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Free Speech or Slavery Profiteering?: Solutions for Policing Online Sex–Trafficking Advertisement

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Free Speech or Slavery Profiteering?: Solutions for Policing Online Sex-Trafficking Advertisement

ABSTRACT

Online sex trafficking is big business. The Department of Homeland Security estimates that sex trafficking generates billions of dollars per year. The marketplace for sex has moved from the street corner to classified ad websites such as Backpage.com, and all too often the victims of online sex trafficking are minors. The National Center for Missing and Exploited Children reported an 846 percent increase in reports of child sexual exploitation between 2010 and 2015—growth the organization attributes to the availability of sex ads on websites such as Backpage.com. Law enforcement agencies and victims have sought to hold Backpage.com liable for facilitating human sex trafficking. To defend against this barrage of litigation, Backpage.com has argued that a statutory corollary of the First Amendment insulates the company from liability. Using Backpage.com as a paradigm, this Note analyzes the constitutional and policy tensions underlying regulation of online sex trafficking and advocates a crowdsourced model for monitoring online sex advertisement.

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A steel gate caged four young Detroit women in a hellish nightmare of sex slavery. Their captor and pimp, Richard K. Jackson, allegedly coerced the young women into the sex trade, forcing them to have sex with customers to finance his heroin addiction.¹ The women—aged between twelve and thirty-one—were subjected to beatings while locked in Jackson’s two-story home.² It took months for two of the women to escape imprisonment through a window, but only an instant for Jackson to advertise their sex services on Backpage.com, a classified ad website.³

The sex trade is one of the world’s most ancient fields of commerce.⁴ In imperial Rome, men exploited women as commodities,

1. Tresa Baldas, *Feds: 2 Teens, 3 Women Held as Sex Slaves in Detroit; Man in Custody*, DETROIT FREE PRESS (Nov. 18, 2016, 8:03 PM), <http://www.freep.com/story/news/local/michigan/wayne/2016/11/18/feds-2-teens-3-women-held-sex-slaves-detroit-man-custody/94081740/>; Candice Williams, *Detroit Man Accused in Sex Trafficking Operation*, DETROIT NEWS (Nov. 18, 2016, 7:25 PM), <http://www.detroitnews.com/story/news/local/detroit-city/2016/11/18/detroit-man-accused-sex-trafficking-operation/94095776/> [<https://perma.cc/PXY4-U4CZ>].

2. Baldas, *supra* note 1.

3. *Id.*

4. Forrest Wickman, *Is Prostitution Really the World’s Oldest Profession?*, SLATE (Mar. 6, 2012, 5:57 PM), http://www.slate.com/articles/news_and_politics/explainer/2012/03/rush_limbaugh_calls_sandra_fluke_a_prostitute_is_prostitution_really_the_world_s_oldest_profession_.html [<https://perma.cc/HM2K-AZ67>].

akin to slave labor.⁵ Today, the technology has changed, but the basic formula persists. Victims of sex trafficking are similarly “packaged” and “sold” on the Internet, often through classified ad websites like Backpage.com, the market leader for sex-trafficking advertisement.⁶ In turn, state law enforcement agencies from Tennessee⁷ to Delaware⁸ have used Backpage.com and its imitators to identify perpetrators of child sex trafficking. Indeed, between 2008 and 2015, the number of identified victims of sex trafficking rose from just under 31,000 to nearly 78,000.⁹

In the past decade, Backpage.com’s role within the law enforcement realm transitioned from an undercover tool to a target.¹⁰ Since 2015, Backpage.com and its executives were the subjects of multiple state and federal investigations.¹¹ A 2015 US Senate Permanent Subcommittee on Investigations (PSI) report alleged that Backpage.com acted as more than a mere “online bulletin board” for sex traffickers, knowingly and actively facilitating the illegal sex trade in violation of federal trafficking and communication laws.¹² A subsequent PSI report from 2017—in which subpoenaed emails showed a companywide practice of failing to report child sex trafficking, editing sex ads with mentions of minors to avoid law enforcement detention, and reaping profits from such ads—vindicated

5. Erin K. Fenton, Note, *Prostitution as Labor in Imperial Rome*, 1 STUD. MEDITERRANEAN ANTIQUITY & CLASSICS, Winter 2007, at 11, digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1007&context=classicsjournal [https://perma.cc/LS77-6SE7].

6. See STAFF OF S. PERMANENT SUBCOMM. ON INVESTIGATIONS, 114TH CONG., RECOMMENDATION TO ENFORCE A SUBPOENA ISSUED TO THE CEO OF BACKPAGE.COM, LLC 10 (2015) [hereinafter 2015 PSI REPORT].

7. Erik Ortiz, *Online Sex Trafficking Sting in Nashville, Tennessee, Nets 41 People*, NBC NEWS (Aug. 5, 2016, 12:53 PM), <http://www.nbcnews.com/news/us-news/online-sex-trafficking-sting-nashville-tennessee-nets-41-people-n623766> [https://perma.cc/RT9E-BB95].

8. Taylor Potter, *27 People Arrested in Delaware Prostitution Bust*, NEWS J. (June 16, 2015, 11:51 PM), <http://www.delawareonline.com/story/news/crime/2015/06/16/joint-operation-results-prostitution-arrests/28806141/> [https://perma.cc/Q8FJ-3CEW].

9. U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REP. 40 (2016), <https://www.state.gov/j/tip/rls/tiprpt/2016/index.htm> [https://perma.cc/CU8L-KSMJ].

10. See Steven Blum, *‘It Will Never Stop’: Sex Workers Respond to Backpage.com Raid*, BROADLY (Oct. 11, 2016, 10:10 AM), https://broadly.vice.com/en_us/article/it-will-never-stop-sex-workers-respond-to-Backpagecom-raid [https://perma.cc/3U9U-H4GT].

11. Press Release, State of Cal. Dep’t of Justice, Attorney Gen. Kamala D. Harris Announces Criminal Charges Against Senior Corporate Officers of Backpage.com for Profiting from Prostitution and Arrest of Carl Ferrer, CEO (Oct. 6, 2016), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-criminal-charges-against-senior> [https://perma.cc/2U5Z-QPMU]; Ryan Autullo, *Texas AG Ken Paxton Says Investigation of Adult Site Backpage Isn’t Over*, STATESMAN (Jan. 11, 2017, 10:22 AM), <http://www.statesman.com/news/crime-law/texas-ken-paxton-says-investigation-adult-site-backpage-isn-over/Rr69fq4VzPwCMcwU8f3APO/> [https://perma.cc/K2VU-YPMJ].

12. See 2015 PSI REPORT, *supra* note 6, at 5.

those allegations.¹³ At the state criminal level, former California Attorney General Kamala Harris charged Backpage.com CEO Carl Ferrer in October 2016 with conspiracy to commit pimping in violation of state law.¹⁴ Harris, now a US Senator, sits on the committee investigating Backpage.com's connection to human trafficking.¹⁵

Backpage.com voluntarily shut down its "adult" section in January 2017, just before the release of the aforementioned 2017 PSI report, which revealed the company's policy of editing—but still publishing—references to child sex in ads to evade law enforcement detection.¹⁶

Backpage.com's move to shutter its "adult" section is an incomplete victory for advocates and victims of child sex trafficking. Just days after Backpage.com shut down its "adult" section, sex ads migrated into the website's "massage" and "miscellaneous" sections.¹⁷ Even if the entire website was removed, it would only be a matter of time before some other online forum filled its void in the sex-trafficking business.¹⁸ On the other hand, First Amendment advocates, online publishers, and sex workers¹⁹ raise concerns about the downstream effects of censoring online content.²⁰ Thus, lawmakers, advocates, and victims must develop strategies for eliminating the online sex trade without running afoul of First Amendment anticensorship rights.²¹

13. See STAFF OF S. PERMANENT SUBCOMM. ON INVESTIGATIONS, 115TH CONG., BACKPAGE.COM'S KNOWING FACILITATION OF ONLINE SEX TRAFFICKING 18–19 (2017) [hereinafter 2017 PSI REPORT].

14. Press Release, State of Cal. Dep't of Justice, *supra* note 11.

15. HSGAC Dems, *Senator Harris: "Backpage's Knowing Facilitation of Online Sex Trafficking" Opening Remarks*, YOUTUBE (Jan. 10, 2017), <https://www.youtube.com/watch?v=rtRCv-XnCNM>.

16. 2017 PSI REPORT, *supra* note 13, at 18–19.

17. See, e.g., *Nashville Massage*, BACKPAGE.COM, <http://nashville.backpage.com/TherapeuticMassage/> [<https://perma.cc/XV9M-HE59>] (last visited Sept. 20, 2017).

18. Sarah D. Wire, *Sen. Kamala Harris Praises Closure of Backpage.com Adult Section*, L.A. TIMES (Jan. 10, 2017, 2:24 PM), <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-sen-harris-praises-closure-of-1484084089-htmllstory.html> [<https://perma.cc/PQH3-NBZL>].

19. Jazmine Ulloa, *We Are Legitimate Workers: Erotic Service Providers Union Asks Gov. Jerry Brown to Decriminalize Prostitution*, L.A. TIMES (Nov. 15, 2016, 11:50 AM), <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-we-are-legitimate-workers-california-1479239048-htmllstory.html> [<https://perma.cc/E2LU-MC8K>].

