



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 117
Issue 3 *Dickinson Law Review - Volume 117,*
2012-2013

1-1-2013

Trading Sex for College Tuition: How Sugar Daddy "Dating" Sites May Be Sugar Coating Prostitution

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Trading Sex for College Tuition: How Sugar Daddy “Dating” Sites May Be Sugar Coating Prostitution

Jacqueline Motyl*

Abstract

Recently, the amount of outstanding student loan debt has skyrocketed, forcing young college students to seek nontraditional sources of financial support. Some of these individuals have turned to sugar daddy dating sites that specialize in pairing young, attractive sugar babies with older, wealthy sugar daddies in “arrangements.” An arrangement is distinct from a traditional relationship because sugar babies receive an allowance from their sugar daddies in exchange for sex and companionship. The media has declared that arrangements are merely prostitution in disguise and that sugar daddy dating sites facilitate prostitution online. This Comment analyzes the liability of sugar daddies and babies under the Model Penal Code’s definition of prostitution. Additionally, this Comment discusses sugar daddy dating sites’ potential liability for facilitating prostitution in view of the broad immunity offered to websites for user-content under Section 230 of the Communications Decency Act. This Comment concludes by positing that current civil and criminal laws are insufficient to ensure that prostitution is not taking place within sugar arrangements and suggests that law enforcement infiltrate sugar daddy dating sites to guard against online prostitution.

Table of Contents

I.	INTRODUCTION	928
II.	BACKGROUND.....	931
	A. The Sugar Culture	931
	B. A Quickie on Prostitution	934
	1. The Act of Prostitution.....	935

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2. Promoting Prostitution	936
3. Civil Repercussions of Prostitution.....	937
C. Responsibility on the Internet	939
III. POTENTIAL LIABILITY FOR THOSE INVOLVED IN THE SUGAR CULTURE	944
A. The Culpability of a Sugar Member: Dating or Prostitution?	944
1. Criminal Liability.....	944
2. Civil Liability.....	947
B. Liability and Criminality of a Sugar Daddy Dating Site: Matchmaker or Pimp.....	949
1. Liability for the Site as a Content Provider.....	950
2. Liability for the Site as an Inducer of Illegal Conduct	951
3. Criminal Charges against the Site for Promoting or Profiting from Prostitution	953
C. Potential Solutions to Eradicating Prostitution in the Sugar Culture	954
IV. CONCLUSION	956

I. INTRODUCTION

I remember the first time I heard of such an arrangement. I was at a friend's house, and a girl spoke of how her "sugar daddy" had paid for some college tuition. And she hadn't even kissed him. That evening, I went home and looked up the website. Yes, the idea was ridiculous and dangerous, but ridiculously and dangerously genius: beautiful women post pictures while wealthy men post their income and *voilà!*—the perfect Darwinian couple is created. Because the expectation is short term, it's flirting with the title of an escort service, or worse, prostitution. But as I considered it, I realized that the main difference between a prostitute and a monogamous marriage was time. Or so I thought.¹

In 2011, the average college graduate entered the job market with over \$27,000 in student loan debt.² To make the picture more daunting, the current unemployment rate for Americans ages 20 to 24 is almost 15 percent.³ Facing the economic uncertainty that awaits them upon graduation, young women have begun to look for other, less traditional sources of income.⁴ In an effort to pay off their loans and graduate debt free, young undergraduates have signed up for websites such as

1. *The Lure of Being a Sugar Baby*, SUGAR COATED, <http://bit.ly/VLVVhw> (last visited Jan. 9, 2013).

2. Arianna Huffington, *Back to School and Deeper in Debt*, HUFFINGTON POST (Sept. 6, 2011, 6:34 PM), <http://huff.to/rcVkSF>.

3. *Id.*

4. *See id.*

SeekingArrangement.com⁵ that offer a selection of “sugar daddies” who are waiting to pluck Cinderella from her plebian lifestyle and introduce her to the riches of the world.⁶ However, in exchange for financial support, most sugar daddies expect sex.⁷

There are currently over 20 sugar daddy dating sites,⁸ which allow young women to create dating profiles that declare how much money they are seeking per month in exchange for their company.⁹ Sugar daddy dating sites, on the surface, differ from escort ads because they are “dating sites” that promote longer-term relationships,¹⁰ as opposed to escort ads that provide immediate companionship-for-hire.¹¹ But with women requesting monthly cash allowances in exchange for their companionship, sugar daddy dating sites are arguably combining the purposes of dating sites and escort sites. And, although women may traditionally seek out relationships that offer financial security,¹² the advent of the Internet and the lure of debt-ridden students to sugar daddy dating sites¹³ tend to break this “security” down to its fundamentals—sex in exchange for cash.

5. See *id.*; Tori Lewis, *The Real Deal: I'm a Sugar Baby*, COLLEGE MAGAZINE (Nov. 1, 2011), <http://bit.ly/w2HBcR> (“Serena’s plans are to stick with her sugar baby lifestyle until she’s out of college . . . or bored with it. She feels like this kind of lifestyle is much more understandable for college students because ‘so many costs are thrown at you and most [students] don’t have a way to cover it all.’”).

6. See SEEKINGARRANGEMENT, <http://bit.ly/6Gu1m> (last visited Jan. 9, 2013).

7. See *A Picture’s Worth 1,000 Words*, SUGAR COATED, <http://bit.ly/VTTpCC> (last visited Jan. 9, 2013) [hereinafter *1,000 Words*].

8. A Google search for “sugar daddy dating” returned over 20 hits for dating sites specifically tailored to connecting sugar daddies and sugar babies.

9. See, e.g., SUGAR DADDIE, <http://bit.ly/14uFL> (last visited Jan. 9, 2013); SEEKINGARRANGEMENT, <http://bit.ly/6Gu1m> (last visited Jan. 9, 2013); SUGARDADDYFORME.COM, <http://bit.ly/UXAFo7> (last visited Jan. 9, 2013).

10. See *What’s An Arrangement?*, SEEKINGARRANGEMENT, <http://bit.ly/2lmkGQ> (last visited Jan. 9, 2013) [hereinafter *What’s An Arrangement?*] (“So no matter what you are seeking whether it is love, companionship, friendship or some financial help, and whether it will be for a short-term, long-term or life-long arrangement, we hope you will find the perfect match here.”).

11. See, e.g., *Boston Escorts*, BACKPAGE, <http://bit.ly/ZtJWDC> (last visited Jan. 9, 2013).

12. See Dan Schulman, *Women Marry for Money*, PSYCHOLOGY TODAY (Mar. 1, 2003), <http://bit.ly/dlpBIR> (stating a man’s earning potential affects the female’s intention to marry); see also Liz Hull, *What Women REALLY Want: To Marry a Rich Man and Stay at Home With the Children*, MAIL ONLINE (Jan. 10, 2011, 7:49 AM), <http://bit.ly/hIFUny> (noting studies done by the London School of Economics show that more women are “marrying up” now as compared to the 1940s).

13. See Ruth Padawer, *Keeping Up With Being Kept*, N.Y. TIMES, Apr. 12, 2009, at MM (stating that SeekingArrangement targets its ads at internet users who search for the terms “student loan,” “tuition help,” and “college support”); see also Amanda M. Fairbanks, *Seeking Arrangement: College Students Using “Sugar Daddies” To Pay Off Loan Debt*, HUFFINGTON POST (July 7, 2011, 11:51 PM), <http://huff.to/naldMO> (reporting

Critics argue that sugar daddies and babies who join sugar daddy dating sites with the intent to exchange sex for money may be engaging in illegal conduct.¹⁴ However, since the 1970s, courts have agreed that sexual acts are not deemed to fall within the realm of prostitution if there is something accompanying the sex, such as companionship, dinner, or even cleaning the house.¹⁵ Additionally, some sugar daddies and babies do fall in love and engage in traditional relationships.¹⁶ The fact-based inquiry into each individual sugar relationship to determine if site users are engaging in illegal conduct could also make it difficult to hold a sugar daddy dating site responsible for facilitating users' actions.

Moreover, under Section 230 of the Communications Decency Act, website creators cannot be held liable as the speaker of content posted by website users.¹⁷ Section 230 effectively provides broad immunity to a website even if the website has general knowledge of its users' misconduct.¹⁸ However, courts are reluctant to extend Section 230 immunity to websites when there is evidence that the website clearly facilitated the illegal conduct of its users.¹⁹ Whether a sugar daddy dating site is fostering prostitution by operating as a forum for the exchange of sex for money would be unlawful only if the site intended for its users to engage in such conduct. Therefore, a sugar daddy dating site that fosters a mixture of legal and illegal user activity could effectively skirt the lines of the law while enjoying Section 230 immunity.

