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## **Sex Trafficking Via The Internet: How International Agreements Address The Problem And Fail To Go Far Enough**

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### I. Introduction

“Craigslist is the single largest source of prostitution in the nation...<sup>1</sup> Missing children, runaways, abused women and women trafficked in from foreign countries are routinely forced to have sex with strangers because they’re being pimped on Craigslist.”

–Thomas J. Dart, Sheriff, Cook County, IL.<sup>2</sup>

On March 5, 2009, Illinois Sheriff Thomas J. Dart brought a federal lawsuit against the owners of Craigslist.org, an online classifieds website.<sup>3</sup> The suit sought to enjoin website owners from hosting an “erotic” services forum on their site.<sup>4</sup> Dart also sought damages exceeding \$100,000 from Craigslist to pay the costs of police enforcement that the department expended in response to prostitution, juvenile pimping, and human trafficking promulgated over the site.<sup>5</sup>

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1. Matt Walberg, *Sheriff Sues Craigslist as 'largest source' of Prostitution*, CHICAGO BREAKING NEWS, Mar. 5, 2009, *archived at* <http://www.webcitation.org/5o5489MCj>.

2. ASSOCIATED PRESS, *Illinois: Sheriff Sues Craigslist*, N. Y. TIMES, Mar. 5, 2009, *archived at* <http://www.webcitation.org/5o54rzT5v>.

3. Walberg, *supra* note 1.

4. Mark J. Konkol, *Cook County Sheriff Sues Craigslist for Sex Ads*, CHICAGO SUN-TIMES, Mar. 6, 2009.

5. *Id.* In October 2009, the Federal Court dismissed the case in favor of Craigslist, stating, “[i]ntermediaries are not culpable for “aiding and abetting” their customers who misuse their service to commit unlawful acts.” *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961 (N.D. Ill. 2009). Nevertheless, Craigslist has since removed its “erotic services” category and replaced it instead with an

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Craigslist is one of many online media through which pimps and human traffickers lure young women to into the commercial sex industry under false pretenses.<sup>6</sup> Pimps and human traffickers then use these websites to sell the women they've enslaved as commercial sex workers.<sup>7</sup> Although Craigslist has been notorious for hosting an "erotic" services page, pimps and human traffickers increasingly solicit women via a range of Internet websites, chat rooms, and peer-to-peer file-sharing servers to which they and the women they seek have ample access.

While sex trafficking is not a new phenomenon, the Internet is a new resource for sex traffickers to find vulnerable women, sell women for sexual exploitation, and at the same time conceal their own identities.<sup>8</sup> Because of the highly unregulated nature of the Internet,<sup>9</sup> pimps and those who purchase trafficked women and children are able to use this platform for criminal purposes with minimal risk of persecution.<sup>10</sup> Further the Internet allows those who exploit enslaved women and children to share experiences with an expansive World Wide Web audience, thereby normalizing the victimization of trafficked women and children.<sup>11</sup> Finally, because Internet websites have global reach, this paper discusses the need for international legal cooperation to further develop human rights law by more explicitly criminalizing Internet-facilitated sex trafficking.

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"adult" services section. *Id.* See Craigslist.org, <http://www.craigslist.org> (last visited Mar. 8, 2010).

6. See Walberg, *supra* note 1.

7. See ASSOCIATED PRESS, *supra* note 2.

8. Jacqui Cheng, *Sheriff Files Lawsuit Over Craigslist's Red-light District (Updated)*, ARS TECHNIA, Mar. 5, 2009, archived at <http://www.webcitation.org/5o71jedqo> (describing the ease of making fairly anonymous postings on Craigslist).

9. *Infra* text accompanying note 102.

10. *Id.*

11. See Explanatory Report, *infra* note 91, at ¶ 93.

## II. A History of Internet Facilitated Sex Trafficking

In the most basic sense, human trafficking is a means of slavery.<sup>12</sup> Although slavery has been legally abolished throughout the world,<sup>13</sup> the practice remains robust both in the U.S. and abroad.<sup>14</sup> As they have done for centuries, slave traders—now known as “traffickers”—entrap vulnerable populations including men, women and children by forcing them into involuntary servitude.<sup>15</sup> Today, forced laborers are commonly traded or sold nationally and internationally as agricultural and industrial workers, soldiers, sex workers and indentured sex slaves<sup>16</sup>—women and children recruited, harbored, transported or otherwise obtained for the “purpose of a commercial sex act.”<sup>17</sup>

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children states that sex trafficking means, at a minimum, “the exploitation of the prostitution of others or other forms of sexual exploitation...”<sup>18</sup> According to the U.S. Trafficking Victims Protection Act, human sex trafficking is considered a “severe form of trafficking,” which frequently involves “a commercial sex

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12. Condoleeza Rice, Secretary, U.S. Department of State, *Letter from the Secretary*, 1 Trafficking in Persons Report: June 2007, published by U.S. Department of State [hereinafter *2007 Trafficking in Persons Report*].

13. Anti-Slavery, *Frequently Asked Questions*, Mar. 9, 2010, <http://www.antislavery.org>, archived at <http://www.webcitation.org/5o6ye9MXc>.

14. *2007 Trafficking in Persons Report*, *supra* note 12, at 8.

15. *2007 Trafficking in Persons Report*, *supra* note 12, at 8. The International Labor Organization Convention defines “forced labor” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” International Labour Organisation, *Forced Labour Convention*, June 10, 1930, ILO No. 29.

16. See INTERNATIONAL LABOUR OFFICE, *COMBATING FORCED LABOUR: A HANDBOOK FOR EMPLOYERS & BUSINESS, PART I, INTRODUCTION & OVERVIEW* 15 (2008), archived at <http://www.webcitation.org/5o882919C> [hereinafter *ILO HANDBOOK FOR EMPLOYERS & BUSINESS*]; *2007 Trafficking in Persons Report*, *supra* note 12, at 21.

17. Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102(9) (2008). “The term ‘sex trafficking’ means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” *Id.*

18. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, Protocol, art. 3(a), 15 Nov. 2000 [hereinafter *Protocol to Prevent, Suppress and Punish Trafficking in Persons*].

act [] induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.”<sup>19</sup>

The United Nations International Labour Organization (ILO) estimates that there are over twelve million individuals currently working as forced laborers who have been trafficked both domestically and internationally.<sup>20</sup> Of those individuals trafficked as forced laborers, the ILO estimates that 1.7 million are forced into commercial sexual exploitation.<sup>21</sup> In 2002, the United States Department of Justice approximated that some 50,000 women were trafficked into the United States alone for the purposes of commercial sex.<sup>22</sup> That number does not include women trafficked domestically between or within U.S. states.<sup>23</sup>

#### A. The Victims\*

Women and children often become victims of sex trafficking when pimps or commercial traffickers abduct them, or entice them to various locations under false pretenses.<sup>24</sup> The most vulnerable women and children are often those from developing or war-torn nations who have limited earning opportunities.<sup>25</sup> The promise of work abroad may lure these

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19. Trafficking Victims Protection Act of 2000, 22 USC § 7102 (8)(a).

20. ILO HANDBOOK FOR EMPLOYERS & BUSINESS *supra* note 16, at 13; 2007 *Trafficking in Persons Report*, *supra* note 12, at 8.

21. Patrick Belser, *Forced Labour and Human Trafficking: Estimating the Profits* 4 (Int'l Labour Office, Working Paper No. 42, 2005); ILO HANDBOOK FOR EMPLOYERS & BUSINESS, *supra* note 20, at 14 (citing Belser).

22. Press Release, Dept. of Justice, Dept. of Justice Issues T Visa to Protect Women, Children and All Victims of Human Trafficking (Jan. 24, 2002), *archived at* <http://www.webcitation.org/5o89UalmS>.

23. *See id.*

\* The following section includes a number of examples of women trafficked by various methods to demonstrate the growing use of technology to facilitate trafficking. For further reading, *see* Polaris Project, Survivor Testimonials *available at* <http://actioncenter.polarisproject.org/the-frontlines/survivor-testimonies>.

24. *See* Berg, *infra* note 37 (Ukrainian woman enslaved as sex worker in Israel after responding to a study-abroad advertisement in that county); *see* Konkol, *supra* note 4 (Illinois teen entrapped as sex slave after responding to a “modeling” ad on Craigslist).

25. 22 U.S.C. § 7101 § (b)(4) (noting congressional finding that “[t]raffickers

individuals into the arms of traffickers intending to exploit them in the commercial sex trade.<sup>26</sup> Once enslaved, women throughout the world are left to their own devices to regain their freedom.<sup>27</sup> In the United States, police have a difficult time finding women and children who are abducted and constantly moved from one location to another.<sup>28</sup> In many parts of the world, law enforcement officers turn a blind eye to the plight of enslaved women and children, or worse, are an integral part of the illegal sex trade—taking money from brothel keepers and sexually exploiting brothel slaves in exchange for allowing the brothel's business to continue.<sup>29</sup>

Anita Sharma Bhattarai of Nepal, was 27 years old when she left her husband.<sup>30</sup> In order to support her children, she raised money by purchasing vegetables from farmers and selling them in villages.<sup>31</sup> While on a bus ride to buy her inventory, a fellow bus passenger offered Bhattarai a banana, and later, a pill to treat a headache.<sup>32</sup> After taking the pill, Bhattarai fell unconscious, and awoke in a train station in India.<sup>33</sup> Her bus captor sold her into a brothel where she was beaten and forced into the commercial sex industry.<sup>34</sup> Bhattarai attempted to buy her way out of the brothel, but discovered that her freedom was

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primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin"); see *2007 Trafficking in Persons Report*, *supra* note 12, at 42 (trafficking in persons tiered watch list).

26. See *infra* text accompanying note 37.

27. See *infra* text accompanying notes 36, 40, 56.

28. *Infra* text accompanying note 55.

29. SOMALY MAM, *THE ROAD OF LOST INNOCENCE* 133 (Random House 2005) (2008). Policemen in Cambodia are said to be "in the pocket of pimps"... sometimes beating up clients who refused to pay, or even owning brothels. Many were regular clients. *Id.*

30. Polaris Project, *Survivor Testimonies: Testimony of Anita*, archived at <http://www.webcitation.org/5o8AdT3ZU>.

31. *Id.*

32. *Id.*

33. *Id.*

34. Polaris Project, *supra* note 30.

not for sale.<sup>35</sup> She managed to escape the brothel only when a new maid left a brothel gate ajar in the early morning.<sup>36</sup>

In another case, a 33-year-old Ukrainian woman responded to a newspaper advertisement to study abroad in Israel.<sup>37</sup> Upon her arrival, the woman was taken to an apartment where others informed her that she was there to serve as a prostitute.<sup>38</sup> The man who solicited her via the study abroad advertisement raped her and sold her to a pimp.<sup>39</sup> She was then forced to have sex against her will until, like Bhattarai, she managed to escape captivity.<sup>40</sup>

While pimps in the U.S. and abroad have preyed on the economic and emotional plight of women living in poverty or abusive homes, modern conveniences such as digital cameras, Internet connections, and social networking websites make it easy for predators to entice, torture and bribe young girls of all backgrounds.<sup>41</sup> Theresa Flores, a former sex slave, was manipulated, blackmailed, and mentally abused by a group of young men from her high school for two years.<sup>42</sup> Flores was a self-proclaimed “upper-middle-class” suburban girl from a caring family.<sup>43</sup> Her nightmare started when a fellow student invited her to his house after school. When Flores arrived at his house, the young man raped her while his friends photographed the incident.<sup>44</sup> The male student subsequently used the photographs, repeated rape, and Flores’s own sense of shame to blackmail her into performing sex acts with numerous people.<sup>45</sup> Federal

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35. *Id.*

36. *Id.*

37. Raffi Berg, *Israel's Fight Against Sex Trafficking*, BBC NEWS, Nov. 6, 2007, archived at <http://www.webcitation.org/5o8BQ9711>.

38. *Id.*

39. *Id.*

40. *Id.*

41. Mike Celizic, *Former Teen Sex Slave Says Trafficking Common*, TODAY-show.com, Feb. 13, 2009, archived at <http://www.webcitation.org/5o8C4jk7n>; see also *2007 Trafficking in Persons Report*, *supra* note 12, at 23.

