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## Trafficking Technology: A Look at Different Approaches to Ending Technology-Facilitated Human Trafficking

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# Trafficking Technology: A Look at Different Approaches to Ending Technology-Facilitated Human Trafficking

## *Abstract*

*In 2018, many believe that slavery is an antiquated concept. But as with anything else, if it has not become extinct, it has evolved with time. Human trafficking is no different. Each year, millions of men, women and children are trafficked in the United States, and internationally, and forced to work against their will. Through the rise of technology and an increasingly globalized world, traffickers have learned to use technology as a tool to help facilitate the trafficking of persons and to sell those victims to others they never could have reached before. But what are we doing about it?*

*Domestic and international laws provide the framework to fight human trafficking and end this type of slavery overall. In the United States, for example, the Trafficking Victim Protection Act sets a standard for the law federally and serves as a guideline for such legislation on the state level. But due to the variance between state and federal laws, and the rapid pace at which technology has transformed, the laws have failed to keep up with the needs of law enforcement to effectively detain and prosecute traffickers who utilize technology in their illegal work. This Comment delves into several current domestic and international laws aimed at preventing human trafficking, and discusses the measures by which we, as a global society, can take toward ending modern-day slavery.*

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I. INTRODUCTION

[A]round the world, there’s no denying the awful reality. . . . When a little boy is kidnapped, turned into a child soldier, forced to kill or be killed—that’s slavery. When a little girl is sold by her impoverished family . . . runs away from home, or is lured by the false promises of a better life, and then imprisoned in a brothel and tortured if she resists—that’s slavery. It is barbaric, and it is evil, and it has no place in a civilized world.<sup>1</sup>

Whether it involves sex or other types of labor, or affects men, women,

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1. President Barack Obama, Remarks by the President to the Clinton Global Initiative (Sept. 25, 2012) (transcript available at <https://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>).

or children, it is all human trafficking—modern day slavery.<sup>2</sup> Around the world, vulnerable persons are taken advantage of and deprived of basic social and economic necessities for the profit of others.<sup>3</sup> Affecting 20.9 million victims worldwide, countries have been working together to form international bonds and put their own domestic efforts toward ending this form of exploitation.<sup>4</sup> According to the United States Department of State, an estimated 600,000 to 800,000 people are trafficked into the United States each year.<sup>5</sup> But what are we doing about it?<sup>6</sup>

The United States has taken steps on international, federal, and state levels to eradicate human trafficking.<sup>7</sup> Countries around the world have partnered in the fight to that same end.<sup>8</sup> But as our global society has become more technologically advanced, traffickers have been able to facilitate much of their criminal activity through technology, which provides both anonymity and access to communication with the entire world.<sup>9</sup> The United States is no exception; it struggles in the fight to prevent trafficking, prosecute traffickers, and provide restorative services to victims of these crimes.<sup>10</sup>

This Comment considers factors for addressing this problem, primarily from the United States' perspective, and proposes a cohesive approach, involving law, policy, and education by all bodies involved, to combat technologically-facilitated human trafficking.<sup>11</sup> Parts II and III delve into the United States' background and approach to combatting this type of crime, current roadblocks to creating and enforcing comprehensive laws to address this problem, and many of the technology-based tools that help facilitate forms of trafficking.<sup>12</sup> Part IV discusses the current state of the law and current issues on

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2. Erin I. Kunze, *Sex Trafficking via the Internet: How International Agreements Address the Problem and Fail to Go Far Enough*, 10 J. HIGH TECH. L. 241, 242–43 (2010).

3. Anna Williams Shavers, *Human Trafficking, the Rule of Law, and Corporate Social Responsibility*, 9 S.C. J. INT'L L. & BUS. 39, 40 (2012).

4. Ben Cook, *Twenty-First Century Slavery*, INT'L BAR ASS'N (Nov. 29, 2013), <http://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=4eb71983-2b09-424e-a481-272c070cac81>.

5. *Id.*

6. *See infra* Part IV.

7. *See infra* Part IV.

8. *See infra* Part IV.

9. *See* Kathleen A. McKee, "It's 10:00 P.M. Do You Know Where Your Children Are?," 23 REGENT U. L. REV. 311, 329–31 (2011).

10. Jennifer A.L. Sheldon-Sherman, *The Missing "P": Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act*, 117 PENN ST. L. REV. 443, 445 (2012).

11. *See infra* Parts II–VI.

12. *See infra* Parts II–III.

an international, federal, and state level.<sup>13</sup> Part V offers solutions to legislative, technological, and societal problems within the current scheme to stop trafficking, as well as suggestions on how to successfully integrate those ideas.<sup>14</sup> Finally, Part VI emphasizes the importance of all actors' contributions and presents a call to action to end slavery once and for all.<sup>15</sup>

## II. A CONSTITUTIONAL FRAMEWORK FOR TRAFFICKING LAWS

### *A. The First Amendment and the Communications Decency Act*

The First Amendment holds that “Congress shall make no law . . . abridging the freedom of speech.”<sup>16</sup> But these protections are not absolute; the Supreme Court has long recognized certain categories of expression that are not afforded constitutional protection.<sup>17</sup> Related to Internet protections, for example, child pornography in any medium is not protected by the First Amendment’s Freedom of Speech Clause.<sup>18</sup> The Court’s rationale is simply that the country’s interest in protecting its children substantially outweighs the benefits to society in allowing people to create and view child pornography.<sup>19</sup> Child pornography is one of a few select categories not protected by the Free Speech Clause, and due to the Internet’s rise, Congress has grappled with developing statutes that balance regulating unprotected speech while avoiding overbroad restrictions on speech the amendment was meant to protect.<sup>20</sup>

13. *See infra* Part IV.

14. *See infra* Part V.

15. *See infra* Part VI.

16. U.S. CONST. amend. I. The First Amendment, as applied to the several states through the Fourteenth Amendment, assures that no state law may abridge the freedom of speech. *See Virginia v. Black*, 538 U.S. 343, 358 (2003).

17. *Black*, 538 U.S. at 358–59. Generally, these are categories of speech “which are ‘of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.’” *Id.* (quoting *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382–83 (1992)). For example, statements that are merely threats of violence or personally abusive words likely to provoke a violent reaction are not protected by the First Amendment’s free speech guarantee. *Id.* at 359.

18. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 240 (2002).

19. *Id.* at 240, 244–46. Here, the category not protected by free speech jurisprudence is obscene speech; unlike pornography involving consenting adults, or even depicting children played by consenting adults in some situations, pornography that involves exploiting minors is considered obscene per se, and therefore is afforded no First Amendment protection. *Id.* at 239–40.

20. *See Kunze, supra* note 2, at 254–56. For an in-depth look at such failed attempts to regulate Internet usage, see *Reno v. ACLU*, 521 U.S. 844, 849 (1997) (holding that preventing Internet users

Although it may have drawbacks in preventing the facilitation of human trafficking, the United States' adherence to free speech principles over the Internet is promulgated by its dedication to preserving its citizens' freedom of expression, especially in the exchange of ideas.<sup>21</sup> Many argue that because the Internet is an open forum for people to share, learn, and create new ideas, it presents the opportunity for the ultimate showing of democracy and, therefore, should not be restricted.<sup>22</sup> The question then becomes whether this expression should be curbed for society's benefit, or—as in this case—whether the government should step in to disrupt the facilitation of human trafficking through technology.<sup>23</sup> To be sure, there are laws, such as the Trafficking Victims Protection Act of 2000 (TVPA), that prohibit websites and individuals from engaging in illegal online conduct.<sup>24</sup> But the dangers of trafficking are heightened in the nuanced area of third-party websites and interactive person-to-person arenas, which provide a forum for buyers and sellers to communicate directly to complete a range of transactions, from classified job postings to sales of antiques, appliances, and people trafficked for sex and labor.<sup>25</sup>

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from sending “indecent” or “patently offensive materials,” even to children, would have an overbroad effect on free speech online, and therefore, those terms within the Communications Decency Act are unconstitutional). The fact that speech is not protected by the First Amendment does not make it illegal; it merely allows Congress or state legislatures to create narrowly defined laws which proscribe such speech. *See id.*

21. *See* Kunze, *supra* note 2, at 256–57.

22. *Id.* at 257–58.

23. *Id.* at 258. Charles Nesson, founder of the Berkman Center for Internet and Society, asserts that “in the grand battle of good and evil . . . there is divinity in the open net” to discourage regulating Internet conduct. *Id.*

24. *Id.* at 258–62. As discussed below, the TVPA is used federally to prosecute defendants for trafficking in persons, which extends to online activity. *See infra* notes 115–16 and accompanying text; *see also* *Elonis v. United States*, 135 S. Ct. 2001 (2015) (holding that 18 U.S.C. § 875(c), which prohibits threats made in interstate commerce, applies to communications made over the Internet). Websites have also been shut down for facilitating prostitution where it is clear that they intentionally provided a forum for that purpose. Press Release, U.S. Dep't of Justice, California Operators of MyRedbook.com Website Arrested for Facilitating Prostitution and Money Laundering (Jun. 25, 2014), <https://www.justice.gov/opa/pr/california-operators-myredbookcom-website-arrested-facilitating-prostitution-and-money>. The website MyRedbook.com was shut down, and its operators were criminally prosecuted by showing that the site advertised prostitutes, provided acronyms for numerous illegal sexual acts, and advertised “VIP Memberships,” which gave users access to private forums and heightened search resources to look at reviews of prostitution services. *Id.*

25. Monica J. DeLateur, *From Craigslist to Backpage.com: Conspiracy as a Strategy to Prosecute Third-Party Websites for Sex Trafficking*, 56 SANTA CLARA L. REV. 531, 532–50 (2016). Though it is used to sell many things, “[Backpage] is a godsend to pimps, allowing customers to order a girl online as if she were a pizza.” Nicholas Kristof, *How Pimps Use the Web to Sell Girls*, N.Y. TIMES (Jan. 25, 2012), <http://www.nytimes.com/2012/01/26/opinion/how-pimps-use-the-web-to-sell-girls.html>.

The Communications Decency Act (CDA) is one hurdle that makes it difficult to hold such forum providers criminally or civilly liable.<sup>26</sup> Though it was originally aimed at shielding minors from “indecent” and “patently offensive” material online, those sections were struck down as overbroad.<sup>27</sup> This left a safeguard for the “publisher” of others’ content; the statute provides that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”<sup>28</sup> The above language applies as long as the “provider” is “not also an ‘information content provider,’ which is defined as someone who is ‘responsible, in whole or in part, for the creation or development of’ the offending content.”<sup>29</sup> For example, the D.C. Circuit affirmed the dismissal of a case against Facebook, Inc.<sup>30</sup> for negligence and assault in delaying or refusing to remove inflammatory pages set up by independent users; the court reasoned that the CDA provides immunity for Facebook as a provider of the forum and not the publisher of such content.<sup>31</sup> This provides a challenge for prosecutors in cases where third-party users of such websites engage in human trafficking or the sale of illegal services and are then absolved of liability.<sup>32</sup>

The main exception to this safe haven for third-party websites is the CDA’s statement that “[n]othing in this section shall be construed to impair the enforcement of . . . Title 18, or any other Federal criminal statute.”<sup>33</sup> This has allowed for successful prosecutions of Silk Road (an online black market used to distribute narcotics, host murder-for-hire postings, and aid in computer hacking) and MyRedbook.com, which hosted listings for prostitution

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26. DeLateur, *supra* note 25, at 547–49.

27. See Kunze, *supra* note 2, at 254–55.

28. 47 U.S.C. § 230(c)(1) (2012).

29. *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1162 (9th Cir. 2008) (quoting 47 U.S.C. § 230(f)(3)).

30. Facebook, Inc. is a social networking website that “allows users to share content with others, including articles, photographs, news about family members and friends, and opinions about world events. Users can also view content shared by other Facebook users on one or more of the hundreds of millions of Facebook Pages.” *Klayman v. Zuckerberg*, 910 F. Supp. 2d 314, 315–16 (D.D.C. 2012), *aff’d*, 753 F.3d 1354 (D.C. Cir. 2014).

31. *Klayman v. Zuckerberg*, 753 F.3d 1354 (D.C. Cir. 2014); *cf. Fair Housing Council of San Fernando Valley*, 521 F.3d at 1175 (holding that, under the CDA, Roommates.com was not completely immune from liability for its users allegedly violating discriminatory housing laws because it induced their selection of sexual preference, sexual orientation, and children’s presence while creating their profiles).