Part II of this Comment will examine the intricacies of the Sugar Culture,²⁰ before focusing on both the criminal and civil repercussions of

that SeekingArrangement targets students by providing free premium memberships to users who register with a ".edu" email address).

14. See Padawer, *supra* note 13; MODEL PENAL CODE § 251.2(1)(a) (Proposed Official Draft 1962) (defining prostitution as the act of engaging in sexual activity as a business).

15. See *People v. Johnson*, 376 N.E.2d 381, 384 (Ill. App. Ct. 1978) (stating law against selling sexual acts was not meant to apply to sexual acts exchanged as part of social companionship); *Commonwealth v. Potts*, 460 A.2d 1127, 1135 (Pa. Super. Ct. 1983); see also *The Today Show* (NBC television broadcast Aug. 3, 2011), available at 2011 LWN 15360580 (reporting arrangements that offer companionship are protected by law).

16. See *The Asshole of the Century*, WANNABE SUGARBABY (Oct. 27, 2010, 7:19 AM), <http://bit.ly/ZtNTIx> [hereinafter *The Asshole of the Century*] ("He was much older and more experienced. I was the lamb, one of many in his flock and I fell in love with him unexpectedly.").

17. See 47 U.S.C. § 230(c) (2006).

18. See *NPS LLC v. StubHub*, No. 06-4874-BLS1, 2009 WL 995483, at *12 (Mass. Super. Ct. Jan. 26, 2009).

19. See *id.* at *11.

20. The author uses the term "Sugar Culture" to refer collectively to sugar daddies, sugar babies, and sugar daddy dating sites.

prostitution, and a website's liability for the illegal acts of its users. Part III will then discuss the implications of participating in the Sugar Culture, focusing first on the acts of sugar daddies and babies, and then, second, on the liability that sugar daddy dating sites may face in the wake of the rulings from *Fair Housing Council of San Fernando Valley v. Roommates.com LLC*,²¹ *Dart v. Craigslist*,²² and *NPS LLC v. StubHub Inc.*²³ Part III will then close with a discussion of possible approaches to prevent the Sugar Culture from becoming a forum that attracts individuals looking to advertise sex for money exchanges online. Finally, Part IV will conclude by suggesting that law enforcement monitor sugar daddy dating sites to ensure they do not develop into online prostitution forums that are beyond the law's reach.

II. BACKGROUND

A. *The Sugar Culture*

I've received property as gifts, and cars and jewelry but receiving luxuries in exchange for sex has left me feeling quite jaded and distrustful of men. I've embarked on shallow relationships that padded my self worth [sic] but left my heart aching.²⁴

As previously mentioned, there are currently over 20 websites that bring sugar daddies and sugar babies together.²⁵ Recently, these sites have been the subject of increased media attention²⁶ because the sites' marketing offers to find users not merely a relationship, but a "mutually beneficial relationship."²⁷

Many individuals in the Sugar Culture refer to a "mutually beneficial relationship" as an "arrangement."²⁸ An arrangement consists of three elements: (1) a sugar daddy, (2) a sugar baby, and (3) an allowance.²⁹ A sugar daddy is typically an older, wealthy individual who

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

22. *Dart v. Craigslist*, 665 F. Supp. 2d 961 (N.D. Ill. 2009).

23. *NPS LLC v. StubHub*, No. 06-4874-BLS1, 2009 WL 995483 (Mass. Super. Ct. Jan. 26, 2009).

24. *See The Love of my Life?*, WANNABE SUGARBABY (Sept. 20, 2010, 3:07 AM), <http://bit.ly/ZtSnyF> (indented for emphasis).

25. *See supra* note 8.

26. *See Padawer, supra* note 13; *see also* Huffington, *supra* note 2.

27. *See What's An Arrangement?*, *supra* note 10. SeekingArrangement has trademarked the term "mutually beneficial relationship." *Id.* It defines the term as an arrangement between two people where each person is "giving as much as they take from [the] other." *Id.*

28. *See Padawer, supra* note 13.

29. *See What's An Arrangement?*, *supra* note 10.

is willing to pay for expensive dinners, vacations, and designer items in exchange for the company of a younger, attractive cohort.³⁰ This cohort is a sugar baby who is often young, beautiful, and cultured.³¹ Above all, however, a sugar baby is a woman seeking a man to support her financially.³² Proponents of these arrangements argue, “It is only human instinct to be attracted to beauty, as it is to be attracted to wealth and power.”³³ Nevertheless, this argument’s main flaw is that these arrangements are more overtly transactional than traditional relationships, especially when considering the third component of an arrangement: an allowance.

An allowance is money that the sugar daddy gives to the sugar baby.³⁴ Often an allowance is provided in the form of a prepaid credit card, a credit card, cash, or a Paypal transaction.³⁵ Allowances can be paid monthly or can be provided per meeting.³⁶ The frequency and method of disbursement typically depends on the agreed-upon arrangement between the sugar daddy and the sugar baby.³⁷ Where monthly allowances are involved, most sugar babies demand an amount that covers their rent and other living expenses plus a set amount of discretionary funds.³⁸ In addition to the regular allowance, sugar babies expect luxurious gifts such as spa treatments, dinners, vacations, or clothes.³⁹

In exchange for a regular allowance and frequent gifts, most sugar daddies expect sex.⁴⁰ This frank exchange is the pivotal point that distinguishes an arrangement from a traditional relationship and draws scrutiny from the media and other outsiders.⁴¹ However, sugar babies

30. *See id.*

31. Although the term “sugar baby” may refer to either male or female cohorts, this Comment focuses on heterosexual relationships between male sugar daddies and female sugar babies.

32. *See What’s An Arrangement?*, *supra* note 10.

33. *See id.*

34. *See Padawer*, *supra* note 13.

35. *See The Big A-Allowance Discussions!*, MEMOIRS OF A SUGARBABY (Feb. 12, 2010, 2:50 AM), <http://bit.ly/ZtWScE> [hereinafter *Allowance Discussions*].

36. *See id.*

37. *See id.*

38. *See id.*

39. *See Padawer*, *supra* note 13.

40. *See 1,000 Words*, *supra* note 7 (“I received plenty of responses from this profile, and some initially seemed to be a great fit: the men sought to help me accomplish my goals and were impressed with my education. But only initially. Too quickly the conversations turned to discuss my amount of “compensation” required. And I knew that they would expect to be compensated in return.”).

41. *See Padawer*, *supra* note 13 (“Seeking Arrangement is a down-and-dirty marketplace where older moneyed men and cute young women engage in brutally frank transactions.”); *see also* Leah McLaren, *I’d Rather Be a Spoiled Brat Than a Sugar Baby*, GLOBE AND MAIL, July 26, 2003, at L3, available at 2003 WLNR 14013365; Lauren

who have blogged about their experiences in the Sugar Culture offer differing perspectives on just how transactional these arrangements actually are. For instance, some sugar babies openly admit that arrangements involve sex in exchange for an allowance,⁴² whereas others contend that sex is not an option until the sugar daddy and the sugar baby have developed a real relationship.⁴³ Brandon Wade, CEO and founder of SeekingArrangement.com, has defended the Sugar Culture, arguing that arrangements are “simply more explicit and transparent about the bargains struck in the traditional model of dating.”⁴⁴ Wade insists that arrangements are merely “brutally honest” relationships where participants are candid about what they can bring to the relationship, and what they expect in return.⁴⁵

In addition to the transactional element of a sugar relationship, arrangements differ from the traditional model of dating in two other regards. First, some sugar daddy dating sites have segregated themselves from traditional dating websites by encouraging non-monogamy.⁴⁶ Although “dating around” is practiced outside the Sugar Culture,⁴⁷ non-monogamy within the Sugar Culture is practiced to maximize individuals’ returns on their time.⁴⁸ Second, sugar babies may split their time between their sugar daddies and their actual boyfriends.⁴⁹

Landry, *Is MIT Responsible for “Legalized Prostitution?”*, BOSTINNO (Sept. 12, 2011, 4:18 PM), <http://bit.ly/Sm6AjR>.

42. See *Sugar Baby Cost*, SUGAR BABYS (Mar. 2, 2010, 11:52 PM), <http://bit.ly/WK3v9J> (“I am not ashamed to tell you that I am the kind of sugar baby who goes for the highest bidder.”).

43. See *It’s My Turn*, CONFESSIONS OF A \$UGAR BABY (Aug. 14, 2009, 10:20 AM), <http://bit.ly/UN6mj6> (“Now, don’t get me wrong, in no way am I ok with exchanging sex for money, I am not a prostitute. The way I look at this is, how is it really any different than dating someone and getting to know each other?”).

