becoming “fresh meat for marketers” in the words of one analyst.¹⁶³ In 2013, Twitter did not respond to complaints about increased prostitution advertising.¹⁶⁴

The number of users of MySpace dramatically increased after minors were permitted to join the site as members.¹⁶⁵ Public concerns then grew about the site’s facilitation of adult/minor

19, 2011, 4:43 PM), <http://www.thejakartapost.com/news/2011/01/19/man-arrested-running-prostitution-ring-through-facebook.html>.

¹⁵⁷ *The Rise of Social Networking*, ITU NEWS, July–Aug. 2010, available at <http://www.itu.int/net/itunews/issues/2010/06/35.aspx>.

¹⁵⁸ Boyd & Ellison, *supra* note 152, at 218.

¹⁵⁹ COMSCORE, A RECAP OF THE YEAR IN DIGITAL MEDIA 11–12 (2011).

¹⁶⁰ *The Rise of Social Networking*, *supra* note 157.

¹⁶¹ Sudhir Venkatesh, *How Tech Tools Transformed New York’s Sex Trade*, WIRED (Jan. 31, 2011, 12:00 PM), http://www.wired.com/2011/01/ff_sextrade/all/1.

¹⁶² *Facebook Advertising Guidelines*, FACEBOOK, http://www.facebook.com/ad_guidelines.php (last updated June 4, 2014).

¹⁶³ See Helen A.S. Popkin, *Facebook Offers Public Posting for Teens . . . and Fresh Meat for Marketers*, NBCNEWS (Oct. 17, 2013, 6:48 PM), <http://www.nbcnews.com/technology/facebook-offers-public-posting-teens-fresh-meat-marketers-8C11414020>.

¹⁶⁴ See *Facebook and Twitter Battle to Rid Themselves of Ads for Prostitutes*, BUS. INSIDER (Jan. 13, 2013, 8:39 AM), <http://www.businessinsider.com/facebook-and-twitter-battle-to-rid-themselves-of-ads-for-prostitutes-2013-1>.

¹⁶⁵ See Tamyra A. Pierce, *Talking to Strangers on MySpace: Teens’ Use of Internet Social Networking Sites*, CALSTATELA.EDU (Nov. 7, 2006), <http://web.calstatela.edu/faculty/sfisco/myspace.htm>.

sexual interactions, leading to legal complaints about potential abuse.¹⁶⁶ There have been both successes and setbacks in challenging trafficking of women and children via social networking sites. A victim from Texas sued MySpace after she was raped by a man she had met on the social networking site.¹⁶⁷ A group of child victims who had been contacted by and engaged with predators online sued MySpace for not protecting underage members.¹⁶⁸ Both cases were dismissed based on the Communications Decency Act (CDA) which protects Internet service providers from some forms of liability for third party actions.¹⁶⁹ The CDA does not provide immunity from prosecution in all cases, for example where the website operator fails to act after being warned that illegal content is present¹⁷⁰ or in cases where website operators contributed to the creation or development of injurious or tortious content.¹⁷¹ Pressure

¹⁶⁶ See generally Joseph Menn & Jessica Guynn, *Facebook Agrees to Shield Minors*, L.A. TIMES, Oct. 17, 2007, at C3 (describing an investigation conducted by New York Attorney General Cuomo to capture Facebook's response to online harassment and abuse of children); Pierce, *supra* note 165 (suggesting that social networking sites facilitate adult/minor sexualized interactions because they foster anonymity).

¹⁶⁷ Eric Bangeman, *MySpace Sued in Wake of Sexual Assault*, ARS TECHNICA (June 20, 2006, 4:58 PM), <http://arstechnica.com/uncategorized/2006/06/7096-2/>.

¹⁶⁸ Bobbie Johnson, *Child Sex Victims Sue MySpace*, GUARDIAN (Jan 19, 2007), <http://www.guardian.co.uk/technology/2007/jan/20/news.usnews>.

¹⁶⁹ Communications Decency Act of 1996, 47 U.S.C. § 230(c)(1) (2012). The CDA has sometimes functioned as an obstacle to effective prosecution of website operators such as Craigslist, Backpage, and MySpace. First signed into law in 1996, the purpose of the CDA was to incentivize the development of blocking and filtering technologies. 47 U.S.C. § 230(b)(4). Section 230(c)(1) of the CDA asserts that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230 (c)(1). The CDA has sometimes been interpreted by the courts to provide broad immunity to website operators from defamation arising from third party content. See, e.g., *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961, 965–66 (N.D. Ill. 2009). Defining protected speech, as distinct from hate speech or speech advocating criminal activity, is a discussion with critical implications for the safety of women, generally. Websites and social media promoting prostitution are not the only source of likely harms to women. The stalking and predation that occur on sites like Reddit and CreepShots fetishize women's inability to consent. Marinda Valenti, *CreepShots: Are You Being Creeped On?*, MS. MAG. BLOG (June 12, 2013), <http://msmagazine.com/blog/2013/06/12/creepshots-are-you-being-creeped-on/>. Surreptitious photos of women are taken by using what the site advertises as “stealth, cunning and deviousness to capture the beauty of your unsuspecting, chosen target.” *Id.* For another discussion of the tensions between men's speech and women's safety, see Jenna Wortham, *When the Web's Chaos Takes an Ugly Turn*, N.Y. TIMES, Oct. 21, 2012, at BU3.

¹⁷⁰ See 47 U.S.C. § 230 (2012); *Chi. Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666 (7th Cir. 2008); *Zeran v. Am. Online, Inc.*, 129 F.3d 327 (4th Cir. 1997).

¹⁷¹ *Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1174 (9th Cir. 2008) (holding that CDA immunity does not protect website operators who “directly participate[] in developing” illegal content); *Jones v. Dirty World Entm't Recordings, LLC*, 766 F. Supp. 2d

from states' Attorneys General led to the removal by MySpace of 90,000 sex offenders from its site in 2009.¹⁷² MySpace pursued various approaches in 2008 meant to protect children, including enhanced parent controls, faster response time to complaints about inappropriate content, and increased privacy settings for users under age sixteen.¹⁷³

In 2009 Cooke County Sheriff Dart sued Craigslist alleging liability for the costs of law enforcement, providing substantial evidence that the site was being used to facilitate prostitution of child and adult victims and that it was a public nuisance.¹⁷⁴ An Illinois court dismissed the case.¹⁷⁵ Questions regarding website operators' invocations of CDA immunity nonetheless remain. At what point does tolerance of criminally illegal activity, content or misuse of a website constitute "encouraging" that illegal conduct, as in the *Jones*¹⁷⁶ and *Roommates*¹⁷⁷ cases; and at what point do website operators become liable for violating state criminal laws that are not preempted by the CDA? While the prostitution and public nuisance laws in *Dart* may not have been sufficient in Illinois, other states' laws may be broader and more effective. The equitable defenses against the CDA also remain untested but are applicable in cases of women trafficked for prostitution. The doctrine of "unclean hands" for the bad faith conduct of certain website operators would challenge CDA immunity from liability. CDA immunity should not benefit those who participate in or knowingly tolerate criminal attacks against persons trafficked for prostitution.¹⁷⁸ When do online advertisers become virtual

828, 836 (E.D. Ky. 2011) ("The immunity afforded by the CDA is not absolute and may be forfeited if the site owner invites the posting of illegal materials or makes actionable postings itself.").

¹⁷² Marlon A. Walker, *MySpace Removes 90,000 Sex Offenders*, NBCNEWS.COM (Feb. 3, 2009, 10:02 PM), http://www.nbcnews.com/id/28999365/ns/technology_and_science-security/t/myspace-removes-sex-offenders/#.U5yOJXb-Ics.

¹⁷³ See Emma Henry, *MySpace Agrees Child Protection Measures*, TELEGRAPH (Jan. 15, 2008, 10:45 AM), <http://www.telegraph.co.uk/news/uknews/1575635/MySpace-agrees-child-protection-measures.html>.

¹⁷⁴ *Dart*, 665 F. Supp. 2d at 961, 962–63.

¹⁷⁵ *Id.* at 970.

¹⁷⁶ See generally *Jones*, 766 F. Supp. 2d at 830–31 (describing the defamatory posts made on the defendant's website).

¹⁷⁷ See generally *Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1161–62 (9th Cir. 2008) (describing the creation of subscriber profiles on a website allegedly used to match compatible roommates).

¹⁷⁸ Michael Dolce, Esq. who practices law in West Palm Beach, Florida provided this discussion of possible challenges to CDA immunity.

traffickers?

In other attempts to block Internet crimes against teens, the Japanese government experimented with blocking social networking sites for users under eighteen, but the results of this policy are unclear.¹⁷⁹ Public pressure has been aimed at online classifieds, urging them to shut down their variously named prostitution advertising.¹⁸⁰

B. Message Boards

There is seamless communication between pimps and sex buyers, ensuring delivery of women to the men who want to buy them. Increasing numbers of online sex buyer communities support predatory behaviors and exchange information regarding where and how women can be bought.¹⁸¹ The Internet facilitates communication between sellers (pimps and traffickers) and sex buyers (johns), enabling pimps and traffickers to respond rapidly to men's demand for purchased sex. By enabling men to evade arrest for soliciting prostitution since they can remain hidden, indoors, and anonymous, the Internet is sex buyer-friendly.¹⁸² Its anonymity has created a private environment in which it is possible to engage in prostitution with a lower risk of arrest, fewer legal penalties, and less public exposure.

With private messaging, warnings about police undercover agents and stings can be broadcast to brother johns.¹⁸³ Atlanta sex buyers for example discussed their awareness of law enforcement's infiltration of online conversations in their forum:

GreekFan: We have always known LE looks at this Board and others. But as indicated, talk is not illegal. Only

¹⁷⁹ Nick Farrell, *Japanese Teens Barred from Social Networking*, ITEXAMINER.COM (Feb 2, 2009, 6:22 AM), <http://www.itexaminer.com/japanese-teens-barred-from-social-networking.aspx>.

¹⁸⁰ Press Release, Robert E. Cooper, Jr., Tennessee Attorney Gen., Attorneys General Urge Backpage.com to Do More to Combat Sex Trafficking Through its Classified Ads (Aug. 31, 2011), available at <http://www.tn.gov/attorneygeneral/press/2011/pr11-26.pdf>; *Craigslist Shuts Down Adult Services Section*, FOX NEWS (Sept. 4, 2010), <http://www.foxnews.com/scitech/2010/09/04/craigslist-shuts-adult-services-section/>.

¹⁸¹ Sven-Axel Mannson, *Men's Practices in Prostitution and Their Implications for Social Work*, PROCON.ORG, <http://prostitution.procon.org/sourcefiles/mens-practices-in-prostitution-and-their-implications-for-social-work.pdf> (last visited June 14, 2014).

¹⁸² Angie Jackson, *Prostitution: Internet Classifieds Create Element of Secrecy, Challenge for Grand Rapids Police*, MLIVE (Nov. 17, 2013, 11:28 AM), <http://www.mlive.com/news/grand-rapids/index.ssf/2013/11/internet.html>.

¹⁸³ Blevins & Holt, *supra* note 18, at 627.

trusted mongers and PM [private messaging] gets the job done. Watch your back people, always. There is no substitute for that.