32. DeLateur, *supra* note 25, at 549–54.

33. 47 U.S.C. § 230(e)(1); *see also* DeLateur, *supra* note 25, at 554–58.

and incentivized users to engage in such activity.<sup>34</sup> The main distinction between publisher and provider turns on whether the website provider induced the illegal activity or merely provided a forum in which its users did, independent of the provider's intent.<sup>35</sup> This brings clarity to how to deal with third-party service providers who work within the CDA safe haven's boundaries, discussed further in Part V.<sup>36</sup>

*B. The Fourth Amendment and Privacy*

The Fourth Amendment is important here because it illuminates the ways in which legislatures and law enforcement are confined in their goals to detect and prevent trafficking activity through technology.<sup>37</sup> It guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”<sup>38</sup> The touchstone of this clause is its focus on reasonableness; a reasonable search is typically satisfied when law enforcement obtains a judicial warrant approved by a neutral and detached magistrate.<sup>39</sup> The magistrate must then approve of the warrant based on a showing of probable cause.<sup>40</sup> A search and seizure of information occurs where an officer physically, or by some other means, intrudes upon a person's “reasonable expectation of privacy” to obtain information.<sup>41</sup> The Supreme Court uses a high level of scrutiny to determine whether a search occurred where law enforcement officers use technology to enhance their senses, especially when the public does not regularly use that technology.<sup>42</sup> But the Court

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34. DeLateur, *supra* note 25, at 555–57; *see also* United States v. Ulbricht, 31 F. Supp. 3d 540 (S.D.N.Y. 2014); Press Release, Dep't of Justice, California Operator of MyRedbook.com Website Pleads Guilty to Facilitating Prostitution (Dec. 11, 2014), <http://www.justice.gov/opa/pr/california-operator-myredbookcom-website-pleads-guilty-facilitating-prostitution>.

35. *See supra* note 28–29 and accompanying text.

36. *See infra* Part V.B.

37. *See infra* notes 38–43 and accompanying text.

38. U.S. CONST. amend. IV. Like the First Amendment, the Fourth was incorporated to the states through the Fourteenth Amendment. *See* Mapp v. Ohio, 367 U.S. 643, 655 (1961).

39. Riley v. California, 134 S. Ct. 2473, 2482 (2014).

40. Illinois v. Gates, 462 U.S. 213, 239–40 (1983). Probable cause roughly translates to a fair probability that contraband or evidence of a crime will be found in the place where an officer seeks to search. *Id.* at 238–39.

41. Adam R. Pearlman & Erick S. Lee, *National Security, Narcissism, Voyeurism, and Kyllo: How Intelligence Programs and Social Norms Are Affecting the Fourth Amendment*, 2 TEX. A&M L. REV. 719, 729–31 (2015).

42. *Id.* at 735. “Where . . . the [g]overnment uses a device that is not in general public use, to



has consistently held that where people voluntarily disclose information to third parties, such as websites visited, groceries bought, and phone numbers dialed, they relinquish any reasonable expectation of privacy in that information.<sup>43</sup>

Technology's rapid evolution has changed the ways in which people interact with, gain, and retain information. Therefore, it has changed the ways that law enforcement can surveil information to stop crime.<sup>44</sup> The government has created various laws and programs that enable it—through several bodies of law enforcement—to monitor technology and how the public uses it.<sup>45</sup> But they are not without limits, falling back on the balance between society's benefits from law and order and citizens' Fourth Amendment privacy rights.<sup>46</sup>

In 1968, Congress enacted the Omnibus Crime Control and Safe Streets Act (Omnibus Act), which contained “the procedures law enforcement operatives must follow to obtain the necessary judicial approval to conduct electronic surveillance” of wire or oral communications.<sup>47</sup> Two years later, it added procedural requirements for the lawful interception of such communications.<sup>48</sup>

Then, in response to technology's rapid growth, Congress passed the Electronic Communications Privacy Act (ECPA), which broadened the Omnibus Act's reach to include electronic communications.<sup>49</sup> The ECPA required government agents that sought to intercept electronic communications

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explore the details of the home that would previously have been unknowable without physical intrusion, . . . the surveillance is a ‘search’ and presumptively unreasonable without a warrant.” *Id.* at 736–37 (quoting *Kyllo v. United States*, 533 U.S. 27, 40 (2001)). Conversely, persuasive authority from the Supreme Court focused on the precedent that a search does not occur when law enforcement views information “in plain public view or that a person ‘knowingly exposes to the public.’” *Id.* at 737 (quoting *Kyllo*, 533 U.S. at 41 (Stevens, J., dissenting)). Related to trafficking, this allows law enforcement to monitor websites open to the public and begin investigations there. *See id.* at 735–37.

43. *See Mapp*, 367 U.S. at 743. It is important to recognize that while the Fourth Amendment does not protect the phone numbers called or websites visited, individuals still maintain a reasonable expectation of privacy in the content of their speech, i.e., the qualitative data related to an interaction. *See* Deborah Buckner, Note, *Internet Search and Seizure in United States v. Forrester: New Problems in the New Age of Pen Registers*, 22 *BYU J. PUB. L.* 499, 502–03 (2008).

44. *See* Constance L. Martin, Note, *Exalted Technology: Should CALEA Be Expanded to Authorize Internet Wiretapping?*, 32 *RUTGERS COMPUTER & TECH. L.J.* 140, 142 (2005).

45. *See infra* notes 46–53 and accompanying text.

46. Martin, *supra* note 44, at 142.

47. *Id.*; *see also* 18 U.S.C. § 2516 (2012).

48. Martin, *supra* note 44, at 143.

49. *Id.*; Electronic Communications Privacy Act of 1986, Pub. L. No. 99-508, 100 Stat. 1848 (codified as amended in scattered sections of 18 U.S.C.).

via wiretap to show probable cause and specify the length of time sought to intercept the content.<sup>50</sup>

In 1994, Congress passed the Communications Assistance for Law Enforcement Act (CALEA), which applied these same standards but also required that telecommunications operators aid law enforcement in its authorized surveillance where necessary.<sup>51</sup> For example, this required some carriers to change their facility and product designs to enable such surveillance, and established standards with which manufacturers and common carriers had to comply.<sup>52</sup> Even more controversial was the FBI's creation of the "Carnivore" software, which could scan millions of pages of data per second to look for specific information.<sup>53</sup> But the FBI has defended its technology, arguing that it is only used within the bounds of the law as dictated by the specific court order that allows the surveillance.<sup>54</sup>

The most controversial act, however, is the USA Patriot Act, which softened the ECPA's probable cause requirement to a showing that "the information likely to be obtained" under the Act "is relevant to an ongoing criminal investigation."<sup>55</sup> Privacy and Fourth Amendment jurisprudence are relevant to lay a foundation for the boundaries, or lack thereof, that law enforcement and legislatures may face while trying to find ways to successfully combat technology-facilitated trafficking.<sup>56</sup> In a recent opinion, the Supreme Court decided that, even though officers may search a person's property found on her person incident to arrest, the scope of the search does not include the person's cellphone.<sup>57</sup> Therefore, in requiring a warrant to obtain such infor-

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50. Martin, *supra* note 44, at 143–44. Again, the ECPA sought to strike the balance mandated by the Fourth Amendment, "'between the privacy of citizens and the needs of law enforcement' that had become tipped too far in favor of the government." *Id.* at 144 (quoting Johnny Gilman, *Carnivore: The Uneasy Relationship between the Fourth Amendment and Electronic Surveillance of Internet Communications*, 9 COMM.LAW CONSPECTUS 111, 118 (2001)).

51. *Id.* at 144–45.

52. *Id.* at 145.

53. *Id.* at 147–49. "[C]ritics have complained that the way Carnivore operated was like an electronic version of listening to everyone's phone calls just to see if it is the one needed call that should be monitored." *Id.* at 148.

54. *Id.* at 148–49.

55. See Buckner, *supra* note 43, at 502; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot) Act of 2001, Pub. L. No. 107-56, § 214(b)(1), 115 Stat. 272, 288–89 (codified as amended at 18 U.S.C. § 3123(a)(1)).

56. See *infra* notes 57–58 and accompanying text.

57. *Riley v. California*, 134 S. Ct. 2473, 2493 (2014).

mation, law enforcement officers may be prohibited for some time from reaching evidence of trafficking in applications, text messages, or photos on a person's cellphone.<sup>58</sup>

These standards also come into play when law enforcement uses websites or social media networks to gather information that is either accessible to the public or that is voluntarily given to the public forum by private individuals.<sup>59</sup> In terms of third-party host sites, all information is arguably voluntarily disclosed, in which case, the actual speaker has relinquished all reasonable expectation of privacy; therefore, the government may access it without a judicial warrant.<sup>60</sup> This Comment provides more examples of the ways in which technology plays a role in trafficking to help illustrate these concepts in the section below.<sup>61</sup>

### III. ADVERTISEMENTS, WEB SITES, AND SOCIAL MEDIA'S ROLE

Traffickers, victims, and buyers develop and use the Internet and computer technology in new ways every day, demanding that law enforcement officials, legislatures, and prosecutors come up with new, creative responses to combat such egregious innovations.<sup>62</sup> In looking at trafficking through the Internet, various themes emerge: online classifieds are used to advertise victims, investigations begin from what appears to be pictures of underage girls in online ads, social media sites and message boards recruit victims, and many victims are identified as runaways.<sup>63</sup> Furthermore, the online landscape, where paper trails are not created, provides a sense of anonymity for both sellers and purchasers of trafficked persons.<sup>64</sup>

Websites that provide online classified advertisements have become an

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58. *See id.* This hypothetical takes into account the exigency exception laid out by the Court: in situations where it is necessary to prevent imminent destruction of evidence, to prevent flight, or to assist injured persons or those threatened with imminent injury, a warrantless search of a cell phone's contents may be permissible. *Id.* at 2494.

59. *See supra* text accompanying notes 42–43.

60. *See* Junichi P. Semitsu, *From Facebook to Mug Shot: How the Dearth of Social Networking Privacy Rights Revolutionized Online Government Surveillance*, 31 PACE L. REV. 291, 329 (2011).

61. *See infra* Part III.

62. Melissa Farley et al., *Online Prostitution and Trafficking*, 77 ALB. L. REV. 1039, 1043–44 (2014).

63. MARK LATONERO, HUMAN TRAFFICKING ONLINE: THE ROLE OF SOCIAL NETWORKING SITES AND ONLINE CLASSIFIEDS (2011), [https://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking\\_FINAL.pdf](https://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking_FINAL.pdf).

64. Farley et al., *supra* note 62, at 1044–45.

easy alternative to previous methods of advertising commercial sex.<sup>65</sup> “Third-party” websites, which allow users to post directly to the third-party, or “host” forum, take advantage of the CDA’s protection of publishers online, even where the advertisers promote illegal behavior.<sup>66</sup> Both Craigslist.com and Backpage.com have been known to provide forums for such use.<sup>67</sup> From May 2012 to May 2013, Backpage.com generated roughly \$37 million from advertisement sales in the “body rubs” and “escort sections,” within its Adult Services category.<sup>68</sup> Sources maintain that Backpage is responsible for roughly

65. DeLateur, *supra* note 25, at 539.

66. *Id.* at 548–49.

67. *See id.* at 539–542. As of May 13, 2009, Craigslist.org decided that it would no longer accept postings to its “erotic services” category, and instead created a category for “adult services,” which would only allow for paid posts reviewed by the website in order to ensure that they complied with Craigslist’s terms of use and guidelines for posting. Jim Buckmaster, *Striking a New Balance*, CRAIGSLIST BLOG (May 13, 2009), <http://blog.craigslist.org/2009/05/13/striking-a-new-balance/>. In 2010, the website closed its Adult Services section in response to more pressure from law enforcement. Ryan Singel, “*Adult Services*” *Shutdown Is Permanent, Craigslist Tells Congress*, WIRED (Sept. 15, 2010), <https://www.wired.com/2010/09/adult-services-shutdown-is-permanent-craigslist-tells-congress/>.

However, there was justifiable skepticism that the trafficking and commercial sex activity that took place on Craigslist would easily migrate to other websites, and thus create an even larger problem for law enforcement to contain. *Id.* For an immediate illustration of the ways that traffickers circumvent the measures taken to eliminate the illicit activity, see Craigslist itself, which boasts categories such as “personals,” with the subcategories: “women seeking men,” “misc. romance,” and “casual encounters.” *See* CRAIGSLIST, <http://craigslist.org> (last visited Jan. 27, 2018). Within these categories, pimps and prostitutes post ads with buzz words like “roses” to mean the dollars they charge for sex acts, or sometimes advertise escort or massage services in those same categories to insinuate that type of prostitution service. Daniel Fisher, *Backpage Takes Heat, But Prostitution Ads Are Everywhere*, FORBES (Jan. 26, 2012), <http://www.forbes.com/sites/danielfisher/2012/01/26/backpages-takes-heat-for-prostitution-ads-that-are-everywhere/#30dbe0027d6e>.