20. Elliot Harmon, *Internet Censorship Bill Would Spell Disaster for Speech and Innovation*, ELEC. FRONTIER FOUND. (Aug. 2, 2017), <https://www.eff.org/deeplinks/2017/08/internet-censorship-bill-would-spell-disaster-speech-and-innovation> [<https://perma.cc/94ZG-GPC2>].

21. See *id.*

To counter these legal attacks, Backpage.com and its executives argued that the First Amendment and a federal statutory corollary in the Communications Decency Act (CDA)²² insulate the company's activities from both prosecution under the anti-trafficking laws and further government inquiry, in the case of the 2017 Senate investigation.²³ Backpage.com points to a safe harbor provision of the CDA, which states that operators of websites will not be treated as "speakers" of illegal content.²⁴ However, a later subsection of the same section expressly provides that nothing in the section "shall be construed to impair the enforcement" of federal or state criminal law.²⁵

Using the Backpage.com case as a paradigm, this Note evaluates the legal and policy arguments surrounding the prosecution of websites that publish sex-trafficking content, the viability of the CDA, and alternative enforcement solutions. Part I of this Note briefly summarizes the legal history of the US sex trade. Part II examines the extent to which the First Amendment and the CDA's safe harbor provision protect adult ad websites that publish child sex-trafficking solicitations. Although Section 230 of the CDA excludes mere "publishers" of illegal content from prosecution, circuits are split as to what test should apply to trigger the safe harbor preemption and the extent to which the First Amendment protects such sites from disclosure. Part III evaluates the strength of regulators' ability to prosecute a website under state and federal anti-trafficking laws. Part IV weighs the merits of a constitutional approach to prosecuting Backpage.com and other online publishers of child sex advertisement under the Thirteenth Amendment. Ultimately, this Note advocates for a practical, collaborative approach to policing online sex trafficking which extends the crowdsourcing model to the enforcement of trafficking laws. Lastly, Part V discusses the free speech policy implications of prosecuting third-party ad websites such as Backpage.com. While this Note's analysis applies to current and future third-party publishers, "Backpage.com" will serve as a shorthand for all such actors, due to the company's prominence in the sex-trafficking world and the current litigation ensnaring its executives.

22. Communications Decency Act, Pub. L. No. 104-104, §§ 501-61, 110 Stat. 56, 133-43 (1996) (codified as amended at scattered sections of 47 U.S.C.).

23. Letter from James C. Grant, Partner, Davis Wright Tremaine LLP, to Kamala D. Harris, Attorney Gen. of Cal. (Oct. 17, 2016), <http://arstechnica.com/wp-content/uploads/2016/10/Letter-to-Attorney-General-Harris-10-17-16.pdf> [<https://perma.cc/3SNC-BQFZ>].

24. 47 U.S.C. § 230(c)(1) (2012).

25. *Id.* § 230(e)(1)-(3).

I. BACKGROUND

A. Child Sex Trafficking is a Form of Slavery

The United Nations broadly defines human trafficking with three constituent parts: the act, the means, and the purpose.²⁶ The “act” can include “the recruitment, transport, transfer, harboring, or receipt of persons.”²⁷ The “means” is defined as “the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits.”²⁸ The “purpose” is defined by a nonexclusive list of exploitive activities, including prostitution, the removal of organs, slavery, and forced labor.²⁹ The Trafficking Victims Protection Act (TVPA)³⁰ provides a narrower definition of trafficking, labeling the activity a “modern form of slavery.” Under Section 1591 of the TVPA, the “means” of trafficking are irrelevant; the statute will attach to perpetrators of any commercial sex trafficking when the victim is under the age of eighteen.³¹ Whether or not the trafficker employs coercion or some other abusive technique to bring the child under his control, a minor victim cannot consent to be sold into the sex trade.³² Thus, whenever a child engages in prostitution, he or she is a legal victim of sex trafficking no matter whether the trafficker recruited the child under conditions of fraud or coercion.³³

The United Nations defines “slavery” broadly as “the control over another’s life [and] the restriction of movement [by] the fact that someone is not free to leave or to change an employer.”³⁴ Sex trafficking falls squarely into the category of slavery. Traffickers often control their victims through financial, chemical, and physical oppression.³⁵ For example, in the aforementioned Detroit anecdote, the defendant lured victims into the sex trade by getting them

26. *Human Trafficking*, UN OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited Sept. 28, 2017).

27. *Id.*

28. *Id.*

29. *Id.*

30. Trafficking Victims Protection Act, Pub. L. No. 106-386, §§ 101–13, 114 Stat. 1464, 1466–91 (2000) (codified as amended at 22 U.S.C. §§ 7101–10 (2012)).

31. *Id.* § 112(a), 18 U.S.C. § 1591(b)(1)–(2) (2012)).

32. *See id.*

33. *See id.*

34. *Slavery*, UNESCO, <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/slavery/> [<https://perma.cc/F2W7-VPFD>] (last visited Sept. 20, 2017).

35. *See Tactics*, BETHEJAM, <http://www.bethejam.org/tactics> [<https://perma.cc/97PJ-BV5C>] (last visited Sept. 20, 2017).

addicted to heroin and withholding the drug from them unless they performed commercial sex acts.³⁶ If the women's performance was inadequate, they were often beaten.³⁷

This story is not unique to these victims, or to Detroit. Indeed, sex trafficking occurs in all fifty states.³⁸ The National Human Trafficking Resource Center, an organization that provides resources to trafficking victims, reported 5,575 cases of human trafficking in the United States in 2015, 75 percent of which involved sex trafficking.³⁹ Though there is no official estimate of the total number of trafficking victims, the Polaris Project, a nonprofit organization that works to combat human trafficking, estimates that the number of victims, both adults and minors, could reach into the hundreds of thousands.⁴⁰ Both federal legislation and the UN Office on Drugs and Crime labeled the practice modern-day slavery.⁴¹

B. Online Sex Trafficking and the Rise (and Fall) of Backpage.com

Once relegated to street corners and word-of-mouth promotion, the child sex trade now flourishes due to the advent of the Internet.⁴² Between 2010 and 2015, the National Center for Missing and Exploited Children (NCMEC) reported an 846 percent increase in reports of child sex trafficking, which the organization attributes to the ease and anonymity with which the Internet connects buyers and sellers of children for sex.⁴³ Once a trafficker coerces a minor into the sex trade, the trafficker can communicate with a limitless universe of potential buyers by placing advertisements on the web. Traffickers use coded language such as “young,” “fresh,” and “new to town,” as euphemisms for children, tailoring their ads to the demand for commercial child sex.⁴⁴ A cursory review of the Nashville, Tennessee

36. Williams, *supra* note 1.

37. *See id.*

38. *The Victims*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking/human-trafficking/victims> [<https://perma.cc/NHD2-4D2S>] (last visited Sept. 20, 2017).

39. *Hotline Statistics*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/states> [<https://perma.cc/7KVG-6E7J>].

40. *The Facts*, POLARIS PROJECT, <https://polarisproject.org/facts> [<https://perma.cc/4VGN-YWK8>] (last visited Oct. 16, 2017).

41. *Human Trafficking*, *supra* note 26.

42. *See* Melissa Farley et al., *Online Prostitution and Trafficking*, 77 ALB. L. REV. 1039, 1063 (2014).

43. *See* 2015 PSI REPORT, *supra* note 6, at 4.

44. Ann Gerhart, *Sex-Trafficking Opponents Fight Craigslist's 'Adult Services' Ads*, WASH. POST (Aug. 7, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/06/AR2010080606376.html> [<https://perma.cc/Y7TH-BMZS>].

“women seeking men” section of Backpage.com—where sex ads have migrated since the “adult” section was shut down in January⁴⁵—yielded dozens of ads containing variations on phrases like “new to town,” along with “young” and similar codes linked to underage commercial sex.⁴⁶ On the buyers’ side, message boards provide anonymous social support whereby online sex buyers can validate each other’s predilections for criminal sexual commerce and coach newcomers.⁴⁷

Before Backpage.com, the “adult services” section of Cragislist.com—the minimalist and now ubiquitous classified advertisement website—was the preferred forum for the child sex trade.⁴⁸ After pressure from anti-trafficking advocates and law enforcement, Craigslist.com shut down the “adult services” section in 2010.⁴⁹ As a result, Backpage.com—another classified advertisement marketplace owned by Village Voice Media—gained the bulk of the sex advertisement business Craigslist.com left behind.⁵⁰ The NCMEC received 7,700 reports of child sexual exploitation to its tip line in 2015, a majority of which it claims relate to ads published on Backpage.com.⁵¹

II. STATUTORY FRAMEWORK

In the debate over whether online forums should be liable for contributing to the modern sex trade, two federal statutes stand in opposition to each other. First, the TVPA enhances punishment and broadens the scope of federal anti-trafficking law.⁵² The Act criminalizes sex trafficking and activities that harbor the commercial

45. David Ovalle, *The ‘Adult’ Section Might Be Closed but Miami Sex Workers Still on the Job*, MIAMI HERALD, (Feb. 2, 2017, 6:00 AM), <http://www.miamiherald.com/news/local/crime/article130185689.html>.