44. See Padawer, *supra* note 13.

45. See *id.*

46. Compare *What’s An Arrangement?*, *supra* note 10 (“[W]ho is to say what is ‘right’ or ‘wrong’? In the past, Kings, Shahs [,] and Emperors have had multiple lovers or concubines.”), with *About eHarmony*, EHARMONY, <http://bit.ly/13kUjNH> (last visited Jan. 10, 2013) (explaining the company’s unique Compatibility Matching System designed to pair individuals for successful, long-term relationships); *About Match.com Dating*, MATCH.COM, <http://bit.ly/90Zhfd> (last visited Jan. 10, 2013) (stating that the purpose of the site is to help users find love).

47. See Carrie Seim, *A Girl in Every Borough*, N.Y. POST, July 7, 2011, <http://bit.ly/XmWRb1>.

48. See Clyde, *Benefits of Dating More Than One Sugar Baby*, SUGARSUGAR.COM BLOG (May 24, 2010, 6:35 AM), <http://bit.ly/h4whvF>; see also LEIDRA LAWSON, SUGAR DADDY 101, WHAT YOU NEED TO KNOW IF YOU WANT TO BE A SUGAR BABY 23 (2002) (“It is advisable that you have a spare sugar daddy tucked away, who is able to step in and take over, in case your current long-term [sugar daddy] is unable to fulfill his duties.”).

49. See *Sharing Myself*, CONFESSIONS OF A \$UGAR BABY (Aug. 16, 2009, 9:09 AM), <http://bit.ly/XnGJy> [hereinafter *Sharing Myself*] (“Oh, did I mention that I have a

Meanwhile, the sugar daddy may be splitting time with his sugar baby and his wife,⁵⁰ meaning that his arrangement with his sugar baby is also an extra-marital affair subject to the legal repercussions of adultery.⁵¹

While sugar daddy dating sites herald these unique arrangements as nothing more than mutually beneficial relationships stemming from innate human attraction to wealth and beauty,⁵² journalists have questioned whether such arrangements are actually prostitution in disguise.⁵³ To answer this question, it is first necessary to address the status of prostitution laws in the United States.

B. *A Quickie on Prostitution*

Known as the world's oldest profession,⁵⁴ prostitution dates back to Sumerian times when temple priestesses would engage in sexual acts to honor fertility goddesses.⁵⁵ Even Hammurabi's ancient code of law makes six references to the profession of prostitution.⁵⁶ Modern society, however, has taken to vilifying the act of prostitution as immoral⁵⁷ and degrading,⁵⁸ condemning it by way of religion⁵⁹ and law.⁶⁰ This section will discuss two laws regarding prostitution—the act of prostitution itself

boyfriend. . . . I guess that may be interesting to some. We have been together for almost 8 months and yes, he knows all about [my sugar daddy] and is ok with it.”)

50. See *Now and Then*, WANNABE SUGARBABY (Nov. 4, 2010, 3:07 PM), <http://bit.ly/VUSSR3> (“Only now as I look back do I see a pattern of choosing unavailable men, specifically married men. They really are the easiest sugar daddies. Married men have another full and demanding life completely separate from me. When we meet our interaction is meant to be light hearted fun.”).

51. See generally 2 AM. JUR. 2D *Adultery and Fornication* § 6 (2011).

52. See *What's An Arrangement?*, *supra* note 10.

53. See Ryan Normandin, *The Dark side of an MIT Brain: How an MIT Grad Has Justified Online Prostitution*, THE TECH (Sept. 6, 2011), <http://bit.ly/padK9X>.

54. See Gerda Lerner, *The Origin of Prostitution in Ancient Mesopotamia*, 11 SIGNS 236, 236 (1986), available at <http://bit.ly/12kKIIU>.

55. See *id.* at 238.

56. See *Code of Hammurabi*, THE AVALON PROJECT, <http://bit.ly/2sNd4E> (last visited Jan. 10, 2013).

57. See VICTOR HUGO, *LES MISÉRABLES*, Bk. V, at ch. XI (Isabel F. Hapgood trans., Thomas Y. Crowell & Co. 1887) (1862) (declaring prostitution to be one of man's disgraces).

58. See Kate Morris, *The Harlot's Curse: Feminism and Prostitution*, FRINGE, Feb. 8, 2007, available at <http://bit.ly/WSGI07> (suggesting that feminists do not view prostitutes as women who are in line with “female liberation”).

59. See MATTHEW 21:31-32 (New International Version) (implying that one who engages in prostitution is immoral and must repent in order to gain entry to heaven); see also PROVERBS 23:27-28 (New International Version) (“For a prostitute is a deep pit and a wayward wife is a narrow well. Like a bandit she lies in wait, and multiplies the unfaithful among men.”).

60. See 73 C.J.S. *Prostitution and Related Offenses* § 1 (2011).

and the act of promoting prostitution—before addressing the civil legal repercussions that may evolve from engaging in prostitution.

1. The Act of Prostitution

As of late 2009, forty-nine out of fifty U.S. states have criminalized prostitution,⁶¹ and the federal government has made it a crime to knowingly transport an individual across state lines for the purpose of prostitution.⁶² While prostitution statutes vary from state to state,⁶³ the Model Penal Code (MPC) defines prostitution as “engag[ing] in sexual activity as a business.”⁶⁴ The MPC is silent as to what constitutes a “business,” but at least one court has adopted the definition in *Black’s Law Dictionary*, stating that a “business” is an “[e]mployment, occupation, profession, or commercial activity engaged in for gain or livelihood.”⁶⁵

Although the term “business” seems to cast a wide net, the word is tailored by the notion that prostitution statutes exist to punish solely commercial sexual activity.⁶⁶ In this regard, commercial sexual activity is considered to be a sexual act done in exchange for money.⁶⁷ Courts have emphasized that such statutes shall have no effect on noncommercial sexual activity that results from social companionship.⁶⁸

61. *Id.* Nevada is the only state in the country that allows for regulated prostitution. *Id.*; see also NEV. REV. STAT. ANN. § 201.354 (West 2010); NEV. REV. STAT. ANN. § 244.345 (West 2010). In November 2009, Rhode Island became the forty-ninth state to criminalize prostitution. See Lynn Arditi, *Bill Signing Finally Outlaws Indoor Prostitution in R.I.*, THE PROVIDENCE J. (Nov. 3, 2009, 2:04 PM), <http://bit.ly/Smq8od>.

62. See The Mann Act, 18 U.S.C. § 2421 (2006) (making it a crime to knowingly transport an individual in interstate commerce for the purpose of prostitution); The Travel Act, 18 U.S.C. § 1952 (2006) (making it a crime to travel interstate with the intent to “promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity” such as prostitution); see also *Hoke v. United States*, 227 U.S. 308, 321-22 (1913) (noting that criminalization of prostitution is a matter best left to the states and holding that federal law may only regulate interstate transportation of individuals engaging in prostitution).

63. See 73 C.J.S. *Prostitution and Related Offenses* § 1 (2011).

64. MODEL PENAL CODE § 251.2(1)(a) (Proposed Official Draft 1962). The MPC also describes prostitution as “loiter[ing] in or within view of any public place for the purpose of being hired to engage in sexual activity.” *Id.* § 251.2(1)(b). “Public place” means “any place to which the public or any substantial group thereof has access.” *Id.*

65. *Commonwealth v. Potts*, 460 A.2d 1127, 1135 (Pa. Super. Ct. 1983) (quoting BLACK’S LAW DICTIONARY 302 (5th ed. 1979)).

66. See *Potts*, 460 A.2d at 1136; *State v. Wahl*, 89 S.W.3d 513, 516 (Mo. Ct. App. 2002); *People v. Medina*, 179 Misc.2d 617, 619 (N.Y. Crim. Ct. 1999).

67. See *Morrison v. State*, 526 S.E.2d 336, 337 (Ga. 2000); *People v. Mason*, 642 P.2d 8, 11 (Colo. 1982) (en banc); *State ex rel. Macomb Cty. Prosecuting Attorney v. Mesk*, 333 N.W.2d 184, 189 (Mich. Ct. App. 1983); see also MODEL PENAL CODE § 251.2 explanatory note for sections 251.1-251.4 (Proposed Official Draft 1962).

68. See *Potts*, 460 A.2d at 1135.

However, courts have also stated that prostitution does not require the accused to engage in sexual activity with more than one person,⁶⁹ thus, there is room for interpretation as to whether one who performs sexual acts in exchange for money under the guise of “social companionship” with a single individual would be considered a prostitute.