As of January 9, 2017, Backpage.com has shut down its “Adult Services” section and issued statements regarding its position on freedom of speech and its cooperation with law enforcement. *See* BACKPAGE, <http://backpage.com> (last visited Jan. 27, 2018). “As the direct result of unconstitutional government censorship, Backpage.com has removed its Adult content section from the highly popular classified website, effective immediately . . . . Backpage.com will continue to pursue its efforts in court to vindicate its First Amendment rights and those of other online platforms for third party expression.” Press Release, Backpage.com, Backpage.com Removes Adult Content Due to Unconstitutional Government Censorship, PR NEWSWIRE (Jan. 10, 2017), <https://www.prnewswire.com/news-releases/backpagecom-removes-adult-content-due-to-unconstitutional-government-censorship-300388277.html>. Backpage made it clear that it would fight to make sure this change is temporary in its official statement to the U.S. Senate’s Permanent Subcommittee on Investigations, stating that it believes it is on the right side of the law because the website’s First Amendment rights were violated, and the investigation against it provides roadblocks to the ways in which they actually help law enforcement track down traffickers and pimps. *Id.*

68. DeLateur, *supra* note 25, at 541. This, and another “conservative estimate” of \$29.1 million from October 2011 to September 2012, come from a study in 2010 by Advanced Interactive Media Group. *Id.*

70–80% of prostitution advertising in the United States.<sup>69</sup> Though many of the advertisers in these sections are not trafficking victims, the research and experience of law enforcement, non-profit organizations, and independent research companies indicates that a large amount of minor sex trafficking victims are bought and sold on Backpage or similar websites.<sup>70</sup> Therefore, significant questions remain as to how far these third-party websites' freedom of speech protections go, and whether banning sites like Backpage and Craigslist from listing "Adult Services," or similar categories, would do anything other than force traffickers to find further means of underground trafficking online, which may be even harder to monitor than the publicly displayed websites.<sup>71</sup>

Not unlike third-party websites, online communities that promote live webcam interaction, chat rooms, escort services, and reviews are used by sex workers and traffickers to set up commercial sex transactions in person.<sup>72</sup> One author points out that these websites present several commercial benefits to the sex work industry: centralized advertisements of "high-priced" escorts lead to a market of "johns"<sup>73</sup> who are willing to pay more, tending to exclude some less desirable clients, and online client screening mechanisms provide a process by which sex workers can check clients' references and decrease the chance of law enforcement involvement.<sup>74</sup> Additionally, the presence of online advertisements allows sex workers, pimps, and traffickers to actively

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69. *Id.* at 541–42.

70. *Id.* at 542. Vendita Carter, the executive director and founder of the organization Breaking Free, estimates that 40% of the minors her organization serves were advertised on Backpage. *Id.*

71. See MEREDITH DANK ET AL., ESTIMATING THE SIZE AND STRUCTURE OF THE UNDERGROUND COMMERCIAL SEX ECONOMY IN EIGHT MAJOR US CITIES 1, 102 (2014), <http://www.urban.org/sites/default/files/publication/22376/413047-estimating-the-size-and-structure-of-the-underground-commercial-sex-economy-in-eight-major-us-cities.pdf>. Federal and state law enforcement officials have commented that, although these websites provide a forum for traffickers to advertise commercial sex acts, they provide a target to investigate: "Getting rid of Craigslist.com was actually a disservice to law enforcement because they were cooperating . . . . [T]hey were cooperating with us in many ways and when they went away it is kind of like the hydra, when we took one away five more popped up." *Id.* at 102.

72. *Id.* at 234. Some of these websites, including AdultSearch.com, Eros.com, and Cityvibe.com, show escort listings not unlike those that were offered on Craigslist and Backpage, and even include reviews from "johns," purchasers of commercial sex acts who previously purchased the services of those advertised on the sites. *Id.*

73. The term "john" refers to a "purchaser[] of commercial sex," and is used in this Comment to broadly refer to this large category of consumers. See Heather C. Gregorio, *More Than "Johns," Less Than Traffickers: In Search of Just and Proportional Sanctions for Buyers of Sex with Trafficking Victims*, 90 N.Y.U. L. REV. 626, 628–29 (2015).

74. Robert Rigg, *The Not-So-Risky Business of High-End Escorts and the Internet in the 21st Century*, 17 RICH. J.L. & TECH., Fall 2010, 3, 17–18.

seek work and receive solicitations via e-mail, cell phone, or social media at all times.<sup>75</sup> The recent shifts in technology have led to an evolution of the world's oldest profession, causing the entire market—supply, demand, and competition—to be controlled by online marketplaces.<sup>76</sup> Another obstacle is that websites give traffickers and sex workers a way to present their enterprise as a legitimate business, like a modeling agency or lingerie advertiser, thereby circumventing any legal prohibitions on commercial sex advertising.<sup>77</sup> For example, dating websites and applications may have a “sexual emphasis” or present a place where a “Sugar Daddy” can exchange his money for a woman's company.<sup>78</sup> It has become the norm that casual dating sites are dominated by prostitution advertisements, as these websites are considered “locations where johns seek women who they presume are prostituting.”<sup>79</sup>

All in all, trafficking's transition to technology is increasingly creating problems with investigations and prosecutions because each day, new technologies are created and loopholes within laws are exploited in new and innovative ways.<sup>80</sup> This leads to the third and potentially most problematic forum

75. See generally DANK ET AL., *supra* note 71, at 234–36.

76. See *id.* Commenting on the competition fueled by online fora, one sex worker explained, “[y]oung girls have made things so cheap now selling \$50 [sexual acts] online. It's because young girls are snorting powder, which is cheaper today, so they can charge less money.” *Id.* at 237. Another responded affirmatively to the question of whether the Internet produced more competition in the industry, and elaborated, “Yeah, I saw one girl, she looked like a crackhead . . . I wanted to cry, she's posting for \$20 and I'm posting for \$80. backpage.[com] is always going to be heavy. Always a money type of thing. Women posting every day.” *Id.*

77. See *id.* at 234. In *Ashcroft v. American Civil Liberties Union*, the court provided that prohibitions on Internet speech must be accomplished by “the least restrictive means among available, effective alternatives.” 542 U.S. 656, 666 (2004). Therefore, it would create a virtually impossible route for legislatures to prevent advertisement of websites that appear to offer or recruit modeling services or those that use the word “roses” in exchange for meeting. See DANK ET AL., *supra* note 71, at 234. Another angle traffickers take with these less-than-legitimate websites is recruitment: “Communications platforms can be used for grooming, coercion, or other forms of deceit,” such as luring vulnerable victims into “becoming models,” and then coercing them into performing sex work. Danah Boyd et al., *Human Trafficking and Technology: A Framework for Understanding the Role of Technology in the Commercial Exploitation of Children in the U.S.* 4 (unpublished manuscripts) <https://www.microsoft.com/en-us/research/wp-content/uploads/2016/02/en-us-collaboration-focus-education-htframework-2011.pdf> (last visited Jan. 27, 2018).

78. See Farley et al., *supra* note 62, at 1081 (“A fourteen-year-old boy in Tokyo met a thirteen-year-old girl through an online dating service and paid her for sex in a public bathroom.”); Jacqueline Motyl, *Trading Sex for College Tuition: How Sugar Daddy “Dating” Sites May Be Sugar Coating Prostitution*, 117 PENN. ST. L. REV. 927, 928–29 (2013) (highlighting a trend wherein students with large loan debts have turned to spending time with others they meet online in exchange for money).

79. See Farley et al., *supra* note 62, at 1080.

80. See *supra* note 67 and accompanying text.

discussed in this Comment: social media.<sup>81</sup>

Sixty-nine percent of American adults use some type of social media, and globally, an estimated 50% of all Internet users use social networks.<sup>82</sup> Like third-party websites, social media covers a broad category of Internet-based applications that allow for the creation and exchange of “[u]ser [g]enerated [c]ontent.”<sup>83</sup> Although this category of fora for user-created speech serves to disseminate information, has revolutionized legitimate advertising strategies from the world’s largest companies, and has been essential in modern-day political activism, traffickers use social media as a means to deceive, recruit, and sell victims into sex work.<sup>84</sup>

This raises a particularly problematic area for law enforcement: when traffickers give victims pre-paid or disposable phones, which are not tied to any identification and may allow for social media use or contact from online postings.<sup>85</sup> Because disposable phones allow for heightened anonymity, traffickers frequently communicate with victims and coordinate criminal activity

81. See *infra* notes 82–90.

82. See *Social Media Fact Sheet*, PEW RES. CTR. (Feb. 5, 2018), <http://www.pewinternet.org/fact-sheet/social-media/>; Jacob Poushter, *Smartphone Ownership and Internet Usage Continues to Climb in Emerging Economies*, PEW RES. CTR., 1, 4 (Feb. 22, 2016), <http://www.pewglobal.org/2016/02/22/social-networking-very-popular-among-adult-internet-users-in-emerging-and-developing-nations/>.

83. Sarah Joseph, *Social Media, Political Change, and Human Rights*, 35 B.C. INT’L & COMP. L. REV. 145, 146 (2012). *User generated content* refers to any content that people create by using these applications; some examples include: blogs, online communities, virtual “worlds,” collaborative projects, and social networking. *Id.* at 146–47.

84. See Farley et al., *supra* note 62, at 1062–66; see generally Joseph, *supra* note 83 (discussing the role of social media in the 2011 revolutions across largely Arab states, commonly referred to as the Arab Spring); W. Glynn Mangold & David J. Faulds, *Social Media: The New Hybrid Element of the Promotion Mix*, 52 BUS. HORIZONS 357 (2009) (arguing that social media should be an integrative part of any modern, successful marketing campaign). Research has shown that social media had a profound effect on the 2016 United States presidential election, as 14% of Americans asked, declared that social media was their “most important” source of election news. Hunt Alcott & Matthew Gentzkow, *Social Media and Fake News in the 2016 Election*, 31 J. ECON. PERSP., Spring 2017, at 211, 212.

85. MARK LATONERO, THE RISE OF MOBILE AND THE DIFFUSION OF TECHNOLOGY-FACILITATED TRAFFICKING 33–34 (2012), [https://technologyandtrafficking.usc.edu/files/2012/11/HumanTrafficking2012\\_Nov12.pdf](https://technologyandtrafficking.usc.edu/files/2012/11/HumanTrafficking2012_Nov12.pdf) [hereinafter LATONERO, THE RISE OF MOBILE]. Research has shown that 19% of the contact phone numbers for a Los Angeles adult classified website were MetroPCS numbers—only one of the main pre-paid phone carriers. Jason Koebler, *Report: Phones Become the ‘Frontline’ of Human Sex Trafficking*, U.S. NEWS & WORLD REP. (Nov. 16, 2012), <http://www.us-news.com/news/articles/2012/11/16/report-phones-become-the-frontline-of-human-sex-trafficking>. Additionally, when a victim is arrested with only a pre-paid phone as evidence and refuses to acknowledge the name of a pimp or trafficker, law enforcement has no recourse against the trafficker and may only have the option to charge the victim with a crime. Telephone Interview with Katie Rhodes, Local Program Director, Forever Found (Jan. 5, 2017). This is particularly dangerous where

through multiple phones, leaving no trace of their locations or identities.<sup>86</sup>

In addition to using chatrooms and websites to lure victims, traffickers commonly reach out to girls on sites like Facebook to recruit them by complimenting their appearance and beginning a relationship with them.<sup>87</sup> Social networking sites provide a formidable plane for traffickers to search for children and establish trust by promising to make them stars, expressing endless admiration, and then setting up a meeting to get the victim out of her home with the promise of a job or financial security.<sup>88</sup> As opposed to public Facebook posts or advertisements for commercial sex, these private messages provide a layer of protection against mass searches by law enforcement for illegal activity because officers are unable to see them publicly.<sup>89</sup> This problem grows as more applications and social media platforms are developed, requiring legislatures and law enforcement to learn how to effectively combat each innovation.<sup>90</sup>

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the law does not protect victims of trafficking because then, victims are even less likely to give information about their traffickers where law enforcement has no evidence that links them to a crime. *Id.*

86. See LATONERO, *THE RISE OF MOBILE*, *supra* note 85, at 33–34.

87. Victoria Vanderschaaf, *Spotlight On: How the Internet Facilitates Underage Victimization in Human Trafficking*, 34 CHILD. LEGAL RTS. J. 135, 136 (2013). In a particularly nefarious case, but most likely not the only occurrence of its kind, two Florida teens—a fifteen-year-old boy and a seventeen-year-old girl—ran a prostitution ring at their school, setting up meetings through Facebook messages. Isabel Mascareñas & Danica Lawrence, *Police: Teen Girl Sets Up High School Prostitution Ring*, USA TODAY (Nov. 26, 2014), <http://www.usatoday.com/story/news/nation/2014/11/25/high-school-prostitution/70114384/>.