46. *Female Escorts*, BACKPAGE.COM, <http://nashville.Backpage.com/FemaleEscorts/> [<https://perma.cc/EA9L-HP38>] (last visited Oct. 16, 2017).

47. See Farley et al., *supra* note 42, at 1069.

48. William Saletan, *Pimp Mobile*, SLATE (Sept. 7, 2010, 8:39 AM), http://www.slate.com/articles/news_and_politics/frame_game/2010/09/pimp_mobile.html [<https://perma.cc/CWB3-GGC7>].

49. *Id.*

50. See AIMGroup, *Prostitution-Ad Revenue up 9.8 Percent from Year Ago*, (Mar. 22, 2012), <https://aimgroup.com/2012/03/22/prostitution-ad-revenue-up-9-8-percent-from-year-ago/> [<https://perma.cc/Q5Z8-JDYU>].

51. See *Human Trafficking Investigation: Hearing Before the S. Permanent Subcomm. on Investigations of the S. Comm. on Homeland Sec. and Governmental Affairs*, 114th Cong. 2–3 (2015) (statement of Yiota Souras, Vice President and General Counsel, National Center for Missing and Exploited Children).

52. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 112(a), 114 Stat. 1464, 1487 (2000) (codified as amended at 18 U.S.C. § 1591 (2012)).

sex trade.⁵³ Second, Section 230 of the CDA shields websites from liability for illegal content posted by third parties.⁵⁴ The following Section summarizes both statutes and describes their respective obstacles in the fight against child sexual exploitation.

A. *The Trafficking Victims Protection Act*

In 2000, Congress passed the Victims of Trafficking and Violence Protection Act to combat the domestic sex trade by bolstering the ability to prosecute sex traffickers.⁵⁵ Additionally, under Section 1591, any individual who facilitates or financially benefits from the commercial sex trade is subject to prosecution.⁵⁶ The statute requires that a defendant have knowledge or, as amended in 2008, have a reckless disregard for the fact that the sex workers in question were coerced into prostitution, either by force, fraud, or virtue of their juvenile status.⁵⁷

In 2003, Congress sought to overhaul prosecution of sex traffickers by adding 18 U.S.C. § 1595—a private civil right of action against those who engage or benefit financially from the coerced commercial sex acts of minors in violation of Section 1591.⁵⁸ Despite the amendment, no private suits resulted from Section 1595 between 2003 and 2007.⁵⁹ In response to the inaction, Congress added teeth to the measure in 2008, replacing a child victim's burden of proving his or her own coercion into the sex trade with strict liability against persons who knowingly benefit from a victim's sex trafficking.⁶⁰ Additionally, the 2015 Justice for Victims of Trafficking Act provided incentives for states to prevent the prosecution of child victims whose criminal conduct was a result of their trafficking.⁶¹ In 2015, the

53. *Id.*

54. *See* Communications Decency Act, Pub. L. No. 104-104, § 509(a), 110 Stat. 56, 137-38 (1996) (codified as amended at 47 U.S.C. § 230 (2012)).

55. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 2, 114 Stat. 1464, 1468-69 (2000) (codified as amended at 22 U.S.C. § 7101 (2012)).

56. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 112(a), 114 Stat. 1464, 1487 (2000) (codified as amended at 18 U.S.C. § 1591 (2012)).

57. *Id.*

58. *Id.*

59. Jennifer S. Nam, Note, *The Case of the Missing Case: Examining the Civil Right of Action for Human Trafficking Victims*, 107 COLUM. L. REV. 1655, 1656 (2007).

60. William Wilberforce Trafficking Victims Protection Act of 2008, Pub. L. No. 110-457, 112 Stat. 5044 (2008) (codified as amended in scattered sections of 22 U.S.C.).

61. Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, § 601, 129 Stat. 227, 258-59 (2015) (codified as amended at 34 U.S.C. § 10381 (2012)); *see* 2016 Trafficking in Persons Report, U.S. DEPT OF STATE, <https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258888.htm> [<https://perma.cc/HV5D-SMLP>] (last visited Oct. 18, 2017).

Department of Justice initiated 248 sex-trafficking prosecutions and obtained convictions of 291 sex traffickers—both figures representing an increase from the prior year.⁶²

Section 1591 gives law enforcement a heavy sword to prosecute participants in the child sex trade; however, a 2015 amendment introduced by US Senator Mark Kirk distinguishes advertisers from other actors in the commercial sex supply chain.⁶³ Specifically, the amendment singles out “advertising” from the laundry list of activities that contribute to the sex trade as one that cannot be prosecuted for a mere “reckless disregard” for the illegal conduct.⁶⁴ Instead, when the offending contribution to the sex transaction is advertisement, prosecutors or private plaintiffs must prove that the advertiser possessed “actual knowledge” that the sex act was a product of coercion.⁶⁵ While including advertising in the list of punishable conduct permits the government to wield the TVPA against websites like Backpage.com, attaching a more onerous mens rea requirement (actual knowledge) makes prosecuting these sites more difficult in practice. This nuance of the TVPA, combined with the countervailing statutory shield of the CDA, stymies the efforts of victims, advocates, and prosecutorial agencies to prosecute publishers of third-party-generated sex ads for their contributions to the sex-trafficking trade.

B. The Communications Decency Act and Section 230

1. History

Congress passed the CDA to update the broader Telecommunications Act of 1934, which placed antitrust regulations on the telecommunications industry.⁶⁶ Specifically, the CDA aimed to incentivize Internet service providers to create parental controls to filter illicit Internet content and make it illegal to knowingly send to or show minors such materials online.⁶⁷

62. 2016 *Trafficking in Persons Report*, *supra* note 61.

63. S. 572, 114th Cong. (2015) (as introduced by Sen. Mark Kirk (R-Ill.)).

64. *Id.* § 2.

65. *See id.*

66. Communications Decency Act, Pub. L. No. 104-104, §§ 501–61, 110 Stat. 56, 133–43 (1996) (codified as amended at scattered sections of 47 U.S.C.); H.R. REP. NO. 104-458, at 81 (1996) (Conf. Rep.).

67. CDA 230: *Legislative History*, ELEC. FRONTIER FOUND., <https://www EFF.ORG/issues/cda230/legislative-history> [<https://perma.cc/65EM-VY4V>] (last visited Sept. 20, 2017).

Section 230 arose in response to a Supreme Court of New York decision, *Stratton Oakmont v. Prodigy Services Co.*, in which an online financial bulletin, Prodigy, was held liable for false and defamatory statements posted by a third party about Stratton Oakmont, a securities firm.⁶⁸ The court reasoned that because Prodigy screened third-party-generated content, it was exercising editorial control over the material on its site and should be subject to liability as a publisher because of that control.⁶⁹

Concerned about the chilling effect the law might have on free speech, two representatives introduced Section 230 to balance the need to protect the safety of children using the Internet while encouraging growth among online companies without invasive regulation.⁷⁰ Section 230 protects “Good Samaritan” online service providers from liability for taking steps to screen indecent content, so long as those actions to restrict access are “taken in good faith.”⁷¹ Section 230 has come to be known as the CDA’s “safe harbor” provision, as it appears to protect publishers of obscene or illegal content when produced by a third party.⁷²

In 1997, the American Civil Liberties Union (ACLU) successfully enjoined enforcement of the CDA’s core obscenity provisions before the US Supreme Court.⁷³ In *Reno v. ACLU*, the Court held that the CDA’s “indecent transmission” and “patently offensive display” provisions violated the free speech rights protected by the First Amendment.⁷⁴ However, Section 230, which relieves third-party publishers of obscene content from liability, survived.⁷⁵ Thus, Section 230 of the CDA—once a statute that epitomized the mid-1990’s conservative push for online censorship—is the primary First Amendment shield against liability for websites that host illegal content. For example, Section 230 protects Google from defamation suits whenever a name search reveals unflattering information.⁷⁶ The

68. *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710, at *4 (N.Y. Sup. Ct. May 24, 1995), *superseded by statute*, Communications Decency Act, 47 U.S.C. § 230 (2012), *as recognized in* *Shiamili v. Real Estate Grp. of New York, Inc.*, 952 N.E.2d 1011, 1016 (N.Y. 2011).

69. Andrew P. Bolson, *Flawed But Fixable: Section 230 of the Communications Decency Act at 20*, 42 RUTGERS COMPUTER & TECH. L.J. 1, 5 (2016).

70. *CDA 230: Legislative History*, *supra* note 67.

71. 47 U.S.C. § 230(c)(2)(A).

72. *See generally* Cynthia Lee, Note, *Subverting the Communications Decency Act: J.S. v. Village Voice Media Holdings*, 7 CALIF. L. REV. CIRCUIT 11, 11 (2016).

73. *Reno v. ACLU*, 521 U.S. 844, 885 (1997).

74. *Id.* at 885.

75. *See* 47 U.S.C. § 230.