2. Promoting Prostitution

Under the MPC, a third party is guilty of promoting prostitution when he “knowingly promotes [the] prostitution of another.”⁷⁰ “Promoting prostitution” includes, among other things, running a house of prostitution, procuring inmates for a house of prostitution,⁷¹ permitting a place within one’s control to regularly be used to promote prostitution,⁷² or receiving any benefit from promoting prostitution.⁷³ The purpose of these statutes is to punish third parties who are attempting to corrupt others or encourage illegal activity.⁷⁴ Therefore, a prostitute cannot be charged with promoting prostitution.⁷⁵

Some states have also adopted broad language that defines “promoting prostitution” as either (1) profiting from prostitution or (2) advancing prostitution.⁷⁶ In these jurisdictions, profiting from prostitution occurs when a third party enters into an agreement to receive compensation for the commercial sexual activities of others.⁷⁷ An individual may be charged with advancing prostitution if that person in

69. See *State v. Poague*, 72 N.W.2d 620, 624 (Minn. 1955) (“[W]hether a woman is a common prostitute does not depend alone upon the number of persons with whom she had illicit intercourse but rather may be judged from all the surrounding circumstances.”); *State v. Cariaga*, 523 P.2d 32, 35 (Idaho 1974); *Connecticut v. Allen*, 203 A.2d 248, 250 (Conn. Cir. Ct. 1964); see also *Wilson v. State*, 84 So. 783, 783 (Ala. Ct. App. 1920) (“A woman may be a prostitute and carry on the business of such if she so holds herself out to the world.”). But see *People ex rel. Colletti v. Morehead* 50 N.Y.S.2d 78, 81 (1944) (“[P]rostitution is not a mere meretricious relation with a single individual.”).

70. MODEL PENAL CODE § 251.2(2) (Proposed Official Draft 1962). State laws against promoting prostitution vary in language. See *US Federal and State Prostitution Laws and Related Punishments*, PROCON.ORG, <http://bit.ly/VM21fz> (last visited Jan. 10, 2013) (comparing various state prostitution laws).

71. See MODEL PENAL CODE § 251.2(2)(a)-(b) (Proposed Official Draft 1962).

72. See *id.* § 251.2(2)(g).

73. See *id.* § 251.2(2)(h).

74. See, e.g., *State v. Grazian*, 164 P.3d 790, 797 (Idaho 2007).

75. See, e.g., *Allen v. Stratton*, 428 F. Supp. 2d 1064, 1072 (C.D. Cal. 2006).

76. See WASH. REV. CODE ANN. § 9A.88.080 (West 2011); HAW. REV. STAT. § 712-1203 (2011); ALA. CODE § 13A-12-110 (West 2011); KY. REV. STAT. ANN. § 529.040 (West 2011); N.Y. PENAL LAW § 230.15 (McKinney 2011); CONN. GEN. STAT. ANN. § 53a-85 (West 2011); ARK. CODE ANN. §§ 5-70-104, 106 (West 2011).

77. See *id.*

any way facilitated the prostitution by procuring patrons or prostitutes, or supplying a premise for the purpose of prostitution.⁷⁸

3. Civil Repercussions of Prostitution

In addition to prosecution from the state, parties that engage in prostitution may also suffer economic penalties arising from state anti-predator laws⁷⁹ and divorce proceedings.⁸⁰ The common ground in both instances is that those who are harmed by an act of prostitution can seek economic recovery against the person who engaged in the illegal activity.

State anti-predator laws, such as the Illinois Predator Accountability Act (“Illinois Act”),⁸¹ provide a private cause of action for a “victim of the sex trade” to recover against one who “profits from, or maintains the victim in any sex trade act.”⁸² The Illinois Act defines “victim of the sex trade” to be the prostitute,⁸³ and “sex trade” to be soliciting a prostitute, or any act that would fall under the broad interpretation of “promoting prostitution.”⁸⁴ All the plaintiff must show to recover is long-term physical or emotional harm as a result of being a victim of the sex trade.⁸⁵ Florida,⁸⁶ Hawaii,⁸⁷ and Minnesota⁸⁸ have similar laws that allow victims of the sex trade to sue those who have coerced them into prostitution. Under these laws, “coercion” includes financial rewards, blackmail, or the promise of marriage.⁸⁹ All of the foregoing state laws

78. *See id.*

79. *See generally* 740 ILL. COMP. STAT. ANN. 128/15 (West 2011); HAW. REV. STAT. § 663J-3 (1999); FLA. STAT. ANN. § 796.09 (West 2011); MINN. STAT. ANN. § 611A.81 (West 2011).

80. Married individuals engaging in prostitution as a form of an extra-marital affair may be liable for adultery in divorce proceedings. *See e.g.*, ALA. CODE § 30-2-1(a)(2) (West 2011). For more information on adultery in divorce proceedings, see *infra* notes 92-95 and accompanying text.

81. *See* 740 ILL. COMP. STAT. ANN. 128/15(a) (West 2011) (stating that violations of this section are actionable in civil court).

82. *Id.* § 128/15(b)(1).

83. *Id.* § 128/10.

84. *Id.* Illinois defines “promoting prostitution” as profiting from or advancing prostitution, which includes compelling someone to become a prostitute or arranging a situation in which one may practice prostitution. 720 ILL. COMP. STAT. ANN. 5/11-14.3 (West 2011). For a discussion of similar definitions of “promoting prostitution,” see *supra* Part II.B.2.

85. *See* Christopher P. Keleher, *The Illinois Predator Accountability Act: A Sleeping Giant*, 98 ILL. B.J. 582, 583 (2010). One act resulting in emotional or physical harm can be enough to satisfy the plaintiff’s burden of proof. 740 ILL. COMP. STAT. ANN. 128/25(a)(7).

86. *See* FLA. STAT. ANN. § 796.09 (West 2011).

87. *See* HAW. REV. STAT. § 663J-3 (West 2011).

88. *See* MINN. STAT. ANN. § 611A.81 (West 2011).

89. *See* HAW. REV. STAT. § 663J-4 (West 2011); FLA. STAT. ANN. § 796.09 (West 2011); MINN. STAT. ANN. § 611A.80 (West 2011).

allow for compensatory and punitive damages,⁹⁰ thus effectively creating a civil penalty for those who engage in or promote prostitution.

Additionally, third-party victims of prostitution may be able to recover if they are married to someone who engaged in prostitution. This aspect of prostitution law is important within the context of the Sugar Culture because sugar daddy dating sites encourage extra-marital affairs.⁹¹ Although the majority of states no longer criminalize adultery,⁹² some states allow proof of adultery to be used to establish fault in divorce cases.⁹³ Once fault is established, the spouse who committed adultery may be liable for additional alimony.⁹⁴ In some states, proof of adultery is also an absolute bar against a party's ability to receive alimony.⁹⁵ Therefore, one who is married and engages in prostitution may also have to answer economically to their spouses, the third-party victims.

As this Section demonstrates, prostitution is a serious offense that can have both criminal and civil repercussions. Liability for this offense is also far reaching, extending not only to the prostitute, the "john,"⁹⁶ and the pimp, but also to anyone who knowingly profits from such illegal activity. Whether the wide reach of prostitution laws will stretch as far as to incriminate a sugar daddy dating site will depend on a site's liability for the criminal conduct of its users.

90. See 740 ILL. COMP. STAT. ANN. 128/20 (West 2011); HAW. REV. STAT. § 663J-5 (West 2011); FLA. STAT. ANN. § 796.09(1) (West 2011); MINN. STAT. ANN. § 611A.81(2)(1) (West 2011).

91. See *What's An Arrangement?*, *supra* note 10.

92. See Gabrielle Viator, *The Validity of Criminal Adultery Prohibitions After Lawrence v. Texas*, 39 SUFFOLK U. L. REV. 837, 837 (2006). As of 2006, most states have decriminalized adultery; however, 23 states still classify adultery as a misdemeanor crime. *Id.*

93. See ALA. CODE § 30-2-1(a)(2) (West 2011); ALASKA STAT. ANN. § 25.24.050(2) (West 2011); ARK. CODE ANN. § 9-12-301(5) (West 2011); CONN. GEN. STAT. ANN. § 46b-40(c)(3) (West 2011); DEL. CODE ANN. tit. 13, § 1505(b)(2) (West 2011); D.C. CODE ANN. § 16-904(b)(3) (2011); GA. CODE ANN. § 19-5-3(6) (West 2011); MASS. ANN. LAWS ch. 208, § 1 (West 2011); MISS. CODE ANN. § 93-5-1 (West 2011); N.H. REV. STAT. ANN. § 458:7(II) (West 2011); N.J. STAT. ANN. § 2A:34-2(a) (West 2011); N.M. STAT. ANN. § 40-4-1(c) (West 2011); N.Y. DOM. REL. LAW § 170(4) (West 2011); N.D. CENT. CODE § 14-05-03(1) (West 2011); OHIO REV. CODE ANN. § 3105.01(c) (West 2011); S.C. CODE ANN. § 20-3-10 (West 2011); TENN. CODE ANN. § 36-4-101(3) (West 2011); UTAH CODE ANN. § 30-3-1(3)(b) (West 2011); VT. STAT. ANN. tit. 15, § 551(1) (West 2011); VA. CODE ANN. § 20-91(1) (West 2011).