88. Vanderschaaf, *supra* note 87, at 136. A Washington case illuminates the ways in which pimps use social networking where another sex worker was tasked with searching Facebook and Myspace for attractive girls that may be interested in “escorting”; then build the relationship, set a meeting place, and promise a better life for the new victim and family if she cooperated. *State v. Barbee*, 386 P.3d 729, 731–32 (Wash. 2017).

89. See, e.g., FACEBOOK MESSENGER, <https://www.messenger.com/> (last visited Jan. 27, 2018); *supra* notes 37–61 (discussing the measures law enforcement must take to obtain evidence where the holder has a reasonable expectation of privacy).

90. Farley et al., *supra* note 62, at 1044 (“The development of the Internet requires new prosecutorial strategies for arresting pimps, traffickers, and sex buyers—a challenge that requires law enforcement officials and prosecutors to keep up with traffickers’ familiarity with, and skills in, web technologies.”).



## IV. CURRENT INTERNATIONAL LAW AND THE UNITED STATES' APPROACH

A. *International Agreements*

As both human trafficking and the Internet know no borders, international collaboration is necessary to successfully curtail trafficking of persons via personal technology and prosecute perpetrators on a global level.<sup>91</sup> Yet currently, no such agreements exist.<sup>92</sup> Although treaties have been ratified to separately regulate Internet crimes and trafficking, the global community has fallen short in specifically targeting Internet use in facilitating the trafficking of persons.<sup>93</sup> In addition to reconciling the differences in trafficking laws between countries, the inclusion of technology in such agreements inherently implicates concerns of restricting people's civil liberties and privacy.<sup>94</sup>

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), is at the forefront of international agreements that seek to eradicate human trafficking on a global level.<sup>95</sup> The Palermo Protocol specifically aims to: "prevent and combat trafficking in persons, paying particular attention to women and children; [t]o protect and assist the victims of such trafficking . . . and [t]o promote cooperation among States Parties in order to meet those objectives."<sup>96</sup> These protections apply to a broad enumeration of categories covered by the Palermo Protocol's definition of "trafficking in persons," including, but not limited to: "the recruitment, transportation, transfer, harbouring or receipt of persons . . . or [] the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation."<sup>97</sup> However, at least one critic of the Protocol asserts that the

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91. Kunze, *supra* note 2, at 285.

92. *Id.* at 253.

93. *See id.*

94. *See id.* at 277 ("As an example, the American Civil Liberties Union expressly discouraged the U.S. [S]enate from becoming a member of the Convention on Cybercrime because of their concern that the 'treaty lacks privacy and civil liberties protections.'" (quoting Brian C. Lewis, *Prevention of Computer Crime Amidst International Anarchy*, 41 AM. CRIM. L. REV. 1353, 1362 (2004))).

95. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, Nov 15, 2000, 2237 U.N.T.S. 319 [hereinafter Palermo Protocol].

96. *Id.* art. 2.

97. *Id.* art. 3(a).

definition of “trafficking in persons,” through its broad recruitment prong, falls short of protecting against online advertisements, disseminating information regarding sex tourism, and receiving payments via the Internet.<sup>98</sup>

On the technology side, the Convention on Cybercrime,<sup>99</sup> brought forth by the Council of Europe, seeks to set an international standard to detect, prevent, and prosecute cybercrime.<sup>100</sup> Specifically, the treaty sets forth ten enumerated categories of substantive law, in addition to guidelines for ancillary liability, for which States Parties must adopt legislative and other measures to combat: illegal access, illegal interception, data interference, system interference, misuse of devices, computer-related forgery, computer-related fraud, offenses related to child pornography, and offenses related to infringements of copyright and related rights.<sup>101</sup> But even though the treaty includes a category to prosecute crimes involving child pornography, those provisions only refer to “pornographic material that visually depicts . . . a minor engaged in sexually explicit conduct,” and therefore excludes the facilitation of acts surrounding the exploitation of minors or persons absent any visual depiction or pornography to go with it.<sup>102</sup>

Even though the Convention on Cybercrime was never intended to target human trafficking, it shined a light on some of the barriers that would be involved in creating a treaty that sought to do so.<sup>103</sup> For example, as access to the Internet increases on a global level, it becomes increasingly possible for those engaged in crimes prohibited by the Convention or any other cybercrime-related treaty to create “a website domain (or ISP)” in a country that has not ratified such a treaty.<sup>104</sup> This reinforces the need for comprehensive agreements, especially between those countries with widespread use of the Internet and participation in the global trafficking trade.<sup>105</sup>

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98. See Kunze, *supra* note 2, at 272. Though the use of the word “recruitment” was purposeful due to its broad definitions, it would not be far-fetched to conceive of a creative defense attorney’s take on the word in place of his client’s “offering, advertising, or displaying,” of persons, outside of any evidence of trafficking off the Internet. See *id.*

99. The Convention on Cybercrime is also called the Budapest Convention. *Budapest Convention and Related Standards*, COUNCIL OF EUROPE, <http://www.coe.int/en/web/cybercrime/the-budapest-convention> (last visited Jan. 27, 2018).

100. Convention on Cybercrime, Preamble, *opened for signature* Nov. 23, 2001, [2001] E.T.S. 185.

101. *Id.* ch. II, § 1.

102. See *id.* art. 9.

103. See Kunze, *supra* note 2, at 272–77.

104. See *id.* at 278; see also *supra* text accompanying note 45–46 (showing the apprehension of regulating online entities based on the principle of protecting people’s private use of technology).

105. See Kunze, *supra* note 2, at 279.

In addition to these two transnational agreements, other agreements still hold countries accountable for creating legislation to prevent slavery and other types of coerced labor.<sup>106</sup> As will be discussed further below, the above measures have laid a foundation for cleaning up the international treaties in effect and present guidelines for how to improve them.<sup>107</sup>

*B. The TVPA and United States Federal Law*

In response to findings that “[a]pproximately 50,000 women and children are trafficked into the United States each year,” and that “[m]any of these persons are trafficked into the international sex trade, often by force, fraud, or coercion,” Congress sought to implement a more comprehensive approach to combatting human trafficking through the TVPA.<sup>108</sup> The TVPA was implemented “to combat trafficking in persons, . . . to ensure just and effective punishment of traffickers, and to protect their victims.”<sup>109</sup> The emphasis on protecting victims represents a growing trend throughout the country (and internationally), in recognizing the cycle of poverty and trafficking, and attempting to break the victims’ return to forced labor through legislation and rehabilitation.<sup>110</sup>

Specifically, the TVPA created a task force to evaluate and measure anti-trafficking means implemented by “the United States and other countries in the areas of trafficking prevention, protection, and assistance to victims of trafficking, and prosecution and enforcement against traffickers.”<sup>111</sup> The statute also allocates resources for regional bureaus to tailor the TVPA’s goals to local needs and objectives.<sup>112</sup> As the Palermo Protocol was partially based on

106. See Naomi Jiyoung Bang, *Casting a Wide Net to Catch the Big Fish: A Comprehensive Initiative to Reduce Human Trafficking in the Global Seafood Chain*, 17 U. PA. J. L. & SOC. CHANGE 201, 248–51 (2014) (discussing several standards set forth by the International Labor Organization and the United Nations, which serve as guidelines for party-states in enacting laws to prevent forced labor).

107. See *infra* Part V.

108. See 22 U.S.C. § 7101(b)(1)–(2) (2012).

109. *Id.* § 7101(a).

110. See *id.* § 7101(b)(17)–(20) (“Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves.”). Another problem regarding victims is that “adequate services and facilities do not exist to meet victims’ needs regarding health care, housing, education, and legal assistance, which safely reintegrate trafficking victims into their home countries.” *Id.* § 7101(b)(18).

111. *Id.* § 7103(d)(2).

112. See *id.* § 7103(e)–(f).

the TVPA's definition of trafficking in persons, the statute covers "severe forms of trafficking in persons," defined to mean:

sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or . . . the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>113</sup>

Like the Palermo Protocol, mentioned above, this definition may leave loopholes for criminals facilitating trafficking via modern technology and gaps in the government's ability to detect and prevent such activities before they materialize.<sup>114</sup>

However, serving as the TVPA's safeguard in enforcing cybercrime laws, circuit courts of appeal have taken an expansive view of the interstate nexus element of crimes against sex trafficking statutes,<sup>115</sup> and continue to allow prosecution for advertisements of related unlawful activities posted online.<sup>116</sup> The Ninth Circuit, in *United States v. Todd*,<sup>117</sup> has been the only circuit court thus far to decide that mere advertisement of prostitutes online is enough to satisfy the interstate nexus element of 18 U.S.C. § 1591.<sup>118</sup> In that case, the

113. *Id.* § 7102(9)(A)–(B).

114. *See supra* note 98 and accompanying text.

115. *See* 18 U.S.C. § 1591(a) (2012).

116. *United States v. Campbell*, 770 F.3d 556, 574–75 (7th Cir. 2014) (declining to decide whether mobile phone and Internet usage are enough to constitute interstate commerce per se, but considering the defendant's purchase of promotional materials out of state, using phone and Internet services from out-of-state companies, and employing out-of-state workers, the court held that the defendant's conduct was sufficient to show an interstate nexus to affirm his conviction); *see also* *United States v. Phea*, 755 F.3d 255, 263 (5th Cir. 2014) (rejecting the defendant's contention that the government failed to show an interstate nexus under 18 U.S.C. § 1591, because the court found the defendant's use of a mobile phone used in advertising the women he "employed" including a woman residing out of state, was sufficient to constitute an interstate nexus). Although in *Phea* the court's opinion seems to suggest that the mere use of a mobile phone and the act of placing an advertisement on the Internet would be sufficient, it neglects to explicitly rule so without the addition that the operation was linked to a prostitute who lived out of state. 755 F.3d at 263.

117. *United States v. Todd*, 627 F.3d 329 (9th Cir. 2009).

118. *Id.* at 331–34. Section 1591 prohibits "[s]ex trafficking of children or by force, fraud, or coercion." 18 U.S.C. § 1591. Specifically, it holds criminally liable any person who "knowingly—in or affecting interstate or foreign commerce . . . recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person," or benefits financially from the

court affirmed the conviction of a defendant under § 1591 based on his advertising of at least one prostitute on *Craigslist* and in the *Seattle Weekly*.<sup>119</sup>

“Since 2000, Congress has passed four Trafficking Victims Protection Reauthorization Acts (TVPRA’s): in 2003, 2005, 2008, and 2013.”<sup>120</sup> These Acts, over time, have sought to address some of the holes left by the TVPA, especially where victim advocacy and local law enforcement intervention were needed.<sup>121</sup> Some of the amendments include a civil cause of action for trafficking victims to sue their traffickers, a model anti-trafficking statute created by the Department of Justice that states could easily adopt, funding and training for state and local law enforcement agencies to become more effective at spotting and preventing trafficking, and advocating for states to pass “safe harbor” laws, which would grant prostitutes and other trafficking victims immunity from prosecution.<sup>122</sup>

Though the TVPRA and its reauthorizations are widely considered a positive step toward awareness and the effective enforcement against trafficking crimes, many scholars, government agencies, and law enforcement entities have criticized the statute for not being aggressive enough.<sup>123</sup> For example, many sex trafficking cases are deemed too difficult to prosecute because the evidence lacks a sufficient showing of coercion, force, or fraud—especially given the nature of trafficking crimes on a global level, and the involvement of “volitional” working engagements in general. This is particularly true in

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previously mentioned acts, to employ a person under the age of eighteen or above that age to engage in commercial sex acts through force, threats of force, duress, or coercion. *Id.* § 1591(a). Subsection (a) is a result of the Stop Advertising Victims of Exploitation (SAVE) Act, which includes advertising in its prohibited actions and applies to online advertisements. *Backpage.com, LLC v. Lynch*, 216 F. Supp. 3d 96, 98–99 (D.D.C. 2016) (discussing the statutory background of Section 1591).