42. Celizic, *supra* note 41.

43. Celizic, *supra* note 41.

44. Celizic, *supra* note 41.

45. Celizic, *supra* note 41.

Prosecutor Erica MacDonald, who frequently works on sex trade cases, argues that the Internet has made the manipulation and abuse, such as Flores faced, more common.<sup>46</sup>

A recent prostitution bust in Illinois told a story similar to that of the young Ukrainian woman lured to Israel. In the Illinois case, a nineteen-year-old female responded to an Internet ad promoting modeling opportunities.<sup>47</sup> Instead of offering her a modeling job, the advertiser enticed the girl to wait in a hotel room where she was expected to have sex with an unknown person.<sup>48</sup> The advertiser, who would become her pimp, intended to sell the young woman for sex at an hourly rate.<sup>49</sup> In this case, the pimp's would-be client was an Illinois police officer who brought the young woman to safety.<sup>50</sup>

In cases where women are entrapped through in-person solicitation, their captors quickly turn to the Internet to advertise their sexual services.<sup>51</sup> A young couple approached 17 year-old "Maya" in a shopping mall in Arizona and—like the Internet advertiser in Illinois—offered her a modeling job.<sup>52</sup> The couple brought Maya to have her nails and hair fashioned, took suggestive photos of her, and promptly posted those photos to an escort service website unbeknownst to Maya.<sup>53</sup> Maya's pimps used the website to advertise where and when she would appear to offer sexual services.<sup>54</sup> Because the pimps were using the Internet to advertise Maya—keeping her off the street—they made it almost impossible for police to find them.<sup>55</sup> Maya escaped

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46. See Celizic, *supra* note 41 (comments by Erica MacDonald, Assistant United States Attorney, Minneapolis United States Attorney's Office).

47. Konkol, *supra* note 4.

48. Konkol, *supra* note 4.

49. Konkol, *supra* note 4.

50. Konkol, *supra* note 4.

51. ABC Primetime: *Trafficking Our Daughters* (ABC television broadcast Feb. 9, 2006).

52. *Id.*

53. *Id.*

54. *Id.*

55. ABC Primetime: *Trafficking Our Daughters* (ABC television broadcast Feb. 9, 2006).

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captivity when she ran from a motel in the middle of the night and flagged down a driver on a nearby road for help.<sup>56</sup>

“Debbie,” a 15 year old honors student from Arizona, was abducted in front of her own house by “friends” of a girl she knew from school.<sup>57</sup> Debbie’s captors drugged her, psychologically manipulated her (threatening harm to her family if she attempted to escape), and locked her in a dog crate.<sup>58</sup> Shortly after abducting her, Debbie’s captors placed an ad offering her services as a prostitute on Craigslist.<sup>59</sup> As soon as the ad ran, men appeared at her captor’s apartment where they raped Debbie at all hours of the night and day.<sup>60</sup> Debbie was rescued and her story told when Phoenix police officers raided the pimps’ apartment and found her locked in a drawer under a bed.<sup>61</sup> During Debbie’s captivity, over fifty men who responded to the Internet ad paid Debbie’s captors to rape her.<sup>62</sup>

### B. The Consumers

Those who are responsible for enticing women and the pimps who prostitute them are only one side of the sex-slave trade. The industry is robust because of a steady consumer base including sexual predators and pedophiles. The International Labor Office (ILO), in their 2005 report *Forced Labor and Human Trafficking: Estimating the Profits*, note that it is highly difficult to calculate profits arising out of commercial sexual exploitation because prostitution is generally part of a city’s “non-observed economy.”<sup>63</sup> However, basing their studies on the average cost of prostitution in various countries and a conservative estimate of the number of clients a victim of sexual exploitation is required to serve in a day, the ILO reports that world-wide profits from all

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56. *Id.*

57. *Id.*

58. *Id.*

59. *ABC Primetime: Trafficking Our Daughters* (ABC television broadcast Feb. 9, 2006).

60. *Id.*

61. *Id.*

62. *Id.*

63. Belser, *supra* note 21, at 13.



forms of “forced commercial sexual exploitation” amount to 33.9 billion USD per year.<sup>64</sup> Of that, 27.8 billion USD is from forced commercial sexual exploitation as a result of trafficking alone.<sup>65</sup> It is important to note that this estimate is based on the assumption that exploited sex workers engage three to four clients per day.<sup>66</sup> This number is based on sources reporting on prostitution in general.<sup>67</sup> However, the ILO estimates that forced commercial sex workers normally serve up to ten customers per day.<sup>68</sup> This means that the true profit from forced commercial sexual exploitation may be double the admittedly “conservative” estimate published by the ILO.<sup>69</sup> More recently generated reports estimate that the “exploitation value” (profits) of the global sex slave industry in 2006 amounted to 73.2 billion USD.<sup>70</sup>

### C. The Technology

Internet commerce has benefited substantially from the commercial sex industry. Some argue that the commercial sex industry itself has been responsible for many of the technological and Internet related developments of the last decade.<sup>71</sup> In 2006, the Internet pornography industry generated 2.8 billion USD, exceeding pornography-generated income from cable television, exotic dance clubs or magazines.<sup>72</sup> The “erotic services” postings

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64. Belser, *supra* note 21, at 14.

65. Belser, *supra* note 21, at 15.

66. Belser, *supra* note 21, at 13-14.

67. Belser, *supra* note 21, at 13-14.

68. Belser, *supra* note 21, at 14.

69. See Belser, *supra* note 21, at 14.

70. SIDDHARTH KARA, *SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY* 226 (Columbia Univ. Press 2009). The ILO estimated in 1998 that profits from sex tourism comprised up to 14% of the GDP of certain south-east Asian countries including Indonesia, Malaysia, the Philippines, and Thailand. Belser, *supra* note 21, at 6; see also Nair, *infra* note 80.

71. Donna M. Hughes, *The Internet and Sex Industries: Partners in Global Sexual Exploitation*,

19-1 TECHNOLOGY AND SOCIETY MAGAZINE 35, available at

<http://www.uri.edu/artsci/wms/hughes/siii.htm>, archived at

<http://www.webcitation.org/5oSAvCLCy> [hereinafter Hughes, *Internet and Sex Industries*].

72. Jerry Ropelato, Top Ten Reviews, *Internet Pornography Statistics*, available at <http://internet-filter-review.toptenreviews.com/internet-pornography-statistics.html> (last visited May 15, 2010), archived at

on Craigslist.org alone were estimated to produce \$80 million in annual profits for website.<sup>73</sup>

Prior to the Internet, human traffickers had to travel within the United States or abroad to secure purchasing of females for sex slavery. However, with the growth of the Internet, human trafficking is now being conducted via telephone and satellite transmissions. (AFA Journal, 2004). Human trafficking is now possible by viewing images of potential girls, bidding on the Internet and paying for via the Internet. With the decrease in travel and being anonymous on the Internet, it is now possible for more human trafficking transaction to occur for purchasing Internet sex slaves.<sup>74</sup>

The first Internet prostitution website was posted online in 1994, the same year Netscape began transmitting information on the World Wide Web (the beginning of the Internet as we know it today).<sup>75</sup> Donna M. Hughes, investigator for The Coalition Against Trafficking in Women and professor of Women's Studies at the University of Rhode Island, suggests that the Internet industry itself has been following the lead of the sex industry in technological innovation and business method.<sup>76</sup> The sex industry has been credited with being at the forefront of accepting credit card payments online, initially by email and later through ecommerce software designed for secure credit card transactions.<sup>77</sup> The sex industry offered live video streaming as early as 1996, and has even been credited with early database

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<http://www.webcitation.org/5oSB3x5Um>.

73. Andrew Greiner, *Judge Dismisses Dart's Craigslist Lawsuit*, NBC CHICAGO, Oct. 22, 2009, <http://www.nbcchicago.com/news/local-beat/Judge-Dismisses-Darts-Craigslist-Lawsuit-65513422.html>, archived at

<http://www.webcitation.org/5pnpVumA8>.

74. Joyce Priddy, *United States Internet Sex Slaves*,

<http://www.associatedcontent.com>, archived at,

<http://www.webcitation.org/5pyVM6ilr>.

75. Hughes, *Internet and Sex Industries*, *supra* note 71.

76. Hughes, *Internet and Sex Industries*, *supra* note 71.

77. Hughes, *Internet and Sex Industries*, *supra* note 71.

management and search engine technology allowing users to select web-videos or images involving specified sexual fantasies.<sup>78</sup>

In 1995, the first Internet websites dedicated to international sex tourism appeared online.<sup>79</sup> The U.S. Department of State and the U.S. Department of Justice: Child Exploitation and Obscenity Section (CEOS) report that technology, including websites, is increasingly facilitating child sex tourism.<sup>80</sup> Their reports state that sex tourists use the Internet to share photos and information about planning sex tours.<sup>81</sup> These predators use “chat rooms, message boards, peer-to-peer file-sharing servers, news groups, and specialized websites to obtain information on potential [sexual tourism] destinations.”<sup>82</sup> Sex tourism “travel agents” use the Internet to publish brochures for their clients.<sup>83</sup> Consumers who have partaken in sex tours have indicated on Internet message boards that they were aware the women they exploited on tours were being held as sex slaves.<sup>84</sup>

In a scene from the forthcoming documentary film, *Playground*, an Atlanta Police Sergeant describes that, “[m]en will actually fly into Atlanta, get on the Internet, say ‘I want a boy...who looks like he’s thirteen...’, order it, show up here, have sex, and be gone.”<sup>85</sup> While he reports this scenario, the Sergeant and filmmakers expose a website where one can order and pay

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78. Hughes, *Internet and Sex Industries*, *supra* note 71.

79. Hughes, *Internet and Sex Industries*, *supra* note 71.

80. Hughes, *Internet and Sex Industries*, *supra* note 71; Sowmia Nair, *Child Sex Tourism*, Department of Justice, Child Exploitation and Obscenity Section (CEOS), <http://www.justice.gov> (last visited May 15, 2010) *archived at* <http://www.webcitation.org/5oSAQaLZT>.

81. 2007 Trafficking in Persons Report, *supra* note 12, at 23.

82. 2007 Trafficking in Persons Report, *supra* note 12, at 23.

83. Nair, *supra* note 80.

84. Hughes, *Internet and Sex Industries*, *supra* note 71 (writings on an Internet newsgroup describe establishments where women and girls are enslaved—“recommended for men who perpetrate sadistic sexual violence”).

85. Libby Spears, *Documentary Film “Playground,”*

<http://www.nestfoundation.org>, *archived at*

<http://www.webcitation.org/5oSDRjXjZ>.

for sex online using a credit card.<sup>86</sup> Officer Greg Scheffer of the Phoenix Police Department reports, “[t]he Internet for the pimps allows them to make their money, do what they want to do with...their prostitutes and have very little contact with the police.”<sup>87</sup> Another interviewee from Playground states that “[t]he sexual exploitation of children has become a ‘cottage industry,’ driven by the Internet.”<sup>88</sup> Law enforcement officers across the U.S. are reporting an increase in online sex ads involving minors.<sup>89</sup> They stipulate that sex trafficking itself has “moved online.”<sup>90</sup>

New technology facilitates the information sharing and communication on a global scale.<sup>91</sup> However, this same technology enables criminals to organize globally and to victimize people around the world while hiding behind the technology that enables their conduct.<sup>92</sup> “Borders are no longer boundaries to [the] flow [of information or criminal conduct].”<sup>93</sup> Further, “[c]riminals are increasingly located in places other than where their acts produce their effects.”<sup>94</sup>

Unlike the flow of information on the Internet, domestic laws, and law enforcement are restricted by national borders.<sup>95</sup>

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86. *Id.*

87. *ABC Primetime: Trafficking Our Daughters* (ABC television broadcast Feb. 9, 2006).

88. Spears, *supra* note 85.

89. Alison Trowbridge, *Children for Sale on Craigslist*, (Nov. 2007, <http://www.notforsalecampaign.org>) archived at <http://www.webcitation.org/5oSDySa2V>.

90. *Id.*

91. Council of Europe, Convention on Cybercrime, Explanatory Report, ¶ 6, Nov. 23, 2001, S. Treaty Doc. No. 108-11, 2001 WL 34368783, 41 I.L.M. 282, C.E.T.S. No. 185 [hereinafter Explanatory Report] available at <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm>, archived at <http://www.webcitation.org/5oockmhYp>.