94. See *Lyons v. Lyons*, 768 So.2d 853, 858 (La. Ct. App. 2000); see also MD. CODE ANN., FAM. LAW § 11-106(b)(6) (West 2011).

95. See GA. CODE ANN. § 19-6-1(b) (West 2011); S.C. CODE ANN. § 20-3-130(A) (West 2010); VA. CODE ANN. § 20-107.1(A) (West 2011).

96. A "John" is a slang term for a prostitute's customer. *Definition of "John,"* DICTIONARY.COM, <http://bit.ly/13lm6Oe> (last visited Jan. 10, 2013).

C. Responsibility on the Internet

In the early 1990s, the Internet began to enter American households.⁹⁷ By 1995, 9.4 percent of the United States was online,⁹⁸ which amounted to over 24.6 million Americans.⁹⁹ As users flocked to the open and endless possibilities of the Internet era, the largely unregulated Internet became home to an assortment of obscene and indecent material.¹⁰⁰ Recognizing the need to regulate online content, Congress began drafting the Communications Decency Act of 1996 (CDA).¹⁰¹

As Congress worked to pass the CDA, the need for balanced regulation became even more apparent after the ruling in *Stratton Oakmont v. Prodigy*.¹⁰² In *Stratton Oakmont*, the court found the defendant interactive service provider (“ISP”),¹⁰³ Prodigy, liable for defamatory comments that were posted by a third party on the website’s message board.¹⁰⁴ The court reasoned that, because Prodigy held itself out as being an editor of the message board, the website was responsible for the defamatory content.¹⁰⁵ Although holding websites responsible for the conduct of their users encouraged websites to self-regulate, the result of this self-regulation threatened to limit the proliferation of ideas on the Internet and the growth of the Internet itself.¹⁰⁶

97. See Lawrence Lessig, *The Death of Cyberspace*, 57 WASH. & LEE L. REV. 337, 337 (2000).

98. See *Graph of Internet Users as a Percentage of U.S. Population, Based on World Bank Development Indicators*, GOOGLE PUB. DATA, <http://bit.ly/UNQlcK> (last updated Jan. 24, 2012).

99. See *Table of Historical U.S. Population Growth, by Year 1900–1998*, NEGATIVE POPULATION GROWTH, <http://bit.ly/aLSSs> (last visited Jan. 10, 2013) (multiplied 9.4% by 262,764,948).

100. See S. REP. NO. 104-23, at 9 (1995) (calling for an amendment to the Communications Act of 1934 to “address an increasing number of published reports of inappropriate uses of telecommunications technologies to transmit pornography. . .”).

101. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.). The CDA was enacted as Section V of the Telecommunications Act of 1996, under the title “Obscenity and Violence.” *Id.* The act was given the short title of “Communications Decency Act of 1996.” H.R. REP. NO. 104-458, at 81 (1996).

102. *Stratton Oakmont v. Prodigy*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995).

103. The CDA defines “interactive service provider” as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server.” 47 U.S.C. § 230(f)(2) (2006).

104. See *Stratton Oakmont*, 1995 WL 323710 at *5.

105. See *id.*

106. See *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997) (“Congress recognized the threat that tort-based lawsuits pose to freedom of speech in the new and burgeoning Internet medium . . . Section 230 was enacted, in part, to maintain the robust nature of Internet communication.”).

Congress responded to the ruling in *Stratton Oakmont* by drafting Section 230, an amendment to the already-completed CDA.¹⁰⁷ Section 230 effectively removes the incentives against self-regulating and the resulting restriction on free speech that the *Stratton Oakmont* decision created.¹⁰⁸ This provision provides in part:

(1) Treatment of publisher or speaker

No 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.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).¹⁰⁹

The statute also defines “information content provider” as “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.”¹¹⁰

With Section 230 protecting ISPs from being held liable as a publisher or speaker of third-party content, ISPs are now free to monitor their sites for material they find offensive, without fear that they will be

107. See *id.* at 331. Although Section 230 remains intact today, in 1997 the U.S. Supreme Court struck other down another section of the CDA. See *Reno v. ACLU*, 521 U.S. 844, 846 (1997). In *Reno v. ACLU*, the U.S. Supreme Court held that Section 223 of the CDA was an abridgment on the First Amendment’s protection of free speech. *Id.* Section 223 was meant to protect children online by prohibiting the transmission to minors of online content that was obscene, indecent, or patently offensive. See Telecommunications Act of 1996, Pub. L. No. 104-104, § 502, 110 Stat. 133 (codified as amended at 47 U.S.C. § 223). The Court found that Section 223’s lack of definitions for “patently offensive” and “indecent” made the Section unconstitutionally overbroad as it inhibited legal adult speech that was not obscene. *Reno*, 521 U.S. at 846.

108. See *Carafano v. Metrosplash.com, Inc.*, 207 F. Supp. 2d 1055, 1065 (9th Cir. 2008).

109. 47 U.S.C. § 230(c) (2006).

110. 47 U.S.C. § 230(f)(3) (2006).

held liable for material that they did not choose to edit or remove.¹¹¹ In effect, plaintiffs can no longer sue the messenger. In the years that followed Section 230's enactment, courts interpreted this amendment broadly,¹¹² granting immunity to ISPs when the actions of third parties resulted in claims against the ISP for defamation,¹¹³ misrepresentation,¹¹⁴ sexual abuse,¹¹⁵ and sexually obscene content.¹¹⁶ Courts have also given weight to Section 230's broad definition of an ISP, granting immunity to both ISPs and website operators.¹¹⁷

Today, many Section 230 immunity cases turn on whether the defendant ISP is a content provider that is responsible in whole, or in part, for the material at issue. Courts have started to recognize that, when ISPs participate in the creation of the content, Section 230 immunity may no longer apply.¹¹⁸ However, in keeping with the Congressional intent to encourage self-policing, courts have been careful to hold ISPs liable only for content creation beyond mere editing.¹¹⁹

111. See *Zeran*, 129 F.3d at 331.

112. See *id.* at 330 (interpreting Section 230 immunity broadly after emphasizing Congress's desire to combat "the threat that tort-based lawsuits pose to freedom of speech in the new and burgeoning Internet medium").

113. See *id.* at 332-33; *Blumenthal v. Drudge*, 992 F. Supp. 44, 51-53 (D.D.C.1998) (immunizing ISP when it did not edit content but had contractual relationship with third-party writer who created the allegedly defamatory content); *Carafano*, 207 F. Supp. 2d at 1125 (immunizing dating site against claim that third party posted fake and defamatory profile about plaintiff).

114. See *Ben Ezra, Weinstein, & Co. v. Am. Online*, 206 F.3d 980, 983 (10th Cir. 2000), *cert. denied*, 531 U.S. 824 (2000) (ISP is not liable for alleged misrepresentation when it merely provides users with access to the material at issue).

115. See *Doe v. MySpace, Inc.*, 528 F.3d 413, 422 (5th Cir. 2008) (ISP immune from claims that it failed to protect minors online when minor user was sexually assaulted by another MySpace member); *Doe v. MySpace, Inc.*, 629 F. Supp. 2d 663, 665 (E.D. Tex. 2009) (immunizing ISP from claims of negligence, gross negligence, and strict product liability as a result of the sexual assault of a minor by another MySpace member).

116. See *Dart v. Craigslist*, 665 F. Supp. 2d 961, 966 (N.D. Ill. 2009) (ISP was not responsible for the sexually obscene content posted by users in the site's "Adult Services" section).

117. See *Zeran*, 129 F.3d at 330 (finding operator of online bulletin board was ISP under Section 230); *Doe v. GTE Corp.*, 347 F.3d 655, 757 (7th Cir. 2003) (finding web host which furnished third party with IP address, internet connection, and server storage space was ISP under Section 230); *Batzel v. Smith*, 333 F.3d 1018, 1030-32 (9th Cir. 2003) (operator of electronic newsletter ISP); *Carafano*, 207 F. Supp. 2d at 1125 (dating site ISP); *Gentry v. eBay, Inc.*, 99 Cal. App. 4th 816, 831 (2002) (online auction site ISP).