119. *Todd*, 627 F.3d at 331–34. The court does not specify whether the advertisement in the *Seattle Weekly* was on the online copy, but in holding that advertising in those two sources was sufficient, the court suggests that even if the *Seattle Weekly* was a local paper in print, the defendant’s use of the website *Craigslist* should be enough to constitute a sufficient nexus of interstate commerce for the statute. *See id.* Additionally, although the Supreme Court has not answered this narrow issue with regard to the interstate commerce involved in 18 U.S.C. § 1591, it has held that use of the website Facebook is sufficient to prosecute other crimes that also require movement in interstate commerce. *See generally* *Elonis v. United States*, 135 S. Ct. 2001 (2015) (remanding the defendant’s conviction for transmission of threats used in interstate commerce solely on the basis of the mental state requirement for a threat).

120. Andrew Hall, Note, *The Uniform Act on Prevention of and Remedies for Human Trafficking*, 56 ARIZ. L. REV. 853, 859 (2014).

121. *Id.* at 860.

122. *Id.* at 860–61.

123. John Elrod, *Filling the Gap: Refining Sex Trafficking Legislation to Address the Problem of Pimping*, 68 VAND. L. REV. 961, 969–74 (2015).

such egregious cases where parents have sold their child to a trafficker.<sup>124</sup> Additionally, as with all federal laws, questions of personal jurisdiction arise for international and state trafficking crimes.<sup>125</sup>

### C. *State Approaches*

Although the federal government took the above measures to help combat trafficking nationally, federal entities agree that local law enforcement is “best positioned to discover human trafficking because of their familiarity with their communities and their ability to detect problems more readily than federal agents with larger jurisdictions.”<sup>126</sup> States have consistently improved their legislation to conform to the TVPA, including drafting provisions based on sex and labor trafficking, law enforcement training, and victim assistance or protection.<sup>127</sup> However, as of 2012, “few states [had] enacted laws that address the role of technology in facilitating and disrupting human trafficking.”<sup>128</sup> One of the main challenges for state legislatures has been to comprehensively define the technologies covered by the law, especially considering how rapidly technology changes.<sup>129</sup>

One common strategy is to expand the coverage of statutes prohibiting the sexual exploitation of minors to computers and “any other device capable of electronic data storage.”<sup>130</sup> Some states have attempted to use the phrase “by any other electronic means” to cover an even broader area of technology.<sup>131</sup> But the balance in implementing a law with the broad constructs nec-

124. *Id.*

125. Esther E. Garcia, *Promoting International Human Rights: A States Interest to Finding Jurisdiction for Transnational Corporations on the Basis of Resolving Common Procedural Issues in ATCA and TVPA Litigation*, 17 SW. J. INT’L L. 285, 286 (2011).

126. Derek Pennartz, *The Irony of the Land of the Free: How Texas Is Cleaning Up Its Human Trafficking Problem*, 12 TEX. TECH. ADMIN. L.J. 367, 373 (2011) (quoting OFFICE OF THE ATTORNEY GEN., THE TEXAS RESPONSE TO HUMAN TRAFFICKING 9 (2008), [https://www.texasattorneygeneral.gov/files/agency/human\\_trafficking\\_2008.pdf](https://www.texasattorneygeneral.gov/files/agency/human_trafficking_2008.pdf)).

127. See generally *A Look Back: Building a Human Trafficking Legal Framework*, POLARIS PROJECT 1–2 (2014), <https://polarisproject.org/sites/default/files/2014-Look-Back.pdf> (discussing improvements in state human trafficking laws).

128. LATONERO, THE RISE OF MOBILE, *supra* note 85, at 14.

129. *Id.* at 15.

130. *Id.* at 15 (quoting FLA. STAT. § 847.0135(3) (2017)).

131. See MD. CODE ANN., CRIM. LAW § 3–324(a)(7) (West, Westlaw through Chapters 1 to 4 from the 2018 Reg. Sess. of the General Assemb.).

essary to cover ever-changing technology requires remaining within the confines of constitutional law, specifically, people’s First Amendment rights to freedom of speech.<sup>132</sup> And states vary greatly in the language they use to define their categories of covered technology.<sup>133</sup> For example, a Louisiana statute limits its reach of electronic solicitation of a minor to “electronic textual communication.”<sup>134</sup> This leaves ever-growing loopholes, especially with electronic communications that solely involve videos and pictures or allow for text that disappears after a specified amount of time.<sup>135</sup>

The Polaris Project, an organization geared toward eradicating trafficking and modern day slavery, published several annual reports on how the fifty states had fared in their own respective efforts to combat human trafficking.<sup>136</sup> These reports are based on various categories, including, but not limited to: legislation prohibiting sex and labor trafficking, training law enforcement and task forces to combat trafficking, and victim assistance.<sup>137</sup> The Polaris Project ranked states in tiers—Tier 1 being the highest, and Tier 4 the lowest—based on the programs each state had implemented to eradicate human trafficking.<sup>138</sup> In its 2014 rankings, Polaris ranked eleven states and Washington D.C. in tiers where it suggests they either “should actively work to improve and implement [the state’s] laws,” or “should take major steps to improve [the state’s] laws” because they “[have] not made minimal efforts to pass laws to support victims

132. *See State v. Muccio*, 881 N.W.2d 149, 153 (Minn. Ct. App. 2016) (affirming a lower court’s decision that MINN. STAT. § 609.352 (2017), prohibiting solicitation of a minor to engage in sexual conduct or including a photograph that explains sexual conduct to a minor “by computerized or other electronic means,” was unconstitutionally overbroad), *rev’d*, 890 N.W.2d 914 (Minn. 2017), *cert. denied*, 138 S. Ct. 328 (2017). *But see* *People v. Foley*, 731 N.E.2d 123, 133 (N.Y. 2000) (holding that the type of communication covered and applied to the use of “any computer communication system,” was not protected by the First Amendment due to the nature of the speech involved).

133. *See* LATONERO, *THE RISE OF MOBILE*, *supra* note 85, at 15.

134. *See id.*; LA. STAT. ANN. § 81.3 (2014) (“Computer-aided solicitation of a minor is committed when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication.”).

135. LATONERO, *THE RISE OF MOBILE*, *supra* note 85, at 15; *see also* INSTAGRAM, <https://www.instagram.com/> (last visited Jan. 28, 2018) (representing a social media platform that communicates a majority of content through pictures and video); SNAPCHAT, <https://www.snapchat.com/> (last visited Jan. 28, 2018) (representing a forum in which text, pictures, and video may be sent and then disappears shortly after).

136. *State Laws and Issue Briefs*, POLARIS PROJECT, <https://polarisproject.org/state-laws-issue-briefs> (last visited Jan. 28, 2018).

137. *Id.*

138. *See 2014 State Rankings on Human Trafficking Laws*, POLARIS PROJECT, <https://polarisproject.org/sites/default/files/2014-State-Ratings.pdf> (last visited Jan. 28, 2018).

of human trafficking.”<sup>139</sup> But wherever states are in their legislative processes, it is important to recognize that broader protections against trafficking on the state level can aid in prosecution, identify and provide rehabilitative resources to trafficking victims, and marshal local resources to combat the problem from a more intimate perspective.<sup>140</sup> However, as noted above, legislators face a problem when dealing with technology-related statutes against trafficking as they relate to citizens’ constitutional rights.<sup>141</sup>

#### *D. Constitutional Implications*

In addition to the brief summary on the constitutional implications of personal technology-related legislation discussed in Part II, a few cases are important to keep in mind when thinking about solutions to prevent trafficking through technology.<sup>142</sup> First, returning to *Riley v. California*, the petitioner raised a Fourth Amendment challenge to officers who searched through the electronically-stored information on his cell phone after his arrest.<sup>143</sup> Chief Justice Roberts, relying on “unreasonable search and seizure” jurisprudence, distinguished cell phones from other personal effects that would be searchable incident to arrest, holding that this type of technology is quantitatively and qualitatively different and should be excluded from searches without a warrant.<sup>144</sup> The Court’s rationale for this was that the information a person stores on his or her phone can be extremely personal and sensitive information that should be protected as unreasonable to search without a warrant.<sup>145</sup> But the Court did not prohibit searching cellphones with a warrant.<sup>146</sup> This landmark case should guide legislators and law enforcement entities in determining how far is too far when deciding whether to search personal, technological devices

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139. *Id.* On a positive note, by its 2014 report, the Polaris Project stated that there were no states that fell into Tier 4 as to human trafficking legislation. *Id.* However, it provided that in terms of victims’ assistance laws, twenty-one states and Washington D.C. fell within either Tier 4 or Tier 3, which states that the “[s]tate has made nominal efforts to pass laws to support victims of human trafficking, and should actively work to improve and implement its laws.” *Id.*

140. Stephanie Richard, *State Legislation and Human Trafficking: Helpful or Harmful?*, 38 U. MICH. J.L. REFORM 447, 459 (2005).

141. *See supra* notes 37–43 and accompanying text.

142. *See infra* notes 143–52 and accompanying text.

143. *Riley v. California*, 134 S. Ct. 2473, 2480–81 (2014).

144. *Id.* at 2482, 2490.

145. *Id.* at 2490.

146. *Id.* at 2495.



while investigating human trafficking cases.<sup>147</sup>

As shown above, legislation involving technology as a means to recruit and solicit minors or involving human trafficking in any way must also be balanced with the freedom of speech and other federal statutes.<sup>148</sup> Illustrative of this is *Backpage.com, LLC v. Cooper*.<sup>149</sup> In that case, the plaintiff sought a preliminary injunction against the enforcement of a Tennessee statute that “criminalizes the sale of certain sex-oriented advertisements.”<sup>150</sup> As a third-party Internet provider, Backpage.com argued that the Communications Decency Act (“CDA”) preempted the state’s ability to regulate the sale of prohibited advertisements online.<sup>151</sup> And though the court ruled that the First Amendment only required the appropriate mental-state requirement to be read into the statute for it to be permissible, it agreed with the plaintiff that the CDA preempted the state from creating a law that established liability for a third-party service provider.<sup>152</sup> Therein lies the crux of this Comment as it follows, in that all bodies involved—international, federal, and state—must reflect each other in cohesive, comprehensive policies to have any shot at effectively combatting human trafficking in the United States and the world as a whole.<sup>153</sup>

## V. USING TECHNOLOGY TO OUR ADVANTAGE

### A. *Revising the Law and Closing up Gaps*

#### 1. International Law

First, it is important to recognize that the Palermo Protocol, at the forefront of international agreements to combat human trafficking, reaches only to “the prevention, investigation and prosecution of the offences established in accordance with . . . this Protocol, where those offences are *transnational* in nature and involve an organized criminal group, as well as to the protection

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147. *See id.*

148. *See supra* note 20 and accompanying text.

149. *Backpage.com, LLC v. Cooper*, 939 F. Supp. 2d 805 (M.D. Tenn. 2013).

150. *Id.* at 813; *see also* TENN. CODE ANN. § 39-13-315 (LEXIS through 2017 Reg. Sess.).

151. *Backpage.com, LLC*, 939 F. Supp. 2d at 821–22.

152. *Id.* at 823, 829.

153. *See infra* Part V.

of victims of such offences.”<sup>154</sup> This places a limit on the agreement’s reach and an emphasis on the importance of each State Party’s own domestic trafficking laws.<sup>155</sup> Where State Parties’ laws differ, or where countries do not have strong domestic laws on trafficking, it is foreseeable that victims and traffickers may “fall through the cracks.”<sup>156</sup>

Next, there is a disconnect in the law’s substantive reach for crimes that advertise and invite sex tourism and the like, but fail to reach the level of trafficking in persons on an international level.<sup>157</sup> It is estimated that “25[%] of child sex tourists are American,” and that they generally prey on developing countries “where there is increased availability of low-priced child prostitutes, anonymity and corruption plaguing the judicial system.”<sup>158</sup> If the strongest international treaties do not reach intra-national trafficking, then how are these victims to be protected from international offenders? Additionally, an issue arises as to the level of protection provided to victims where their immigration status is not legally recognized;<sup>159</sup> different countries carry different standards for the protection of immigrant victims’ citizenship status and other needs.<sup>160</sup>

154. See Palermo Protocol, *supra* note 95, art. 4 (emphasis added).

155. See Sarah King, *Human Trafficking: Addressing the International Criminal Industry in the Backyard*, 15 U. MIAMI INT’L & COMP. L. REV. 369, 377 (2008).

156. *Id.*; see *infra* Section V.A.2 (discussing a perspective on the United States’ laws and solutions to provide a more comprehensive system to combat intra-national human trafficking).