Blazer: for all you newbies, elly¹⁸⁴ monitors and POSTS to this board so watch yo' six. They usually ask dumbass questions that make it obvious that they are elly in the first place, like, can you tell me where to go to monger in Cobb, I mean names and numbers please, or **** like that. The danger is ever present, however, and we must stay aware.¹⁸⁵

Sex trafficking industry businesses such as Room Service provide background checks that help sex buyers avoid arrest for prostitution.¹⁸⁶ A customer can pay a fee to have a background check run.¹⁸⁷ Then when the sex buyer contacts a prostituting woman, he can provide access to his background check that is now anonymous. This arrangement allows women in prostitution to screen out undercover police officers while enabling sex buyers to avoid blackmail that might be possible if a woman had his personal information.¹⁸⁸

Two cases illustrate sex buyers' use of the Internet to locate women and evade arrest. Southwest Companions, a members-only website and chatboard, had 1400 members including many professors and a former University of New Mexico president who served as leader of the site's "Hunt Club."¹⁸⁹ His job, in effect online pimping, was to recruit women in prostitution to travel to the Albuquerque/Santa Fe area.¹⁹⁰ According to reports, the website featured the ability to share information with other johns about police stings, to provide "physical descriptions and cell phone numbers of undercover police to help members avoid arrest."¹⁹¹ The

¹⁸⁴ In this excerpt, "elly" refers to law enforcement.

¹⁸⁵ Blevins & Holt, *supra* note 18, at 627 (alterations in original).

¹⁸⁶ See ROOMSERVICE2000, <http://www.roomservice2000.com/> (last visited June 14, 2014).

¹⁸⁷ *See id.*

¹⁸⁸ *See id.*

¹⁸⁹ Jeri Clausing, *F. Chris Garcia, Former University of New Mexico President, Arrested in Connection with Prostitution Website*, HUFFINGTON POST (June 23, 2011, 10:32 PM), http://www.huffingtonpost.com/2011/06/23/f-chris-garcia-former-uni_n_883238.html; Russell Contreras, *F. Chris Garcia, Former University of New Mexico President, Cleared of Criminal Charges Concerning 'Southwest Companions'*, HUFFINGTON POST (June 20, 2012, 7:41 PM), http://www.huffingtonpost.com/2012/06/20/f-chris-garcia-prostitution-ring_n_1613009.html.

¹⁹⁰ Michel Santo, *Professors Arrested for Running Escort Service for 'Esteemed' Men*, EXAMINER.COM (June 24, 2011), <http://www.examiner.com/article/professors-arrested-for-running-escort-service-for-esteemed-men>.

¹⁹¹ Jeri Clausing, *Police: Profs Ran Site for 'Esteemed' Men to Get Sex*, NAPLESNEWS.COM (June 24, 2011, 9:21 PM), <http://www.naplesnews.com/news/2011/jun/24/albuquerque>.

Southwest Companions website provided training videos on what to do if arrested for prostitution and posted sex buyers' evaluations of women's prostitution performances, including prices and rankings of the women.¹⁹² Several of the arrested men were charged with promoting prostitution, conspiracy, and tampering with evidence.¹⁹³ Charges against the men running the Southwest Companions online prostitution ring were dismissed by a judge who ruled that the website was not physically a brothel,¹⁹⁴ illustrating the challenge of applying laws that were written before the Internet was invented. "Sometimes states' laws are too specific and were written years ago, long before the Internet," said Scott Cunningham, a Baylor University economics professor who has written about technology and prostitution. "That's why we are seeing some successful challenges to laws when websites are involved."¹⁹⁵

The Minnesota Nice Guys, a self-named sex buyer group, was organized by a pimp who was a former assistant county attorney.¹⁹⁶ The pimp received high ratings on Theeroticreview (TER), a sex buyers' message board, for providing attractive and compliant women to sex buyers, often trafficking undocumented immigrants.¹⁹⁷ The attorney/pimp was charged with 6 felony counts of promoting prostitution.¹⁹⁸ Although the pimp admitted weakness of character, the judge seemed to empathize with his "medical fragility" and sentenced him only to probation.¹⁹⁹

Global communications forums on the Internet provide an

william-roseman-police/.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Russell Contreras, *F. Chris Garcia and David Flory Cleared in Online Prostitution Case, Experts Say Laws Out of Date*, HUFFINGTON POST (Aug. 19, 2012, 3:13 PM), http://www.huffingtonpost.com/2012/08/20/f-chris-garcia-david-flory-online-prostitution-_n_1810147.html.

¹⁹⁵ *Id.*

¹⁹⁶ David Chanen, *Cops Bust "Nice Guys" Sex Ring*, STAR TRIB. (Minneapolis), June 7, 2009, at 1A.

¹⁹⁷ *Id.*

¹⁹⁸ David Chanen, *Charges Filed in "Nice Guys" Sex Ring*, STAR TRIB. (Minneapolis), July 30, 2010, at 1A.

¹⁹⁹ Debra Cassens Weiss, *Ex-County Attorney Gets Probation for Role in "Nice Guy" Prostitution Ring*, A.B.A. J. (Jan. 21, 2011, 10:23 AM), <http://www.abajournal.com/news/article/ex-county-attorney-gets-probation-for-role-in-nice-guy-prostitution-ring>. The lead pimp, John Paul St. Marie, who pled guilty to three felonies and was granted probation appears to be a white man. See Emily Gurnon, *Former Assistant Hennepin County Attorney and "Nice-Guy" Prostitution Broker Re-Arrested*, PIONEER PRESS (May 7, 2012, 11:01 PM), http://www.twincities.com/ci_20566169/former-assistant-hennepin-county-attorney-arrested-prostitution-charge. One wonders if a young black pimp who pled guilty to three felonies would be granted probation due to his medical problems as was Mr. St. Marie.

anonymous social support network for predatory men to share their experiences, legitimize their behaviors, and mentor inexperienced sex buyers. The Internet plays a crucial role in validating the norms, cultures, and beliefs of the sex buyers' subculture. A language that normalizes sexual predation is developed in online chat rooms and bulletin boards. Because of the stigma of the words johns or tricks, online sex buyers refer to themselves as mongers, trollers, or hobbyists.²⁰⁰

While allegedly serving as community discussion forums, message boards aimed at sex buyers ("hobbyists") and women in prostitution ("providers") are in fact sites where reviews of women in prostitution occur and where prostitution is facilitated.²⁰¹ Buyers post judgmental, often nasty reviews of women that pressure the women to act as if they enjoy the rape-like sex of prostitution.²⁰² Consequences from negative message board reviews are rapid and usually result in decreased earnings.²⁰³ The message board rating system in effect coerces women to perform sex acts that they would prefer not to so that they can obtain good ratings and thereby maintain an income amount that is frequently set by pimps.²⁰⁴ The women who perform acts of prostitution in such a way that they convince sex buyers they truly enjoy the sex of prostitution, or who permit the buyer to rationalize his behavior, are praised as providing a "Girlfriend Experience."²⁰⁵ Research findings suggest that a surprisingly high number of sex buyers actually believe that women enjoy the sex of prostitution.²⁰⁶ In a study of 110 Scottish

²⁰⁰ See Blevins & Holt, *supra* note 18, at 626.

²⁰¹ See *id.* at 627, 630.

²⁰² See generally Melissa Farley et al., *Attitudes and Social Characteristics of Men Who Buy Sex in Scotland*, 3 PSYCHOL. TRAUMA: THEORY, RES., PRAC., & POL'Y 369, 375 (2011) (explaining that some men who use women in prostitution want to control and dominate women, attitudes that are visible in reviews posted on many of the sites).

²⁰³ 1 ENCYCLOPEDIA OF PROSTITUTION AND SEX WORK 228 (Melissa Hope Ditmore ed., 2006).

²⁰⁴ Telephone Interview with Lauren Hersh, New York Director of Equality Now (Dec. 10, 2013). Sex buyers posting ratings of women on punternet.com in UK and myredbook comment, "Couldn't take a light spanking and complained about me pulling her hair. Told me I was rough. All I wanted to do was spread her legs in the missionary position and pound away. Kept pushing me back. I've had better and wouldn't return." Noting physical injuries as if he were grading meat, another noted, "Minor defects include: 5.0 cm. X 1 cm. horizontal cafe au lait patch above the right buttock, two stellate scars left deltoid (smallpox vaccinations), and a small nevus left medial breast." A third john observed, "Hurt face, but nice little body." All examples from PUNTERNET, <http://www.punternet.com/> (last visited June 14, 2014); MYREDBOOK, <http://www.myredbook.com/> (last visited June 14, 2014).

²⁰⁵ See Blevins & Holt, *supra* note 18, at 635.

²⁰⁶ See Farley, *supra* note 202, at 376.

sex buyers, 49% believed that women in prostitution were sexually satisfied with sex with johns more than half of the time.²⁰⁷

Discussion forums such as theeroticreview (TER) and bigdoggie groom men to buy sex.²⁰⁸ These misogynist sites help sex buyers locate women and teach them how to relentlessly bargain down prices when they buy sex.²⁰⁹ Reflecting a mistrust of women in prostitution, the men who control TER describe its message board system as

the section where the guys get to review providers who advertise on the web. You can now know exactly what to expect before you make the call and spend your hard earned money. The bonus is that the opinions expressed are real and not sent in by the adult entertainers themselves. *It's about time!*²¹⁰

In August 2008 there were more than 500,000 reviews of 94,000 women in prostitution on TER.²¹¹ Among other topics, TER offers discussion forums on how to buy sex from pornography actresses, legal concerns, and a special forum for sex buyers over age sixty.²¹²

The message boards facilitate the racist and sexist objectification of women in prostitution. Women are referred to as SWs [sex workers] and are almost always defined by ethnicity.²¹³ For example, “a week & 1/2 ago I was driving by 111th & saw 5 SW's. 3 BSW's & 1 WSW & 1 LSW.”²¹⁴ Men use the term “mileage” to refer to women whose appearances reflect the damage inflicted on them by men who use them for sex.²¹⁵ “High mileage” means that women are older or unattractive.²¹⁶ A woman spoke about sex buyers who

²⁰⁷ *Id.* at 371, 376.

²⁰⁸ See THE EROTIC REVIEW, <http://www.theeroticreview.com/main.asp> (last visited June 14, 2014).

²⁰⁹ One john's need to subordinate women was reflected in his proud purchase of an airfare for \$1,000 to fly to Mexico or the Dominican Republic from the United States so that he could buy \$15 sex acts “at bargain rates” from desperately poor women.

²¹⁰ *Reviews*, THE EROTIC REVIEW, <http://classic.theeroticreview.com/reviews/index.asp> (last visited June 14, 2014).

²¹¹ Scott Cunningham & Todd D. Kendall, *Prostitution 2.0: The Changing Face of Sex Work*, 69 J. URB. ECON. 273, 278 (2011).

²¹² See *TER General Boards*, THE EROTIC REVIEW, http://www.theeroticreview.com/discussion_boards/viewmsg.asp?MessageID=358534&boardID=12&page (last visited June 14, 2014).

²¹³ Scott Cunningham & Todd Kendall, *Men in Transit and Prostitution: Using Political Conventions as a Natural Experiment*, 11 B.E. J. ECON. ANALYSIS & POL'Y 1 (2011), available at http://business.baylor.edu/scott_cunningham/cunningham-and-kendall-2011.pdf.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

obsessively evaluate the sexual performance of every woman used in prostitution in special anticipation of writing about her for other men: “He’s the type of john I religiously steer away from, and that’s largely due to his immersion in review board ‘culture.’”²¹⁷ What is it about “message board culture” that women in prostitution dislike?

TER reviews are primarily based on [sexual] performance . . . and appearance You, as a provider, are dehumanized. TER hobbyists, feeding on these reviews, see you as less than human. They are looking for 5-star blowjobs and model looks, rather than a human being with a personality. Instead of respecting your limits and preferences, they expect you to give them what it says you provided someone else in your last review.²¹⁸

Described by another pimp as “the most influential man in the prostitution business in America,”²¹⁹ CEO of TER Dave Elms and other sex buyers have been accused of using the threat of poor ratings to extort sex acts, perform unsafe sex, or decrease prices.²²⁰ Elms, who founded TER in 1999 with the goal of empowering sex buyers, has been accused of bribery and rape.²²¹ TER was acquired in 2004 by Treehouse Park, a company that currently operates out of the Netherlands—reflecting the global nature of the sex trafficking industry.²²²

²¹⁷ James Gartler, *Chester Brown “Pays for It”*, COMIC BOOK RESOURCES (Aug. 8, 2011, 9:58 AM), <http://www.comicbookresources.com/?page=article&id=33769> (last updated Aug. 15, 2011, 11:12 AM).