92. *Id.*

93. *Id.*; see also Brian C. Lewis, *Prevention of Computer Crime Amidst International Anarchy*, 41 AM. CRIM. L. REV. 1353, 1355 (2004) (“In the realm of the Internet, where borders are meaningless, we are vulnerable to criminals from all over the world”).

94. Explanatory Report, *supra* note 91, at ¶ 6.

95. See Brian C. Lewis, *Prevention of Computer Crime Amidst International Anarchy*, 41 AM. CRIM. L. REV. at 1355.

Because of this, domestic law alone cannot suffice to thwart international criminal activity such as trafficking via the Internet.<sup>96</sup> Yet, while domestic and global sex trafficking is increasingly facilitated by technology, there is no global law directly criminalizing the use of the Internet to recruit, advertise, sell or otherwise exploit victims of sex trafficking.<sup>97</sup>

Although the Convention on Cybercrime—described in detail below—is an international treaty with a provision to combat child pornography on the Internet, it does not go so far as to explicitly criminalize the use of the Internet to traffic children or to sell children into sexual servitude.<sup>98</sup> There is likewise no provision that criminalizes the use of the Internet to pornographically exploit adult women without their consent nor a provision to criminalize the use of the Internet to entice by misrepresentation, advertise, or sell through online transaction enslaved individuals who have reached the age of majority.<sup>99</sup> Further, the existing treaty is not global in reach.<sup>100</sup> In order to combat current trends in commercial sexual exploitation, it is vital that the international community adopt both domestic legislation and international treaty provisions to target sexual predators and human traffickers who use technology and the Internet to enslave minors and adults alike.

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96. *See id.*

97. Protocol to Prevent, Suppress and Punish Trafficking in Persons, *supra* note 18. The Protocol makes it a crime to traffic women and children by *any* means, thereby including the Internet. *Id.* However, no international law specifically criminalizes using the Internet as a means of trafficking women. *See* UN Resolution to address cybercrime *infra* note 215 (noting that the Convention on Cybercrime is the only international treaty addressing cybercrime).

98. *See generally* Explanatory Report, *supra* note 91, at ¶ II.

99. Explanatory Report, *supra* note 91, at ¶ II.

100. *Infra* text accompanying note 217.

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### III. Internet and Trafficking Regulations

#### A. United States Law and Policy

##### 1. Federal Internet Law

Despite the fact that criminals may use the Internet to conduct unlawful activity, the United States Courts have consistently supported an “open net” Internet policy by largely refusing to uphold domestic law regulating Internet space.<sup>101</sup> Congress has asserted that the policy of the United States is to “preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”<sup>102</sup> At the same time, Congress promotes criminal law to deter and punish “trafficking in obscenity, stalking, and harassment by means of computer.”<sup>103</sup>

##### a. The Communications Decency Act

The Communications Decency Act, passed by Congress in 1996, attempted to make the Internet a safer place for children, in part by criminalizing the “knowing” transmission of “obscene or indecent” messages to any recipient under 18 years of age.<sup>104</sup> In *Reno v. ACLU*, the Supreme Court overturned this portion of Act, finding that it was a “content-based blanket restriction on speech” offending the First Amendment. They determined that the provision was not narrowly tailored to serve a compelling

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101. See *Zeran v. America Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997) (citing 47 U.S.C.A. § 230(c)(1)) (providing “broad immunity” from liability for unlawful third-party content). See also *Ben Ezra, Weinstein & Co. v. America Online, Inc.*, 206 F.3d 980, 984-85 (10th Cir. 2000); *Green v. America Online*, 318 F.3d 465, 470 (3d Cir. 2003); *Batzel v. Smith*, 333 F.3d 1018, 1036 (9th Cir. 2003); *Universal Communication Systems, Inc. v. Lycos, Inc.*, 478 F.3d 413, 418 (1st Cir. 2007). We have questioned whether § 230(c)(1) creates any form of “immunity,” see *Doe v. GTE Corp.*, 347 F.3d 655, 658-62 (7th Cir. 2003). But see *Chicago Lawyers’ Committee for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666 (refusing to classify §203(c)(1) as “broad immunity”).

102. Telecommunications Act of 1996, 47 U.S.C. § 230(b)(2)(2006).

103. 47 U.S.C. § 230(b)(5).

104. 47 U.S.C. § 230(a)(1)(B).

governmental interest because less restrictive alternatives were available to curtail indecent Internet content.<sup>105</sup>

#### b. The Child Online Protection Act

Congress enacted the Child Online Protection Act (COPA) in response to the Court's holding in *Reno*, which criminalized the "knowing posting, for 'commercial purposes,'... of World Wide Web content that is 'harmful to minors.'<sup>106</sup> This Act was similarly given negative interpretation by the Supreme Court.<sup>107</sup> The Court held in *Ashcroft v. ACLU*, that Internet content providers and civil liberties groups were likely to prevail on the claim that COPA violated their free speech rights by burdening adults' access to some protected speech—placing too many restrictions on protected speech.<sup>108</sup> On remand, the United States Court of Appeals for the Third Circuit upheld their earlier injunction to prevent COPA's enforcement because the plaintiffs established substantial likelihood of prevailing on a claim that COPA was not narrowly tailored to achieve the Government's compelling interest and therefore failed a strict scrutiny test under the First Amendment, and that the Act was unconstitutionally overbroad.<sup>109</sup>

#### c. Children's Internet Protection Act

One act that aims to restrict the viewing of indecent content on the Internet which has been upheld by the Court is the Children's Internet Protection Act (CIPA) of 2000.<sup>110</sup> CIPA prevents public libraries from receiving federal assistance to provide Internet access unless such libraries install software that blocks images that constitute obscenity or child pornography and software to prevent minors from obtaining access to harmful

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105. *Reno v. ACLU*, 521 U.S. 844, 845-46 (1997).

106. *Ashcroft v. ACLU*, 542 U.S. 656, 656 (2004); 47 U.S.C. § 231.

107. *Ashcroft*, 542 U.S. at 666.

108. *Id.*

109. *ACLU v. Ashcroft*, 322 F.3d 240, 265-67 (2003).

110. *See U.S. v. Am. Library Ass'n, Inc.*, 539 U.S. 194, 214 (2003) (holding CIPA constitutionally valid).

materials.<sup>111</sup> The Court held that CIPA is a valid exercise of Congress' spending power, and does not violate the First Amendment rights of library patrons, stating,

When the Government appropriates public funds to establish a program [in this case, federal assistance in providing Internet access to libraries], it is entitled to broadly define that program's limits. . . . [T]he Government here is not denying a benefit to anyone, but is instead simply insisting that public funds be spent for the purpose for which they are authorized: helping public libraries fulfill their traditional role of obtaining material of requisite and appropriate quality for educational and informational purposes.<sup>112</sup>

## 2. United States Internet Policy

### a. In Support of the Open Net

The U.S.'s reluctance to regulate the Internet is rooted in the country's more broad aversion to regulating an individual's right to expression online or otherwise. This reluctance to regulate the content of information posted on the Internet derives from a long history of U.S. law propagating the notion that regulating the "content" of speech offends the Constitution.<sup>113</sup> While the "time, place and manner" of speech may be restricted, subject to intermediate scrutiny,<sup>114</sup> the content

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111. *Id.* at 201 (citing Children's Internet Protection Act of 2000, 20 U.S.C. §§ 9134(f)(1)(A)(i) & (B)(i)); 47 U.S.C. §§ 254(h)(6)(B)(i) & (C)(i) [hereinafter CIPA]).

112. *Id.* at 196 (2003).

113. U.S. CONST. amend. I. *See* R.A.V. v. City of St. Paul, Minn., 505 U.S. 377 at 382 (1992) (stating that First Amendment prevents government from limiting speech); *Heffron v. International Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 648 (1981) ("A major criterion for a valid time, place, and manner restriction on First Amendment rights is that restriction may not be based upon either content or subject matter of speech.").

114. *Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622, (1994) ("Most exacting scrutiny is applied to regulations that suppress, disadvantage, or impose differential burdens upon speech on basis of its content, and to laws that



and subject matter of speech may not be regulated.<sup>115</sup> In *R.A.V. v. City of St. Paul*, Justice Scalia concluded that the First Amendment expressly prohibits any ordinance that limits speech or even expressive conduct because of disapproval of the ideas expressed therein.<sup>116</sup> Put simply, “the United States still privileges free speech, including hate speech [and adult Internet content], over other values while other countries do not.”<sup>117</sup>

Defenders of free speech and expression, such as the Electronic Frontier Foundation, the ACLU and the Berkman Center for Internet and Society, have argued that the World Wide Web is the ultimate form of democracy.<sup>118</sup> The web is an open forum for sharing information with anyone wishing to receive it. It allows individuals to express their personal opinions and to express opposition to the ideals of others.

The Berkman Center for Internet and Society at Harvard University studies the dynamics of individual and societal interactions with the Internet.<sup>119</sup> They strive to “assess the need

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compel speakers to utter or distribute speech bearing particular message, but regulations that are unrelated to content are subject to intermediate level of scrutiny reflecting less substantial risk of excising ideas or viewpoints from public dialogue.”).

115. See *Heffron v. International Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 648 (1981); *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 99 (1972). The case demonstrates that “there is an equality of status in the field of ideas, and government must afford all points of view an equal opportunity to be heard.... Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone.” *Id.* at 96.

116. 505 U.S. 377, 382 (1992).

117. Kevin Boyle, *Hate Speech-The United States Versus the Rest of the World?*, 53 ME. L. REV. 487, 500 (2001). Policies of the United States create a Safe-Haven for Hate Speakers by not prosecuting those who post hate speech on U.S. Internet sites. *Id.*

118. Marilyn Davis, Ph.D., *On Electronic Democracy and its Profound Implications*, EFFECTOR ONLINE, Sept. 11, 1992, available at <http://www.webcitation.org/5on0or9X3> (noting that “[i]n an ideal democracy, every participant has equal opportunity... to participate in every discussion. . . . Because, until now, we haven’t had the technology for Electronic Democracy, we have been trapped away from this ideal.”); see also Berkman Center for Internet and Society, *infra* note 121.

119. Berkman Center for Internet and Society at Harvard University, <http://cyber.law.harvard.edu/about> (last visited Apr. 11, 2009), archived at <http://www.webcitation.org/5pzPjYtmt>.

or *lack thereof*" of Internet regulation (emphasis added).<sup>120</sup> In particular, the Center's Internet and Democracy project aims to "support the rights of citizens to access, develop and share independent sources of information."<sup>121</sup> While the Berkman Center also acknowledges the possible negative iterations of unregulated Internet content, its founder, Charles Nesson, commented in the Center's ten-year annual report, "in the grand battle of good and evil, I feel there is divinity in the open net."<sup>122</sup>

As Nesson predicted, Craigslist has taken measures to insure the moral integrity (good) of the site over illicit activity (evil) conducted thereon in response to the lawsuit brought on by Sheriff Dart.<sup>123</sup> Although Craigslist initially stated that it would maintain its erotic services website page, they assured the public that any illegal content on the site—such as ads for sex with females under eighteen—would not be tolerated.<sup>124</sup> Further, Craigslist users note that the open net policy which has come under attack by Dart is the same policy that can be used to block illegal and immoral content on Craigslist and other Internet websites.<sup>125</sup> Indeed, when the suit commenced, Craigslist updated the main page under its "erotic services" category to state that "[h]uman trafficking and exploitation of minors are not tolerated - any suspected activity will be reported to law enforcement."<sup>126</sup> They have since removed the "erotic services" category and replaced it with an "adult services" page.<sup>127</sup>

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120. *Id.*

121. Berkman Center for Internet and Society, Internet and Democracy project, <http://cyber.law.harvard.edu/research/internetdemocracy> (last visited Apr. 11, 2009).

122. Charles Nesson, Founder's Letter, The Berkman Center for Internet & Society at Harvard Law School, Special Annual Report, Berkman @ 10: a decade of exploring cyberspace, sharing in its study, and pioneering its development, at 2 (Dec. 1, 2007).

123. Greg Sandoval and Declan McCullah, *Is Craigslist the World's Biggest Bordello?*, CNET NEWS, Mar. 6, 2009, available at <http://news.cnet.com/is-craigslist-the-worlds-biggest-bordello/?tag=mncol>.