157. See *supra* notes 100–02 and accompanying text.

158. Cerise Fritsch, *Cambodian Government Attempts to Combat Child Sex Tourism with Approval of Anti-Trafficking Law*, 13 PUB. INT. L. REP. 100, 101 (2008). The primary destination of American sex tourists is Cambodia. *Id.* After years of the United States’ inability to work with Cambodia to successfully prosecute sex tourists who purchased, primarily, trafficked children—based on corrupt public officials, insufficient anti-trafficking laws, and a lack of resources and capability to organize documents in accordance with U.S. courts—Cambodia raised its standards for eradicating child trafficking, leading to increased cooperation with and extradition of Americans accused of child sex tourism. *Id.* at 101–03; see also 18 U.S.C. § 2423(b) (2012) (establishing criminal penalties for persons traveling into, or out of the United States “for the purpose of engaging in any illicit sexual conduct with another person”).

159. See Kendal Nicole Smith, Comment, *Human Trafficking and RICO: A New Prosecutorial Hammer in the War on Modern Day Slavery*, 18 GEO. MASON L. REV. 759, 771–72 (2011) (noting that a limited number of “T-visas” may be approved every year to provide victims of trafficking temporary residence in the country, provided that such victims serve as witnesses against the traffickers who victimized them).

160. See 22 U.S.C. § 7105(b)(1) (2012) (laying out the United States’ protections for alien victims of severe forms of trafficking, including those labeled a nonimmigrant alien, to obtain benefits from state or federal entities). In the United States, benefits are limited to those victims who “[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.*

Recognizing these shortcomings and acknowledging that only countries themselves may decide to strengthen their laws on the issue, the Palermo Protocol should be enhanced with an eye toward international uniformity, even if countries differ in philosophies regarding intra-national trafficking.<sup>161</sup> One way to address these challenges is to incorporate, within the two treaties listed above, for example, provisions prohibiting the use of technology to “recruit, advertise for sale, arrange services, and purchase women and children for the purposes of commercial . . . exploitation.”<sup>162</sup> This would allow governments with standing to collaborate while investigating such crimes and impose criminal liability on those traffickers who would have otherwise slipped through jurisdictional cracks.<sup>163</sup>

As to the issue of legal status within a country, beginning with the United States, the Protocol’s requirements for temporary protection of victims of human trafficking should be relaxed to allow victims to receive basic housing or medical services, regardless of whether they testify or are proven to be victims of “severe” trafficking.<sup>164</sup> Encouraging or requiring States Parties to do this to facilitate a broader victim protection plan, relative to their means, would create an international community dedicated to the humanitarian efforts supported by the Palermo Protocol.<sup>165</sup> This type of uniformity would take into

§ 7105(b)(1)(E)(i)(I). These benefits may continue while the individual is assisting in the investigation, or extend to the time it takes to litigate a civil suit against the traffickers responsible. *Id.* § 7105(c)(3)(A)(i), (iii). By contrast, in 2009, Australia passed legislation which allows the extension of “visas to victims of trafficking whether or not they are willing or able to assist in the prosecution of their perpetrators.” See Kunze, *supra* note 2, at 267.

161. See Kunze, *supra* note 2, at 282–83.

162. *Id.*

163. See *id.* at 281–88.

164. See Sheldon-Sherman, *supra* note 10, at 461–67 (discussing the shortcomings of the current regime, including emotional trauma, fear of law enforcement, and bureaucracy, that stand in the way of immigrant victims obtaining relief in the United States). An easy argument against this idea may be that the United States government has only reserved 5,000 T-Visas for this purpose each year. *Questions and Answers: Victims of Human Trafficking, T Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victim-s-human-trafficking-t-nonimmigrant-status/questions-and-answers-victims-human-trafficking-t-nonimmigrant-status-0> (last visited Jan. 28, 2018). But a realistic look at the distribution of these visas shows that in 2015, only 508 T-Visas were issued. U.S. DEP’T OF STATE, BUREAU OF CONSULAR AFFAIRS, *Table XVII (Part I): Nonimmigrant Visas Issued*, in REPORT OF THE VISA OFFICE 2015 (2015), <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2015AnnualReport/FY15AnnualReport-TableXVII.pdf>.

165. See Charles Song & Suzy Lee, *Between A Sharp Rock and A Very Hard Place: The Trafficking Victims Protection Act and the Unintended Consequences of the Law Enforcement Cooperation Requirement*, 1 INTERCULTURAL HUM. RTS. L. REV. 133, 152 (2006) (asserting that the severe hardship requirement for aid supported by the United States does not support the humanitarian effort required

account an appreciation of the different circumstances from which victims come, ranging from those with degrees in higher education to individuals from the most disadvantaged ethnic and social sectors of the world's most politically unstable and economically depressed areas.<sup>166</sup> Furthermore, especially in the United States, loosening the requirements for aid in this way would more appropriately reflect the humanitarian ends sought by these types of agreements, rather than requiring “victims to choose between cooperating with law enforcement authorities or face arrest, incarceration, and removal.”<sup>167</sup>

## 2. State and Federal Schemes

It is up to each country to create its own effective domestic anti-trafficking laws.<sup>168</sup> And due to the rise in technology, we are realizing now how much of an “ever-evolving, comprehensive endeavor” is necessary to better curb the problem.<sup>169</sup> Although the TVPA and its reauthorizations have improved the situation and provided a broad, expansive approach to the issue, it can be improved to match new challenges faced in the field.<sup>170</sup>

As to the statutory language, the hard-lined requirement of proving fraud,

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to appropriately support trafficking victims).

166. See Martti Lehti & Kauko Aromaa, *Trafficking for Sexual Exploitation*, 34 CRIME & JUST. 133, 148–50 (2006) (laying out the different struggles faced by migrant victims of human trafficking). For example, “[i]n Austria, about a third of eastern European victims of trafficking who take refuge with . . . NGOs have university degrees or are university students.” *Id.* at 150. However, many victims of human trafficking do come from conditions of poverty, dangers from conflict or natural disasters, and displacement resulting from war. U.N. OFFICE ON DRUGS & CRIME, TOOLKIT TO COMBAT TRAFFICKING IN PERSONS 454 (2008), [https://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375\\_Ebook\[1\].pdf](https://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook[1].pdf). It is particularly important to take into account the differences of the victims’ backgrounds when providing relief because, with a test based on cooperation with law enforcement to prosecute the victim, education levels and emotional intelligence may become the determining factors in rendering shelter or immigrant status. See generally Sheldon-Sherman, *supra* note 10, at 479–82 (discussing the importance of NGOs and local law enforcement in simultaneously rehabilitating victims and educating them on their rights and duties under current laws).

167. See Song & Lee, *supra* note 165 at 155–56. Scholars have also suggested more successful, practical alternatives to the “law enforcement cooperation requirement”: providing aid to victims and serving them through subpoena to testify in court or requesting a “material witness warrant” from courts to ensure their appearance. *Id.* Though these measures would still compel trafficking victims to testify in court against their traffickers, they would not retain a determinative effect on the victim’s immigration status, and thus, victims would not have to “balance their personal safety and that of their families with the possibility of remaining safely in the United States.” *Id.* at 153.

168. See *supra* text accompanying notes 155–56.

169. Sheldon-Sherman, *supra* note 10, at 499.

170. *Id.* at 499–500.

force, or coercion under the TVPA has incentivized some federal prosecutors to pursue only “slam-dunk” cases.<sup>171</sup> Without undermining its importance, the fact that the only requirement for minors under the age of eighteen is inducement, regardless of fraud, force, or coercion, often results in only those cases being pursued as a matter of efficiency.<sup>172</sup> By leaving a broad interpretation of those requirements within the TVPA for adults, the federal law requires taking a victim’s consent into account—a much more restrictive policy than the Palermo Protocol, “which considers persons trafficked by someone abusing their position of vulnerability to be victims, regardless of consent.”<sup>173</sup> Even though the TVPRA reauthorizations have expanded the definition of coercion to include psychological coercion,<sup>174</sup> Congress should broaden the definition of the TVPA’s current regime to look more like the definition presented by the Palermo Protocol:

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171. Elrod, *supra* note 123, at 971; *see also supra* note 113 and accompanying text (laying out the pertinent statutory language enforced by the TVPA).

172. *See* Elrod, *supra* note 123, at 971. “[O]ne U.S. Attorney went so far as to say that ‘[my office] only took cases in which there was a child involved, although it’s a federal crime to take an adult.’” *Id.* (second alteration in original) (quoting AMY FARRELL ET AL., IDENTIFYING CHALLENGES TO IMPROVE THE INVESTIGATION AND PROSECUTION OF STATE AND LOCAL HUMAN TRAFFICKING CASES 199 (2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/238795.pdf>). Another problem in proving duress, fraud, or coercion for adults presents itself in sex-trafficking rings, where pimps and traffickers use victims to recruit or manage other victims. *See* Rhodes, *supra* note 85. When this occurs, a factual question arises as to whether that individual, commonly referred to as a “bottom bitch,” is a trafficker or victim, whether duress is involved, and whether she is entitled to protection as a victim. *Id.* This issue highlights the blurry line between trafficking and prostitution, as it relates to duress, consent, and what protection will be afforded to the respective participants. *See* Elrod, *supra* note 123, at 976–77. One scholar has pointed out the logical fallacy involved with assuming that individuals can no longer be victims when they turn eighteen, unless force, fraud, or coercion are involved. Julianne Siegfriedt, *When Sex Trafficking Victims Turn Eighteen: The Problematic Focus on Force, Fraud, and Coercion in U.S. Human Trafficking Laws*, 23 WM. & MARY J. WOMEN & L. 27, 36 (2016). The evidence shows that around 80% of adults who sell sex also sold sex as a minor. *Id.* Therefore, the pressures that children face in engaging in illicit activities often linger into adulthood; thus, reaching adulthood is an arbitrary point of time in a person’s life at which the government ceases to provide certain protections. *Id.* at 36–37.

173. Andrea L. Johnson, *A Perfect Storm: The U.S. Anti-Trafficking Regime’s Failure to Stop the Sex Trafficking of American Indian Women and Girls*, 43 COLUM. HUM. RTS. L. REV. 617, 662 (2012). This restrictive effect of the TVPA’s language creates three main categories of victims who are not covered by the law: those who are so vulnerable or traumatized that coercion, force, or fraud are not necessary to ensure their submission; those who came into the trafficking arrangement consensually but were exploited at a later time; and those who fall through the cracks when prosecutors refuse to spend time on a case due to the vagueness of the law itself. *See id.* at 663; *see* Elrod, *supra* note 123, at 970–71.

174. Johnson, *supra* note 173, at 665.

[T]he 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, for the purpose of exploitation.<sup>175</sup>

The Palermo Protocol also provides that the consent of a victim is irrelevant if any of the above circumstances is present.<sup>176</sup> Using this or a similar definition would lower the burden of proof that deters prosecutors, and incorporate a more suitable model for addressing the gray areas of vulnerability where fraud, coercion, and force are not found.<sup>177</sup>

On the technology side, Congress should focus more attention on research, investigations, enforcement, and creating legislation that specifically addresses technology-facilitated trafficking, “as well as the utilization of technology in combating human trafficking.”<sup>178</sup> As the TVPA and its reauthorizations have set the tone as a model for state anti-trafficking laws as a whole, they should continue to set the tone by creating cohesive definitions and policies surrounding the use of technology in human trafficking.<sup>179</sup> With a focus on technology-facilitated trafficking, the federal government should also work toward using technologies in conjunction with constitutionally-permissible legislation to compile and disseminate information related to trafficking trends and the protection of victims.<sup>180</sup>

That being said, state and local law enforcement authorities are usually

175. *Id.* at 699–700 (alteration in original) (quoting Palermo Protocol, *supra* note 95, art. 3(a)).

176. Palermo Protocol, *supra* note 95, art. 3(b).

177. *See* Johnson, *supra* note 173, at 700 (applying the importance of this change, among others, to address the particular vulnerabilities faced by American Indian women and girls and discussing the law’s shortcomings in protecting them).

178. *See* LATONERO, *THE RISE OF MOBILE*, *supra* note 85, at 14.

179. Hall, *supra* note 120, at 857, 862–63 (recognizing the success that the TVPRA has had thus far, but advocating that the model statute, the Uniform Act on Prevention of and Remedies for Human Trafficking, would drastically improve nearly any state’s current anti-trafficking laws); *see also supra* notes 130–35 and accompanying text (highlighting some of the disparities in state laws regarding technology-facilitated trafficking); UNIF. ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING (UNIF. LAW COMM’N 2013).