76. *See, e.g.,* *Manchanda v. Google Inc.*, No. 16-CV-3350, 2016 WL 6806250, at *3 (S.D.N.Y. Nov. 16, 2016).

provision is why Mark Zuckerberg cannot be successfully sued when cyberbullying via Facebook or Instagram pushes a teenager to commit suicide.⁷⁷ Section 230 is also the reason Facebook cannot face liability for hosting the falsified news articles that incited a man to brandish a gun in a Washington, DC pizza parlor.⁷⁸ In an era where Internet users and the websites they visit number in the billions, Section 230 protects online publishers from a potentially unending stream of litigation.⁷⁹ While First Amendment protections are essential to the free exchange of information on the Internet, Section 230 creates perverse incentives for more nefarious actors to flourish.

2. Applied to Backpage.com

To be sure, websites that *do* screen the content that third parties post on their websites must act in good faith.⁸⁰ The 2017 PSI report makes clear that Backpage.com's executives lacked good faith in their editorial decisions to moderate commercial sex advertisements posted by their users. For example, one subpoenaed email revealed that Backpage.com supplied employees who edited the website's "adult" section with a spreadsheet of terms to strip from ads in order to give the ads a "clean" appearance and to allow sex trafficker clients to avoid law enforcement detection.⁸¹ The list included the following terms: "Lolita," "teenage," "rape," "young," "amber alert" (the name of a national child abduction warning system), "little girl," "fresh," "innocent," and "school girl."⁸² By stripping these terms from their website, without removing the ad itself or alerting law enforcement about these unambiguous signs of child sexual exploitation,⁸³ Backpage.com demonstrated bad faith, destroying its protection under the CDA.

77. See Dani Manor, *Can Social Media Be Held Accountable for Cyberbullying?*, ADWEEK (Apr. 7, 2010), <http://www.adweek.com/socialtimes/social-media-cyberbullying/10620> [https://perma.cc/24UY-V75W].

78. Paul Callan, Opinion, *Sue Over Fake News? Not So Fast*, CNN (Dec. 6, 2016, 10:36 AM), <http://www.cnn.com/2016/12/05/opinions/suing-fake-news-not-so-fast-callan/> [https://perma.cc/FXZ2-D3DU].

79. See Letter from James C. Grant to Kamala D. Harris, *supra* note 23.

80. 47 U.S.C. § 230(c)(2)(A) ("No provider or user of an interactive computer service shall be held liable on account of . . . any action voluntarily taken *in good faith* to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected[.]") (emphasis added).

81. See 2017 PSI REPORT, *supra* note 13, at 22.

82. *Id.* at 22–23.

83. See *id.* at 26.

With the unfavorable Senate investigation now publicly available, previously thwarted state and federal prosecutors may find fewer evidentiary hurdles to bringing claims against the website.⁸⁴ But just as Backpage.com replaced Craigslist.com in 2010, it is only a matter of time before another website crops up to fill the digital void Backpage.com now leaves behind in the illegal commercial sex trade.⁸⁵

3. Lower Courts Divided

Although the Supreme Court previously addressed the contours of Section 230 protections in *Reno*, lower courts disagree about the extent to which the provision insulates advertising forums like Backpage.com from liability under TVPA and state anti-trafficking laws.⁸⁶

a. The First Circuit: Section 230 Immunizes Backpage.com

On the pro-free speech end of the spectrum, the US Court of Appeals for the First Circuit in *Doe v. Backpage.com, LLC* held that Section 230 of the CDA immunized Backpage.com from prosecution under the TVPA, that the TVPA did *not* fall within the CDA's carve-out exception for criminal enforcement, and that the appellant child sex-trafficking victims were not entitled to relief.⁸⁷ The appellants pointed to Backpage.com policies surrounding its "escorts" section to suggest that the operator acted as more than a mere conduit for ads for sex and should, therefore, be treated as a speaker and denied Section 230's publisher immunity.⁸⁸ These policies included prohibiting certain terms in postings, lack of verification of phone numbers, anonymizing users' email addresses, stripping metadata from photographs of the child victims, and Backpage.com's acceptance

84. *Backpage.com's Knowing Facilitation of Online Sex Trafficking: Hearing Before the S. Permanent Subcomm. on Investigations of the S. Comm. on Homeland Sec. and Governmental Affairs*, 115th Cong. 3 (2017) (statement of Sen. Rob Portman, Chairman, S. Permanent Subcomm. on Investigations) ("The evidence is clear that Backpage deliberately edited out words indicative of child sex trafficking and other crimes from ads.").

85. *Wire*, *supra* note 18.

86. *Compare Doe v. Backpage.com, LLC*, 817 F.3d 12, 24 (1st Cir. 2016) (providing immunity under Section 230), *with Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1167 (9th Cir. 2008) (rejecting immunity under Section 230 for providing a discriminatory survey on its website), *and Chi. Lawyers' Comm. for Civ. Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 669–70 (7th Cir. 2008) (explaining that Section 230 provided website operators "not with a sword but a safety net").

87. *Doe*, 817 F.3d at 20–24 ("Although the appellants try to distinguish *Doe* by claiming Backpage.com's decisions about what measures to implement deliberately attempt to make sex trafficking easier, this is a distinction without a difference.").

88. *Id.* at 16.

of anonymous payments.⁸⁹ The First Circuit rejected this argument, reasoning that Backpage.com's policies, regardless of its motivations, reflected editorial choices about the "structure and operation" of the website and thus were well within the traditional publisher functions.⁹⁰ The Supreme Court denied the appellants' petition for a writ of certiorari on January 9, 2017,⁹¹ though the new revelations of the 2017 PSI report (released the following day) may complicate Backpage.com's legal strategy.⁹²

b. The Ninth Circuit: No Immunity Where Website "Directly Participates" in Illegality

On the other hand, the Ninth Circuit held that the CDA's immunity is unavailable where a website "directly participates in developing the alleged illegality."⁹³ In *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, the court stated that the roommate-matching website was not precluded from treatment as a "provider" of discriminatory information just because subscribers to the site create most of the content.⁹⁴ There, Roommates.com provided its users a survey including questions about sexual orientation preferences.⁹⁵ The court held Roommates.com liable under the Fair Housing Act—and unshielded by Section 230—because the website became "much more than a passive transmitter" of the discriminatory information and acted as the "developer" of the content.⁹⁶

Applying the Ninth Circuit's framework to the sex-trafficking scenario, both victims and prosecutors would have to show that Backpage.com, by its structure, elicited unlawful content from sex trafficker users. Here, parties suing Backpage.com do not base their allegations on the illegality of the content itself; rather, they claim that Backpage.com promotes the illegal sex trade by guiding its users

89. *Id.* at 16–17.

90. *Id.* at 21.

91. *See id.*, cert. denied, 137 S. Ct. 622 (2017).

92. Jonathan O'Connell & Tom Jackman, *Members of Congress Press Sessions to Investigate Sexual Ads at Backpage.com*, WASH. POST (July 13, 2017), https://www.washingtonpost.com/local/public-safety/congresswomen-press-sessions-to-investigate-sexual-ads-at-backpagecom/2017/07/13/99e8aed8-6752-11e7-9928-22d00a47778f_story.html?utm_term=.ab8ec0ed712e [<https://perma.cc/9FXZ-574Q>].

93. *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1174 (9th Cir. 2008).

94. *Id.* at 1165–67.

95. *Id.*

96. *Id.* at 1166, 1175.

in posting ads that are suggestive enough to attract child sex buyers but vague enough to avoid law enforcement detection.⁹⁷

The Supreme Court of Washington applied this same reasoning in *J.S. v. Village Voice Media Holdings, LLC*, a suit brought by a victim of sex trafficking against Backpage.com's holding company.⁹⁸ The court refused to grant Backpage.com's motion to dismiss, reasoning that the court needed more information about the company's editorial policies—and the degree to which those policies helped child sex traffickers—before Backpage.com could invoke immunity under Section 230 of the CDA.⁹⁹ A related civil trial is scheduled for January 2018,¹⁰⁰ and the 2017 PSI report suggests that immunity will be unavailable for Backpage.com. More recently, unfavorable documents seized from Philippines-based Avion in connection with an unrelated lawsuit in Missouri suggest that Backpage.com hired the overseas firm to target its sex ads and redirect users from rival websites to Backpage.com.¹⁰¹ The documents, provided to NBC News and the *Washington Post*, undercut Backpage.com's defense that it exerted no control over the sex ads on the website.¹⁰²

Relatedly, Seventh Circuit Chief Judge Frank Easterbrook has opined that Section 230's safe harbor should be unavailable where a website operator designs its services to facilitate illegal conduct.¹⁰³ Analogizing to Section 230's application in the intellectual property context, Judge Easterbrook reasoned that if "providers" may be liable for contributory infringement if they design their system to help people evade copyright laws, then Section 230 cannot be read as "a grant of comprehensive immunity from civil liability for content provided by a third party."¹⁰⁴ In that case, defendant Craigslist.com

97. See generally *Doe v. Backpage.com, LLC*, 817 F.3d 12, 20–24 (1st Cir. 2016).

98. *J.S. v. Vill. Voice Media Holdings, LLC*, 359 P.3d 714, 717 (Wash. 2015).

99. *Id.* at 718.

100. *Legal Info. Network Exchange*, PIERCE CNTY. WASH., https://linxonline.co.pierce.wa.us/linxweb/case/civilcase.cfm?cause_num=17-2-04897-1 (last visited Sept. 25, 2017) (Case No. 17-2-04897-1).