²¹⁸ *TER Hobbyist = Bad Customer*, TER SUCKS BLOG (Nov. 15, 2006), <http://tersucks.blogspot.com>.

²¹⁹ Matt Richtel, *Sex Trade Monitors a Key Figure’s Woes*, N.Y. TIMES, June 17, 2008, at A12.

²²⁰ See Melissa Gira Grant, *Online Critics Accuse TheEroticReview.com CEO Dave Elms of Rape*, GAWKER (May 12, 2008, 3:00 PM), <http://gawker.com/389612/online-critics-accuse-theeroticreviewcom-ceo-dave-elms-of-rape?tag=valleywag>.

²²¹ *Id.*

²²² *The Erotic Review and David Elms Part Ways*, EIN PRESSWIRE (Mar. 3, 2009) <http://www.einpresswire.com/article/56530882/the-erotic-review-and-david-elms-part-ways>.

Elms has an extensive criminal history which is described here because he’s not unique among online pimps. In 2006 Elms raped a woman at gunpoint. Richtel, *supra* note 219. He was arrested in 2008 on weapons and narcotics violations. *Id.* The police investigation of Elms evidenced that he had extorted sex from women reviewed on TER website in exchange for removing damaging reviews about them. *Id.* In 2009, Elms missed a court date, with charges pending for “conspiracy to commit aggravated assault, [and] various [felony] drugs and weapons charges.” Ray Stern, *“TheEroticReview.com” Founder, David Elms, on the Lam*, PHOENIX NEW TIMES (Mar. 18, 2009, 12:01 PM), http://blogs.phoenixnewtimes.com/valleyfever/2009/03/theeroticreviewcom_founder_dav_1.php. The charges for conspiracy to commit aggravated assault stemmed from February 15, 2009 when Elms met with undercover officers to contract for murdering two people. Rhett Pardon, *TheEroticReview*

Sex buyers' posts promote the prostitution of the women as they lobby for their favorites.²²³ Yet there has been resistance to the selling of women on message boards.²²⁴ A British member of Parliament asked California's Governor in 2009 to shut down the US-owned punternet website that permits men to rate British women in prostitution.²²⁵ While message boards are used to thwart law enforcement efforts with posts about where police stings are occurring and suggestions about how to avoid law enforcement actions,²²⁶ at the same time, message boards can be used to monitor and prosecute criminal activity. The information on these sites can provide intelligence for police officers investigating prostitution and trafficking.²²⁷ Message boards and online classifieds have provided an opportunity for sting operations.²²⁸ Online john community sites such as TER can deter prostitution and trafficking when police monitoring of the site is publicized with posted messages such as

Founder Ordered to Pay \$20,000, XBIZ NEWSWIRE (July 19, 2011, 4:30 PM), <http://newswire.xbiz.com/view.php?id=136443>. One person he wanted to have killed was the owner of a competing escort review website SexWork.com. *Id.* Elms fled the country after posting \$150,000 bond. *Id.* According to border patrol agents who arrested him when he tried to re-enter the United States, "Elms told them that after skipping bail, he fled to Toronto, then Dubai, Armenia, Iran and Mexico." Matt Richtel, *Founder of Prostitution Site is Arrested at Border*, N.Y. TIMES, June 4, 2009, available at <http://bits.blogs.nytimes.com/2009/06/04/prostitution-site-founder-david-elms-arrested-at-border>; see also Ray Stern, "The EroticReview.com" Founder David Elms Arrested in California; Was On Run from Maricopa Charges, PHOENIX NEW TIMES (Jun. 4, 2009, 2:11 PM), http://blogs.phoenixnewtimes.com/valleyfever/2009/06/theeroticreviewcom_founder_dav_2.php.

²²³ See BESTGFE, <http://www.bestgfe.com> (last visited June 14, 2014) (promoting users' reviews of women in prostitution).

²²⁴ See Stefano Ambrogi, *Britain Asks Schwarzenegger to Close Prostitute Web Site*, REUTERS (Sept. 30, 2009, 4:25 PM) <http://www.reuters.com/article/2009/09/30/us-britain-prostitutes-idUSTRE58T69420090930?feedType=RSS&feedName=technologyNews>.

²²⁵ *Id.* Minister for women and equality Harriet Harman called the website a "sinister development" that promoted men's demand for prostitution thereby fuelling trafficking. *Id.* MP Harman said: "[s]urely it can't be too difficult for 'The Terminator' to terminate Punternet and that's what I am demanding that he does." *Id.* (first internal quotation marks omitted).

²²⁶ See BESTGFE, *supra* note 223 (discussing ways to evade law enforcement).

²²⁷ See Ken Franzblau, *Sex Trafficking: Looking at Demand*, in *LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 291, 295 (Jill Laurie Goodman & Dorchon A. Leidholt eds., 2011) (discussing the prostitution-related internet posts of an individual using the name SlamasterJay and law enforcement use of those posts). "SlamasterJay, later identified as Jeffrey Whyte, was subsequently arrested and charged with promoting prostitution in New York County." *Id.* at 300 n.23 (citing Jamie Schram, *NYPD Daily Blotter*, N.Y. POST (Dec. 10, 2009, 5:00 AM), <http://nypost.com/2009/12/10/nypd-daily-blotter-2705/>).

²²⁸ See, e.g., Gary Taylor, *Child-Sex Sting: Men Tote Candy, Condoms*, ORLANDO SENTINEL, Aug. 17, 2010, at B1 (describing sting operation using Craigslist conducted by Florida sheriff's department).

“Police are present.” This would likely create fear among sex buyers and pimps who would flee the site. Public exposure has been documented as a deterrent to prostitution.²²⁹ The Chicago Police Department website posts photos, names, addresses, and other information about those arrested for soliciting prostitution.²³⁰ A similar website in Ohio which posted the photographs of men charged with soliciting prostitution was viewed more than 100,000 times in its first year.²³¹

C. Online Classified Advertising for Prostitution

Originally presenting itself as a community-oriented garage sale, Craigslist is an Internet site where people can post at no cost what they want to buy and sell.²³² Because posting a personal ad was free and because posts can be anonymous, the website developed into a primary site for prostitution advertising. With no questions asked, Craigslist set aside a significant portion of its website for sex buyers’ and sex sellers’ advertising.²³³ This provided “an extraordinary opportunity for coordinating domestic and transnational sex trafficking.”²³⁴ The process of trafficking via online classifieds is stunningly simple: a cell phone and an ad on Craigslist (or other online prostitution sites) enables a pimp to set up a woman for sexual exploitation in exchange for cash.

After 2000, Craigslist and other online classifieds became virtual prostitution zones. In March 2005, Craigslist averaged 25,000 new ads in the United States every 10 days for “casual sex” and “erotic services” that were prostitution.²³⁵ A 2007 study of 12,444 Las Vegas online classified advertisements found that 90% advertised escort prostitution.²³⁶ Ethnicity was specified 92% of the time,²³⁷

²²⁹ See FARLEY ET AL., *supra* note 16, at 5, 33, 37.

²³⁰ See Gretchen Ruethling, *Chicago Police Put Arrest Photos of Prostitution Suspects Online*, N.Y. TIMES, June 23, 2005, at A16.

²³¹ U.S. Government Efforts to Fight Demand Fueling Human Trafficking, U.S. DEPT STATE (Jan. 7, 2008), <http://2001-2009.state.gov/g/tip/rls/fs/08/100208.htm>; see also *Shaming*, DEMANDFORUM.NET, <http://www.demandforum.net/shaming/> (last visited June 14, 2014).

²³² *About*, CRAIGSLIST, <http://www.craigslist.org/about/> (last visited June 14, 2014).

²³³ See Brief for Coalition Against Trafficking in Women as Amicus Curiae Supporting Plaintiffs at 8, *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961 (N.D. Ill. 2009) (No. 09 CV 1385), 2009 WL 2446750.

²³⁴ *Id.*

²³⁵ See Farley, *What We Must Not Know*, *supra* note 107.

²³⁶ M. Alexis Kennedy & Melanie A. Taylor, *Prostitution on Craigslist 7–8* (2010) (unpublished manuscript) (on file with author). A random number generator was used to select 180 one-hour time frames from the “Women for Men” section of Craigslist. *Id.* at 7.

reflecting the importance to johns of choosing the race/ethnicity of the women to be used for sex. Photos were included in 96% of the posts.²³⁸ A phone number was included in the ad 83% of the time.²³⁹ Prostitution advertising on Craigslist included code words that imply domestic trafficking (“here for a short stay,” “looking for an inexperienced girl”), or international trafficking (both Mexican and U.S. phone numbers given).²⁴⁰ Other classified advertising websites promoting prostitution include Backpage, Eros, CityVibe, MyRedbook, and AdultSearch.²⁴¹ Spikes in online demand for purchased sex generally occur near or on military bases and at political conventions, electronics conventions, and sporting events.²⁴² During the 2008 United States political conventions online advertisements for prostitution peaked in the host cities.²⁴³

While Craigslist claimed to be a non-commercial site with a non-

Data from each post during that hour was collected. *Id.* A total of 12,444 advertisements were coded by research assistants in a university forensic psychology lab. *Id.*

²³⁷ *Id.* at 9.

²³⁸ *See id.*

²³⁹ *See id.* at 10.

²⁴⁰ Three ads from Craigslist (on file with author) that suggest trafficking include:

1) SF bay area craigslist > north bay > services offered > adult services

Sweet Asian *****Apple *****. w4m (mill valley)

Date: 2010-06-29, 9:00AM PDT

Reply to: Sweet Asian ***** Apple ***** Here for short stay.

Please Call: (415) 000-0000

2) sacramento craigslist > gigs > adult gigs

Looking for an inexperienced girl (Sacramento)

Date: 2010-06-21, 12:56PM PDT Reply to:

Looking for a fun and friendly non pro girl for an adult gig in return for some \$\$\$ compensation. Would love to hear from any of you that may have an interest. Please send me a message, some pics, phone and lets have some fun. ***Please Be Serious*** No phone means you're not serious. You must be at least 18 years old !!!

3) puerto vallarta craigslist > personals > erotic services

12 hours for only \$250 – THE GIRLFRIEND EXPERIENCE!

w4m - 18 (13 Girls to choose from!)

Date: 2010-06-29, 1:38PM PDT

Take as much time as you want—up to 12 hours with the girl of your choice! There are 13 of us. All of us will give you an unforgettable girlfriend experience! For only 3100 pesos [\$250] we'll come stay with you for 12 hours! This includes our undivided attention, cuddling and 2 complete services! For more information, see our web site at www.escort.com. Email us or call us now! From Mexico Cell 322-000-0000 From US 011-521-322-000-0000

²⁴¹ *See* Mark Whittaker, *Backpage Continues to Gain from Prostitution Advertising*, AIM GROUP (Feb. 25, 2011), <http://aimgroup.com/blog/2011/02/25/backpage-continues-to-gain-from-prostitution-advertising/>. The AIM Group also summarizes prostitution advertising on three additional sites—NaughtyReviews.com, Eccie.com, and AllList.net. *Id.*

²⁴² *See* Farley, *What We Must Not Know*, *supra* note 107, at 121.