118. See *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1164 (9th Cir. 2008) ("Roommate is undoubtedly the 'information content provider' as to the questions [it provides for its users to answer] and can claim no immunity for posting them on its website. . . ."). *But see Chi. Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 672 (7th Cir. 2008) (holding that ISP is not a content provider when it does not induce its users to post discriminatory ads).

119. See *Batzel*, 333 F.3d at 1034 (refusing to hold defendant ISP liable only on the grounds that defendant made edits to the allegedly defamatory content before publishing

Courts have also held that ISPs do not “create” content simply by providing a forum through which the content can be exchanged or distributed.¹²⁰ Nevertheless, ISPs have been found to be information content providers when they help users violate state or federal laws.¹²¹ In fact, Section 230(e) provides that immunity afforded by the CDA does not affect criminal law.¹²²

For instance, in *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, the U.S. Court of Appeals for the Ninth Circuit found the ISP, Roommates.com, to have been an information content provider because it required users to answer a series of questions as part of its Terms of Service.¹²³ These questions violated the federal Fair Housing Act by allowing Roommates.com’s users to discriminate against potential roommates on the basis of sex, sexual orientation, race, and familial status.¹²⁴ By forcing its users to answer discriminatory questions and by providing pre-made discriminatory answers to the questions via a drop-down menu, Roommates.com had effectively crossed the line from being solely an ISP to being an ISP *and* a content provider.¹²⁵

In response to accusations that it was a content provider, Roommates.com argued that the discriminatory content did not exist until the user entered his or her preference, thus discharging Roommates.com as the true provider of the content.¹²⁶ The court rejected this argument, noting that Roommates.com was responsible at least “in part” for the discriminatory content, and was thus not shielded from liability by Section 230.¹²⁷

the material); *Blumenthal v. Drudge*, 992 F. Supp. 44, 51-53 (D.D.C. 1998) (refusing to hold ISP liable when it did not edit content but had contractual relationship with third-party writer who created the allegedly defamatory content).

120. *See Chi. Lawyers’ Comm.*, 519 F.3d at 671 (“Doubtless Craigslist plays a causal role in the sense that no one could post a discriminatory ad if Craigslist did not offer a forum. That is not, however, a useful definition of cause. One might as well say that people who save money ‘cause’ bank robbery, because if there were no banks there could be no bank robberies.”). *But see NPS LLC v. StubHub*, No. 06-4874-BLS1, 2009 WL 995483, at *10 (Mass. Super. Ct. Jan. 26, 2009) (noting that providing a forum does not preclude an ISP from engaging in improper means).

121. *See Roommates.com*, 521 F.3d at 1165 (“The CDA does not grant immunity for inducing third parties to express illegal preferences.”); *StubHub*, 2009 WL 995483 at *11 (finding a genuine issue of material fact existed as to whether StubHub intentionally induced users to violate state anti-scalping laws).

122. *See* 47 U.S.C. § 230(e) (2006).

123. *See Roommates.com*, 521 F.3d at 1165.

124. *See id.* at 1166.

125. *See id.*

126. *See id.* at 1166.

127. *See id.* at 1166-67 (“The projectionist in the theater may push the last button before a film is displayed on the screen, but surely this doesn’t make him the sole producer of the movie.”).

In contrast, in *Dart v. Craigslist*,¹²⁸ the plaintiff was unable to pierce Craigslist's Section 230 immunity even though there was ample evidence that the site was being used to facilitate prostitution.¹²⁹ The case focused on whether Craigslist induced its users to post online advertisements that offered illegal sexual services.¹³⁰ The court found that Craigslist did not induce its users to participate in the illegal conduct, reasoning that the site's "Adult Services"¹³¹ section could be used to post lawful ads and that the terms "Adult" and "Services" together do not necessarily call for the posting of illegal content.¹³² Unlike the *Roommates.com* court, the court in *Dart* found that Craigslist did not induce its users to violate the law because Craigslist repeatedly warned users not to use the site to post illegal content.¹³³ Although the court did not hold Craigslist liable for the content in its "Adult Services" section, the court did note that law enforcement officials could use the website to pursue and prosecute the actual users who posted the unlawful content.¹³⁴ Thus, even with the large amount of evidence of illegal conduct occurring on Craigslist, Section 230 provided immunity absent a showing that the website was actively inducing its users to violate the law.¹³⁵

Finally, in *NPS LLC v. StubHub, Inc.*,¹³⁶ the Superior Court of Massachusetts was unwilling to provide Section 230 immunity to an online ticket exchange, finding a genuine issue of material fact as to whether Stubhub induced its users to violate state anti-scalping laws.¹³⁷ The court found that there was evidence to suggest that the defendant ISP not only had knowledge of the potential illegal conduct on its site, but also that it contributed to the illegal conduct.¹³⁸ The defendant ISP was

128. *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961 (N.D. Ill. 2009).

129. *See id.* at 962.

130. *See id.*

131. This section of Craigslist replaced the site's "Erotic Services" category, which was voluntarily taken down after *Dart* filed his Complaint against the website. Robert Mitchum & Monique Garcia, *Craigslist Erotic Services: Legal Pressure Shuts Down Section Tied to Prostitution*, CHI. TRIB., May 14, 2009, available at <http://bit.ly/SmGY6r>. Craigslist CEO, Jim Buckmaster, stated that a human, instead of a computer program, would review each ad in the new "Adult Services" section to ensure that the content was legal. *Id.* *Dart* opined that these changes were only symbolic and that the substance of the section remained the same. *Id.* The *Dart* court seemed to agree, acknowledging Craigslist's voluntary changes, but concluding that a controversy between the parties still existed. *Dart*, 665 F. Supp. 2d at 963.

132. *See Dart*, 665 F. Supp. 2d at 969.

133. *See id.* But see *NPS LLC v. StubHub*, No. 06-4874-BLS1, 2009 WL 995483, at *11 (Mass. Super. Ct. Jan. 26, 2009).

134. *See Dart*, 665 F. Supp. 2d at 969.

135. *See id.* at 968.

136. *NPS LLC v. StubHub*, No. 06-4874-BLS1, 2009 WL 995483, at *11 (Mass. Super. Ct. Jan. 26, 2009).

137. *See id.* at *11.

138. *See id.*

profiting from users' violation of anti-scalping laws, masking ticket locations to shield seller identities, and hiding the face value of tickets, therefore making it impossible for buyers to know if the sale price exceeded the legal markup under state anti-scalping laws.¹³⁹ However, the court noted that an ISP does not lose its Section 230 immunity simply because it has knowledge that some of its customers might be using its site to violate the law.¹⁴⁰ Instead, the ISP must take the extra step and engage in the illegal activity with the user.¹⁴¹

These cases illustrate that ISPs will not always be immune from liability created by third-party acts if the ISP either served as a partial content provider of¹⁴² or induced¹⁴³ the illegal content on its site. Whether a sugar daddy dating site will be liable for the criminal conduct of its users will depend on the type of sugar arrangement users create as well as the sugar daddy dating site's own infrastructure and marketing.

III. POTENTIAL LIABILITY FOR THOSE INVOLVED IN THE SUGAR CULTURE

A. *The Culpability of a Sugar Member: Dating or Prostitution?*

This section will attempt to categorize the possible types of sugar arrangements and discuss the accompanying criminal and civil liability for members of the Sugar Culture.

1. Criminal Liability

Although state laws vary, the MPC defines prostitution as engaging in sexual activity as a business.¹⁴⁴ Thus, one who engages in sexual activity as the result of a social companionship is effectively outside the realm of prostitution.¹⁴⁵ Sugar babies have blogged about their experiences in the Sugar Culture,¹⁴⁶ which can be divided into three categories, each having distinct legal ramifications.

139. *See id.*

140. *See id.* at *12.

141. *See id.*

142. *See Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157 at 1165 (9th Cir. 2008).

143. *See Dart*, 665 F. Supp. 2d at 966; *StubHub*, 2009 WL 995483, at *12.

144. *See* MODEL PENAL CODE § 251.2(1)(a) (Proposed Official Draft 1962).

145. *See* Commonwealth v. Potts, 460 A.2d 1127, 1136 (Pa. Super. Ct. 1983); *State v. Wahl*, 89 S.W.3d 513, 516 (Mo. Ct. App. 2002); *People v. Medina*, 179 Misc.2d 617, 619 (N.Y. Crim. Ct. 1999).