124. *Id.*

125. Sandoval and McCullah, *supra* note 123.

126. Craigslist.org, Erotic Services Page, <http://boston.craigslist.org/cgi-bin/personals.cgi?category=erservices> (visited Mar. 10, 2009) (screenshot on file with author). Current "adult services" page states, "I agree to report suspected exploitation of minors and/or human trafficking to the appropriate au-

Craigslist responded similarly to a lawsuit in 2006 attacking the website for infringing Fair Housing laws.<sup>128</sup> In *Chicago Lawyers' Committee for Civil Rights Under the Law v. Craigslist*, the 7<sup>th</sup> circuit court held that Craigslist was not liable for discrimination because it does not publish content on the site, but rather allows individuals to add content autonomously.<sup>129</sup> Rather, the court ruled that online information systems should not "be treated as the publisher or speaker of any information provided by" someone else.<sup>130</sup> Although it was not held liable, Craigslist added a notice to users at the top of every housing advertisement page to inform them that "stating a discriminatory preference in a housing post is illegal."<sup>131</sup>

The site further encourages users to "flag" (bring to Craigslist's attention) content that violates the law and Craigslist's policy of upholding legal principles.<sup>132</sup> Craigslist reports that "millions" of posts are removed from the website each month after users flag them as improperly categorized, as containing prohibited content, or as spam.<sup>133</sup> The website states that 98 – 99% of user flagged content is in fact in violation of the

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thorities." Craigslist.org, Adult Services landing page, <http://boston.craigslist.org/cgi-bin/services.cgi?category=ads> (last visited May 15, 2010).

127. Craigslist.org, Adult Services landing page, <http://boston.craigslist.org/cgi-bin/services.cgi?category=ads> (last visited May 15, 2010). *But see*, Dart v. Craigslist, Case No. 09 CV 1385, Brief of Amicus Curiae, The Coalition Against Trafficking in Women, at 8, *available at* <http://action.web.ca/home/catw/attach/Craigslist%20Amicus%20Brief%20-%20August%202009%20.pdf>. "Craigslist changed nothing of substance by re-labeling its domestic prostitution advertisements 'adult services,' or by adding a meaningless disclaimer with a universally accessible button to click." *Id.*

128. *Chicago Lawyers' Committee for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666 (7th Cir. 2008).

129. *Id.* at 671.

130. *Id.* at 671.

131. Craigslist.org, Housing, <http://boston.craigslist.org/aap>, *archived at* <http://www.webcitation.org/5ooeYjvR3>.

132. Craigslist.org, Flags and Community Moderation, [http://www.craigslist.org/about/help/flags\\_and\\_community\\_moderation](http://www.craigslist.org/about/help/flags_and_community_moderation), *archived at* <http://www.webcitation.org/5ooenwvkE>.

133. *Id.*

website's terms of use.<sup>134</sup> Furthermore, Craigslist states that it may take remedial measures against those who repeatedly post content that is flagged.<sup>135</sup> U.S. policy enthusiasts would likely support the open net initiatives that Craigslist has taken.<sup>136</sup>

#### b. In Opposition of Unrestricted Internet Content

In response to the vehement supporters of the open net doctrine (and those that value free speech over human degradation), Hughes comments:

Internet users have adopted and defend an unbridled libertarianism. Any kind of regulation or restriction is met with hysterics and predictions of a totalitarian society... The Internet libertarianism coupled with the United States free speech absolutism is setting the standard for Internet communication.<sup>137</sup>

While many argue that allowing the Internet to regulate itself is the most effective method of controlling web content, the method is merely responsive and does little to curtail an Internet user from conducting illicit activity online in the first place. Allowing criminals to exploit women via the Internet has "normalized and globalized" victimizing women for commercial sexual exploitation, increasing overall harm to women and victims of trafficking.<sup>138</sup> The broad reach of the Internet means that those interested in profiting from commercial sexual exploitation are

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134. *Id.*

135. Craigslist.org, Terms of Use, ¶ 19(f), <http://www.craigslist.org/about/terms.of.use#conduct> (last visited May 15, 2010).

136. See Davis, *supra* note 118; see Nesson, *supra* note 122.

137. Donna M. Hughes, *Use of the Internet for Global Sexual Exploitation of Women and Children*, at 9, available at <http://www.uri.edu/artsci/wms/hughes/internet.pdf>, archived at <http://www.webcitation.org/5ooezloa4> [hereinafter Hughes, *Use of Internet for Exploitation*].

138. Hughes, *Internet and Sex Industries*, *supra* note 71.

inclined to abuse women in ways that appeal to an equally broad spectrum of sexual desires and fantasies.<sup>139</sup>

One need only review the user comments to online articles about the Craigslist “erotic services” lawsuit to confirm that the sexual exploitation of women is becoming or has already become an acceptable norm in society today.<sup>140</sup> In response to the article, which describes women lured into sex via Craigslist, anonymous user “Nightblade” commented, “[w]ho is prostitution hurting? Oh, yeah, Nobody.”<sup>141</sup> In response to the lawsuit, anonymous user “Irda Ranger” commented, “[w]hat an incredible waste of money (just like all vice laws). Where Demand exists, Supply follows.”<sup>142</sup> The comment makers disregard the article’s discussion about the surreptitious recruitment of women which leads to prostitution, focusing only on the prostitution element itself. This indicates that there are members of the public who simply accept sexual exploitation – including deceitful tactics that lead to prostitution – as a ‘part of life’ and therefore not worth regulating. Comments like these tend to legitimize legislative policies aimed toward regulating public commentary that facilitates the normalization of hatred and disrespect towards women.

Recognizing that an individual’s conduct—in the form of expression via the Internet—can be harmful in the offline world, Massachusetts legislators have recently joined other U.S. states in implementing “prevention-oriented legislation” to curtail “cyberbullying” amongst school children.<sup>143</sup> The state action requires schools to investigate reports of bullying that take place on or off of school grounds—including incidents that take place online.<sup>144</sup> For the purposes of the legislation, the definition of

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139. Hughes, *Internet and Sex Industries*, *supra* note 71.

140. Cheng, *supra* note 8.

141. Cheng, *supra* note 8 (reader comments); *see also* Walberg, *supra* note 1.

142. Cheng, *supra* note 8 (reader comments).

143. *Measure Cracking Down on School Bullies Passes Mass. Senate*, BOSTON GLOBE, Mar. 11, 2010, available at [http://www.boston.com/news/local/breaking\\_news/2010/03/mass\\_senate\\_t\\_o.html](http://www.boston.com/news/local/breaking_news/2010/03/mass_senate_t_o.html). Legislators report that 41 other states have adopted similar laws. *Id.*

144. *Id.* Karen Brown, Morning Edition, *Bullying Suspects Arraigned In Classmate’s Suicide* (WBUR radio broadcast Apr. 6, 2010), archived at

bullying includes “electronic expression” which causes emotional harm to other students.<sup>145</sup> Legislators specifically targeted online communications in their bill because bullying in schools has become more problematic and more prevalent as students communicate with one another via the Internet.<sup>146</sup> As evidence that online communications harm people in the real world, Massachusetts legislators point to recent online bullying incidents that have lead teens to commit suicide.<sup>147</sup>

### 3. United States Trafficking Law

#### a. 18 USC § 2423, Transportation of Minors Statute

While the U.S. courts and interest groups generally oppose regulating Internet content that may facilitate illicit activity,<sup>148</sup> they do not similarly oppose regulating illicit activity in the offline world. The U.S. Transportation of Minors statute penalizes consumers of child sex tourism and child traffickers alike.<sup>149</sup> Sections (b) and (c) of the statute make it illegal for US citizens and permanent residents to travel in interstate commerce or internationally with the intent of engaging in “illicit sexual conduct,” and imposes penalties on those who do engage

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<http://www.webcitation.org/5ouzbKa7n>. However, because stalking and harassment are already against law, the bill does not make bullying itself a criminal act, but requires schools to investigate bullying. *Id.*

145. Anti-Bullying Bill, S. 2283 § 3(a), 2009 Leg. (Mass. 2010), available at <http://www.mass.gov/legis/bills/senate/186/st02pdf/st02283.pdf>, archived at <http://www.webcitation.org/5oohw0HXS>.

146. See *Measure cracking down on school bullies passes Mass. Senate*, BOSTON GLOBE, Mar. 11, 2010, archived at <http://www.webcitation.org/5oovv8WZB>.

147. *Id.* (stating, “[t]he legislation follows recent high-profile cases of students enduring abuse by bullies. In the most recent one, Phoebe Prince, 15, of South Hadley is thought to have committed suicide in January after allegedly being abused both in school and online by classmates at South Hadley High School.”). See also David Abel, *Newburyport Teens Charged in Cyberbullying Case*, BOSTON GLOBE, Feb. 11, 2010 (boy from Newburyport High School was physically attacked after reporting being harassed by other students on Facebook).

148. *But see* Anti-Bullying Bill, S. 2283 § 3(a), 2009 Leg. (Mass. 2010); *U.S. v. Am. Library Ass'n, Inc.*, 539 U.S. 194, 214 (2003) (holding CIPA constitutionally valid).

149. 18 U.S.C. § 2423 (2006).

in “illicit sexual conduct.”<sup>150</sup> The statute also addresses pimping and trafficking, stating “[w]hoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 30 years, or both.”<sup>151</sup> Within the meaning of the statute, “illicit sexual conduct” means a sex act or a commercial sex act with a minor.<sup>152</sup> The statute does not extend to persuading, inducing, enticing, or coercing a person over the age of eighteen into prostitution.<sup>153</sup>

b. 18 U.S.C. § 2422, Transportation for Illegal Sexual Activity and Related Crimes

Title 18 of the United States Code section 2422(b), goes so far as to criminalize the use “the mail or any facility or means of interstate or foreign commerce... [to] knowingly persuade[], induce[], entice[], or coerce[] any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity....”<sup>154</sup> In *United States v. George Clarke*, the United States Court of Appeals for the Eleventh Circuit applied the statute to criminal prostitution activity facilitated over the Internet.<sup>155</sup> Clarke attempted to travel to Costa Rica to engage in illicit sexual activity—commercial sex with minors.<sup>156</sup> His journey was halted when FBI agents arrested him at an airport in Miami, Florida.<sup>157</sup> The court convicted Clarke under 18 U.S.C. section 2422(b) for using an Internet website, Costa Rica Taboo Vacations, and email

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150. 18 U.S.C. § 2423; *United States v. Frank*, 486 F. Supp. 2d 1353, 1354 (2007).

151. 18 U.S.C. § 2423(d).

152. 18 U.S.C. § 2423(d); 486 F. Supp. 2d, at 1354.

153. 18 U.S.C. § 2423.

154. 18 U.S.C. § 2422(b).

155. See 159 Fed. Appx. 128, 129 (2005). “[W]ebsite assured him the sexual activities being offered were ‘safe’ and ‘secure.’” *Id.* at 131.

156. Brief for the appellant (United States), 2005 WL 4664970 at statement of facts (a).

157. *Id.*

correspondence with website administrators<sup>158</sup> to facilitate his illicit sex tour.<sup>159</sup> The statute, while addressing Internet trafficking, applied in this case because the victim was a minor.<sup>160</sup> Like the Transportation of Minors statute, 18 U.S.C. section 2422(b) does not address Internet facilitated trafficking or Internet facilitated persuasion, inducement, enticement or coercion of a person over the age of eighteen into prostitution or sex trafficking.<sup>161</sup> These laws therefore, do not protect the nineteen-year-old Illinois teenager who was coerced into commercial sex after responding to a modeling ad on Craigslist.<sup>162</sup>

### c. Trafficking Victims Protection Act of 2007

Trafficking Victims Protection Act (TVPA), passed by Congress in 2007, recognizes that both children and adult women are vulnerable to trafficking.<sup>163</sup> The Act notes that women and girls are especially vulnerable because they “are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin.”<sup>164</sup> Further, “[t]he low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry”.<sup>165</sup>

Unlike 18 U.S.C. section 2422(b) or 18 U.S.C. section 2423(b), the Trafficking Victims Protection Act does not focus primarily on punishing U.S. consumers who sustain the sex trafficking industry.<sup>166</sup> Rather, TVPA implements measures to

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158. *Id.* The website was in fact an FBI-generated, and site “administrator” was a detective from the federally funded Internet Crimes Against Children Task Force. *Id.*

159. *Clark*, 159 Fed. Appx. 128 at 129.