²⁴³ Craigslist prostitution postings increased 41% during the Minneapolis convention and 74% in the during the Denver convention. Cunningham & Kendall, *supra* note 213, at 9.

corporate culture of public service, in fact, the business was extremely lucrative for its owners.²⁴⁴ In 2003, the site's earnings were estimated at \$7 million.²⁴⁵ By 2010, Craigslist's earnings were estimated at \$122 million with approximately one-third of its revenue coming from prostitution advertising.²⁴⁶ Backpage.com and five similar websites were estimated in February 2011 to generate annual revenue of \$37.3 million from the sale of ads for prostitution.²⁴⁷ Village Voice Media, publisher of Backpage.com and 13 alternative weeklies in the United States, generated an estimated \$17.5 million in ads for escorts and adult services in 2010.²⁴⁸ While smaller than Craigslist, Backpage has become the primary Internet prostitution advertiser since the closure of much of Craigslist's prostitution advertising.²⁴⁹ A Seattle police officer estimated in 2011 that 80% of the young women his department investigated for prostitution were advertised on Backpage.²⁵⁰ In 2013, 82% of the nearly \$45 million generated annually by online classifieds for prostitution (usually escort and bodyrub ads) was obtained by Backpage, the leading publisher of such ads.²⁵¹ Backpage averaged \$4.5 million a month in online classifieds, up 78% from the previous year, and 200% from two years previously.²⁵² Several other websites tracked by AIM Group (Eros.com, CityVibe.com, MyRedbook.com and AdultSearch.com) "generated \$5.3 million in May [2013], . . . up 67% from \$3.2 million the same month in 2012."²⁵³

²⁴⁴ Peter M. Zollman, *Craigslist Revenue, Profits Soar*, AIM GROUP (Apr. 30, 2010) <http://aimgroup.com/2010/04/30/craigslist-revenue-profits-soar/>.

²⁴⁵ *Id.*

²⁴⁶ *Id.*; *Online Prostitution Ads Generated at Least \$37.3 Million in Last Year*, AIM GROUP (Oct. 25, 2012), <http://aimgroup.com/2012/10/25/online-prostitution-ads-generated-at-least-37-3-million-in-last-year/>.

²⁴⁷ Whittaker, *supra* note 241.

²⁴⁸ *Women's Funding Network Continues to Pressure Outlets Facilitating Demand for Domestic Child Sex Trafficking*, WOMEN'S FUNDING NETWORK (Sept. 30, 2010, 6:00 AM), <http://www.womensfundingnetwork.org/about/news/press-releases/womens-funding-network-continues-to-pressure-outlets-facilitating-demand-f>.

²⁴⁹ Whittaker, *supra* note 241.

²⁵⁰ Sara Jean Green, *The Weekly, Its Parent Company Face Backlash Over Online Sex Ads That Exploit Teens*, SEATTLE TIMES (July 23, 2011, 9:50 PM), http://seattletimes.com/html/localnews/2015710216_prostitution24m.html.

²⁵¹ *Online Prostitution-Ad Revenue Crosses Craigslist Benchmark*, AIM GROUP (July 10, 2013), <http://aimgroup.com/2013/07/10/online-prostitution-ad-revenue-crosses-craigslist-benchmark/>.

²⁵² *Id.*

²⁵³ *Id.* For documentation of the trajectory of backpage.com since Craigslist shuttered its prostitution advertising, see Kat Stoeffel, *Village Voice Media Getting Down and Dirty with Escort Ads*, N.Y. OBSERVER (Apr. 26, 2011, 11:42 PM), <http://observer.com/2011/04/village->

ErosGuide is a sex trafficking industry website offering a range of products using multiple web technologies.²⁵⁴ Women place advertisements for prostitution describing themselves as escorts, pimps place advertisements selling women for sex, pornography can be downloaded or videos purchased, sex and fetish toys are sold, strip clubs and massage parlors can be located by zip code, and webcam pimps offer “live girls on home webcams with amateurs and housewives.”²⁵⁵ ErosGuide provides a range of webcam pornography and chat options for johns who can choose breast and buttocks size, hair color, skin color, and other sexualized physical features of women they use for sex. These can be seen clearly in their website options.²⁵⁶ ErosGuide, Backpage and other sites with prostitution advertising usually offer forums where there is general social commentary by posters about romance, sex, and dating. The forums serve to legitimize both the website and the sex industry much as an article by Margaret Atwood or Ray Bradbury in *Playboy* legitimized the magazine pornography of the 1960-70’s era. Other sex trafficking industry sites such as Bootytag present themselves as adult community culture, and include pornography and prostitution but also sell products such as crotchless panties and sex toys.²⁵⁷ Similar online sales are found at adultsearch, CityVibe, eros.com, netchixx.com, titsandass.com, eros.com, and rentboy.com.

Arrests for online prostitution-related crimes and trafficking have increased in the past decade.²⁵⁸ Violent crimes have been associated with Backpage just as they were with Craigslist. Using Backpage to locate young women in prostitution, a Seattle sex buyer impersonated a police officer and was subsequently charged with multiple counts of rape, kidnapping, extortion and criminal

voice-media-getting-down-and-dirty-with-escort-ads/; Emma Bazilian, *Backpage.com a Hit, Filling Craigslist Sex Ad Void*, ADWEEK.COM (Apr. 27, 2011, 8:25 AM), <http://www.adweek.com/news/advertising-branding/backpagecom-hit-filling-craigslist-sex-ad-void-131043>; and *Escort-Ad Revenue Migration Continues*, AIM GROUP (July 13, 2011), <http://aimgroup.com/blog/2011/07/13/escort-ad-revenue-migration-continues-2/#more-12002>.

²⁵⁴ EROSGUIDE, <http://www.eros-guide.com> (last visited June 14, 2014).

²⁵⁵ *See id.* While Craigslist was originally a free site that evolved into a site requiring pay for prostitution advertising, erosguide charged for listings on the site.

²⁵⁶ *Eros Cams: The Ultimate Guide to Webcams*, BR.NAKED.COM, http://br.naked.com/ads/naked/pop/eroscams.php?cmp=popunder2&id=&ad_id= (last visited June 14, 2014). Options for models to chat with or view include “live girls, 18+, small tits, big tits, White, Latin, Asian, Ebony, Big Black Women, Foot Show, Big Ass, Moms I’d Like to Fuck, and Squirters.” *Id.*

²⁵⁷ BOOTYTAG, <http://www.sextoyfun.com/?a=bootytag> (last visited June 14, 2014).

²⁵⁸ Green, *supra* note 250.

impersonation.²⁵⁹

Craigslist's and other online traffickers' assertions that their advertising was for sex between consenting adults was countered by a 2010 study in which researchers placed ads on Craigslist and Backpage that were typical of prostitution advertising.²⁶⁰ Two hundred eighteen men telephoned in response to the ads.²⁶¹ When the men inquired about details regarding the sale of sex, researchers who posed as escort agency pimps gave each of the men three escalating warnings that the girl they were about to buy was probably younger than eighteen.²⁶² Researchers found that 47% of sex buyers in the Atlanta area were willing to proceed to buy sex even after being given three warnings that the girl they were about to buy was probably a minor.²⁶³

In response to community and government criticism of prostitution posts that facilitated sex trafficking, Craigslist made token changes such as announcing that minors should not use its erotic services section, providing links to antitrafficking websites, and charging ten dollars for posts.²⁶⁴ Craigslist's requirement that posts be verified with a phone number was relatively meaningless given pimps' ability to purchase disposable cell phones.²⁶⁵ The requirement that implying an exchange of sex for money was not

²⁵⁹ Levi Pulkkinen, *Charge: Fake Cop Raped Child Prostitutes Hired Off Backpage*, SEATTLE POST-INTELLIGENCER (Aug. 10, 2011, 12:36 PM), <http://www.seattlepi.com/local/article/Charge-Fake-cop-raped-child-prostitutes-hired-1802787.php>.

²⁶⁰ SCHAPIRO GROUP, MEN WHO BUY SEX WITH ADOLESCENT GIRLS: A SCIENTIFIC RESEARCH STUDY 12 (2010), available at <http://prostitutionresearch.com/2014/04/29/men-who-buy-sex-with-adolescent-girls-a-scientific-research-study/>.

²⁶¹ *Id.* at 6.

²⁶² *Id.* at 11 (The three warnings issued by the "escort agency operator" who was actually the researcher are as follows: "1. We're talking about the really young girl, right? 2. She doesn't look like she's 18. 3. I don't believe this girl is actually 18, and I have no reason to believe she is.")

²⁶³ *Id.* at 12. In response, Craigslist attempted to suppress this independently conducted research on use of minors in prostitution in the Atlanta area by sending a cease and desist letter both to the funder of the research study (Women's Funding Network, San Francisco) and to the Governor of Georgia. See Press Release, Chris Grumm, Women's Funding Network, Women's Funding Network Releases Georgia Demand Study to Craigslist (June 17, 2010), available at <http://www.womensfundingnetwork.org/about/news/press-releases/women%E2%80%99s-funding-network-releases-georgia-demand-study-to-craigslist>.

²⁶⁴ David Sarno, *Craigslist to Remove Erotic Services Section, Monitor Adult Services Posts*, L.A. TIMES (May 13, 2009, 8:40 AM), <http://latimesblogs.latimes.com/technology/2009/05/craigslist-attorneys-general-erotic-services-prostitution.html>; Peter M. Zollman, *Craigslist Revenue: 100 Million Smackers*, 10 CLASSIFIED INTELLIGENCE REP., June 10, 2009, at 2, 5.

²⁶⁵ Tracy Coenen, *No More Free Advertising for Prostitutes on Craigslist*, DAILYFINANCE (Nov. 7, 2008, 8:00 AM), <http://www.dailyfinance.com/2008/11/07/no-more-free-advertising-for-prostitutes-on-craigslist/>.

permitted was also easily circumvented by pimps' code words well known to sex buyers (according to chat board jargon) such as "roses" or "hugs" for "dollars" and the phony disclaimer that all payment was for escort companionship and not for sex acts which were "voluntary" and "consenting."²⁶⁶ Craigslist agreed to report suspected abuse or trafficking to the National Center for Missing and Exploited Children (NCMEC), a quasi-law enforcement agency, thereby manipulating public perception and avoiding direct contact with appropriate law enforcement, such as local police departments or federal agencies.²⁶⁷

Like Craigslist, Backpage has been unwilling to screen advertisers, a process that would entail reviewing posts for sex solicitation or hate speech. If a screener were not employed, filters could block certain keywords, jargon or images from the ad posting process.²⁶⁸ Backpage has offered children for sale through thinly veiled prostitution advertising, with at least one lawsuit against Village Voice Media/Backpage for posting pornography of a child available for prostitution.²⁶⁹ Pornography of either adults or children used in this way functions as human trafficking.

D. Live and Streaming Video

As in any enterprise, novelty and spinoffs are typical of sex trafficking businesses. Videoconferencing technology (live video and audio connections between users) was immediately adapted for prostitution by pimps and traffickers. By 1995, the web technology of live video chat, such as Skype, AIM, and MSN Messenger,

²⁶⁶ Thomas J. Holt, Kristie R. Belvins & Joseph B. Kuhns, *Examining the Displacement Practices of Johns with On-Line Data*, 36 J. CRIM. JUST. 522, 522, 523, 527 (2008).

²⁶⁷ Adam Thierer, *State AGs + NCMEC = The Net's New Regulators?*, TECH. LIBERATION FRONT (Nov. 24, 2008), <http://techliberation.com/2008/11/24/state-ags-ncmec-the-nets-new-regulators/>; Steve Turnham & Amber Lyon, *Online Sex Ads Complicate Crackdowns on Teen Trafficking*, CNN.COM (Sept. 15, 2010, 9:52 AM), http://articles.cnn.com/2010-09-14/justice/us.craigslist.sex.ads_1_craigslist-ads-law-enforcement?_s=PM:CRIME; *Domestic Minor Sex Trafficking: Hearing on 110 H.R. 5575 Before the Subcomm. On Crime, Terrorism, & Homeland Sec. of the H.R. Comm. On the Judiciary*, 111th Cong. 3–4 (2010) (testimony of Elizabeth L. McDougall, counsel to Craigslist, Inc.) (discussing Craigslist's reporting agreement with NCMEC which permits Craigslist to avoid reporting to local or federal police).