101. Tom Jackman & Jonathan O'Connell, *Backpage Has Always Claimed It Doesn't Control Sex-Related Ads. New Documents Show Otherwise*, WASH. POST (July 11, 2017), https://www.washingtonpost.com/local/public-safety/backpage-has-always-claimed-it-doesnt-control-sex-related-ads-new-documents-show-otherwise/2017/07/10/b3158ef6-553c-11e7-b38e-35fd8e0c288f_story.html?utm_term=.fa4c8378677c.

102. *Documents Cast Doubt on Backpage.com Defense Claims*, AP NEWS (July 12, 2017), <https://www.apnews.com/771f719ddf284c2191d0096bb7e5c991> [https://perma.cc/6KRF-9JNC].

103. *Chi. Lawyers' Comm. for Civ. Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 670 (7th Cir. 2008).

104. See *id.* (discussing *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005)).

was ultimately not held liable for promoting or causing housing discrimination because, unlike the quiz in *Roommates.com*, nothing about Craigslist.com services *induced* discriminatory statements from its third-party users.¹⁰⁵

Applying Judge Easterbrook's reasoning to Backpage.com, Section 230 protection would not be available to Ferrer, the CEO of Backpage.com, if the website was *designed* to help sex traffickers evade the criminal and civil law.¹⁰⁶ Thus, efforts to prosecute the website will hinge on what Backpage.com executives and employees knew about the illicit use of "escort" ads and the degree to which they geared the website's services to facilitate the commercial sex trade of minors.¹⁰⁷ The 2017 PSI report suggests that executives not only knew about user involvement in the child sex trade but actively assisted them by filtering ads with particularly egregious references to child sex prior to publishing them on Backpage.com.¹⁰⁸

III. ANALYSIS: PROPOSED STRATEGIES FOR AMENDING SECTION 230 OF THE CDA

The Senate's investigation exposing Backpage.com's participation in the illegal sex trade partially vindicated lawmakers, victims, and advocates fighting to hold all parties accountable in the crusade to eliminate child sex exploitation in the United States. Lawmakers continue to grapple with shaping policy that protects victims of child sex trafficking from future iterations of Backpage.com while avoiding undue censorship.¹⁰⁹ For First Amendment advocates, the stakes may be particularly high in the coming years, as President Donald J. Trump pledged to "open up our libel laws"¹¹⁰ and publicly

105. *Id.* at 671–72.

106. *See id.*

107. *See* Alison Frankel, *Backpage.com Pimping Case Will Turn on What Officials Knew About Escort Ads*, REUTERS (Oct. 21, 2016), <http://blogs.reuters.com/alison-frankel/2016/10/21/Backpage.com-com-pimping-case-will-turn-on-what-officials-knew-about-escort-ads/> [<https://perma.cc/5756-M47Y>].

108. 2017 PSI REPORT, *supra* note 13, at 22.

109. *See* Tom Jackman, *Senate Launches Bill to Remove Immunity for Websites Hosting Illegal Content, Spurred by Backpage.com*, WASH. POST (Aug. 1, 2017), https://www.washingtonpost.com/news/true-crime/wp/2017/08/01/senate-launches-bill-to-remove-immunity-for-websites-hosting-illegal-content-spurred-by-backpage-com/?utm_term=.543575691050 [<https://perma.cc/KM99-J2FX>].

110. *See* Sydney Ember, *Can Libel Laws Be Changed Under Trump?*, N.Y. TIMES (Nov. 13, 2016), <https://www.nytimes.com/2016/11/14/business/media/can-libel-laws-be-changed-under-trump.html> [<https://perma.cc/8E3R-T43Z>].

shamed journalists,¹¹¹ actors,¹¹² satirists,¹¹³ and political critics¹¹⁴ who disagree with his rhetoric. Weakening Section 230 of the CDA may help victims of sex trafficking seeking restitution from the websites that profit from their exploitation. But without careful drafting, future amendments might achieve this policy goal at the expense of legitimate free speech.

A. Digital Millennium Copyright Act Approach

One approach offers to amend the CDA to model the Digital Millennium Copyright Act's (DMCA's) "notice and takedown" mechanism.¹¹⁵ The DMCA provides online content providers civil immunity for copyright infringement when they meet certain requirements, such as removing content as soon as the provider learns of its infringing nature.¹¹⁶ When the provider removes the material, they must then notify the original publisher of the alleged infringing content and permit that poster the opportunity to dispute the removal.¹¹⁷ If disputed, the individual or business that requested the removal must file a lawsuit in federal court within fourteen days, or else the website is free to repost the allegedly infringing material.¹¹⁸

Applied to the online classified ad websites where child sex trafficking has proliferated, a DMCA approach to the CDA would properly incentivize website operators to remove ads offering commercial sex with children to secure their immunity under Section 230.¹¹⁹ The scheme's appeals process also provides a safety valve to protect against undue censorship of unconventional, yet legally protected, speech. Consider an example highlighted by Judge Richard

111. Andrew Higgins, *Trump Embraces 'Enemy of the People,' a Phrase with a Fraught History*, N.Y. TIMES (Feb. 26, 2017), <https://www.nytimes.com/2017/02/26/world/europe/trump-enemy-of-the-people-stalin.html> [<https://perma.cc/D755-LWGE>].

112. Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 9, 2017, 3:27 AM), <https://twitter.com/realDonaldTrump/status/818419002548568064> [<https://perma.cc/U927-YANC>].

113. Dave Itzkoff, *Trump and 'S.N.L.': A Look Back at a Complicated Relationship*, N.Y. TIMES (Feb. 9, 2017), <https://www.nytimes.com/2017/02/09/arts/television/donald-trump-saturday-night-live-alec-baldwin.html> [<https://perma.cc/X5QM-L892>].

114. Donald J. Trump (@realDonaldTrump), TWITTER (Aug. 7, 2017, 4:47 AM), <https://twitter.com/realDonaldTrump/status/894525428236464128> [<https://perma.cc/9Y8F-K5WR>].

115. Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860, 2877–917 (1998), codified as amended at scattered sections in 17 U.S.C.); Bolson, *supra* note 69, at 14.

116. Digital Millennium Copyright Act § 202(a), 17 U.S.C. § 512 (2012).

117. Bolson, *supra* note 69, at 14.

118. *Id.*

119. *See id.*

Posner in *Backpage.com, LLC v. Dart*, discussing an ad for the services of a dominatrix—one who makes a living by “hitting, humiliating, dressing up, verbally attacking and otherwise fulfilling men’s weird fantasies about being dominated.”¹²⁰ In that case, the Seventh Circuit reversed a lower court’s denial of Backpage.com’s motion for an injunction against the Cook County Sheriff.¹²¹ Backpage.com sought to enjoin Sheriff Dart from using his position to coerce credit card companies from providing services to Backpage.com. Judge Posner writes:

It’s not obvious that such conduct endangers women or children or violates any laws, including laws against prostitution. The district judge remarked “that the majority of the advertisements [in Backpage.com’s adult section] are for sex”—but a majority is not all, and not all advertisements for sex are advertisements for illegal sex.¹²²

Applying the dominatrix ad example to a DCMA “notice and takedown” model, an individual who erroneously reported such an ad to a website operator for its “illegal” character would ultimately fail to achieve removal—either the complaining party would fail to file a suit or a court would dismiss a suit because the objectionable content does not violate the law. However, this model needs to be crafted to avoid a “heckler’s veto” cycle, a First Amendment doctrine under which the government may not suppress speech solely because of an actual or anticipated violent reaction from the audience of the speech.¹²³ Because any party could request the removal of third-party-generated content, a “notice and takedown” scheme could chill legal (if perhaps unconventional) speech, such as the dominatrix ad.¹²⁴ Moreover, nothing prevents a motivated trafficker from reposting similar posts until they are removed—a situation that imposes significant monitoring costs.

Additionally, the DMCA model fails to recognize the special problem of the online child sex-trafficking market. What allowed Backpage.com to foster the online market for child sex was its filtering policy, whereby Backpage.com’s “moderators” would scrub “adult” section ads for words like “Lolita” or “young” to avoid law enforcement

120. *Backpage.com, LLC v. Dart*, 807 F.3d 229, 234 (7th Cir. 2015).

121. *Id.* at 239.

122. *Id.* at 234 (alterations in original).

123. Bolson, *supra* note 69, at 15; see, e.g., David French, *Ninth Circuit Guts Student Free Speech, Upholds ‘Heckler’s Veto’ of the American Flag*, NAT’L REV. (Sept. 17, 2014, 12:58 PM), <http://www.nationalreview.com/corner/388181/ninth-circuit-guts-student-free-speech-upholds-hecklers-veto-american-flag-david> [<https://perma.cc/YL64-D7EB>].

124. Hannah L. Cook, *Flagging the Middle Ground of the Right to Be Forgotten: Combatting Old News with Search Engine Flags*, 20 VAND. J. ENT. & TECH. L. 1, 39 (2017); Bolson, *supra* note 69, at 15.

detection.¹²⁵ Backpage.com may face criminal liability for this policy,¹²⁶ however, individual traffickers may become more savvy in posting ads online by self-filtering and using more sophisticated coded language, further obscuring the substance of advertisements for child sex. In other words, if the illegal content is invisible to potential reporters, the DMCA model becomes less effective.