160. 18 U.S.C. § 2422(b)

161. *Id.*

162. *Supra* text accompanying note 47. These laws also do not protect minors who the trafficker or consumer reasonably believed to be the age of consent. 18 U.S.C. § 2423(g).

163. 22 U.S.C. § 7101(a) (2006).

164. 22 U.S.C. § 7101(b)(4).

165. 22 U.S.C. § 7101(b)(2).

166. *See* 22 U.S.C. § 7104 (offering primarily economic benefits to enable po-



prevent trafficking, to protect trafficking victims, and to prosecute traffickers.<sup>167</sup> The Act endorses preventative goals by authorizing federal programs to raise public awareness about the threats of trafficking,<sup>168</sup> supporting media and documentary film production relating to trafficking,<sup>169</sup> investing in programs to promote economic independence for women,<sup>170</sup> and by training border guards to recognize trafficking.<sup>171</sup>

TVPA also aims to protect victims of sex trafficking in the U.S. and abroad.<sup>172</sup> Trafficking victims on U.S. territory may be admitted for U.S. residence as refugees.<sup>173</sup> While in custody of the federal government, trained government personnel are responsible for protecting a trafficking victim's safety, ensuring that victims have access to appropriate medical care, and for ensuring that a victim's privacy is maintained.<sup>174</sup>

In addition to protective and preventative goals, TVPA establishes that "the knowing commission of any act of sex trafficking involving force, fraud, coercion" is punishable as a grave crime such as forcible sexual assault.<sup>175</sup> The Act further imposes an obligation on countries receiving U.S. foreign assistance that they meet minimum standards for the elimination of trafficking.<sup>176</sup>

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tential victims to avoid falling into the sex trade).

167. *Id.*

168. 22 U.S.C. § 7104(b).

169. 22 U.S.C. § 7104(d).

170. 22 U.S.C. § 7104(a)(2).

171. 22 U.S.C. § 7104(c).

172. *See* 22 U.S.C. § 7106.

173. 22 U.S.C. § 7105(b)(1)(A) (stating that "an alien who is a victim of a severe form of trafficking in persons...shall be eligible for benefits...to the same extent as an alien who is admitted to the United States as a refugee); *but see* 22 U.S.C. § 7105(b)(1)(E)(1) (trafficking victims are eligible for T-visas only if they are "willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons or [are] unable to cooperate with such a request due to physical or psychological trauma"). *Id.*

174. 22 U.S.C. § 7105(c)(1).

175. 22 U.S.C. § 7106(a)(2).

176. 22 U.S.C.A. § 2152d (2006) (imposing elimination of trafficking obligations for governments seeking foreign assistance); *See* 22 U.S.C. § 7106(a) (outlining the "minimum standards" for the elimination of trafficking).

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## B. Foreign Internet and Trafficking Law

### 1. Australian Law and Policy

#### a. Anti-Trafficking Law

Like U.S. law which aims to punish traffickers and protect trafficking victims, the Australian Criminal Code was amended in 1999 to outline the crime of slavery, sexual servitude, and deceptive recruiting.<sup>177</sup> The amendment aimed to update existing anti-slavery law in the country and to address the growing concern of international trafficking for the purposes of sexual exploitation.<sup>178</sup> Under the statute, a person who intentionally or recklessly enslaves another for the purposes of sexual services is subject to imprisonment for up to twenty-five years.<sup>179</sup> Any person who engages in or facilitates an act of trafficking is subject to twelve years imprisonment, and any person who induces another to engaging in providing sexual services, or who deceives another about engaging them for sexual services may serve a prison sentence of seven to nine years.<sup>180</sup> Penalties are similarly imposed on those who conduct “any business” involving the sexual services of others.<sup>181</sup> These provisions aim to address those who traffic in humans and those who exploit trafficked persons.

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177. Criminal Code Act, 1995, c. 8, div. 270 (Austl.) See Dr. Andreas Schloenhardt, *Slavery, Sexual Servitude, and Deceptive Recruiting Offences: Division 270 Criminal Code (Cth)*, UNIVERSITY OF QUEENSLAND: HUMAN TRAFFICKING WORKING GROUP, Oct. 10, 2009 (discussing the impact of division 270 on the fight against sex trafficking in Australia) archived at <http://www.webcitation.org/5owJuVPGF>.

178. See generally Schloenhardt, *supra* note 177.

179. See Criminal Code Amendment (Slavery and Sexual Servitude) Act, 1999, c. 8, div. 271.4 (Austl.) amended by Criminal Code Amendment (Trafficking in Persons Offences) Act 2005 (trafficking of children carries a twenty-five year penalty).

180. *Id.*

181. Criminal Code Amendment (Slavery and Sexual Servitude) Act, 1999, c. 8, div. 270.6(2)(a)-(d) (Austl.) amended by Criminal Code Amendment (Trafficking in Persons Offences) Act 2005 (imposing prison sentences of 15 to 20 years for such crimes).

Like the law of the United States, the Australian government aims to protect victims of trafficking by providing means for victims of sex trafficking to remain in the country. In 2009, legislation was amended to extend visas to victims of trafficking whether or not they are willing or able to assist in the prosecution of their perpetrators.<sup>182</sup>

b. Australian Broadcasting Services Act of 1992

In contrast to the U.S. Internet policy which largely prohibits legal restraints on Internet content, the Australian government aims to curtail Australian-generated pornographic Internet content by legal device.<sup>183</sup> The Australian Broadcasting Services Act of 1992 outlined three categories of prohibited or restricted online content, which Internet Service Providers (ISPs) are required to remove from their servers.<sup>184</sup> In the strictest category, ISPs are required to delete material that encompasses real depictions of actual sexual activity, material containing excessive violence or sexual violence, detailed instruction of crime, drug use, and material that advocates terrorism.<sup>185</sup> While the system of flagging and removing content is in part user-dependent, the Australian Communications and Media Authority also reserve the right to investigate and order removal of websites on its own initiative.<sup>186</sup>

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182. *New Laws to Protect Victims of People Trafficking in Australia*, Australian Broadcasting Corporation, June 17, 2009 (discussion between Linda Mottram, Jennifer Burn, Tanya Pliberseck) *archived at* <http://www.webcitation.org/5orlgwaU3> (contrasting U.S. law which currently requires victims to assist in prosecuting their perpetrators in order to be afforded a visa to stay in the United States).

183. Australian Communications and Media Authority, *Broadcasting Services Act of 1992*, *archived at* <http://www.webcitation.org/5oow9Itj0>.

184. *Id.*

185. *Id.*

186. *Id.*

## 2. Canadian Law and Policy

### a. Publishing Policy

In a similar effort to curtail the normalization of sexual violence, the Canadian Criminal Code 163(8) makes it an offense to produce or distribute “any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence.”<sup>187</sup> The Canadian Advertising Foundation further works to educate citizens about the “fine lines between erotica, freedom of expression, and sexual exploitation.”<sup>188</sup> The organization does not renounce the relevant use of sexual imagery in advertising or otherwise, but encourages advertisers and others to refrain from publishing inappropriate sexual imagery.<sup>189</sup> For instance, the Foundation’s Gender Portrayal Guidelines state that “[a]dvertising must not portray sexual harassment as acceptable or normal, and should avoid representing women as prey or objects of uncontrolled desire.”<sup>190</sup>

### b. Anti-Trafficking Law

In addition to attempting to influence attitudes towards exploitation, the Canadian government has implemented several measures to combat sex trafficking by legislation and through community outreach and development projects.<sup>191</sup> The

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187. See Canada Criminal Code § 163(8).

188. See The Pornography Debate: Controversy in Advertising, Media Awareness Network, archived at <http://www.webcitation.org/5oowzQEtP>.

189. *Id.*

190. Canadian Advertising Foundation Gender Portrayal Guidelines relating to pornography, Media Awareness Network, available at [http://www.media-aware-](http://www.media-awareness.ca/english/resources/educational/handouts/ethics/caf_guidelines.cfm)

ness.ca/english/resources/educational/handouts/ethics/caf\_guidelines.cfm.  
191. See generally Letter from The Honourable Robert Nicholson, Minister of Justice, Attorney General of Canada, Government Response to the Twelfth Report of the Status of Women: Turning Outrage into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada (Feb. 2007) available at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3047088&Language=E&Mode=1&Parl=39&Ses=1>, archived at

government has invested resources in trafficking public-awareness campaigns, educating women in high-risk communities about the threats of trafficking and sexual violence, and training law enforcement officers and the Canada Border Services Agency on the needs of victims.<sup>192</sup> These community-based efforts aim to both prevent instances of trafficking and to protect victims.

Legislatively, Canada has implemented several broad provisions relating to human trafficking. Section 279.01 of the Canadian Criminal Code states that “[e]very person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable.”<sup>193</sup> This provision carries a potential life-sentence if the crime also involves kidnapping, aggravated assault, or aggravated sexual assault—which is often the case when victims are trafficked for commercial sexual exploitation.<sup>194</sup> The Canadian code further clarifies that trafficking is more about slavery and entrapment than movement.<sup>195</sup> To this end, Canadian anti-trafficking provisions impose criminal liability on those who threaten victims into providing labor or services whether or not the victim has been physically trafficked from another geographic location.<sup>196</sup>

Canadian law further criminalizes the procurement, attempted procurement or solicitation of an individual who is not a prostitute for illicit sexual conduct.<sup>197</sup> To give impact to this

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<http://www.webcitation.org/5owFLS03J>.

192. *See id.*

193. Canada Criminal Code, R.S.C., ch. C-46, 279.01 (2010).

194. *Id.*

195. *See* Canada Criminal Code, R.S.C., ch. C-46, 212 (1)(a)-(g) (2010).

196. *See* Canada Criminal Code, R.S.C., ch. C-46, 279.01 (2010).

197. Canada Criminal Code, R.S.C., ch. C-46, 212 (1)(a)-(b) (2010). U.S. law similarly criminalizes enticing a person into slavery, but not specifically with respect to prostitution (unless a child). *See* 18 U.S.C. § 1583 (Enticement into Slavery); *See* 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion).

provision, the law holds accountable any person who entices or forces another to become a prostitute.<sup>198</sup> These laws potentially hold both pimps and consumers of commercial sexual exploitation accountable for fostering the trafficking industry.<sup>199</sup>

Canada's domestic trafficking legislation—enacted in 2005—implements many of the goals outlined in international treaties aimed to combat trafficking.<sup>200</sup> Through community awareness, police sensitivity and harsh criminal penalization, Canada has made significant efforts to uphold their obligations under the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children.<sup>201</sup> Although the U.S. has held some reservations to the Protocol,<sup>202</sup> the U.S. Trafficking Victims Protection Act, like Canada's criminal code, reflects key provisions outlined therein.<sup>203</sup>

### C. Transnational and International Law

#### 1. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, recognizes that international effort is necessary to combat commercial sex trafficking.<sup>204</sup> The Protocol requires parties to the agreement to criminalize sexual exploitation. For the purposes of the Protocol, exploitation includes “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of

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198. Canada Criminal Code, R.S.C., ch. C 46, 212 (1)(d) (2010).

199. *See id.* at (1) (a)-(j).

200. *See generally* Protocol to Prevent, Suppress and Punish Trafficking in Persons, *supra* note 18; *see* Nicholson, *supra* note 191.

201. *See generally* Protocol to Prevent, Suppress and Punish Trafficking in Persons, *supra* note 18; *see* Nicholson, *supra* note 191.

202. *Supra* text accompanying note 244.

203. *E.g.*, Trafficking Victims Protection Act, 22 U.S.C. § 7101(a) (2006).

204. Protocol to Prevent, Suppress and Punish Trafficking in Persons, *supra* note 18.

abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.”<sup>205</sup> The Protocol further notes that the “consent” of a victim of exploitation is irrelevant, and therefore cannot be used as a defense to the crime of trafficking in women and children.<sup>206</sup> The Protocol requires States to criminalize attempted trafficking, accomplice to trafficking, and ordering or directing others to commit a trafficking offense.<sup>207</sup>

The Protocol aims also to protect the victims of trafficking. State parties to the Protocol, including the United States, Canada, and Australia,<sup>208</sup> are required to ensure the privacy of victims and to provide support to victims in the form of counseling, medical treatment, housing and employment opportunities.<sup>209</sup> Further, victims are entitled to seek legal redress and compensation for damages suffered.<sup>210</sup> According to the Protocol, victims should also be given the opportunity to remain in the country to which they have been trafficked, or to return to their country of origin.<sup>211</sup>

While the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children aims to protect victims of trafficking and makes it a blanket crime to traffic women and children for sexual exploitation, the Protocol

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205. Protocol to Prevent, Suppress and Punish Trafficking in Persons, *supra* note 18, at art. 3(a).