²⁶⁸ E-mails from Greg Collier, CEO, Geebo, (Mar. 26, 2012, 7:47 AM, Mar. 29, 2012, 7:26 AM) (explaining screening and filtering of online classified ads) (on file with author).

²⁶⁹ M.A. *ex rel* P.K. v. Vill. Voice Media Holdings, 809 F. Supp. 2d 1041, 1043–44 (E.D. Mo. 2011).

permitted johns to obtain prostitution online.²⁷⁰ In addition to viewing photos or films of prostitution, johns could comment by voice or keyboard or they could direct the woman to perform specific sex acts in real time.²⁷¹

Using live video chat a U.S. pimp offered johns the choice to pay for and view women being tortured in Phnom Penh, Cambodia at rapecamp.com.²⁷² Extreme violence and humiliation of impoverished women has continued with LiveJasmin advertising “sexy Eastern European girls” on one website, and iFriends, one of the largest prostituting/dating websites in the world on another, separately advertising Eastern European women and “some Asian babes.”²⁷³

Livestreamed pornography of the women’s prostitution is used by pimps, traffickers, and sex buyers to control and humiliate women.²⁷⁴ The existence of a video or photograph that is on the web for the world to see is profoundly disturbing to most women.²⁷⁵ It removes their ability to control the image, removes their dignity and removes their ability to put prostitution out of their lives when they escape it.²⁷⁶

Pornographers produce films or streaming video for sex trafficking industry websites. In this practice, a webcam company advertises via a network of affiliates who post ads on their websites.

²⁷⁰ Hughes, *supra* note 148, at 118.

²⁷¹ *Id.* at 118–19; MALAREK, *supra* note 123, at 202. In order to assure themselves that they are really in direct contact, johns ask for the woman to make special signals or show today’s newspaper to indicate that the prostitution is live. Hughes, *supra* note 148, at 119. Multiple viewers can be linked at one time or johns can pay extra for a private performance of prostitution. *Id.* On a web cam site the john pays to chat with live women who perform prostitution on live streaming video, performing what the johns pay them to do. Melissa Farley, *Pornography, Prostitution, and Trafficking in Nevada*, in PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS, *supra* note 82, at 153, 156. When johns are bored with online pornography, they can create their own pornography with webcam prostitution. See MALAREK, *supra* note 123, at 201–02.

²⁷² Hughes, *supra* note 148, at 119.

²⁷³ MALAREK, *supra* note 123, at 203.

²⁷⁴ Melissa Farley, *Pornography, Prostitution, and Trafficking in Nevada*, in PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS, *supra* note 82, at 157 n.470 (explaining how one pimp/pornographer would withhold payment to prostituting women who refused to be filmed).

²⁷⁵ *Id.* (“[Women in prostitution] resist being filmed because that would be a record of their prostitution, and often a part of their lives that they prefer to leave behind them, rather than have on view indefinitely into the future.”).

²⁷⁶ Telephone Interview, *supra* note 204; see also Farley, *supra* note 91, at 146 (discussing how women in prostitution whose johns or pimps made pornography of them in prostitution had significantly more severe symptoms of PTSD than did women who did not have pornography made of their prostitution).

The affiliates earn a fee whenever someone signs up to purchase webcam pornography.²⁷⁷ San Francisco's torture pornography site Kink.com offered sex buyers in 2011 the opportunity to chat with, interact with, and control Kink.com's slaves and bondage porn stars in live streamed interactive bondage pornography cam shows.²⁷⁸ In addition to Kink.com's live cam shows, the site features live streaming video, live bondage chats, live bondage sex parties, and other live streamed BDSM reality shows.²⁷⁹

E. Dating and Sugar Daddy Websites

Webcam video and escort prostitution sites have merged with some adult dating sites. Since 2000 prostitution advertising has increased on dating websites with many dating websites now largely consisting of locations where johns seek women who they presume are prostituting. Adultfriendfinder, for example, features gonzo pornography²⁸⁰ of women seeking dates for prostitution in dozens of countries and every state in the United States. The site is

²⁷⁷ Melissa Farley, *Pornography, Prostitution, and Trafficking in Nevada, in* PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS, *supra* note 82, at 156, 157, 261–62. The connections between web cam pornography, prostitution and casual sex/dating websites such as adultfriendfinder (“the largest sex and swingers personals site in the world”) can be seen in the history of webcams.com. The parent company of webcams.com is Streamray (<http://www.streamray.com>). In January 2006 Streamray announced the broadcast of 400 pornographic videos simultaneously with the goal of becoming the world's largest webcam company. AVONLINE.COM, http://www.avnonline.com/index.php?Primary_Navigation=Editorial&Action=View_Article&Content_ID=255014. Streamray subsequently merged with Various, the parent company of Adultfriendfinder.com, owned by Andrew Conru. Adultfriendfinder features gonzo pornography. In August 2005, Adultfriendfinder claimed that 17 million people visit the site, and that the company employs 200 people. See AVONLINE.COM, http://www.avnonline.com/index.php?Primary_Navigation=Editorial&Action=View_Article&Content_ID=235604. Other sites owned by Various are AdultFriendFinder.com, FriendFinder.com, Alt.com, OutPersonals.com, Passion.com, GradFinder.com, NiceCards.com, QuizHappy.com, BreakThru.com, Dine.com, BigChurch.com, ShareRent.com, FriendPages.com, FilipinoFriendFinder.com, AsiaFriendFinder.com, GUANXI.com, IndianFriendFinder.com, SeniorFriendFinder.com, JewishFriendFinder.com, Amigos.com, GermanFriendFinder.com, FrenchFriendFinder.com, KoreanFriendFinder.com.

²⁷⁸ Warning: viewing the kink.com site is disturbing. KINK.COM, <http://goo.gl/bVFEbL> (last visited June 15, 2014).

²⁷⁹ See *id.*; see also Melissa Farley, *Kink.com in San Francisco: Women and Gay Men's Abuse*, PROSTITUTION RES. & EDUC. (Oct. 22, 2007), http://prostitutionresearch.com/pre_blog/2007/10/22/kinkcom_in_san_francisco_women/ (deconstructing torture pornography and comments in response).

²⁸⁰ Gonzo pornography is extremely violent pornography where women are violently raped, obviously injured, painfully tied up, often terrified and/or crying. See Martin Amis, *A Rough Trade*, GUARDIAN (Mar. 16, 2001), <http://www.theguardian.com/books/2001/mar/17/society.martinamis1>.

available in German, Spanish, Japanese, French, Portuguese, Italian, Dutch, and Swedish. Some dating websites ask users to bid for a first date with a woman.²⁸¹ “[C]reat[ing] a financial market for first dates,” women who are beautiful are asked to join the site and get paid for dates.²⁸² Casual dating sites such as onlinebootycall are dominated by prostitution advertising. The seekingarrangement.com website’s goal is to create what the site’s pimps describe as mutually beneficial relationships between two people. “Such a relationship is usually between an older and wealthy individual who gives a young person expensive gifts or financial assistance in return for friendship, or intimacy.”²⁸³ The prostitution culture often seen in dating websites has expanded to include children. A fourteen-year-old boy in Tokyo met a thirteen-year-old girl through an online dating service and paid her for sex in a public bathroom.²⁸⁴

VII. PROSECUTORIAL STRATEGIES

The global nature of prostitution and trafficking has led to the creation of federal anti-trafficking laws that include the Mann Act and the Trafficking Victims Protection Act (TVPA).²⁸⁵ Given the range of felonies committed by pimps and traffickers, other laws are applicable for prosecuting them such as Racketeer Influenced and Corrupt Organizations Act (RICO).²⁸⁶ Whereas in the past, those prostituting have been primary targets of arrest,²⁸⁷ states are now starting to enforce prostitution laws against sex buyers.²⁸⁸

²⁸¹ Conor Friedersdorf, *Worse Than Prostitution?*, ATLANTIC (Apr. 25, 2011, 10:30 AM), <http://www.theatlantic.com/national/archive/2011/04/worse-than-prostitution/237795/>.

²⁸² *Id.* Continuing to promote the interests of sex buyers, Brandon Wade developed Carrot Dating, a 2013 mobile app where men “can use bribery to get first dates.” CARROTDATING.COM, <http://www.carrotdating.com/> (last visited June 15, 2014).

²⁸³ Mark Berman, *College Girls and Sugar Daddies: Is SeekingArrangement.com Just Prostitution?*, OPPOSING VIEWS (Aug. 1, 2011), <http://www.opposingviews.com/i/society/crime/college-girls-and-sugar-daddies-seekingarrangementcom-just-prostitution>.

²⁸⁴ *Boy, 14, Buys Sex with Girl, 13*, DESTROYER J. (Sep. 8, 2009), <http://destroyerjournal.com/2009/09/08/boy-14-buys-sex-from-girl-13/>.

²⁸⁵ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102, 114 Stat. 1464, 1466–469 (codified as amended at 22 U.S.C. § 7101 (2012)); White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–2424 (2012)).

²⁸⁶ Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961–1968 (2012).

²⁸⁷ BOYER ET AL., *supra* note 62.

²⁸⁸ *E.g.*, Kyle Nagel, *Cops Focusing More on “Johns” in Prostitution Busts*, DAYTON DAILY NEWS (Aug. 21, 2012, 8:00 PM), <http://www.daytondailynews.com/news/news/cops-focusing-more-on-johns-in-prostitution-busts/nRGxG/>.

The TVPA was signed into law in 2000 with reauthorizations that expanded it passed in 2003, 2005 and 2008.²⁸⁹ In addition to defining the crimes and penalties for trafficking, the TVPA established civil remedies, provides services for victims, and created T-visas and U-visas for foreign victims of trafficking to obtain immigration relief.²⁹⁰ The T-visa is available to victims of trafficking in the U.S. who are willing to assist in the prosecution of traffickers and who can show that they would suffer extreme hardship if removed from the U.S.²⁹¹ The U-visa is available to victims of criminal activity in the U.S. who have “suffered substantial physical or mental abuse,” who have information about the criminal activity, and who are helpful to law enforcement in prosecuting the crime.²⁹²

The TVPA defines a perpetrator of sex trafficking as a person who “knowingly . . . recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or benefits, financially . . . knowing . . . that means of force, . . . fraud, [or] coercion . . . will be used to cause the person to engage in a commercial sex act.”²⁹³ No transportation is required in order to meet the legal requirement of trafficking under the TVPA. Prostitution of minors under TVPRA 2005 is presumed to be exploitive and any person who causes another person under the age of 18 to engage in a commercial sex act is guilty of sex trafficking.²⁹⁴ Adult trafficking victims must prove force, fraud, or coercion.²⁹⁵ The Department of Justice prosecuted 162 defendants for sex trafficking under the TVPA in 2012,²⁹⁶ with 366 T-visas issued to victims and 103 issued

²⁸⁹ Victims of Trafficking and Violence Protection Act of 2000, 114 Stat. at 1464–548; Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875; Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558; William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, 110th Cong. (2008) (enacted).

²⁹⁰ Melynda H. Barnhart, *Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation*, 16 WM. & MARY J. WOMEN & L. 83, 97–101 (2009).

²⁹¹ *Victims of Human Trafficking: T Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVICES, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status> (last updated Oct. 3, 2011).

²⁹² *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVICES, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status#U%20Nonimmigrant%20Eligibility> (last updated Jan. 9, 2014).

²⁹³ 18 U.S.C. § 1591(a) (2012).