B. Exclude the Worst Actors

Professor Danielle Keats Citron, a noted privacy scholar, advocates amending Section 230's safe harbor provision to "exclude the very worst actors: sites that encourage cyber stalking or nonconsensual pornography and make money from its removal or that principally host" those activities.¹²⁷ By this method, Citron seeks to preserve immunity for "Good Samaritan" Internet operators while confiscating that First Amendment shield from actors that facilitate crime by providing an online marketplace for activities like nonconsensual pornography or cyberstalking.¹²⁸

Extending such exclusion of Section 230 immunity to sex traffickers and sites that "principally host" such activity presents administrative concerns.¹²⁹ First, exclusion from Section 230 immunity would attach only if the government could show that the operator "principally hosted" sex-trafficking ads.¹³⁰ In the case of Backpage.com, the website certainly hosted ads for illegal commercial sex, but it also hosted ads for mundane commodities like furniture, sports equipment, and housing.¹³¹ Second, excluding the "worst" actors from Section 230 safe harbor requires making extralegal determinations of moral value, a practice which is highly subjective in

125. See 2017 PSI REPORT, *supra* note 13, at 2.

126. See *Backpage.com CEO Transferred to Calif. Jail*, CBS NEWS (Oct. 8, 2016, 4:54 PM), <http://www.cbsnews.com/news/carl-ferrer-backpage-com-ceo-transferred-to-california-jail/> [<https://perma.cc/B4JB-AG58>].

127. Bolson, *supra* note 69, at 15 (quoting DANIELLE KEATS CITRON, *HATE CRIMES IN CYBERSPACE* 171–72 (Harvard Univ. Press 2014)).

128. *Id.*

129. See *Backpage.com, LLC v. Dart*, 807 F.3d 229, 235 (7th Cir. 2015) (noting that determinations regarding moral nature of content are subjective in nature); Bolson, *supra* note 69, at 15 (describing that the government would still need to determine if an operator "principally hosted" sex-trafficking ads).

130. See Bolson, *supra* note 69, at 15. See generally 47 U.S.C. § 230 (2012).

131. Rebecca Hersher, *Backpage Shuts Down Adult Ads in the U.S., Citing Government Pressure*, NPR (Jan. 10, 2017, 11:23 AM), <http://www.npr.org/sections/thetwo-way/2017/01/10/509127110/backpage-shuts-down-adult-ads-citing-government-pressure> [<https://perma.cc/TUT5-CQ65>].

nature.¹³² The sexual exploitation of children is obviously both morally and legally reprehensible. However, creating a list of excluded actors might invite lawmakers to categorize closer calls, like the dominatrix ad mentioned above, as “bad” based on their moral views.¹³³

C. *Maintain the Status Quo of Section 230*

Of course, the least costly option would be to keep Section 230 in its current form. Keeping the statute unchanged limits unnecessary compliance costs for online service providers covered by the CDA and avoids the extralegal moral assumptions inherent in categorizing “good” and “bad” content. However, with the lives of sex-trafficking victims held in the balance, efficiency arguments should give way to a more prescriptive solution. The rise in identified victims of sex trafficking, arguably attributable to the success of Backpage.com, has not been met with a commensurate increase in convictions of those traffickers that advertise online. A more robust, collaborative regulatory regime could help bridge the enforcement gap that afflicts domestic trafficking laws and could protect the First Amendment rights of online publishers.

IV. SOLUTION: THIRTEENTH AMENDMENT INVOCATION AND CROWDSOURCED MONITORING

The Senate’s discovery that Backpage.com executives knowingly facilitated child sex trafficking¹³⁴ will likely destroy the company’s chance at protection under Section 230 of the CDA.¹³⁵ The filtering policy allegedly designed by CEO Carl Ferrer and his associates demonstrates a bad faith motive to profit from their sex-trafficking customers that excludes a defendant from evading civil liability.¹³⁶ But any successful civil lawsuit or criminal prosecution of Backpage.com is an incomplete victory for victims of sex trafficking and their advocates. While the threat of prosecution itself is a deterrent for operators, similar classified ad websites might draw from

132. See *Dart*, 807 F.3d at 235.

133. *Id.*

134. 2017 PSI REPORT, *supra* note 13, at 3.

135. See *id.* at 9.

136. See *id.* at 7–8.

Backpage.com's playbook and occupy a now vacant—and ever profitable—space in the online sex-trafficking market.¹³⁷

Child sex trafficking is modern day slavery, an activity explicitly prohibited by the Thirteenth Amendment.¹³⁸ Until recently, Backpage.com successfully evaded disclosure of its practices and subsequent conviction by relying on a countervailing, paramount constitutional provision: the First Amendment right to free speech.¹³⁹ Free speech rights, even as attached to “low-value” speech, have been a strong legal defense for Backpage.com.¹⁴⁰ To counter this defense against future distributors of online sex-trafficking ads, victims of sex trafficking and prosecutorial agencies should invoke an equally weighty constitutional value—the Thirteenth Amendment's prohibition on slavery.¹⁴¹

Though Congress indeed promulgated federal anti-trafficking laws under Thirteenth Amendment authority, this Note argues that invoking the constitutional argument—albeit duplicative—adds symbolic heft to victims' claims. The following Section briefly summarizes the Supreme Court's Thirteenth Amendment precedent and presents the merits and constraints of invoking a pure constitutional challenge against online hosts of child sex-trafficking activity. Though the significance of a Thirteenth Amendment argument would be largely symbolic, invoking the constitutional slavery prohibition supplies parties with a weighty constitutional sword to counter free speech defenses, does not require the costly and dubiously efficacious legislative process of amending Section 230, and builds public awareness of sex trafficking as a form of modern-day slavery.

Ultimately, this Note suggests that Backpage.com and other successive classified ad websites draw on “crowdsourcing” theory to monitor the spread of illegal commercial sex ads online. By implementing a crowdsourced model of citizen-based enforcement, classified ad websites can mitigate liability associated with hosting

137. See *Wire*, *supra* note 18 (“While the website shut down its adult services section last night, to my great relief, other websites will undoubtedly seek to profit off the exploitation of minor trafficking victims,” [Sen. Dianne Feinstein (D-Cal.) said.]”).

138. U.S. CONST. amend. XIII; OFFICE FOR VICTIMS OF CRIME, COORDINATION, COLLABORATION, CAPACITY: FEDERAL STRATEGIC ACTION PLAN ON SERVICES FOR VICTIMS OF HUMAN TRAFFICKING IN THE UNITED STATES, 2013–2017, at 5 (2014) [hereinafter “OVC PLAN”].

139. Reply Brief of Appellant at 5, *Backpage.com LLC v. Dart*, 807 F.3d 229 (7th Cir. 2015) (No. 15-3047), 2015 WL 7204235, at *5.

140. See *Backpage.com, LLC v. Dart*, 807 F.3d 229, 238 (7th Cir. 2015) (finding that Backpage.com's free speech rights had been violated when a Sheriff sent threatening letters to credit card companies to deter them from providing payment services to Backpage.com).

141. U.S. CONST. amend. XIII.

potentially illegal ads while enjoying the protection of Section 230's Good Samaritan provision. This Note suggests that classified ad websites should work with the existing reporting mechanisms of victims' rights groups to lower monitoring costs, rebuild a sordid reputation, and insulate such websites from government overreach.

A. Thirteenth Amendment Precedent

The Thirteenth Amendment declares that “[n]either slavery nor involuntary servitude, except as punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”¹⁴² In *The Civil Rights Cases*, the Supreme Court controversially held that the Thirteenth Amendment is “self-executing without any ancillary legislation, so far as its terms are applicable to any existing state of circumstances.”¹⁴³ Though the primary purpose of the Amendment was to abolish slavery of involuntary African immigrants in the Civil War era, Congress intended the inclusion of “involuntary servitude” to cover similar forms of compulsory labor.¹⁴⁴ Additionally, in contrast to the Fourteenth Amendment, the Thirteenth Amendment extends to private action.¹⁴⁵

More recently, in *United States v. Kozminski*, the Supreme Court narrowly defined the concept of “involuntary servitude” as applied through a federal statute as:

[A] condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury in legal coercion. . . . We hold only that the jury must be instructed that compulsion of services by the use or threatened use of physical or legal coercion is a necessary incident of a condition of involuntary servitude.¹⁴⁶

Justice O'Connor, writing for the majority, narrowly construed involuntary servitude in *Kozminski* to preclude the conviction of a couple who subjected two intellectually disabled men to physical and verbal abuse for failing to do work on the family's dairy farm—work

142. *Id.*

143. *The Civil Rights Cases*, 109 U.S. 3, 20 (1883).

144. Jennifer Mason McAward, *The Thirteenth Amendment, Human Trafficking, and Hate Crimes*, 39 SEATTLE U. L. REV. 829, 833–34 (2016).

145. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 429 (1968) (holding that Congress has the authority under the Thirteenth Amendment to eliminate racial barriers in private real estate transactions).