180. *See* LATONERO, *HUMAN TRAFFICKING ONLINE*, *supra* note 63, at 34. “Establishing national-level taskforces on trafficking online and supporting existing regional taskforces with information and capabilities to address trafficking online,” will be one of the many ways, in addition to allocating resources for trafficking-related research, to monitor and combat trafficking on domestic and international levels. *Id.*

the first to discover trafficking victims and are in the best place to tailor their approaches to stop human trafficking in the unique region in which they reside.<sup>181</sup> Due to familiarity with smaller communities, the movement of traffickers to states with less intrusive anti-trafficking laws, and a limited amount of federal resources, the war on human trafficking “will be won or lost at the state and local levels.”<sup>182</sup> Therefore, a cohesive effort where law enforcement entities at every level work together will be the only way to effectively combat trafficking, especially that with international ties.<sup>183</sup>

State legislatures have the unique opportunity to use federal laws as a floor and bolster their attack on human trafficking based on the shortcomings of the federal scheme and the needs of their own communities.<sup>184</sup> Organizations like Shared Hope International and the Polaris Project present annual assessments of each state’s improvements or deficiencies in their human trafficking laws, and can serve as guidelines for the creation of more effective legislation.<sup>185</sup> Shared Hope provides a framework for improving the laws in six main categories related to domestic minor sex trafficking: “criminalization of domestic minor sex trafficking,” “criminal provisions addressing demand,” “criminal provisions for traffickers,” “criminal provisions for facilitators,” “protective provisions for the child victim,” and “criminal justice tools for

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181. John Tanagho, Comment, *New Illinois Legislation Combats Modern-Day Slavery: A Comparative Analysis of Illinois Anti-Trafficking Law with Its Federal and State Counterparts*, 38 LOY. U. CHI. L.J. 895, 918–19 (2007). For example, even if victims do not qualify for federal benefits under the TVPA, states have the authority, and arguably the duty, to provide for basic needs such as protection of victims and their families while testifying, and emergency medical services. *See id.* at 934–35. Furthermore, the aforementioned protections are particularly important because participation in a state proceeding against a perpetrator of trafficking does not automatically entitle victims to the federal protection they would have if they were working with federal agents. *Id.* at 934.

182. *See* Hall, *supra* note 120, at 871–73.

183. *See* Shashi Irani Kara, Note, *Decentralizing the Fight Against Human Trafficking in the United States: The Need for Greater Involvement in Fighting Human Trafficking by State Agencies and Local Non-Governmental Organizations*, 13 CARDOZO J.L. & GENDER 657, 667–68 (2007) (discussing the importance of federal, state, and local level law enforcement working together with NGOs and other knowledgeable entities to receive training and resources to better combat human trafficking).

184. *See* Stephanie L. Mariconda, Note, *Breaking the Chains: Combating Human Trafficking at the State Level*, 29 B.C. THIRD WORLD L.J. 151, 177 (2009).

185. *See supra* note 138 and accompanying text; SHARED HOPE INTERNATIONAL, PROTECTED INNOCENCE CHALLENGE: TOOLKIT 2016 (2016), [http://sharedhope.org/wp-content/uploads/2016/11/SHI\\_Protected\\_Innocence\\_Challenge\\_Toolkit.pdf](http://sharedhope.org/wp-content/uploads/2016/11/SHI_Protected_Innocence_Challenge_Toolkit.pdf) [hereinafter TOOLKIT]. “Recognizing that most of the gaps in responding to domestic minor sex trafficking must be addressed at the state level, the Protected Innocence Legislative Framework sets out the basic policy principles required to create a safer environment for children.” *Id.* at 4.

investigation and prosecution.”<sup>186</sup>

Criminal provisions addressing demand and protective provisions for child victims are discussed separately below.<sup>187</sup> As of 2013, all fifty states have outlawed human trafficking.<sup>188</sup> However, states must remain cognizant of the fact that interstate continuity in strong anti-trafficking laws and enforcement is the only way to effectively combat trafficking—without such cohesion, traffickers will simply exploit states with weaker laws as they currently do in certain countries.<sup>189</sup> Since state and local law enforcement generally make first contact with trafficking victims and are in a better position to deal with them than are federal agents, states must at least rise to the level of prosecution and enforcement held by the TVPA to mitigate the risk of letting perpetrators slip even further through the cracks of the federal system.<sup>190</sup> This can be done by states including the provisions within the TVPA in their legislation, criminalizing the trafficking of minors, and loosening the restrictions of the present law against adults.<sup>191</sup> These laws must also include high penalties for specific trafficking crimes and laws against “[t]he acts of assisting, enabling, or financially benefitting from . . . sex trafficking.”<sup>192</sup>

Furthermore, states would be better served in their fight against technology-facilitated trafficking by employing broad definitions, such as “any electronic means,” to criminalize trafficking in a way that encompasses any new technology.<sup>193</sup> But the laws must be carefully drafted so as to not conflict with federal or constitutional rights.<sup>194</sup>

Another important facet of anti-trafficking measures suggested by Shared

186. *Id.* at 6. The organization then assigns a score to how well or poorly a state is doing with regard to the laws in each category and reveals where improvements can be made. *Id.* at 2–3. Although Shared Hope focuses on domestic minor sex trafficking, many of the principles discussed as to shortcomings in the federal law and improvements that are discussed below can be applied in conjunction with the Toolkit to create more comprehensive laws with respect to human trafficking. *See supra* notes 168–85 and accompanying text; *infra* Sections V.B–C.

187. *See infra* notes 214–28 and accompanying text.

188. *See* Press Release, Polaris Project, Wyoming Becomes 50th State to Outlaw Human Trafficking (Feb. 27, 2013), <https://polarisproject.org/news/press-releases/wyoming-becomes-50th-state-out-law-human-trafficking>.

189. Tanagho, *supra* note 181, at 939.

190. *See supra* note 189 and accompanying text; TOOLKIT, *supra* note 185, at 8. “[S]ex trafficking offenses may [already] violate a broad range of state laws, but clearly making the purchase and sale of [individuals] for sex acts a separate crime is essential to effectively combat . . . sex trafficking.” *Id.*

191. *See supra* notes 168–75 and accompanying text.

192. *See* TOOLKIT, *supra* note 185, at 12, 14.

193. *See supra* notes 130–35 and accompanying text.

194. *See supra* Part II.



Hope's Toolkit is the provision of tools for investigation and prosecution.<sup>195</sup> Though the TVPA's reauthorizations have increased funding for law enforcement training at state and local levels, states have not prioritized these grants to investigate and adjudicate crimes at the state level.<sup>196</sup> One study showed that in around 40% of child sex trafficking cases, technology was used to either identify a trafficker or a victim.<sup>197</sup> Further, the use of technology in investigating such crimes "can enable police to engage in more far reaching, proactive investigations," is generally a safer way for police to conduct those investigations, and allows them to collect and maintain transcripts and evidence of communications to help prosecutors build a stronger case.<sup>198</sup>

Therefore, any state laws will only be as good as the training that is provided to law enforcement.<sup>199</sup> Effective training in identifying victims, handling the above types of investigations, and taking advantage of the resources available for victims will be essential to effective enforcement of the law as well as rehabilitation of victims.<sup>200</sup> As a result, technology-specific task forces and law enforcement training on human trafficking identification and investigation is essential to addressing these problems.<sup>201</sup> And while guided by the proper principles of privacy and freedom of speech, law enforcement

195. See *supra* note 186 and accompanying text.

196. See Kara, *supra* note 183, at 681. "The resources are there. . . . As is evidenced by the dramatic increase in federal funds made available to these groups in the past five years, these funds will likely increase as more state agencies and local organizations get involved." *Id.*

197. Mary Graw Leary, *Fighting Fire with Fire: Technology in Child Sex Trafficking*, 21 DUKE J. GENDER, L. & POL'Y 289, 314 (2014).

198. *Id.* at 315. One problem that may arise with these investigations, however, is that undercover sting operations will often lead only to a victim, or a person once removed from the victim, on the trafficking chain of command—not the pimp or trafficker who actually sells or buys the victim. *Id.* at 316–17. But this trade-off is well worth the risk, as at the very least, law enforcement may be able to protect the victims with a chance at following a trail to the perpetrator. *Id.*

199. See *infra* note 200 and accompanying text; see also Leary, *supra* note 197, at 319 (discussing how success in these cases requires a two-pronged approach, including equipping police with the interpersonal skills and infrastructural support to respond to victims' need and technical skills to investigate traffickers).

200. See Priscila A. Rocha, Note, *Our Backyard Slave Trade: The Result of Ohio's Failure to Enact Comprehensive State-Level Human-Sex-Trafficking Legislation*, 25 J.L. & HEALTH 381, 402, 415, 436, 442 (2012). In a survey of one state's law enforcement officers, "93% of respondents 'identified a lack of training as the top barrier to identifying human trafficking cases.'" *Id.* at 408 (quoting Erin Kelley Michel, Law Enforcement Response to Human Trafficking in Ohio, 32–33 (2010) (unpublished M.S. thesis, The Ohio State University)). The survey also showed that about half of the police administrators and almost three quarters of the state's detectives and line officers questioned had received no training to recognize instances of human trafficking. *Id.*

201. See LATONERO, HUMAN TRAFFICKING ONLINE, *supra* note 63, at 34.

should be open to using new technologies within the confines of the Fourth Amendment to identify and track the behavior of perpetrators on a large scale.<sup>202</sup>

### *B. Comprehensive Cooperation*

While addressing such a broad topic as human trafficking through technology, many players are involved: legislators, law enforcement, private Internet and technological service providers, NGOs, academics, healthcare professionals, and other social service agencies.<sup>203</sup> If any of these parties falls short at any level, gaps in the system of effective enforcement are widened.<sup>204</sup>

Although the CDA has protected third-party websites from liability in trafficking cases and various apps have been used to facilitate trafficking due to user-generated content, those private entities are not free of the duty to inform law enforcement when asked for information.<sup>205</sup> Likewise, although the CDA's broad rules have protected third-party host sites, courts will allow for further investigation and potential criminal liability when those sites are participating or encouraging trafficking crimes through their forum.<sup>206</sup> These

202. See LATONERO, *THE RISE OF MOBILE*, *supra* note 85, at 38.

203. See LATONERO, *HUMAN TRAFFICKING ONLINE*, *supra* note 63, at 37–38.

204. See *supra* Part IV.

205. See 18 U.S.C. § 2703(b)–(c) (2012). Under § 2703, “[a] governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication,” or “a record or other information pertaining to a subscriber to or customer of such service.” *Id.* Snapchat, for instance, offers a service where photos or video (“snaps”) may be sent to other subscribers and are then automatically deleted unless the receiver opts to save them. SNAP, INC., *SNAPCHAT LAW ENFORCEMENT GUIDE* 4–5 (last updated Oct. 11, 2016), <https://storage.googleapis.com/snap-inc/privacy/lawenforcement.pdf>. The company acknowledges that in some situations the content of those communications may be retrievable, along with logs for the last thirty-one days of snaps containing the metadata of those communications. *Id.* at 8–9. This information and more must be given at law enforcement’s request, so long as it follows the legal process under the CDA. *Id.* at 3.

206. See *Senate Permanent Subcomm. v. Ferrer*, 199 F. Supp. 3d 125 (D.D.C. 2016), *vacated as moot*, 856 F.3d 1080 (D.C. Cir. 2017). In that case, the court affirmed the enforcement of a subpoena for records from Backpage.com CEO Carl Ferrer, where the United States Senate Permanent Subcommittee on Investigations sought documents concerning the website’s “Banned Term List” or related to any modifications the site made to Adult advertisements. *Id.* at 132–33. According to the subcommittee’s staff report, it charges the website with “knowingly conceal[ing] evidence of criminality by systematically editing its ‘adult’ ads” before publication. *Backpage.com’s Knowing Facilitation of Online Sex Trafficking*, PERMANENT SUBCOMM. ON INVESTIGATIONS, S. COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFAIRS, 114TH CONG., *BACKPAGE.COM’S KNOWING FACILITATION OF ONLINE SEX TRAFFICKING* (2017), <https://www.mccaskill.senate.gov/imo/media/doc/2017.01.10%20Backpage%20Report.pdf>. In its opinion, the court makes very clear that the subcommittee recognizes the shortcomings of the CDA in regulating third-party websites, and that this litigation serves both the

measures ensure that there is at least some accountability for third-party sites.<sup>207</sup> Based on the amount of trafficking activity that occurs under their watch, private Internet service providers must lead the fight against technology-facilitated trafficking on the ground floor, through working with law enforcement and creating innovative solutions toward “detecting and disrupting human trafficking on their networks.”<sup>208</sup>

In addition to law enforcement working with the private sector, there is a great need for participation from anti-trafficking NGOs, different social services, and the public itself.<sup>209</sup> In general, because much of technology-related trafficking involves the newest aspects of social media and user-generated content, the best way to fight it may be by utilizing those same technologies.<sup>210</sup> Various apps are dedicated to educating the public on how to identify human trafficking if they see it, and some even help law enforcement locate trafficked victims.<sup>211</sup> NGOs are another essential component to the fight against human trafficking because their intimate knowledge of victimization and the communities in which they work afford them crucial insight into how to serve victims and identify trafficking scenarios.<sup>212</sup> Specifically, collaborations between NGOs and law enforcement can serve the cause by further educating law en-

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purpose of teaching third-party websites how to self-regulate against facilitating these crimes and filling legislative gaps in this area, while implicitly pursuing potential criminal causes of action. *Ferrer*, 199 F. Supp. 3d at 136–37.