²⁹⁴ *Id.*

²⁹⁵ Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, 110th Cong. § 237(a)(2)(B) (2008).

²⁹⁶ U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT 382 (2013),

to foreign national children.²⁹⁷ These numbers remain limited because of the burdensome requirements for the visas. Created primarily to prosecute traffickers rather than to assist victims, the TVPA is onerous for trafficking victims. It is often too dangerous for victims to testify since traffickers and organized crime groups threaten not only their lives but the lives of family members, sometimes holding them hostage.²⁹⁸ Other forms of immigration relief are less burdensome to victims, such as U-visas or self-petitioning under VAWA remedies for domestic violence.²⁹⁹

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 amended the TVPA to make civil remedies available for victims.³⁰⁰ Thus victims can sue traffickers as well as individuals or corporations who are complicit with traffickers. No foreknowledge is required—only that the third party “should have known.”³⁰¹ The civil remedy under the TVPRA holds traffickers and those who are complicit liable for damages arising out of her prostitution even after the criminal case has terminated.³⁰² The TVPRA remedy has some advantages: it would implicate individuals and corporations in a pattern of detrimental practices that would serve as a deterrent based on the financial and reputational risks involved.³⁰³ Civil remedies also hold third parties accountable and create opportunities for survivors of trafficking to obtain necessary services.³⁰⁴ In a case in progress a survivor of trafficking used the civil remedy section of the TVPRA to sue a sex buyer for facilitation

<http://www.state.gov/documents/organization/210742.pdf>.

²⁹⁷ *Id.* at 384.

²⁹⁸ U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS FISCAL YEAR 2008 3, 40 (2009).

²⁹⁹ Telephone Interview with Margaret Baldwin, Executive Director of Refuge House, Tallahassee, Fla. (Feb. 2012).

³⁰⁰ The Act provided that not only could victims of trafficking sue the immediate perpetrator, but anyone who “knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter.” H.R. 7311, § 221(2)(A)(ii).

³⁰¹ Sallie Pullman, *Exploring Civil Remedies for Child Trafficking Victims: Class Action Litigation and Our Capacity to Reduce Demand*, NDAA.ORG, 2 (2011), http://www.ndaa.org/ncpca_update_newsletter.html. In other laws with similar language the notion of benefit includes financial benefit as well as business opportunities, gaining access to file-sharing websites that contain illicit images of children, and being provided pornography. *Id.*

³⁰² *Id.* at 3. The civil suit will be stayed until the criminal case has been terminated. *Id.* at 4.

³⁰³ *Id.* at 3.

³⁰⁴ Max Waltman, *Sweden's Prohibition of Purchase of Sex: The Law's Reasons, Impact, and Potential*, 34 WOMEN'S STUD. INT'L F. 449, 463 (2011), available at <http://goo.gl/XdOyfr>.

of trafficking when he bought her for sexual use.³⁰⁵ In this case, the sex buyer and the pimp pled guilty to criminal charges of trafficking and sexual exploitation. The United States Attorney for the Western District of Missouri has used the language from the TVPA to prosecute buyers of sex under that statute.³⁰⁶ This case marked the first time that sex buyers were convicted under the TVPA in a sex trafficking case in which the victim was an adult.³⁰⁷

There have been a number of successful prosecutions of pimps and traffickers who used online prostitution classifieds to advertise and sell women and children for sexual use.³⁰⁸ Many federal antitrafficking cases against Craigslist have been based on its advertising of children for sale in prostitution.³⁰⁹ Pimps have been charged with violating child pornography laws as a result of posting online advertisements of children for use in prostitution.³¹⁰

³⁰⁵ Julia Dahl, *Suing Lawrence Taylor "Next Frontier" in Fighting Sex Trafficking, Says Expert*, CBSNEWS.COM (Dec. 1, 2011, 2:34 PM), http://www.cbsnews.com/8301-504083_162-57334731-504083/suing-lawrence-taylor-next-frontier-in-fighting-sex-trafficking-says-expert/.

³⁰⁶ Press Release, U.S. Attorney's Office for the W.D. of Mo., *Lebanon Man Sentenced to 20 Years for Coercing a Minor to Become a Sex Slave; Two Customers also Sentenced for Sex Trafficking* (Sept. 11, 2013), *available at* <http://www.justice.gov/usao/mow/news2013/bagley.sen.html>.

³⁰⁷ *Id.*

³⁰⁸ Press Release, U.S. Attorney's Office for the W.D. of N.C., *California Man Sentenced to 18 Months in Prison for Prostitution-Related Charges* (July 25, 2012), *available at* <http://www.justice.gov/usao/ncw/pressreleases/Charlotte-2012-07-25-rodgers.html>; *see also Chicago Man Found Guilty of Sex Trafficking of Minors*, EXAMINER.COM (Nov. 21, 2011), <http://www.examiner.com/residential-in-chicago/chicago-man-found-guilty-of-sex-trafficking-of-minors> (arranging locations through Craigslist and other websites); *Craigslist Named as America's Biggest Pimp*, THEAGE.COM (Mar. 6, 2009, 11:01 AM), <http://www.theage.com.au/news/web/craigslist-named-as-americas-biggest-pimp/2009/03/06/1235842625281.html> (noting that a 2008 FBI investigation found that "more than 2800 child prostitution ads had been posted on Craigslist"); *Prison, Indictment in NYC Sex Trafficking Cases*, WALL ST. J. (Nov. 23, 2011, 7:03 AM), <http://online.wsj.com/article/APf611332ac6944e65a760327f4d5c4d4b.html> (reporting on a man indicted on sex trafficking charges for forcing a woman to prostitute in Queens and coercing her to advertise on Craigslist); Levi Pulkkinen, *Charge: Pimp Promised Disabled Seattle Teen Thanksgiving Dinner if She 'Made Some Money,'* SEATTLEPI.COM (Dec. 1, 2011, 11:25 PM), <http://www.seattlepi.com/local/article/Charge-Pimp-promised-disabled-Seattle-teen-2338672.php> (reporting that a 37-year-old man sold eighteen-year-old for sex on backpage.com); Liz Robbins, *4 in Brooklyn Charged with Sex Trafficking*, N.Y. TIMES (Nov. 21, 2011, 4:34 PM), http://cityroom.blogs.nytimes.com/2011/11/21/4-in-brooklyn-charged-with-sex-trafficking/?_php=true&_type=blogs&r=0 (reporting that a man forced a thirteen-year-old into prostitution and advertised her prostitution by posting photos of her on the internet).

³⁰⁹ Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3559, 3563 (2008); H.R. 7311, § 235.

³¹⁰ Pimp Daniels was convicted on child pornography charges, Mann Act, and sex trafficking charges. *United States v. Daniels*, 653 F.3d 399, 404 (6th Cir. 2011). He unsuccessfully claimed that he didn't know the girl he was advertising for sale for sexual use on Craigslist was a minor. *Id.* at 410-11. It should be noted that jurisdictions that continue

States' rights to protect children from being pimped online have been opposed by the Electronic Frontier Foundation using First Amendment arguments.³¹¹ Attorney General Rob McKenna and prosecutors were restrained from enforcing a Washington state law that would require online classified advertisers such as Backpage to verify the ages of people advertised in "adult services."³¹² Similar measures have been introduced in New York, New Jersey, and Tennessee.³¹³ Attorneys from Backpage cited the Communications Decency Act protecting them as website operators from liability over the speech of "unaffiliated parties." AG McKenna stated, "Backpage is many things, but an ally in the fight against trafficking it's not. It's a cash machine churning out tens of millions a year for its owners by charging \$1 and up for prostitution advertisements."³¹⁴ The National Association of Attorneys General has begun to lobby Congress to narrow section 230 of the CDA so that it will protect against civil but not criminal liability.³¹⁵

Social networking sites and online classified advertising sites maintain data servers in more than one state.³¹⁶ The interstate commerce element of the TVPA allows prosecution of online traffickers as illustrated in the Eleventh Circuit decision in *United States v. Myers*.³¹⁷ The defendants placed pornography of their victims on Craigslist and Backpage and were charged with trafficking two girls for sex.³¹⁸ The court concluded that the interstate commerce element of the statute was satisfied by the movement of funds through accounts and servers in various states.³¹⁹

to arrest and treat minors in prostitution as criminals are at odds with the federal law.

³¹¹ Sheri Qualters, *EFF Challenges as Overbroad Washington State Law Targeting Child Trafficking Ads*, NAT'L L. J., June 18, 2012 (accessed using LexisAdvance).

³¹² *Id.*; see James R. Marsh, *EFF Joins the Child Exploitation Bandwagon*, CHILDLAW BLOG (June 19, 2012), http://www.childlaw.us/eff_joins_the_child_exploitati/ (stating that in its opposition to a Washington state law preventing child sex trafficking the EFF is supporting freedom of speech on the internet).

³¹³ Qualters, *supra* note 311.

³¹⁴ Robert McKenna, *Backpage: An "Ally" in the Fight Against Trafficking?*, WA ST. OFF. ATTORNEY GEN. (May 31, 2012, 3:56 PM), <http://www.atg.wa.gov/ingeneralpost.aspx?id=29800#UvVhyYWPvW0>.

³¹⁵ Letter from the Nat'l Ass'n of Attorneys Gen. to Senator Rockefeller, Senator Thune, Representative Upton & Representative Waxman (July 23, 2013), available at <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1465&context=historical>.

³¹⁶ See *United States v. Myers*, 430 F. App'x 812, 815 (11th Cir. 2011).

³¹⁷ *Id.* at 815–16.

³¹⁸ *Id.* at 816.

³¹⁹ *Id.* at 817; MARK LATONERO, HUMAN TRAFFICKING ONLINE: THE ROLE OF SOCIAL NETWORKING SITES AND ONLINE CLASSIFIEDS 20–21 (2011),

The Mann Act criminalizes the act of transporting or enticing a person—adult or child—to travel for the purpose of engaging in prostitution.³²⁰ Only the intent of the perpetrator is relevant; whether or not the victim consented is irrelevant.³²¹ Unlike the TVPRA, there is no need to prove force, fraud or coercion under the Mann Act.³²² Providing transportation³²³ with the intent of prostituting the victim is sufficient for conviction under the Mann Act.³²⁴ The Act's focus on the perpetrator's behavior can spare the victim from testifying—a major advantage over the TVPRA. When a TVPRA prosecution appears difficult, the penalty, not inconsequential, of a ten-year prison sentence calls for wider use of the Mann Act.³²⁵

Online prostitution has blurred jurisdictional boundaries. When an online sex buyer in New Jersey solicits prostitution from a seller (pimp or trafficker) normally located in New York, the Mann Act can be applied. Transportation may be proved through travel receipts, toll records or other documentary evidence that do not require a victim's testimony. Electronic conversations arranging the meeting can be used as evidence that the sex buyer negotiated a commercial sex act with the trafficker. Some courts have ruled that warrantless cell phone searches are permissible when police are searching for evidence of a specific crime such as selling drugs or soliciting prostitution.³²⁶ Emails, text messages, and other

http://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking_FINAL.pdf.

³²⁰ The Mann Act provides that the knowing transport of “any individual in interstate or foreign commerce . . . with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.” 18 U.S.C. § 2421 (2012).

³²¹ *See id.*

³²² *See id.*

³²³ Transportation is not a requirement of TVPRA. *See supra* text accompanying notes 300–07.

³²⁴ 18 U.S.C. § 2421.

³²⁵ After pleading guilty to pimping women between NY and CT for prostitution, Corey Davis launched an appeal to overturn his guilty plea following his 293 month sentence under the Mann Act. *United States v. Davis*, No. 3:07-cr-11 (JCH), 2008 U.S. Dist. LEXIS 99802, at *1, *6 (D. Conn. Nov. 26, 2008).