146. *United States v. Kozminski*, 487 U.S. 931, 942 (1988).

for which they ultimately received no pay.¹⁴⁷ Despite these sympathetic conditions, the Court held that the government could only succeed on a Thirteenth Amendment claim if the plaintiffs' labor was demanded through the use or threat of physical or legal coercion.¹⁴⁸ In *Kozminski*, because the government relied on the farmers' "psychological coercion" of the intellectually disabled workers in showing involuntary servitude, the Thirteenth Amendment was unavailable.¹⁴⁹

B. Thirteenth Amendment Applied to Sex Trafficking

The Court's limited holding in *Kozminski* presents a challenge to a pure application of the Thirteenth Amendment in the sex-trafficking context. This challenge complicates bringing a claim against collateral actors in the commercial sex trade, such as advertising platforms like Backpage.com. Though the Thirteenth Amendment *does* reach private conduct, *Kozminski's* narrow construction of "involuntary servitude" (requiring objective indicia of physical or legal coercion) would not reach the vast majority of sex-trafficking cases.¹⁵⁰ Most sex-trafficking victims are lured into servitude by the kind of psychological coercion expressly excluded from application of the Thirteenth Amendment in *Kozminski*.¹⁵¹ While some sex traffickers use physical coercion like kidnapping, more often they deploy psychological manipulation to establish a relationship of trust with their vulnerable victims.¹⁵² Take the paradigmatic example of "boyfriending": Traffickers will feign a romantic interest or friendship with a victim, often a young person who lacks emotional support from family members or friends, to exploit her low self-esteem.¹⁵³ Once the victim becomes reliant on the trafficker or recruiter for emotional support, that individual turns her over to the sex trade.¹⁵⁴ Such psychological tactics would fall outside of the Court's current definition of "involuntary servitude."¹⁵⁵

147. *Id.* at 934–36, 953.

148. *Id.* at 952.

149. *Id.* at 944 ("The guarantee of freedom from involuntary servitude has never been interpreted specifically to prohibit compulsion of labor by other means, such as psychological coercion.").

150. See McAward, *supra* note 144, at 833–34.

151. OVC PLAN, *supra* note 138, at 6.

152. See *Tactics*, *supra* note 35.

153. *Id.*

154. *Id.*

155. See *United States v. Kozminski*, 487 U.S. 931, 952 (1988).

On the other hand, Congress passed the TVPA, which included involuntary servitude under the umbrella category of “human trafficking.”¹⁵⁶ Under the TVPA, human trafficking includes nonphysical coercion and was promulgated under the enforcement power of Section 2 of the Thirteenth Amendment.¹⁵⁷ Yet sex-trafficking victim claimants largely refrain from expressly invoking the Amendment in their complaints against Backpage.com.¹⁵⁸ However duplicative, invoking both the Thirteenth Amendment and the TVPA against Backpage.com could provide symbolic constitutional weight to the pleadings of victims exploited on Backpage.com.

C. Crowdsourcing: A Technological Solution to Monitoring Online Sex Trafficking

1. What Is Crowdsourcing?

First coined in 2005, “crowdsourcing” describes the business practice of replacing traditional employees with an “open call” to all Internet users.¹⁵⁹ Now a well-established means of business production, crowdsourcing enables companies to garner new ideas by leveraging the vast and low-cost online community.¹⁶⁰ For example, Frito-Lay crowdsourced new product flavors through its “Do Us A Flavor”¹⁶¹ contest, effectively outsourcing the creative process to the public.¹⁶² Incentives for members of the “crowd” to complete work vary from cash payment to simply altruistic fulfillment.¹⁶³

“Lawsourcing” is the specific application of crowdsourcing to achieve a legal goal.¹⁶⁴ Crowdsourcing, due to its low transaction costs, may be particularly effective in “correcting the legal services delivery mismatch” and providing long-term social benefits to a vastly underserved legal services market. Prominent firms that have

156. 18 U.S.C. § 1590 (2012).

157. See McAward, *supra* note 144, at 833.

158. See, e.g., Complaint at 35–40, Fla. Abolitionist v. Backpage.com, LLC, No. 6:17-CV-00218 (M.D. Fla. 2017) (No. 1).

159. See David Orozco, *The Use of Legal Crowdsourcing (“Lawsourcing”) to Achieve Legal, Regulatory, and Policy Objectives*, 53 AM. BUS. L.J. 145, 145 (2016).

160. *Id.* at 146.

161. *Id.* at 152–53.

162. See *id.* at 151 (describing how crowdsourcing has replaced traditional outsourcing techniques).

163. *Id.* at 152.

164. *Id.* at 154.

adopted the lawsourcing model include LegalZoom¹⁶⁵ and Rocket Lawyer,¹⁶⁶ which connect crowdworker attorneys to potential clients to conduct basic legal services such as contract review, simple estate planning, and entity formation.¹⁶⁷ Professor David Orozco identifies three major categories of lawsourcing: (1) legal question and answer platforms, (2) government participation forums, and (3) strategic nonmarket behavior.¹⁶⁸ This Section evaluates the government participation forum as a model for identifying cases of sex trafficking online while preserving the First Amendment rights of third-party platforms.

2. Crowdsourcing the Sex-Trafficking Problem

In the context of the online sex-trafficking trade, crowdsourcing could provide online advertising platforms, law enforcement agencies, and victim advocates a creative solution to the proliferation of sex-trafficking ads online.¹⁶⁹ As mentioned in Part I, a whack-a-mole approach to monitoring illegal sex ads online is insufficient—when Backpage.com shut down the “adults” section of its website, traffickers simply migrated their posts to other sections of the website, such as “miscellaneous” or “massage.”¹⁷⁰ Internally removing ads with sex-trafficking content exposes future websites to liability for incomplete removal¹⁷¹ and imposes monitoring costs on those individual firms. Instead, this Note suggests that online ad forums implement a crowdsourced model.

In practice, websites could leverage low-cost crowdworkers by inviting the public to report child sex-trafficking ads.¹⁷² In a coordinated scheme, those reports could then automatically flow to a

165. *About Us*, LEGALZOOM, <https://www.legalzoom.com/about-us> [<https://perma.cc/3MZ7-ASZ4>] (last visited Sept. 20, 2017).

166. Orozco, *supra* note 159, at 178; *see* ROCKET LAWYER, <https://www.rocketlawyer.com> [<https://perma.cc/L56D-TWRU>] (last visited Sept. 20, 2017).

167. LEGALZOOM, <https://www.legalzoom.com> [<https://perma.cc/DKQ3-YJRD>] (last visited Sept. 20, 2017); ROCKET LAWYER, *supra* note 166.

168. Orozco, *supra* note 159, at 159.

169. *See id.* at 163–64.

170. *See* Dune Lawrence, *Sex Trafficking Just Got a Dangerous New Enemy*, BLOOMBERG BUSINESSWEEK, (Feb. 8, 2017, 4:00 AM), <https://www.bloomberg.com/news/articles/2017-02-08/now-david-boies-is-coming-after-backpage-com> [<https://perma.cc/6ZEC-N8XD>]; *Nashville Massage*, *supra* note 17.

171. *See* 2015 PSI REPORT, *supra* note 6, at 10 (describing a Washington Supreme Court case in which the court found that Backpage.com would lose Section 230 CDA immunity if it contributed to the offending content through, *inter alia*, “its posting rules, screening process, and content requirements”).

172. *See* Orozco, *supra* note 159, at 163.

victims' rights organization, such as the Polaris Project.¹⁷³ The Polaris Project operates a national hotline¹⁷⁴ through which victims and advocates can report cases of human trafficking via phone or text message.¹⁷⁵ The Polaris Project then refers those cases to law enforcement agencies, which in turn respond to the reports by facilitating victims' escape and successfully prosecuting traffickers.¹⁷⁶ By coordinating with the Polaris Project, Backpage.com could utilize that organization's existing hotline and client services infrastructure to curb the proliferation of sex-trafficking content on its website.¹⁷⁷ In addition, by outsourcing its reporting mechanism to a victims' rights organization, Backpage.com could avoid scrutiny for inconsistent reporting.¹⁷⁸

As of this writing, Backpage.com provides a "Report Ad" button on each of its ads, with a message to email an internal address if the ad "involves a threat to a child or an image of child exploitation."¹⁷⁹ While this reporting function is a good start, a more proactive invitation would encourage potential crowdworkers to monitor the site.¹⁸⁰ Moreover, the 2017 PSI report makes clear that Backpage.com's existing reporting mechanisms lacked transparency and consistency in pursuing flagged ads.¹⁸¹ A more participatory approach that involves law enforcement on the front end could provide transparency for the public, protect online classified websites from liability while building good will, and enable law enforcement to more robustly enforce anti-trafficking laws.

Furthermore, Backpage.com could make simple changes to its website to encourage and incentivize the online community to report potential illegal commercial sex advertisements. For example, the website could feature a button on its main landing page inviting users

173. *About*, POLARIS PROJECT, <https://polarisproject.org/about> [https://perma.cc/2Q4Y-R7BW] (last visited Sept. 20, 2017).

174. POLARIS PROJECT, <https://polarisproject.org/> [https://perma.cc/J92A-DBC5] (last visited Sept. 20, 2017).

175. *2016 Hotline Statistics*, POLARIS PROJECT (Jan. 2017), <https://polarisproject.org/resources/2016-hotline-statistics> [https://perma.cc/G4H4-ZKSR].