146. A Google search for "sugar baby blogs" returns numerous sites where sugar babies have blogged about their various experiences in the Sugar Culture.

A “Category One” arrangement is the frank exchange of sex for money without including any form of social companionship. In Category One arrangements, the sugar baby’s allowance would be given to her on a per meeting basis instead of a monthly basis,¹⁴⁷ making the exchange of money more temporally proximate to the sexual act.¹⁴⁸ For sugar members who have engaged in Category One arrangements, both the sugar daddy and the sugar baby may be guilty of prostitution.¹⁴⁹ The caveat lies within the MPC’s advisory note stating that prostitution focuses on sexual activity “as a business,” clarifying that not every instance of sex for a profit will qualify as prostitution.¹⁵⁰

In terms of the MPC, debt-strapped college students participating in the Sugar Culture may fall within the “as a business” qualification because the students partake in the Sugar Culture to pay for tuition, books, and living expenses.¹⁵¹ Like a business, these sugar babies may be engaging in such exchanges solely to generate income to pay for their immediate expenses.¹⁵² While the MPC is only a model code and its provisions are not enforceable until adopted by a state legislature,¹⁵³ a few states have included the MPC’s “as a business” clause within

147. See *Money Honey*, STORIES OF A SUGAR BABY (Jan. 14, 2010, 7:00 PM), <http://bit.ly/14yRTMf> (“Every time I saw him, he had an envelope with \$1,000 in cash and he paid a couple of my bills.”).

148. While temporal proximity of the payment to the sexual act is not an element of prostitution, some laws require the state to prove beyond a reasonable doubt that payment was offered. See, e.g., *Haddaway v. State*, 891 So.2d 631, 632-33 (Fla. Dist. Ct. App. 2005). Thus, close temporal proximity of the payment to the sexual act, as opposed to a monthly allowance, may make it easier for prosecutors to prove the element of an offered payment. See *id.*

149. See MODEL PENAL CODE § 5.02(1) (Proposed Official Draft 1962) (promoting criminal liability for one who engages in sexual activity as a business); NEV. REV. STAT. ANN. § 201.354 (West 2011) (making it a crime to engage in prostitution or solicit a prostitute outside a state-regulated brothel). Even offering to engage in Category One arrangements would expose parties to criminal liability under anti-solicitation laws. See MODEL PENAL CODE § 5.02(1) (Proposed Official Draft 1962). To be guilty of criminal solicitation, a party must have encouraged or requested another to engage in an illegal activity. *Id.* Under state law, some states allow for both the prostitute and the patron to be charged with solicitation. *Parrott v. Municipality of Anchorage*, 69 P.3d 1 (Alaska Ct. App. 2003); *McNeil v. State*, 739 A.2d 80 (Md. 1999); *Thompson v. United States*, 618 A.2d 110 (D.C. 1992); *Files v. Bernal*, 22 P.3d 57 (Ariz. Ct. App. 2001). However, other state solicitation laws have been interpreted as not applicable to the patron. See, e.g., *People v. Jones*, 615 N.E.2d 391 (Ill. App. Ct. 1993).

150. See MODEL PENAL CODE note on section 251.1-251.4 (Proposed Official Draft 1962).

151. See, e.g., Padawer, *supra* note 13.

152. See *id.*

153. See PAUL H. ROBINSON & MARKUS DIRK DUBBER, AN INTRODUCTION TO THE MODEL PENAL CODE (n.d.), available at <http://bit.ly/RlIfW3> (Chinese translation in 2 LAW SCIENCE 107-16 (2006)).

enforceable state criminal laws.¹⁵⁴ However, courts within these states are left to interpret the scope of the clause,¹⁵⁵ which could lead to inconsistencies if charges against Category One arrangements are pursued in these jurisdictions. Therefore, the “as a business” element likely means that Category One exchanges will be subject to a fact-specific inquiry of a sugar baby’s “business,” making instances that appear to be clear cases of prostitution into timely ordeals for prosecutors.

On the other hand, “Category Two” arrangements deal with long-term sugar arrangements that include high levels of companionship. Category Two arrangements tend to mimic traditional dating relationships where sex and money are incidental to the companionship that the relationship offers.¹⁵⁶ Sugar daddies and babies who engage in Category Two arrangements will likely fall under the “social companionship” safe harbor of prostitution laws, thus avoiding any criminal liability for their actions.¹⁵⁷ The legality of the arrangement will be true regardless of the baby’s set monthly allowance because courts are reluctant to inquire into the inner-workings of a romantic relationship.¹⁵⁸ Therefore, Category Two arrangements will be deemed to fall outside the scope of prostitution laws.

Finally, “Category Three” arrangements act as a hybrid of the first two categories, offering long-term sex for money exchanges with little social companionship. Category Three arrangements are difficult to generalize. In some, a sugar baby may receive a per-visit allowance

154. See 18 PA. CONS. STAT. ANN. § 5902 (West 2011); TENN. CODE ANN. § 99-12-512 (West 2011). It may be easier for prosecutors to secure charges in states that have not included the “as a business” language. See, e.g., HAW. REV. STAT. § 712-1200 (West 2011) (making it illegal to engage in sexual activity “for a fee”) (emphasis added); KAN. STAT. ANN. § 21-6419 (West 2011) (defining prostitution as performing sexual acts “for hire”) (emphasis added).

155. See, e.g., *Commonwealth v. Potts*, 460 A.2d 1127, 1135 (Pa. Super. Ct.1983) (adopting broad interpretation of “as a business” to include sexual acts performed for personal gain or livelihood).

156. See *The Asshole of the Century*, *supra* note 16 (“I had found more than a sugar daddy, a soul mate that I could be with forever.”).

157. See *Potts*, 460 A.2d at 1136; *People v. Johnson*, 376 N.E.2d 381, 384 (Ill. App. Ct. 1978).

158. See *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984) (“The Court has long recognized that, because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State”). See generally Kenneth Karst, *The Freedom of Intimate Association*, 89 YALE L.J. 624 (1980); Nancy Catherine Marcus, *The Freedom of Intimate Association in the Twenty First Century*, 16 GEO. MASON U. C.R. L.J. 269 (2006).

from the sugar daddy.¹⁵⁹ If the visits are solely sexual, this arrangement would be a long-term version of a Category One arrangement, which would essentially place the sugar baby on retainer for sexual services.¹⁶⁰ Under the MPC, the question would then become whether the sugar baby's monthly allowance qualified as profits rendered from engaging in "sexual activity as a business."¹⁶¹

Complications with applying a Category One analysis to a Category Three arrangement may arise if the visits between the sugar daddy and baby are not solely sexual. For instance, the visits could offer social companionship such as a dinner outing or a trip to the theater.¹⁶² In this scenario, the arrangement seems more akin to a legal Category Two arrangement. However, if the sugar baby has no romantic feelings for the sugar daddy and engages in the social companionship and sex solely for financial purposes,¹⁶³ the arrangement once again seems to fall within Category One. Thus, Category Three arrangements pose the biggest problem for prosecutors because the legality of the arrangements requires a fact-specific inquiry into the actual arrangement at issue.

2. Civil Liability

Although criminal law may not successfully deter prostitution within the Sugar Culture, the threat of civil liability could dissuade some sugar members from engaging in sex for money exchanges. Civil measures that could deter sugar *daddies* are state anti-predator laws, such as the Illinois Act.¹⁶⁴ Under these laws, a sugar baby could potentially sue her sugar daddy for civil damages by showing (1) that her sugar daddy solicited her to act as an escort or prostitute and (2) that she was emotionally harmed by it.¹⁶⁵ Such laws would allow sugar babies who

159. See Sorta, Comment to Brandon Wade, *Sugar Daddy Dating: Decision Points*, SEEKING ARRANGEMENT (BLOG) (Nov. 8, 2010), <http://blog.seekingarrangement.com/sugar-daddy-dating-decision-points/>.

160. See *Money Honey*, *supra* note 147 (discussing allowances and noting that "[m]ost guys on [sugar daddy dating] sites see [arrangements] as 'bulk-buy' prostitution").

161. See MODEL PENAL CODE § 251.2(1)(a) (Proposed Official Draft 1962).

162. See Baby Bow, *Mini Update Numero Uno*, MEMOIRS OF A SUGARBABY (June 2, 2010, 2:31 AM), <http://bit.ly/VNXtYe> ("[W]e meet for dinner, go dancing or have drinks, spend the day together shopping and spoiling me, we speak every day on the phone and we are very close in that respect.").