³²⁶ In *United States v. Flores-Lopez*, 670 F.3d 803 (7th Cir. 2012) a judge ruled that the search of a cell phone was legal because the officer conducted a limited search and only looked for phone numbers associated with the alleged drug deal. *Id.* at 810. The judge argued it was similar to flipping through a diary to search for basic information such as addresses and phone numbers. *Id.* at 807. Understanding that data from cell phones of men arrested for buying sex are a potential source of information about organized criminals and traffickers, the California Supreme Court in January 2011 ruled in *People v. Diaz* that it is legal in California for detained arrestees' cell phones to be searched by police without requiring a

electronic communications are likely to be a rich source of evidence for Mann Act prosecutions and possibly other crimes.³²⁷

The “persuades, induces, entices” language in the Mann Act means that it can be applied to sex buyers as well pimps.³²⁸ A sex buyer in New Jersey for example, who contacts a person in prostitution that he discovered on Backpage under listings in New York, could be held liable if he urges her to come to New Jersey to perform an act of prostitution. If it can be proved that he knew the woman was in New York, he will have violated the Mann Act.

Pimps have been prosecuted under RICO. In 2011, U.S. Attorneys charged thirty-eight California gang members under RICO for trafficking women and children via social networking sites.³²⁹ Gang members recruited vulnerable girls and women through MySpace, Facebook, and Twitter and then held them in captivity.³³⁰ The women and children were then “sold, traded, or ‘gifted’ [by gang members] to other ‘pimps.’”³³¹ Gang members from Texas and from United Arab Emirates continue this practice of

warrant, a decision the Supreme Court refused to overturn in October 2011. *People v. Diaz*, 244 P.3d 501, 502 (Cal. 2011). Several other appellate courts have ruled similarly to California in this regard. See Timothy B. Lee, *Obama Administration Asks Supreme Court to Allow Warrantless Cellphone Searches*, WASH. POST (Aug. 19, 2013, 2:24 PM), <http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/19/obama-administration-asks-supreme-court-to-allow-warrantless-cellphone-searches/>.

³²⁷ For examples of such evidence, see the indictment of Corey Davis who transported victims from Queens, NY to strip clubs in CT. See Grand Jury Indictment at 12, 5 B-06-1, *United States v. Davis*, 2008 U.S. Dist. LEXIS 99802 (D. Conn. 2008), available at <http://www.scribd.com/doc/48989066/Corey-Davis-Indictment> (providing evidence that victims were transported across state lines and were given a cell phone to communicate with pimp Davis and potential sex buyers). The Mann Act has been used successfully in other states. See, e.g., Press Release, U.S. Attorney’s Office D. Minn., Federal Jury Convicts Woodbury Man of Sex Trafficking a Minor (Aug. 18, 2011), available at <http://www.justice.gov/usao/mn/press/aug030.pdf>; Press Release, U.S. Attorney’s Office S.D. Fla., Two Martin County Women Plead Guilty to Interstate Prostitution Charges (Aug. 3, 2011), available at <http://www.justice.gov/usao/fls/PressReleases/2011/110803-02.html>; see *United States v. Daniels*, 653 F.3d 333, 410 (6th Cir. 2011) (stating that the crime is committed any time a person of any age is transported for the purpose of prostitution). A former New York Sheriff was charged under the Mann Act for hiring a limousine to transport several prostituted women to another state for a freemasons’ convention. Dan Herbeck, *Ex-Deputy Charged in Jesters Case*, BUFFALONEWS.COM (June 9, 2010, 12:00 AM), <http://www.buffalonews.com/article/20100609/CITYANDREGION/306099974>.

³²⁸ See *United States v. Farner*, 251 F.3d 510, 511 (5th Cir. 2001); see also Carrie Johnson, *Spitzer Won’t Face Charges for Scandal*, WASH. POST, Nov. 7, 2008, at A2 (reporting that “Justice Department guidelines disfavor indictments against clients of prostitution rings,” such as Eliot Spitzer, even when it appears that the client violated the Mann Act).

³²⁹ Press Release, *supra* note 24.

³³⁰ *Id.*

³³¹ *Id.*

MySpace recruitment, captivity, and sales of humans.³³² RICO punishes any persons who have received any income derived either directly or indirectly from any racketeering activity as well as persons employed by or associated with any enterprise that conducts its affairs through a pattern of racketeering activity.³³³ According to Lieutenant Derek Marsh, Co-Director of the Orange County, California Human Trafficking Task Force, charging sex buyers with conspiracy to commit the crime of human trafficking would subject them to liability for the same penalties as traffickers and pimps.³³⁴ Marsh argued that because “[t]he crime of conspiracy is already familiar to investigators, prosecutors, and judges, and its application has a long history of success,” the consistent use of conspiracy charges would have “a real chance . . . of making these demanders of inhumane services cease their demands.”³³⁵ Racketeering activity includes any acts that are indictable under numerous code sections, including the Trafficking Victims Protection Act and the Mann Act.³³⁶ Once evidence of a conspiracy—for example a conspiracy to buy prostituted women—is shown, the sex buyer’s “connection to the conspiracy, need only be slight, and the government is only required to prove that the defendant was a party to the general conspiratorial agreement.”³³⁷ RICO could thus be used against sex buyers who did not admit to conspiring to trafficking but who shared a common purpose and were involved in some aspect of trafficking. Many of the more than thirty “state RICO statutes have significantly broader civil and criminal applications than the federal [RICO] statute,” providing for civil liability, criminal liability, and forfeiture.³³⁸ Some states’

³³² ‘Facebook’ Human Trade Ring Busted by Dubai, EMIRATES 24|7 (Feb. 4, 2012), <http://www.emirates247.com/crime/local/facebook-human-trade-ring-busted-in-dubai-2012-02-04-1.441088>; Tecca, *Police Warn About Gangs Recruiting Prostitutes Via Facebook*, YAHOO TECH. NEWS BLOG (Sept. 26, 2012, 2:04 PM), <http://news.yahoo.com/blogs/technology-blog/police-warn-gangs-recruiting-prostitutes-via-facebook-180449666.html>.

³³³ 18 U.S.C. § 1962 (2012).

³³⁴ *Human Trafficking: Recent Trends: Hearing Before the Subcomm. on Border, Maritime and Global Counterterrorism of the H. Comm. on Homeland Security*, 111th Cong. 13 (2009) (statement of Lieutenant Derek Marsh, Co-Director, Orange County, California Human Trafficking Task Force).

³³⁵ *Id.*

³³⁶ 18 U.S.C. § 1961 (2012); *see* 18 U.S.C. §§ 1582–1592; 18 U.S.C. §§ 2421–2424.

³³⁷ Kendal Nicole Smith, *Human Trafficking and RICO: A New Prosecutorial Hammer in the War on Modern Day Slavery*, 18 GEO. MASON L. REV. 759, 781 (2011) (internal quotation marks omitted); *see* *United States v. Dietz*, 577 F.3d 672, 677 (6th Cir. 2009).

³³⁸ ABA SECTION OF ANTITRUST LAW, RICO STATE BY STATE: A GUIDE TO LITIGATION UNDER THE STATE RACKETEERING STATUTES 1 (2d ed. 2011).

statutes have longer periods of limitations than the federal statute and “[m]any state RICO statutes have fewer essential elements than the federal statute.”³³⁹ Prosecutors should use these laws more aggressively against sex traffickers.

The Travel Act can be used to prosecute sex traffickers when interstate or foreign travel is involved.³⁴⁰ This law provides that whoever travels in interstate and foreign commerce with intent to “promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,” is in violation of federal law.³⁴¹ The statutory definitions of unlawful activity include “prostitution offenses in violation of the laws of the State in which they are committed or of the laws of the United States.”³⁴²

Some states have laws that criminalize online traffickers or pimps of children, if not traffickers or pimps of adults. In 2011, Florida enacted an internet child solicitation statute that criminalizes the use of the internet to solicit or seduce a minor for sex, including prostitution, and criminalizes traveling to meet a child for sex.³⁴³ A section of the Florida law imposes criminal penalties on the Internet owner/operator for knowing use of the service for the prohibited purposes.³⁴⁴ A 2011 Massachusetts anti-trafficking law establishes the crime of enticing a child into prostitution by electronic communication.³⁴⁵ Statutory rape laws should also be used against sex buyers when the victim is a minor. For instance New York Penal Law section 130.30 penalizes rape in the second degree.³⁴⁶ The statute provides that a person over the age of eighteen commits rape in the second degree when he or she engages in sexual intercourse with a person less than 15 years of age.³⁴⁷ There is no requirement in this law that force, fraud or coercion must have been used.³⁴⁸ Like the TVPA, engaging in a commercial sex act with an individual less than 18 years of age

³³⁹ *Id.* at 2.

³⁴⁰ 18 U.S.C. § 1952 (2012).

³⁴¹ *Id.* at § 1952 (a)(3).

³⁴² *Id.* at § 1952 (b)(1).

³⁴³ FLA. STAT. ANN. § 847.0135 (West 2014).

³⁴⁴ *Id.* It would be preferable if the word “knowing” was removed from the law.

³⁴⁵ An Act Relative to the Commercial Exploitation of People, ch. 178, sec. 22, 2011 Mass. Legis. Serv. 839, 846 (West).

³⁴⁶ N.Y. PENAL LAW §130.30 (McKinney 2014).

³⁴⁷ *Id.* §130.30(1); ASAPH GLOSSER ET AL., STATUTORY RAPE: A GUIDE TO STATE LAWS AND REPORTING REQUIREMENTS 86 (2004), <http://aspe.hhs.gov/hsp/08/sr/statelaws/report.pdf>.

³⁴⁸ N.Y. PENAL LAW §130.30; GLOSSER ET AL., *supra* note 347, at 86.

requires no proof other than the commission of the act. States' statutory rape laws should not be ignored.³⁴⁹

A Florida civil law provides victims of prostitution and trafficking with the right to sue pimps for damages they inflict and could be used to prosecute online trafficking cases.³⁵⁰ The Florida law permits women who are coerced into prostitution via exploitation of their social and legal vulnerability to sue, defining coercion as restriction of communication with others, exploitation of a person's developmental disability, cognitive limitation, affective disorder, or addiction, exploitation of previous victimization by sexual abuse, exploitation during the production of pornography, and exploitation of the human needs for food, shelter, safety, or affection.³⁵¹

VIII. CONCLUDING THOUGHTS

"For a Web site like Backpage to make \$22 million off our backs," said a trafficking survivor, "it's like going back to slave times."³⁵²

The transition of trafficking and prostitution to the Internet has created unique challenges for law enforcement. "Technology creates new ways for people to interact with each other," said Eric Goldman, a law professor at Santa Clara University in California. "You have to figure out if old law maps to new interactions."³⁵³ Today the prostitution transaction includes not only victim, buyer and trafficker/pimp but the most invisible partner: the online advertiser.³⁵⁴ When prostitution happened on the street in

³⁴⁹ For an analysis of each state's statutory rape laws, see GLOSSER ET AL., *supra* note 347.

³⁵⁰ FLA. STAT. ANN. § 796.09 (West 2014); see Margaret A. Baldwin, *Strategies of Connection: Prostitution and Feminist Politics*, 1 MICH. J. GENDER & L. 65, 70–71 (1993).

³⁵¹ FLA. STAT. ANN. § 796.09(3)(k)–(o); see also CAPTIVE DAUGHTERS AND INT'L HUMAN RIGHTS LAW INST. OF DEPAUL UNIV. COLL. OF LAW, DEMAND DYNAMICS: THE FORCES OF DEMAND IN GLOBAL SEX TRAFFICKING 88–89, 111 (Morrison Torrey & Sara Dubin eds., 2004), available at http://www.law.depaul.edu/centers_institutes/ihrl/downloads/demand_dynamics.pdf

(discussing claims brought and won under section 796.09). In 2006, the Florida Council Against Sexual Violence, in collaboration with Florida Legal Services, the Jacksonville Women's Center, and Refuge House, sought federal funding to support civil legal claims that may be brought by prostituted women under section 796.09 of the Florida Code. E-mail from Margaret Baldwin (Mar. 17, 2006, 1:48 PST) (on file with author).