176. *Hotline FAQs*, POLARIS PROJECT, <https://humantraffickinghotline.org/faqs/hotline-faqs> [https://perma.cc/C6GZ-89HS] (last visited Sept. 20, 2017).

177. *See Orozco, supra* note 159, at 163.

178. *See* 2017 PSI REPORT, *supra* note 13, at 33–34 (referencing Backpage.com's inconsistent advertisement editing practices).

179. *E.g., Songwriters/Singers*, BACKPAGE.COM, <http://nashville.backpage.com/MusicianWanted/songwriters-singers/28021823> [https://perma.cc/M45J-QVHE] (last visited Sept. 21, 2017) (randomly selected Backpage.com advertisement featuring the "Report Ad" feature).

180. *See Orozco, supra* note 159, at 163–64 (discussing the general advantages of crowdsourcing).

181. 2017 PSI REPORT, *supra* note 13, at 18.

to report instances of illegal sex trafficking.¹⁸² Crowdworkers could receive a nominal gift for their services, such as a t-shirt with a socially conscious message or a small-dollar donation to the partner victims' rights nonprofit in the proposed cooperative scheme. These incentive programs would provide a low-cost way for Backpage.com, or future classified ad websites, to build a positive brand and avoid liability for facilitating the commercial sex industry. To educate crowdworkers about how to identify commercial sex-trafficking ads and anti-trafficking laws, Backpage.com could supply a Q&A page for its users, much like Craigslist.com did to counter discriminatory housing ads.¹⁸³ To discourage non-meritorious reporting, Backpage.com could require its crowdworkers to complete an online training module for identifying illegal sex advertisements before engaging in any reporting. Borrowing from the reputational rating systems of ridesharing applications like Uber¹⁸⁴ or restaurant reviews in Yelp,¹⁸⁵ crowdworkers could earn more premium status as Backpage.com users if they report ads that are ultimately removed.

A crowdsourced model for reporting illegal content would provide Backpage.com and successive classified ad websites a low-cost solution that would preserve its First Amendment rights. By deploying the crowd to monitor illegal content, websites could keep their "adult" section active without running afoul of the CDA's safe harbor provision. Because Section 230 protects websites from liability when they act as mere conduits of information, Backpage.com could avoid liability by returning to a more laissez-faire approach to its internal monitoring systems.¹⁸⁶ Moreover, a more transparent, unregulated flow of published ads will keep trafficking ads in the daylight and thus visible to crowdworkers and law enforcement entities.¹⁸⁷

Conversely, the proposed crowdsourced model could present significant challenges for websites like Backpage.com, including privacy concerns, a collective action problem, and spam. First,

182. Compare CRAIGSLIST.ORG, <https://www.craigslist.org> (last visited Sept. 20, 2017) (including on listing pages a link to report any unauthorized or illegal use of Craigslist.com), with *Songwriters/Singers*, *supra* note 179 (including on listing pages a link to report unauthorized use of Backpage.com but requiring user to email a separate abuse email account to report child exploitation).

183. See *Fair Housing Is Everyone's Right!*, CRAIGSLIST, <https://www.craigslist.org/about/FHA> [<https://perma.cc/FGQ3-569X>] (last visited Oct. 16, 2017).

184. See *Star Ratings: What to Know as a Driver-Partner*, UBER, <https://www.uber.com/drive/resources/how-ratings-work/> (last visited Sept. 30, 2017).

185. See *Guidelines*, YELP, <https://www.yelp.com/guidelines> (last visited Sept. 30, 2017).

186. See *Doe v. Backpage.com, LLC*, 817 F.3d 12, 18 (1st Cir. 2016).

187. See Farley et al., *supra* note 42, at 1084.

classified ad websites may be concerned that such a cooperative, open model with a nonprofit could permit user information to be shared with law enforcement.¹⁸⁸ This risk would be most salient when the content of the ad is legal but indicative of non-normative moral behavior, such as Judge Posner's dominatrix example discussed in Part III. To manage this privacy risk, Backpage.com could contract with its nonprofit partner to ensure protection of users' information from government intrusion.¹⁸⁹ Next, the crowdsourced participatory model presents a collective action problem, which arises when the costs of individual action outweigh the public benefit of that action.¹⁹⁰ The ubiquity of the Internet and the ease with which crowdsourced reporters could flag illegal content lessen the individual costs that give rise to this collective action problem.¹⁹¹ However, the offensive nature of the advertisements may discourage some users from screening ads, perhaps even for fear that visiting the website will implicate them as potential customers instead of monitors. Lastly, Backpage.com may be subject to abusive over-reporting by spammers and robots.¹⁹² However, machine learning technologies like Google's reCAPTCHA can successfully weed out such bad faith reporting by requiring human effort before a user can pass through a website.¹⁹³ This free adaptive technology service, which Backpage.com already uses, would permit classified ad websites to provide illegal content reporting

188. See Compl. ¶ 6.22, R.O. *ex rel.* S.H. v. Medalist Holdings, Inc., No. 17-2-04897-1 (Wash. Super. Ct. Jan. 25, 2017), 2017 WL 373037; see also *Privacy Policy*, BACKPAGE.COM, <http://nashville.backpage.com/classifieds/PrivacyPolicy> [<https://perma.cc/3C5J-Q5QW>] (last visited Sept. 20, 2017) ("We may also disclose your . . . information if . . . requested by other government, law enforcement, or investigative authority.").

189. See *Data Sharing Agreement*, CONTRACTSTANDARDS.COM, <https://www.contractstandards.com/contracts/data-sharing-agreement> [<https://perma.cc/CV6H-QVVU>] (last visited Sept. 20, 2017) (sample data-sharing contract). See generally Stop Online Piracy Act, H.R. 3261, § 104(2), 112th Cong. (2011) ("No cause of action shall lie . . . against . . . [an] advertiser . . . for taking any action . . . in the reasonable belief that . . . the action is consistent with the entity's terms of service or other contractual rights."); Jenna Wortham, *A Political Coming of Age for the Tech Industry*, N.Y. TIMES (Jan. 17, 2012), http://www.nytimes.com/2012/01/18/technology/web-wide-protest-over-two-antipiracy-bills.html?_r=0 [<https://perma.cc/Z2TL-QR9W>] (describing the potential consequences for Internet privacy of the Stop Online Piracy Act).

190. See Orozco, *supra* note 159, at 185.

191. *Id.*; see also Cook, *supra* note 124, at 28–29 (proposing a flagging system to highlight misleading information on the Internet because such information "can be damaging to a person's ability to get a job, loan, or apartment").

192. See *User Safety*, BACKPAGE.COM, <http://nashville.backpage.com/classifieds/UserSafety> [<https://perma.cc/FFF8-GP3N>] (last visited Sept. 20, 2017) (providing resources to report users for human trafficking and child exploitation).

193. GOOGLE RECAPTCHA, <https://www.google.com/recaptcha/intro/> [<https://perma.cc/G27L-C5M3>] (last visited Sept. 21, 2017).

mechanisms while filtering abusive, spam-like reports from automated software.¹⁹⁴

V. CONCLUSION

Prosecuting classified ad websites that are complicit in the illegal sex trade is only one step in the fight against modern-day slavery. To be sure, the strategy must also include preventative screening of potential victims by school and social service authorities, education about the tactics and warning signs of sex trafficking, and victim immunity. Ideally, the recent exposure of Backpage.com will serve as a cautionary tale to other classified websites. But any subsequent claims against the perpetrators of the illegal sex trade would be bolstered by invoking the Thirteenth Amendment's prohibition on slavery. Websites should adopt a proactive monitoring strategy through a crowdsourced model. Such a public call to action may signal to sex traffickers that they will not be safe from law enforcement detection on traditional online classified websites. This carries a risk that traffickers will deploy more covert means to advertise,¹⁹⁵ which could hinder law enforcement's ability to identify illegal sex traffickers and rescue victims. Conversely, customers may be deterred from seeking out sex online if access to the market requires the use of anonymous networks or encryption technologies.¹⁹⁶ Still, a crowdsourced model of monitoring insulates these companies from liability under the TVPA and Thirteenth Amendment. Crowdsourcing will allow companies to enjoy Section 230's safe harbor provision by acting as mere channels for information while outsourcing the role of Good Samaritan to the crowd.

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194. *Privacy Policy*, *supra* note 188.

195. See Joseph Cox, *One Step Ahead: Pedophiles on the Deep Web*, MOTHERBOARD (Jan. 28, 2015, 2:10 PM), https://motherboard.vice.com/en_us/article/gymzxx/one-step-ahead-pedophiles-on-the-deep-web [<https://perma.cc/7V9A-RASD>].

196. See, e.g., *id.*; Kathryn Zickuhr, *1 in 7 Americans Is Offline. Why? It's Complicated.*, CNBC, (Oct. 21, 2013, 12:07 PM), <https://www.cnbc.com/2013/10/21/1-in-7-americans-is-offline-why-its-complicated.html> [<https://perma.cc/9GMF-TNV5>] (showing that the complicated nature of the Internet has deterred some adults from going online).

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