206. Protocol to Prevent, Suppress and Punish Trafficking in Persons, *supra* note 18, at art. 3(b).

207. Protocol to Prevent, Suppress and Punish Trafficking in Persons, *supra* note 18, at art. 5.

208. United Nations Office on Drugs and Crimes, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: Status of Protocol, Signatory and Ratification list as of 26/09/2008, archived at <http://www.webcitation.org/5ooyvWcDN>.

209. Protocol to Prevent, Suppress and Punish Trafficking in Persons, *supra* note 18, at art. 6.

210. Protocol to Prevent, Suppress and Punish Trafficking in Persons, *supra* note 18, at art. 6(6).

211. Protocol to Prevent, Suppress and Punish Trafficking in Persons, *supra* note 18, at art. 7.

fails to address one of the fastest growing platforms for this form of organized crime—the World Wide Web. The members of the Council of Europe insist that the term “recruitment,” which is used to define an element of trafficking in the Protocol, is sufficiently broad enough to include recruitment of trafficking victims via online technology.<sup>212</sup> However, a broad interpretation of “recruitment” does not also reach other uses of technology in facilitating sex trafficking, such as offering or advertising a trafficking victim’s sexual servitude online, disseminating sex tourism information online and receiving payments for services resulting from exploitation via the Internet.

## 2. The Council of Europe Convention on Cybercrime

While the Protocol does not fully address Internet facilitated crimes, the Council of Europe’s<sup>213</sup> Convention on Cybercrime targets crimes that harm computer systems and crimes that are committed through computer systems.<sup>214</sup> It is

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212. Dr. Mohamed Mattar, Executive Director of The Protection Project at Johns Hopkins University School of Advanced International Studies, Remarks at the Prostitution, Sex Work, and Human Trafficking, 5th Annual Conference, University of Toledo: Human Trafficking for the Purpose of Prostitution: The Bush Doctrine and Beyond 13 (Sept. 19, 2008) *available at* [http://www.protectionproject.org/sites/default/files/Toledo%20Ohio\\_Sex%20Trafficking\\_September\\_19\\_2008\\_updated.doc](http://www.protectionproject.org/sites/default/files/Toledo%20Ohio_Sex%20Trafficking_September_19_2008_updated.doc).

213. Council of Europe, *Who we are & what we do*, <http://www.coe.int>, *archived at* <http://www.webcitation.org/5oSGXplth>. The Council of Europe is a 47 member state network with the goal of promoting “common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals.” *Id.* The Council includes nearly every country in Europe, who come together to form treaties between their countries, as distinguished from the European Union which requires that member states delegate certain elements of their sovereignty for specific matters of joint interest among its 27 member states. *Id.*

214. Explanatory Report, *supra* note 91, at ¶ 8 (stating “cyber-space offences” are either committed against the integrity, availability, and confidentiality of computer systems and telecommunication networks or they consist of the use of such networks of their services to commit traditional offences”). In drafting the Convention on Cybercrime, committee members acknowledge certain crimes covered by the Convention may already be regulated by traditional criminal law. Explanatory Report, *supra* note 91, at ¶ 35. Still the Convention ensures those crimes are addressed when modern technology is used to advance those illicit activities. *See* Explanatory Report, *supra* note 91, at ¶



currently the only binding legal basis for international cooperation regarding cybercrime.<sup>215</sup> Although treaties of the Council of Europe are typically directed at European member states, most are additionally open for signature to non-member states.<sup>216</sup> The Convention on Cybercrime was open to at least nine other non-member states including the United States.<sup>217</sup> The United States ratified the Convention in September 2006 and

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35 (“where computer and telecommunication systems are used as a means to attack certain legal interests which mostly are protected already by criminal law against attacks using traditional means”).

215. International cooperation in the prevention, investigation, prosecution and punishment of economic fraud and identity related-crime, U.N. Res. 2009/22, ¶ 12, U.N.Econ. & Soc. Council [ECOSOC], 44<sup>th</sup> Plenary Meeting, U.N. Doc. E/2009/30 (July 30, 2009) *available at* <http://www.un.org/en/ecosoc/docs/2009/resolution%202009-22.pdf>, *archived at* <http://www.webcitation.org/5oTL9swx5> [hereinafter UN Resolution to address cybercrime]. “Taking note of the Convention on Cybercrime, currently the *only* international treaty specifically addressing computer-related fraud, computer-related forgery and other forms of cybercrime that may contribute to the perpetration of economic fraud, identity-related crime, money-laundering and other related illicit activities . . .” *emphasis added*. *Id.* Press Release, Eleventh UN Congress on Crime Prevention and Criminal Justice, ‘Around-the-Clock’ Capability Needed to Successfully Fight Cybercrime, Workshop Told, U.N. Doc. SOC/CP/334 (Apr. 25, 2005), *archived at* <http://www.webcitation.org/5oTO3UDnP>. *See* Press Release, Secretary General, States Have Shared Duty to Fight Transnational Threats to International Peace, Security, Secretary-General Says in Security Council Debate, U.N. Doc. SG/SM/12763, SC/9868, SOC/CP/345 (Feb. 24, 2010) (“much more to be done against emerging threats like cybercrime”), *archived at* <http://www.webcitation.org/5oTOBiDcy>. While most of the European Council’s treaties facilitate agreements between European states, they have opened over 150 treaties to non-member states. Council of Europe, List of Treaties Open to the Non-Member States of the Council of Europe, <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=12&CL=ENG>, *archived at* <http://www.webcitation.org/5oTPHr3mA>.

216. Council of Europe, Treaty Office, List of Treaties Open to non-European, non-member States of the Council of Europe, *available at* <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=185&CM=12&DF=16/05/2010&CL=ENG>, *archived at* <http://www.webcitation.org/5oTPPYbJE>. Since its inception, only 42 treaties were restricted to European Council member countries. *Id.* In comparison, 167 treaties have been open to signature by non-member states. *Id.*

217. Council of Europe, Treaty Office, List of treaties open to the non-European non-member States of the Council of Europe, Convention on Cybercrime, C.E.T.S. No.: 185, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=12&DF=16/05/2010&CL=ENG>, *archived at* <http://www.webcitation.org/5oTPTfoCM>.

the treaty entered into force domestically on Jan. 1, 2007.<sup>218</sup> To date, forty-six countries have signed the convention, and twenty-nine have ratified it.<sup>219</sup> Parties to the Convention agree to assist one another in the investigation and, in some cases, the prosecution of crimes outlined by the Convention.<sup>220</sup>

The Convention on Cybercrime targets four major areas of cybercrime.<sup>221</sup> These include: (1) "Offences against the confidentiality, integrity and availability of computer data and systems," such as illegally accessing non-public computer information or interfering with computer systems or data;<sup>222</sup> (2) "Computer-related offences," such as forgery or fraud facilitated via the Internet;<sup>223</sup> (3) "Content-related offences," regulating information shared over computer systems as opposed to infringing the integrity of a computer system or using a computer systems to conduct criminal activity;<sup>224</sup> and (4) "Offences related to infringements of copyright and related rights."<sup>225</sup>

The Convention does not broadly criminalize otherwise illicit activity perpetrated via the Internet.<sup>226</sup> Rather, the current text of the Convention is largely designed to protect the integrity

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218. *Id.*

219. *Id.*

220. Council of Europe, Convention on Cybercrime, Nov. 23, 2001, E.T.S. No. 185, S. Treaty Doc. No. 108-11, 2001 WL 34368783, 41 I.L.M. 282. Parties to the convention agree to international cooperation to investigate offenses. *Id.* at Preamble.

If a party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence referred to in paragraph 1 of this article.

*Id.* at art. 24, ¶ 3. See also, Memorandum from Barry Steinhardt, Director, Technology and Liberty Project, & Christopher Calabrese, Project Counsel, ACLU, ACLU Memo on the Council of Europe Convention on Cybercrime (Jun. 16, 2004), archived at <http://www.webcitation.org/5ood4NYVc>.

221. Convention on Cybercrime, *supra* note 220.

222. Convention on Cybercrime, *supra* note 220, at Title 1.

223. Convention on Cybercrime, *supra* note 220, at Title 2.

224. Convention on Cybercrime, *supra* note 220, at Title 3.

225. Convention on Cybercrime, *supra* note 220, at Title 4.

226. Marc D. Goodman & Susan W. Brenner, *The Emerging Consensus on Criminal Conduct in Cyberspace*, 2002 UCLA J.L. & TECH. 3 (2002).

of computer systems and computer data.<sup>227</sup> The preamble states that the Convention is “necessary to deter action directed against the confidentiality, integrity and availability of computer systems, networks and computer data,” while reaffirming the rights of all people to freedom of expressions and freedom to “seek, receive, and impart information and ideas of all kinds.”<sup>228</sup>

While assuring respect for privacy and freedom of expression, Article 9 of the Convention explicitly restricts the content of computer information and expression involving child pornography—criminalizing the production, making available, distribution, procurement or possession of child pornography on a computer system.<sup>229</sup> The Preamble explains that the council members drafted the treaty with consideration of the United Nations Convention on the Rights of the Child and the International Labour Organization Worst Forms of Child Labour Convention.<sup>230</sup> This consideration explains why the drafters criminalized computer related content involving child pornography even though the drafters were also concerned about the protection of personal computer data and freedom of expression.<sup>231</sup>

The Explanatory Report to the Convention additionally explains that, while other international agreements address child pornography and trafficking, “[i]t was strongly felt that specific provisions in an international legal instrument were essential to combat this new form of sexual exploitation and endangerment of children.”<sup>232</sup> The drafters included Article 9 because “... on-line

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227. Convention on Cybercrime, *supra* note 220, at Preamble. The Convention on Cybercrime was created in response to the “love bug”, whose creator was not held criminally liable because there were no laws in the Philippines to criminalize such activity. *See generally* Goodman, *supra* note 226.

228. Convention on Cybercrime, *supra* note 221, at Preamble.

229. Convention on Cybercrime, *supra* note 221, at art. 9.

230. *See* Convention on Cybercrime, *supra* note 221, at Preamble.

231. Committee on Legal Affairs and Human Rights, *Draft Convention on Cybercrime*, ¶ 10, Doc. 9031 (Apr.10, 2001) (*prepared by Ivar Tallo*) archived at <http://www.webcitation.org/5oodj76n9> [hereinafter *Convention on Cybercrime, Draft*].

232. Explanatory Report, *supra* note 91, at ¶ 93.

practices, such as the exchange of ideas, fantasies and advice among paedophiles, play a role in supporting, encouraging or facilitating sexual offences against children.”<sup>233</sup> Special Rapporteur Ivar Tallo stated that the Committee on Legal Affairs and Human Rights (charged with preparing an opinion on the Draft Convention on Cybercrime) welcomed the criminalization of child pornography to the greatest extent possible.<sup>234</sup>

### 3. The Convention on Cybercrime and the ILO’s Worst Forms of Child Labour Convention

While the drafters maintained that the very use of the Internet to exchange fantasies may be damaging; the production, procurement, and possession of child pornography are the *only* “content-related” crimes included in the Convention on Cybercrime.<sup>235</sup> The Convention does not also address other morally reprehensible “content-based” crimes that have—like child pornography—become increasingly facilitated by the Internet.<sup>236</sup> While the Convention drafters claim to consider the ILO Worst Forms of Child Labour Convention,<sup>237</sup> the Convention on Cybercrime does not criminalize the recruitment or transfer of information regarding child labor via computer systems as it does for the transfer of information regarding child pornography.<sup>238</sup> The ILO Convention describes deplorable forms of child labor as including procuring and offering children for pornography.<sup>239</sup> However, the ILO Convention further prohibits “the sale and trafficking of children... the use, procuring or offering of a child for illicit activities... [and] work which, by its nature or the circumstances in which it is carried out, is likely to

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233. Explanatory Report, *supra* note 91, at ¶ 93.