207. See *supra* note 192 and accompanying text.

208. LATONERO, HUMAN TRAFFICKING ONLINE, *supra* note 63, at 35–37. Some suggested actions for these companies include: coordinating industry-wide anti-trafficking codes of conduct, using distribution channels to educate the public and disseminate information regarding human trafficking online, and including agreements in their terms of use/service not to participate in any trafficking-related activity. *Id.* at 36. For example, Microsoft has been a large contributor to the fight against technology-facilitated human trafficking through using software tools and its own expertise to monitor, investigate, and collaborate against such crimes. See ARTHUR T. BALL & CLYDE W. FORD, EMPLOYING INFORMATION TECHNOLOGY TO COMBAT HUMAN TRAFFICKING 6 (2015), <http://ncmedia.azureedge.net/ncmedia/2015/06/Tech-Human-Trafficking-Whitepaper.pdf>.

209. See Farley et al., *supra* note 62, at 1093.

210. See Leary, *supra* note 197, at 322 (“Because detection in a public space can be done by civilians as well as law enforcement, the fact that child sex trafficking is becoming identifiable in new ways suggests opportunities for prevention by educating civilians as well as law enforcement.”).

211. See Leanne Rhodes, *4 Apps to Help You Fight Human Trafficking*, ABOLISHION (Feb. 4, 2016), [http://www.abolishion.org/4\\_apps\\_to\\_help\\_you\\_fight\\_human\\_trafficking](http://www.abolishion.org/4_apps_to_help_you_fight_human_trafficking); see also TRAFFICKCAM, <https://traffickcam.com/about> (last visited Jan. 28, 2018) (encouraging users to upload pictures of their hotel rooms, which are then plugged into a database for law enforcement to compare with pictures of trafficking victims in order to successfully locate them and prosecute their traffickers).

212. See Sheldon-Sherman, *supra* note 10, at 476.

forcement entities, helping to put victims at ease in cooperating with law enforcement, and enabling a comprehensive process for victims' unique needs to be met.<sup>213</sup>

### C. *Thinking Broadly*

In addition to the practical actions listed above, cultural changes in the ways we view trafficking give many of those measures a chance to thrive—namely shifting the focus to the victims and not prosecution, and aiming to punish criminals rather than those who have been exploited.<sup>214</sup> Jumping back to the final two categories in the Toolkit, protective provisions for victims and strengthened efforts to curb the demand for the services of trafficked persons require a cultural shift from the ways these crimes are viewed.<sup>215</sup> For trafficking, like any business, there must be demand for it to thrive.<sup>216</sup> Studies have shown that although laws have now improved in many states to punish johns in addition to prostitutes and traffickers, most states have traditionally fined or incarcerated prostitutes while giving their customers a mere citation.<sup>217</sup>

The focus on arresting sex workers, specifically child sex workers, has traditionally been a way of demonstrating law enforcement's commitment to eradicate this "social ill."<sup>218</sup> But some countries have found success in partially decriminalizing prostitution and prosecuting the johns while providing rehabilitative services to prostitutes and trafficking victims.<sup>219</sup> Though the

213. *Id.* at 479–81.

214. See Rhodes, *supra* note 85 (remarking that the current culture in dealing with common trafficking scenarios often leads to the prosecution of victims whether or not they comply with requests from law enforcement); Kunze, *supra* note 2, at 282–83.

215. See TOOLKIT, *supra* note 185 and accompanying text; Amanda Walker-Rodriguez, *The Crime Next Door: An Examination of the Sex Trafficking Epidemic in the United States and How Maryland Is Addressing the Problem*, 41 U. BALT. L.F. 43, 66–67 (2010) (arguing that the United States must "realize" that a large part of the international human trafficking problem is the dynamic between a continuous demand and a large supply of desperate victims).

216. See Cheryl George, *Jailing the Johns: The Issue of Demand in Human Sex Trafficking*, 13 FLA. COASTAL L. REV. 293, 295 (2012).

217. Julie Lefler, Note, *Shining the Spotlight on Johns: Moving Toward Equal Treatment of Male Customers and Female Prostitutes*, 10 HASTINGS WOMEN'S L.J. 11, 19–22 (1999). For example, "[t]he arrest disparity between prostituted children and johns is stark: 'more than ten times as many minors were arrested for prostitution as were customers for solicitation of minor prostitutes over a twenty-five year period in New York City.'" Amanda Shapiro, Note, *Buyer Beware: Why Johns Should Be Charged with Statutory Rape for Buying Sex from a Child*, 23 J.L. & POL'Y 449, 472 (2014) (quoting Cynthia Godsoe, *Punishment As Protection*, 52 HOUS. L. REV. 1313, 1339 (2015)).

218. Shapiro, *supra* note 217, at 472.

219. Kelsey Fleharty, Comment, *Targeting the "Tricks" of the Trade: A Comparative Analysis of*

argument for decriminalization of prostitution is not the focus of this Comment,<sup>220</sup> it is important to note that even when purchasers of trafficked victims are prosecuted, the underlying reasons for them buying those victims are rarely dealt with.<sup>221</sup> And if tolerance of the crime of purchasing trafficked children continues, the supply of exploited children has no natural reason to cease.<sup>222</sup>

The final shift this article covers, which should be applied at all levels of enforcement, is a true shift to a focus on the victims.<sup>223</sup> As discussed above, many measures have been taken to focus on protecting victims of trafficking, but much more can be done.<sup>224</sup> This may require a cultural divergence from the victim-criminal dichotomy that our society, and therefore law enforcement, currently employs.<sup>225</sup> California has recently taken a step toward the

*Prostitution Laws in Sweden and the United States*, 15 OR. REV. INT'L L. 443, 446 (2013). This method is referred to as the “Swedish Model,” and has seen success in Sweden, Iceland, and Norway. *Id.* at 463. A study in 2008 found that after implementing this method, the percentage of men who paid for sex in Sweden dropped 5% in the first year. *Id.* at 464. But the Swedish Model’s implementation was not flawless, and some negative consequences were noted: due to new laws, the prostitution industry was forced to move into more underground realms, the johns that remained customers were more likely violent and aggressive, and prostitutes were forced to meet in more secluded areas—also threatening their safety. *Id.* at 451.

220. For an in-depth discussion comparing the United States’ model in criminalizing prostitution with the Swedish Model, see Fleharty, *supra* note 219.

221. *Offenders Prostitution Program/The John School*, BREAKING FREE, [http://www.breakingfree.net/the\\_john\\_school.aspx](http://www.breakingfree.net/the_john_school.aspx) (last visited Jan. 28, 2018). Organizations like Breaking Free recognize the relevance of recidivism in commercial sex purchasers and strive to offer programs like “The John School” to “hold offenders accountable, while raising awareness about sex trafficking.” *Id.* A Breaking Free study found that 61% of the men that were court-ordered to attend The John School had paid for sex before; this is not a cycle that ends itself. *Id.*

222. See TOOLKIT, *supra* note 185, at 10 (“America’s youth are at risk because of a simple economic principle—demand for sex acts with children drives the market of exploitation.”).

223. See *infra* notes 224–28 and accompanying text.

224. See *supra* notes 164–67 and accompanying text.

225. See Rhodes, *supra* note 85. Many times, especially in commercial sex work, women are forced to choose between labeling themselves as a victim, where they may be required to aid in the prosecution of their traffickers, or default to criminal status by refusing to do so—a glaringly stark dichotomy, given the complex nature of trafficking in these cases. *Id.* Not to mention the fact that many victims of human trafficking have no knowledge of their status as a victim, much less their potential remedies or protections as such. U.S. DEP’T OF HEALTH & HUMAN SERVS., RESOURCES: THE MINDSET OF A HUMAN TRAFFICKING VICTIM, [https://www.acf.hhs.gov/sites/default/files/orr/understanding\\_the\\_mindset\\_of\\_a\\_trafficking\\_victim.pdf](https://www.acf.hhs.gov/sites/default/files/orr/understanding_the_mindset_of_a_trafficking_victim.pdf) (last visited Jan. 28, 2018). This speaks to the force, coercion, or fraud requirement becoming the determining factor in whether an individual is thrown in jail or given rehabilitative service; the line is an arbitrary one, drawn regardless of the victim’s background related to trafficking and on the limited training of the officers who handle these cases. See Siegfriedt, *supra* note 172, at 30–32.

protection of minor prostitutes by choosing to treat them as victims rather than criminals, and by offering rehabilitative services to break the cycle of abuse rather than imposing jail time.<sup>226</sup> Though challenges to these new laws with regard to policy and resource allocation may be valid, as long as the execution of this shift is sound, it may be a way for states to focus on prosecuting johns, pimps and traffickers, rather than those who have been harmed by them.<sup>227</sup> Additionally, states should incorporate networks of NGOs and social services into the ways law enforcement deals with trafficking victims, and legislatures must take the initiative to recognize the difference between criminals and society's victims and take the right steps to protect the true victims in these cases.<sup>228</sup>

## VI. CONCLUSION: AN INTEGRATIVE APPROACH IS THE ONLY SOLUTION

Human trafficking is an egregious affront to human rights that permeates societies around the world,<sup>229</sup> and technology has made it much easier for traffickers to exploit men, women, and children while concealing their identities and escaping prosecution.<sup>230</sup> But technology is not only available to the criminal side of the spectrum.<sup>231</sup> The measures discussed in this Comment have successfully improved the problems of human trafficking throughout the world, but in order for each of these measures to reach its full potential, any new policies and implementation plans must work in a cohesive, cooperative way to fill the current gaps.<sup>232</sup> Consequently, the actions taken by each of the

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226. Erik Ortiz, *New California Law Does Not Legalize Child Prostitution*, NBC NEWS (Dec. 30, 2016, 4:00 PM), <http://www.nbcnews.com/news/us-news/new-california-law-does-not-legalize-child-prostitution-n701471>.

227. *See id.*; Siegfriedt, *supra* note 172, at 44. Additionally, California recently enacted legislation that allows victims of human trafficking to vacate and seal their criminal records where they can show that prior convictions for “nonviolent offense[s],” as defined by the statute, resulted from coercion or trafficking. Cal. Penal Code § 236.14 (West 2017). Laws of this type may be essential for human trafficking victims to enter the legal workforce and remain free from exploitation. *See* Sarah Dohoney Byrne, *Meeting the Legal Needs of Human-Trafficking Survivors*, 52 WAKE FOREST L. REV. 379, 380–84 (2017) (maintaining that although there is a great need for meaningful assistance to obtain such relief through the legal system, criminal records may present a complete bar to education, employment, and housing, regardless of whether the crime was a result of an individual being exploited).

228. *See supra* text accompanying note 203.

229. *See* Shavers, *supra* note 3, at 39–40.

230. *See* Kunze, *supra* note 2, at 242.

231. *See supra* note 210 and accompanying text.

232. *See supra* notes 200–10 and accompanying text. For a purported uniform state code for preventing human trafficking, see the *Uniform Act on Prevention of and Remedies for Human Trafficking*,

public and private bodies discussed above must be “ever-evolving,” changing in conjunction with the ways society and technology change.<sup>233</sup> Therefore, in the face of technology-facilitated trafficking and the evils that it brings, all branches of the government, the private sector, and the public must work together on the same plane to successfully eradicate these tragedies.<sup>234</sup> But until society reaches this level of cooperation, the improvements discussed throughout this Comment should serve as guidelines for every party involved to contribute toward a world free of slavery.

David Barney\*

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Uniform Law Commission, The National Conference of Commissioners on Uniform State Laws, July 16, 2013, [http://www.uniformlaws.org/shared/docs/Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking/2013AM\\_UPRHT\\_As%20approved.pdf](http://www.uniformlaws.org/shared/docs/Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking/2013AM_UPRHT_As%20approved.pdf).

233. See Sheldon-Sherman, *supra* note 10, at 499.

234. See LATONERO, HUMAN TRAFFICKING ONLINE, *supra* note 63, at 34–40.

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