³⁵² Nicholas D. Kristof, *Where Pimps Peddle Their Goods*, N.Y. TIMES SUNDAY REV., Mar. 18, 2012, at 1.

³⁵³ Somini Sengupta, *Case of 8,000 Menacing Posts Tests Limits of Twitter Speech*, N.Y. TIMES, Aug. 27, 2011, at A1.

³⁵⁴ Andrea Powell, *Sex Trafficking in America: The Role of Online Advertisers*, FAIR OBSERVER (Sept. 26, 2013), <http://www.fairobserver.com/article/sex-trafficking-america-role-online-advertisers>.

someone's neighborhood, it was clear whose jurisdiction that was. Enforcement of a range of laws against johns and pimps was sometimes fueled by citizens' concern about prostitution as a neighborhood nuisance rather than concern about prostitution's exploitation and violence. Communities wanted prostitution out of sight and out of their neighborhoods. Because online sex businesses are less visible to the public, victims of sexual exploitation in prostitution are isolated and can be in greater danger from sex buyers. A survivor of prostitution opined that street prostitution was actually safer than online prostitution since friends watched out for her on the street. "They don't know what they are doing," she said about women who are sold via online websites, "they're alone."³⁵⁵

The United States has shown ambivalence regarding enforcement of laws on prostitution and trafficking. This is highlighted in public comments of U.S. Attorney Michael J. Garcia about a sex buyer's purchase and interstate transport of a prostituted woman that was facilitated via an online escort advertisement, Emperor's Club VIP. Mr. Garcia indicated that the Department of Justice (DOJ) does not typically prosecute sex buyers who buy women from pimps except in cases of prostitution of children.

"In light of the policy of the Department of Justice with respect to prostitution offenses and the longstanding practice of this Office, as well as Mr. Spitzer's acceptance of responsibility for his conduct, we have concluded that the public interest would not be further advanced by filing criminal charges in this matter."³⁵⁶

This federal indifference to the prostitution and often co-occurring trafficking of adult women has had an additional adverse impact on the enforcement of state laws against prostitution. Because of a lack of resources and also because of the need for special training, it has been difficult to monitor online prostitution and trafficking.³⁵⁷ Nonetheless, police in many states including Washington,

³⁵⁵ Jennifer Quinn & Robert Cribb, *Inside the World of Human Trafficking*, TORONTO STAR, Oct. 5, 2013, at IN1, available at http://www.thestar.com/news/gta/2013/10/05/inside_the_world_of_human_sex_trafficking.html.

³⁵⁶ Melissa Farley & Norma Ramos, *Opinion: Why Spitzer Should be Prosecuted*, NEWSWEEK (Mar. 13, 2010, 6:47 PM), <http://www.newsweek.com/id/168395> (quoting Michael J. Garcia).

³⁵⁷ Personal observation by the second author, during his tenure as Director of Human Trafficking Prevention and Training with New York State Division of Criminal Justice Services.

Tennessee, New York, and Virginia conducted sting operations by posting fake prostitution advertisements online resulting in numerous arrests of men seeking to buy sex.³⁵⁸

In this article we have summarized information about online prostitution and trafficking. Describing the history of technological advances that permitted pimps, traffickers and sex buyers to expand the sex industry online, we discussed the use of websites, online classified advertising, message boards, dating and sugar daddy sites, live streaming video, and the involvement of organized crime in online trafficking. We have also noted that these technologies leave digital traces that can be used by law enforcement, and that online technologies raise new issues for those involved in challenging trafficking such as adult pornography, child pornography, and interstate commerce.³⁵⁹ We have discussed some challenges to prosecutors: the inseparability of different arms of the sex industry despite the insistence of some that they are discrete entities. Other prosecutorial challenges include complex jurisdictional boundaries, lack of resources and funding. We also described creative and successful prosecutions.

Challenging Internet giants Google and Facebook and accusing them of protecting massive profits via free speech arguments, a Huffington Post blogger wrote,

This is a human rights fight. It's not about sex. This isn't about left or right, liberal versus conservative but about freedom. This isn't about actual free speech either. It is about trillion-dollar interests too lazy to move this issue to priority one. Everyone needs to get involved to change the internet giants minds. That includes the LGTB community, liberal and feminist activists, evangelicals, and everyone else. We need to unite—*for* once—to make it clear that fighting to stop slavery, child rape and sex trafficking is not

³⁵⁸ Associated Press, *Cops Bust 66 People in Craigslist Prostitution Ring*, NY DAILY NEWS (Jan. 12, 2008, 1:48 PM), <http://www.nydailynews.com/news/crime/cops-bust-66-people-craigslist-prostitution-ring-article-1.345129>; Hector Castro, *Ad on Craigslist Really a Sex Sting: Nearly 100 Men Arrested in Police Prostitution Ploy*, SEATTLE POST-INTELLIGENCER (Nov. 15, 2006, 10:00 PM), <http://www.seattlepi.com/local/article/Ad-on-Craigslist-really-a-sex-sting-1219955.php>; Freeman Klopott, *Va. Man Nabbed in Craiglist Sex Sting; Drawn in by Fake Ad*, WASHINGTON EXAMINER (Nov. 30, 2009, 3:00 AM), <http://washingtonexaminer.com/va.-man-nabbed-in-craigslist-sex-sting-drawn-in-by-fake-ad/article/19931>; Amy Hunter, *Attorney Among Sting Arrests*, TRICITIES.COM (Apr. 28, 2009, 7:15 AM), http://www2.tricities.com/news/2009/apr/28/attorney_among_sting_arrests-ar-247092/.

³⁵⁹ BOYD ET AL., *supra* note 20, at 3.

about fighting human sexuality. It is the opposite. We are freeing people to make their own choices.³⁶⁰

New community alliances have been formed in response to the human rights violations of trafficking. After police complained of a lack of funding and resources to combat prostitution, Big Sisters, based in Iceland,³⁶¹ gave the Reykjavík Metropolitan Police “56 names, 117 telephone numbers and 29 emails of men who expressed interest in” buying sex acts from women in prostitution “through the websites einkamal.is, mypurplerabbit.com, raudatorgid.is and classified ads offering ‘massages’ in [the] daily newspaper *Fréttabladid*.”³⁶² The activist group noted that although sex buyers attempt to hide their identities, their computer skills are sometimes limited.³⁶³ San Antonio police have mentioned similar concerns about a lack of funding for prosecution of online trafficking cases.³⁶⁴ Applications that detect suspected money laundering by trafficking networks have been developed by JP Morgan Chase. For example, sex trafficking was discovered by “investigation of several credit card transactions at a nail salon during nonbusiness hours.”³⁶⁵ It is worth noting that police in 2013 closed down Hong Kong’s largest prostitution website, charging the owners who they described as members of criminal syndicates with money-laundering and living off the avails of a prostitute.³⁶⁶

Citizen assistance and cooperation with law enforcement could be

³⁶⁰ Frank Schaeffer, *Uncool!—Google and Facebook’s Human Trafficking Complicity*, HUFFINGTON POST (June 6, 2013, 8:57 AM), http://www.huffingtonpost.com/frank-schaeffer/google-and-facebooks-comp_b_3389538.html.

³⁶¹ Buying sex is illegal in Iceland, although selling it is not. This law is similar to that of Sweden. GENERAL PENAL CODE [GEN. PENAL C.] No. 19/1940, ch. XXII, art. 206 (Ice.); *see also A New Law Makes Purchase of Sex Illegal in Iceland*, JAFNRETTISSTOFA (Apr. 21, 2009), <http://www.jafnretti.is/jafnretti/?D10cID=ReadNews&ID=523>.

³⁶² *Big Sister Watches Buyers of Prostitution in Iceland*, ICELAND REV. ONLINE (Oct. 19, 2011), http://www.icelandreview.com/icelandreview/daily_news/Big_Sister_Watches_Buyers_of_Prostitution_in_Iceland_0_383393.news.asp.

³⁶³ *Id.*

³⁶⁴ Phil Anaya, *Constables Busy Busting Men Suspected of Soliciting Sex on Craigslist*, KENS5.COM (Oct. 27, 2011, 9:05 PM), <http://www.kens5.com/news/Constables-office-busts-men-soliciting-sex-for-drugs-using-Craigslist-132732983.html>.

³⁶⁵ Judge Herbert B. Dixon, Jr., *Human Trafficking and the Internet* (*and Other Technologies, too)*, ABA, http://www.americanbar.org/publications/judges_journal/2013/winter/human_trafficking_and_internet_and_other_technologies_too.html (last visited June 15, 2014).

³⁶⁶ *HK Closes Largest Prostitution Website*, BANGKOK POST (Dec 6, 2013, 3:49 AM), <http://www.bangkokpost.com/news/asia/383475/hong-kong-largest-prostitution-website-paralysedhttp://au.news.yahoo.com/world/a/20182940/hong-kongs-largest-prostitution-website-paralysed/>.

a major step forward in providing evidence of online trafficking. This might occur via crowdsourcing, the online broadcast of a problem, such as trafficking, to a large and undefined group of people who then apply their talents to solving the problem. Via crowdsourcing, new collaborations between the public, NGOs, law enforcement, and researchers can produce new information such as mapping the location of trafficked individuals or those at high risk for trafficking.³⁶⁷

Despite the obstacles to combating online prostitution and trafficking, law enforcement and prosecutors have tools to successfully charge and convict pimps, traffickers and most importantly sex buyers. It is incumbent upon policy makers and law enforcement to enforce existing laws and where needed, to develop new laws and policies that will abolish online (and offline) trafficking and prostitution. While many have been recruited, sold and trafficked into prostitution on social networking sites, the sites can also be turned against traffickers. A thirty-year-old New Jersey woman used Facebook to contact a family member who then rescued her and others from a trafficker who held them captive.³⁶⁸ The creative and proactive use of online technologies against sex buyers, pimps, and traffickers is cause for hope.

³⁶⁷ Survivors Connect has used an open-source platform, Ushahidi, to crowdsource information about cases of violence against women, potential trafficking, and resources. Aashika Damodar, founder of Survivors Connect noted, “No one individual or organization can know everything there is to know about the conditions or locations of trafficking, however, with increased awareness, all individuals may have some piece of knowledge that can be critical to solving the larger puzzle.” Telephone Interview with Aashika Damodar, Founder of Survivors Connect (Nov. 15, 2011) (on file with the author). Damodar suggested that individuals can contribute to ending trafficking via the use of simple online technologies such as a text message or email about suspicious web activity. *Id.*; see also Jeff Howe, *The Rise of Crowdsourcing*, WIRED MAG., June 2006, at 176, 176–78 (identifying several fields in which crowdsourcing has been used effectively); Dan Woods, *The Myth of Crowdsourcing*, FORBES.COM (Sept. 29, 2009, 6:00 AM), <http://www.forbes.com/2009/09/28/crowdsourcing-enterprise-innovation-technology-cio-network-jargonspy.html> (describing misconceptions about how crowdsourcing works to solve problems by sending issues to uniquely qualified individuals rather than by sheer number of participants).

³⁶⁸ Bob Holt, *Facebook to the Rescue for NJ Woman Coerced into Prostitution*, NEWJERSEYNEWSROOM.COM (Dec. 31, 2011, 12:10 PM), <http://www.newjerseynewsroom.com/state/facebook-to-the-rescue-for-nj-woman-coerced-into-prostitution>.