234. Convention on Cybercrime, Draft, *supra* note 231, at ¶ 38.

235. Explanatory Report, *supra* note 91 at ¶¶ 93, 95, 96, 97.

236. *See generally* Convention on Cybercrime, *supra* note 221, at Title 3 (content-related offenses include only offenses relating to child pornography on computer systems).

237. Convention on Cybercrime, *supra* note 221, at Preamble.

238. *See generally* Convention on Cybercrime, *supra* note 221.

239. INTERNATIONAL LABOR ORGANIZATION, WORST FORMS OF CHILD LABOUR CONVENTION, art. 3 (1999) *archived at* <http://www.webcitation.org/5ooderfTg>.

harm the health, safety or morals of children.”<sup>240</sup> The Convention on Cybercrime fails to give full regard to the ILO’s goals in reducing the worst forms child labor by criminalizing the recruitment, sales and distribution of information about procuring children when such acts are conducted over the web.<sup>241</sup>

The Assembly opinion on the draft Convention on Cybercrime states that, “[e]xtending the list of content-related offences could be another of the committee’s demands (eg incitement to racial hatred, use of the Internet to offend against the dignity of the individual, or use of the Internet for human trafficking purposes).”<sup>242</sup> The committee expressed its disappointment that the final version of the Convention would not include human trafficking<sup>243</sup> and other content-related offenses to the convention because of the “overbearing influence of countries traditionally opposed to any restrictions on freedom of expression.”<sup>244</sup> As an example, the American Civil Liberties Union expressly discouraged the U.S. senate from becoming a member of the Convention on Cybercrime because of their concern that the “treaty lacks privacy and civil liberties protections.”<sup>245</sup> Convention drafters took heed, noting that an influx of content-related offenses would have deterred countries that stringently uphold individual rights to expression—such as the U.S.—from signing onto the Convention.<sup>246</sup>

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240. See generally International Labor Organization, *supra* note 239.

241. See generally Convention on Cybercrime, *supra* note 221; International Labor Organization, *supra* note 239.

242. Convention on Cybercrime, Draft, *supra* note 231, at ¶ 40.

243. Convention on Cybercrime, Draft, *supra* note 231, at ¶ 40.

244. Convention on Cybercrime, Draft, *supra* note 231, at ¶ 41.

245. Brian C. Lewis, 41 AMCRLR 1353 at 1362 (Summer 2004) (citing *The Seven Reasons the Senate Should Reject the International Cybercrime Treaty*, www.aclu.org, Dec. 18, 2003, archived at <http://www.webcitation.org/5ooduRqLd> (stating that the treaty is a “bad agreement, and that the Senate should not ratify it”).

246. Explanatory Report, *supra* note 91, ¶ 35. The drafters of the Convention noted dueling purposes in both covering illicit activity, but also in passing legislation with as many signatories as possible. This dichotomy is expressed in the Explanatory Report, ¶ 35 and 12.

The committee drafting the Convention discussed the possibility of including other content-related offences, such as the distribution of racist propaganda

Although the Convention on Cybercrime is a regional treaty passed by the Council of Europe, cybercrime itself is inherently global.<sup>247</sup> Therefore, it was vital that as many Internet-capable countries as possible adopt the measures to curtail crime facilitated by technology as outlined by the Convention. A single country's failure to adhere to principles defined in the Convention could easily create a safe-haven for criminal activity via the web.<sup>248</sup> This occurs when an Internet user creates a website or posts information to a website domain (or ISP) located in a country that does not adhere to the strict standards of the International community. For example, a person living in Germany, where hate speech is criminalized, may post hate speech online to a U.S. website in order to avoid prosecution by German authorities.<sup>249</sup> Indeed, the United States has been regarded as a safe-haven for this type of behavior, much to the frustration of countries who take efforts to thwart hate-speech.<sup>250</sup>

In the face of ongoing conflicts growing out of freedom of expression and Internet conduct, the Committee on Legal Affairs and Human Rights recommended "immediately drawing up a protocol to the new convention under the title 'Broadening the

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through computer systems. However, the committee was not in a position to reach consensus on the criminalisation of such conduct. While there was significant support in favour of including this as a criminal offence, some delegations expressed strong concern about including such a provision on freedom of expression grounds. Noting the complexity of the issue, it was decided that the committee would refer to the European Committee on Crime Problems (CDPC) the issue of drawing up an additional Protocol to the present Convention.

Explanatory Report, *supra* note 91, ¶ 35.

Conference of the European Ministers of Justice (London, June 2000), which encouraged the negotiating parties to pursue their efforts with a view to finding appropriate solutions so as to enable the largest possible number of States to become parties to the Convention and acknowledged the need for a swift and efficient system of international co-operation.

Explanatory Report, *supra* note 91, ¶ 12

247. See Convention on Cybercrime, Draft, *supra* note 231, at ¶51. "There is no longer the same concept of national boundaries on the Web." Convention on Cybercrime, Draft, *supra* note 231, at ¶ 51.

248. Boyle, *supra* note 117, at 489.

249. Convention on Cybercrime, Draft, *supra* note 231, at ¶ 44.

250. Boyle, *supra* note 117, at 500.

scope of the convention to include new forms of offence', with the purpose of defining and criminalizing the dissemination of racist propaganda, abusive storage of hateful messages, use of the Internet for trafficking in human beings, and the obstruction of the functioning of computer systems by "spamming" (sending "junk e-mail")."<sup>251</sup> For those countries dedicated to eradicating hate-speech, the Council of Europe created the Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems—to which the U.S. is not a party.<sup>252</sup> No action has yet been taken to address other content-based elements of cybercrime including regulating spam or the use of the Internet for trafficking.

#### IV. An Argument for International Trafficking Provisions Targeting Internet Activity

The United States, and other countries with prevalent Internet use, have a strong desire to curtail human sex trafficking.<sup>253</sup> At the same time, the Internet is a growing force in facilitating trafficking.<sup>254</sup> Moreover, both Internet crime and trafficking are global problems, which exist without regard for national borders. Although international collaboration is essential for locating and prosecuting criminals who traffic women and children with the aid of the Internet, there is currently no international agreement specifically regulating this

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251. Convention on Cybercrime, Draft, *supra* note 231, at ¶ 13.

252. Additional Protocol to the Convention on Cybercrime, Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed through Computer Systems, Preamble, 23 Nov. 2001. Currently thirty-four states, including two non-member states to the Council of Europe have signed the Convention. Council of Europe, *Simplified Chart of Signatures and Ratifications*, [www.coe.int](http://www.coe.int), archived at <http://www.webcitation.org/50oe35Sg8>. Only fifteen states (not including any of the non-member states such as the U.S.) have ratified the Convention internally. *Id.*

253. *See e.g.*, TVPA, 22 U.S.C. § 7101(a)(2006); Canada Criminal Code, R.S.C., ch. C-46, 279.01 (2010); Criminal Code Amendment (Slavery and Sexual Servitude) Act, 1999, c. 8, div. 270.6(2)(a)-(d) (Austl.) amended by Criminal Code Amendment (Trafficking in Persons Offences) Act 2005.

254. Nair, *supra* note 80 (reporting that technology, including websites, is increasingly facilitating child sex tourism).

type of Internet activity. Rather, the Convention on Cybercrime is the only treaty which regulates harmful Internet activity internationally.<sup>255</sup> Still, the Convention on Cybercrime is not global, and—while regulating Internet content in the form of child pornography—the Convention does not further regulate Internet content that promotes the sexual exploitation of trafficked women and children. Nor does the Convention on Cybercrime regulate Internet activity that enables traffickers to recruit and sell women for the purposes of sexual exploitation.<sup>256</sup> As the drafters of the Convention stated, there was a strong desire to address the concerns of human degradation and trafficking amongst Convention signatories.<sup>257</sup> Parties to the Convention however, did not add an anti-trafficking provision for fear that such language would offend nations concerned about freedom of speech and would keep those nations from joining the Convention.<sup>258</sup>

Recognizing that Internet crimes are not bound by national borders, the United Nations recently published two press releases discussing the need for international collaboration to address cybercrime.<sup>259</sup> Because combating sex trafficking on the Internet requires international collaboration, the UN should address sex trafficking facilitated by the Internet in future discussions about International cybercrime. Further, they should pick up where the Protocol to Prevent, Suppress and Punish Trafficking in Persons and the Convention on Cybercrime leave off, by drafting measures to prevent Internet-facilitated trafficking in an international instrument.<sup>260</sup>

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255. See Explanatory Report, *supra* note 91.

256. See Explanatory Report, *supra* note 91.

257. See Explanatory Report, *supra* note 91.

258. See Explanatory Report, *supra* note 91.

259. Press Release, 'Around-the-Clock' Capability Needed to Successfully Fight Cybercrime, *supra* note 215, (released Apr. 25, 2005); see also Press Release, States Have Shared Duty to Fight Transnational Threats to International Peace, Security, *supra* note 215 (released Feb. 24, 2010) (UN Secretary General states there is, "much more to be done against emerging threats like cyber-crime").

260. *But see*, Press Release, 'Around-the-Clock' Capability Needed to Successfully Fight Cybercrime, *supra* note 215, (speakers suggest that a United Nations Convention on Cybercrime would be premature at this stage).



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A. Lack of Legal Instrument to Prohibit the use of the Internet for Advertising the Sexual Services of Trafficking Victims

While the UN Protocol may extend to the use of the Internet to recruit trafficking victims, it does not necessarily prohibit a trafficker from using the Internet for other trafficking purposes. In addition to recruitment activity, traffickers use the Internet to advertise women and children for prostitution. While women living in less technologically advanced nations may be less likely fall victim to Internet recruiting tactics, they remain at risk of being exploited online through advertisements used to entice sex tourists from abroad.<sup>261</sup>

B. Lack of Legal Instrument to Prohibit the use of the Internet to Sell Trafficking Victims

Traffickers may also use the Internet to conduct sales of women and children, for example via an online bank transfer or credit card transaction. In some instances, tourists can conveniently pay for their fantasies through secured credit card transactions online—making it easier than ever to arrange desired sexual services with a pimp.<sup>262</sup>

C. Lack of International Agreement for Locating Internet Traffickers

International sex tourists can live out their fantasies in obscurity by making arrangements for sex tours on the Internet and traveling abroad where they hope to commit crimes against women and children beyond the reach of domestic law enforcement.<sup>263</sup> While certain domestic laws, such as 18 U.S.C.

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261. See 2007 Trafficking in Persons Report, *supra* note 81, at preface.

262. Spears, *supra* text accompanying notes 85-86.

263. Hughes, *Internet and Sex Industries supra* note 71. U.S. laws reach citizens who travel abroad to commit sex crimes, but law enforcement depends on collaboration with officers beyond U.S. borders. See also *ABC Primetime: Trafficking Our Daughters*, *supra* note 51. But see *U.S. v. George Clarke*, 159 Fed. Appx. 128, 129 (2005) (U.S. officers arrested Clarke for arranging travel

section 2422(b), may target citizens who travel outside of the country to sexually exploit children,<sup>264</sup> international agreement regarding Internet regulation is necessary to ensure that woman and children alike are protected without regard to the nationality of those who exploit them.

Because perpetrators involved in trafficking may work from any location, an international treaty provision is required to prevent Internet safe-havens for traffickers who recruit, advertise and sell women and children online. Further, pimps who conduct their business online are able to change physical locations frequently, making it difficult for police in any one jurisdiction to intercept them.<sup>265</sup> Like the Convention on Cybercrime, which enables international collaboration in investigating cybercrime, and in some cases permits signatory countries to extradite cyber-criminals to countries in which they harm computer systems, international treaty provisions targeting Internet trafficking can allow participating countries to investigate crimes collaboratively or to exercise jurisdiction over traffickers who may otherwise avoid criminal liability by working out of non-regulated jurisdictions.<sup>266</sup>

#### V. Proposals for Enacting International Treaty Provisions Targeting the Use of the Internet for Trafficking Without Offending U.S. Federal Law

Even the United States, a country that is exceptionally distrustful of Internet regulation, has implemented sex trafficking legislation that can reach the Internet when such trafficking is facilitated by the web.<sup>267</sup> Therefore, drafting an International agreement that criminalizes the use of the Internet to facilitate trafficking should not offend the U.S. because such a policy

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to foreign country to have sex with minors, but Clarke was arrested in the U.S. for activities arranged by the FBI).

264. *U.S. v. George Clarke*, 159 Fed. Appx. at 233 (2005).

265. *See e.g.* text accompanying *ABC Primetime: Trafficking Our Daughters*, *supra* note 55.

266. *See* Explanatory Report, *supra* note 91.

267. *See* *United States v. George Clarke*, 159 Fed. Appx. 128, 131 (2005).

already exists in domestic legislation.<sup>268</sup> The international community should create an international agreement based on those that exist in domestic law in order to establish uniform standards in an international context, where commerce is inevitably facilitated via the Internet.

The international community can implement regulations penalizing Internet facilitated sex trafficking under existing doctrine by adding a provision to the Convention on Cybercrime prohibiting the use of computer systems to recruit, advertise for sale, arrange services, and purchase women and children for the purposes of commercial sexual exploitation.<sup>269</sup> Sexual exploitation would carry the meaning promulgated by the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons—"the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person."<sup>270</sup> As with the UN Protocol, an international Internet-anti-trafficking provision should further note that the "consent" of a victim of exploitation is meaningless, and therefore cannot be used as a defense to the crime of Internet facilitated trafficking in women and children.

#### A. Regulating Conduct

The idea that criminalizing trafficking activity on the Internet offends freedom of speech and expression is misguided.<sup>271</sup> Trafficking promulgated by the Internet is a human rights offense facilitated by computer systems, and not a

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268. *See id.*

269. *See* Explanatory Report, *supra* note 91, at TITLE II. This new provision should be included under Title 2, "Computer-related offences" of the Convention on Cybercrime rather than Title 3, "Content-related offences," because trafficking promulgated by the Internet is an illicit activity facilitated by computer systems, rather than a content-related offense such as posting pornography or hate-speech online.

270. *See* Protocol, *supra* note 204, at 2.

271. *See* R.A.V. v. City of Saint Paul, 505 U.S. 377 (1992).

content-related offense like pornography or hate speech which are generally protected under the First Amendment of the U.S. constitution.<sup>272</sup> Where organizations like the ACLU distrust the Convention (and other US attempts at Internet regulation) on first amendment grounds,<sup>273</sup> it helps to clarify that an international cybercrime treaty can be drafted, or the Convention on Cybercrime amended, to include offenses relating to sex trafficking without also offending U.S. Constitutional freedom of speech or expression. There is a distinct difference between content posted on Internet space and conduct promulgated via computer systems. In particular, pornographic images of adults and children alike, without more, amount only to content published on the Internet.<sup>274</sup> Such images may be little more than an individual's private expression: artistic, pornographic, or otherwise. Conduct, on the other hand, refers to an individual's actions.<sup>275</sup>

As argued by open net enthusiasts, targeting specific language or images in general could be highly problematic to regulate web content. Targeting specific language may be more harmful than useful, because sex trafficking websites may be misleading, may not appear illicit, or may contain legal content that should not be subject to blanket regulations (i.e. language that may be illicit in some circumstances, but not in others). However, if the international community criminalizes the *act* of online trafficking—whereby a web publisher intends to promulgate trafficking via the Internet—then the distinction between illicit activity and non-illicit activity becomes clear.<sup>276</sup>

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272. *Id.* Still, pornography may considered harmful in itself when it is posted and distributed on computer systems. See Explanatory Report, *supra* note 91, at TITLE II.

273. See *Ashcroft v. ACLU*, 542 U.S. 656, 656 (2004); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 845-46 (1997).

274. Past conduct may however, be insinuated by such content.

275. See *R.A.V. v. City of Saint Paul*, 505 U.S. 377, 385 (1992) (stating that the state could have prosecuted *conduct* at issue in the case, cross-burning, as disorderly conduct, but they could not prosecute the activity for its content, expression of racist viewpoints).

276. See Explanatory Report, *supra* note 91, at TITLE II.

## B. Regulating Content

Even proponents of open net and freedom of speech agree that some content should be regulated.<sup>277</sup> Parties to the current Convention on Cybercrime have agreed to regulate online expressions of child pornography.<sup>278</sup> An international Internet-trafficking agreement could likewise hold perpetrators liable not only for conducting trafficking activities with the aid of computer systems, but for posting misleading or harmful information or advertisements online in order to recruit, advertise for sale, or share experiences about trafficking victims.

As described by drafters of the Convention on Cybercrime, actions that take place online can harm people in the real world.<sup>279</sup> Although an individual may post harmful information about another online (including defaming comments or photos), the poster may not foresee that such activity will physically harm the victim. However, as Canadian advertising policies have described, and as Hughes of the Coalition Against Trafficking in Women has suggested, online and real world advertisements portraying harmful sexual fantasies that victimize women and children and advertisements that glamorize domestic violence normalize these behaviors throughout society.<sup>280</sup> As Massachusetts legislators realized, harassment and psychological abuse that take place online can have devastating effects in the real world when a teen commits suicide in reaction to classmates taunting her via email and social networking websites.<sup>281</sup>

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277. See e.g., Explanatory Report, *supra* note 223, at ¶ 93 and accompanying text; see Hughes, *Internet and Sex Industries*, *supra* note 138 and accompanying text; see CIPA, *supra* note 111, at § 9134(f).

278. Explanatory Report, *supra* note 91.

279. BOSTON GLOBE, *supra* note 143 (online bullying led teen to commit suicide); see Spears, *supra* note 85 (Atlanta police officer describes cases of men ordering sex online, by preference of age of child, and subsequently showing up in Atlanta to take advantage of the child).

280. Canadian Advertising Foundation, *supra* note 190; Hughes, *Internet and Sex Industries*, *supra* text accompanying note 139; see Cheng, *supra* text accompanying note 142 (reader comments).

281. See BOSTON GLOBE, *supra* note 143.

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Likewise, the content that traffickers post online is harmful to populations vulnerable of becoming trafficking victims. Traffickers may post misleading advertisements online in a manner that attracts vulnerable populations to recruit them into the sex trade.<sup>282</sup> Such misleading information, which has the potential of condemning respondents to sexual slavery, should be prohibited from the Internet.

The existence of online content depicting women and children for sale is further damaging in that it normalizes sexual exploitation of children or enslaved women, potentially making such activity socially acceptable.<sup>283</sup> Information posted by sex tourists that explains how others can take part in exploiting trafficking victims not only damages those women or children who have been exploited, but also encourages others to do take part in exploiting women and children on sex tours. Information in the form of shared experiences, like some pornographic advertisements, makes the exploitation of women or children appear normal, acceptable, or at minimum, possible to those who might otherwise have determined that otherwise deviant fantasies were unobtainable and abnormal.

### 1. Regulating Content to Protect Children

Domestic law in the United States, Australia, and Canada, and the current Convention on Cybercrime, recognize that children are particularly vulnerable to harmful Internet content.<sup>284</sup> While the United States Supreme Court has repeatedly struck down Internet legislation that threatens an adult's access to content,<sup>285</sup> congress was able to implement Internet restrictions through the Children's Internet Protection

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282. See Konkol, *supra* note 4 (nineteen year old girl drawn into the sex trade after responding to a modeling ad)

283. Hughes, *Internet and Sex Industries*, *supra* note 139.

284. See CIPA, 20 U.S.C. § 9134(f) (2003) (demonstrating US Legislators' attempts at regulating children's access to content); Canada Criminal Code § 163(8): The Pornography Debate, *supra* note 188; Australian Communications and Media Authority, Broadcasting Services Act of 1992, *supra* note 183.

285. See *Ashcroft v. ACLU*, 542 U.S. 656, 656 (2004).

Act because the restrictions therein are sufficiently limited.<sup>286</sup> CIPA passed constitutional muster because it did not impose a blanket restriction on adults' use of the Web, but merely restricted federal subsidies for such use.<sup>287</sup> The widely supported Massachusetts anti-cyberbullying bill is similarly constrained in that it aims only to prevent "school children" from conducting harmful Internet activities and from posting harmful content on the Internet.<sup>288</sup>

The international community has further recognized that children are especially vulnerable to sexual exploitation.<sup>289</sup> This is evidenced by domestic and international law criminalizing the production, distribution and private possession of child pornography. Because sexual abuse involving children is widely condemned, international parties can likely agree to, at minimum, create a provision criminalizing child sex trafficking facilitated via computer systems, prohibiting the production or distribution of information through computer systems to recruit, advertise, or sell the sexual services of minors.

### C. Optional Protocol for Gradual Change

While members of the international community may still be reluctant to adopt a universal Internet-trafficking agreement,<sup>290</sup> a provision to combat Internet sex trafficking could be implemented through an additional optional protocol to the Convention on Cybercrime. The optional protocol should, like the provisions suggested above, criminalize the use of computer systems, including the Internet, to entice under false pretences or otherwise recruit, advertise and sell women and children for

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286. BOSTON GLOBE, *supra* note 143. See U.S. v. American Library Ass'n, Inc., 539 U.S. 194, 201 (2003) (citing 20 U.S.C. §§ 9134(f)(1)(A)(i) & (B)(i); 47 U.S.C. §§ 254(h)(6)(B)(i) & (C)(i)).

287. American Library Ass'n, Inc., 539 U.S. 194 at 201.

288. BOSTON GLOBE, *supra* note 143.

289. See Protocol Supplement, *supra* note 18; Trafficking Victims Protection Act, 22 USC § 7101.

290. See Press Release, 'Around-the-Clock' Capability Needed to Successfully Fight Cybercrime, *supra* note 215, (speakers suggest that a United Nations Convention on Cybercrime would be premature at this stage).

commercial sexual exploitation. While certain parties to the current Convention are opposed to criminalizing this conduct would not be obligated to ratify the additional protocol, the Council of Europe could implement an additional protocol in order to add weight to arguments that sex trafficking via the Internet should be criminalized. As member states increasingly adhere to the principles of Internet specific anti-sex trafficking regulations, fewer Internet safe havens will exist and the protocol can become more effective in combating sex trafficking. Further, a widely adopted additional protocol to the Convention on Cybercrime could eventually be used as evidence that prohibitions against sex trafficking on the Internet amount to international customary law.

## VI. Conclusion

The Internet, and ease of communication and commercial transactions it offers, has facilitated the trafficking of women and children around the globe. Traffickers and potential purchasers of trafficking victims are increasingly using Internet websites, chat rooms, and peer-to-peer file-sharing servers to recruit and sell women and children into the sex trade. Those who exploit trafficked women and children can use the Internet to share stories about their experiences with broad audiences, normalizing otherwise abhorrent behavior. Further, those who use computer systems to exploit women and children are able to conduct their illicit business while hiding from law enforcement because their online presence allows them to frequently relocate without disrupting their business. The borderless nature of the Internet allows criminals to exploit women and children from around the world, without regard to domestic law or domestic law enforcement.

Because of the international nature of the Internet and the increasing use of the Internet to facilitate trafficking, international regulations are necessary to ensure that women and children are protected without regard to their country of origin or status in society. To fully achieve the goals of the United



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Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the goals of countries including the United States, Canada and Australia in reducing, preventing, and prosecuting those who sexually exploit women and children, international law addressing modern trafficking must reach Internet activity.

The most comprehensive solution to stemming online sex-trafficking is to develop an international agreement explicitly prohibiting such activity. In order to involve countries such as the United States, who might be wary of regulating the expressive content, the agreement could specify that it is the kind of activity promulgated over the Internet—and not necessarily the kind of speech promulgated there—that constitutes criminal human trafficking violations. Moreover, many members of the international community should assent to adopting Internet-specific anti-trafficking provisions because they have already expressed their commitment to prohibiting trafficking activity under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and domestic law which, in some cases, reaching certain Internet activities.

In the event that members of the international community would reject a new Internet-specific trafficking agreement, an optional protocol to the current Convention on Cybercrime could be adopted to protect women and children victimized by computer crimes arising out of countries who adopt the additional protocol. Further, an optional protocol could serve as a model for future legislation that would engage the broader international community. Eventually, a comprehensive international law targeting internet-facilitated sex trafficking could be established to protect those who are exploited by traffickers, pedophiles, and sexual deviants who covertly navigate the Internet to prey on the economic and social plight of women and children throughout the world.