163. See *What Type of Sugar Baby are You With?*, SUGAR BABYS (Apr. 25, 2011, 4:45 PM), <http://bit.ly/TNmja1>; *Sharing Myself*, *supra* note 49 (describing how she wants a sugar daddy to take care of her financially and her boyfriend is fine with the idea).

164. See 740 ILL. COMP. STAT. ANN. 128/20 (West 2011); see also Keleher, *supra* note 85, at 583 (interpreting act as applicable against any person who solicits someone to engage in prostitution).

165. See Keleher, *supra* note 85, at 585.

have been emotionally injured by their relationships with their sugar daddies to sue, regardless of whether they consented to the sexual conduct or carried on a romantic relationship with the sugar daddy.¹⁶⁶

State anti-predator laws exist to protect workers in the sex industry from exploitation, allowing them to sue those who have sexually exploited them.¹⁶⁷ Consequently, such laws are believed to decrease prostitution overall.¹⁶⁸ The Illinois Act, in particular, was also created as an effort to counteract the sex trade's move to the Internet through sites such as Craigslist and Backpage.¹⁶⁹ Although a prostitute and her pimp are distinct from a sugar baby and her daddy,¹⁷⁰ state anti-predator laws could serve similar purposes in the Sugar Culture by allowing the culture to, in a sense, police itself online, eliminating prostitution-like arrangements via the threat of civil liability. If such laws were extended to the Sugar Culture, they could serve as a warning to sugar daddies who are only interested in paying sugar babies for sexual acts. This deterrent would in turn help eradicate illegal Category One arrangements and legally questionable Category Three arrangements.

However, because only the sugar daddy could be sued under state anti-predator laws,¹⁷¹ the laws may not deter sugar babies from continuing to engage in sex for money arrangements. Giving sugar babies the opportunity to sue may be futile because sugar babies, particularly college students, view themselves not as prostitutes coerced into the sex industry, but as problem-solving, empowered women looking for benefactors to pay for schooling.¹⁷² Additionally, given a sugar baby's already struggling financial situation, instituting suit against a well-off sugar daddy may be a timely and costly action with no

166. *See id.* at 583.

167. *See id.* State anti-predator laws differ from criminal prosecution because these laws allow the prostitute to sue without exposing herself to criminal prosecution for her own involvement in the underlying illegal act. *Id.* This power shift is extremely important because prostitution thrives on the coercion of the prostitute by the pimp. *Id.*

168. *See id.*

169. *See id.*

170. Because these laws are meant to counter the violence that exists within the sex-traffic industry, a distinction between the relationship of a pimp and prostitute and that of a sugar daddy and baby is important. The sex trade industry is characterized by long-term coercion. *Id.* Conversely, the Sugar Culture seems to be comprised of voluntary arrangements that do not involve physical harm. Padawer, *supra* note 13. Therefore, a movant attempting to sue under a state anti-predator law may be faced with a defendant who contends that these distinctions are material and that anti-predator laws were not intended to apply to situations regarding sugar babies.

171. *See* Keleher, *supra* note 85, at 583 (noting that the Illinois anti-predator law only provides a cause of action for the victim).

172. *See* Padawer, *supra* note 13.

guaranteed reward.¹⁷³ For these reasons, state anti-predator laws, if applied at all to the Sugar Culture, may be reserved only for those arrangements that actually do cause the sugar baby a significant level of harm. Finally, only four states currently have anti-predator laws, making it even more difficult for this type of cause of action to affect the Sugar Culture on a large-scale basis.¹⁷⁴

Adultery is another civil action that could have an effect on the Sugar Culture.¹⁷⁵ Because a sugar daddy may be married,¹⁷⁶ sexual acts with his sugar baby could be used against him in divorce proceedings. In many states, if a sexual relationship with the sugar baby is proven, the sugar daddy may be responsible for additional alimony or may be barred from receiving alimony.¹⁷⁷ While adultery is not a cause of action brought by a member of the Sugar Culture, the threat of third-party claims may deter married individuals from participating in the Sugar Culture.

In sum, it is likely that current criminal and civil repercussions do not substantially deter sex for money exchanges within the Sugar Culture. Given that the law is unable to effectively stop members of the Sugar Culture from engaging in illegal behavior, could putting a stop to sugar daddy dating sites be the answer?

B. Liability and Criminality of a Sugar Daddy Dating Site: Matchmaker or Pimp

There are three possible ways to attempt to hold a sugar daddy dating site liable for the potentially illegal conduct of its users: (1) establish the site as a content provider, (2) show the site was inducing members to violate the law, or (3) charge the site with promoting or profiting from prostitution.

173. See Eugene Lee, *How Much Do Lawsuits Cost?*, CAL. LABOR & EMP'T LAW (Oct. 9, 2011, 1:49 PM), <http://bit.ly/gFqzP7> (listing the various costs typically associated with filing a lawsuit). Alternatively, an anti-predator law could create an increase in lawsuits brought by sugar babies hoping to gain large damage awards from prior sugar daddies.

174. See Keleher, *supra* note 85, at 583.

175. See *supra* notes 92-95 and accompanying text. Additionally, some states still criminalize adultery, classifying the act as a misdemeanor. See, e.g., GA. CODE ANN. § 16-6-19 (West 2011). In these states, both the sugar daddy and baby would be guilty of the crime and would be subject to fines. AM. JUR. 2D *Adultery and Fornication* § 4 (2011).

176. See *The Asshole of the Century*, *supra* note 16.

177. See, e.g., *Lyons v. Lyons*, 768 So.2d 853, 858 (La. Ct. App. 2000); MD. CODE ANN., FAM. LAW § 11-106(b)(6) (West 2011).

1. Liability for the Site as a Content Provider

To establish a sugar daddy dating site as a content provider, a plaintiff or prosecutor must show that the site is responsible in part for creating illegal sex for money exchanges.¹⁷⁸ Sugar daddy dating sites vary in the type of information they require from users when making a profile.¹⁷⁹ Sites that provide open-response boxes where users can describe the type of arrangement they are looking for will not be held liable for the content provided by those answers.¹⁸⁰ Similar to the circumstances of *Roommates.com*, where the court found the site was not liable for users' free responses to a prompt to describe roommate preferences, sugar daddy dating sites that allow complete freedom of response will likely be protected as a publisher under Section 230.¹⁸¹ This outcome is true even if the site edits the users' content or reserves the right to do so.¹⁸²

However, some sugar daddy dating sites combine an open-response section with a drop-down bar that allows the user to select a requested monthly allowance.¹⁸³ Requiring a user to select an allowance from a drop-down menu may bring a sugar daddy dating site within the realm of a content provider.¹⁸⁴ Drop-down menus force a user to select a pre-made answer, making the content a product of both the site that created the list and the user who selected an answer from it.¹⁸⁵ While drop-down menus have exposed websites to liability as content providers,¹⁸⁶ the distinction with sugar daddy dating sites is that the connection between the user's selection from the list and potentially illegal activity is attenuated.¹⁸⁷ Specifically, there is no guarantee of a sex for money exchange at the time the user selects an allowance amount from the drop-

178. See *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1166 (9th Cir. 2008).

179. Compare *Join*, SEEKINGARRANGEMENT, <http://bit.ly/h56PnO> (last visited Feb. 3, 2013) (follow "Continue" hyperlink; then follow "I am a Sugar Baby" hyperlink) [hereinafter *Join*] (providing both a drop down menu to select the amount of allowance a user requests and a free-response box for users to detail the type of arrangement they are seeking), with *Sign Up*, SUGARSUGAR, <http://bit.ly/iVLOS9> (last visited Jan. 10, 2013) (providing only a free-response section for users to detail their ideal arrangement).

180. See *Roommates.com*, 521 F.3d at 1173-74.

181. See *id.*; *Carafano v. Metrosplash.com, Inc.*, 207 F. Supp. 2d 1055, 1065 (9th Cir. 2008) (declining to find dating site liable for user responses to open-response prompts).

182. See *Roommates.com*, 521 F.3d at 1174.

183. See *Join*, *supra* note 179.

184. See *Roommates.com*, 521 F.3d at 1168.

185. See *id.*

186. See *id.*

187. Cf. *Roommates.com*, 521 F.3d at 1168 (providing drop down menus that allowed users to discriminate against potential roommates in housing advertisements, making actual selection from drop down menu an illegal act).

down menu, especially because some sugar babies have blogged that they do not engage in sexual relations with a sugar daddy until it is natural.¹⁸⁸ Therefore, a sugar baby making a profile on a sugar daddy dating site and selecting an allowance is not always creating a strict sex for money exchange. In contrast, Roommates.com was found liable as a content provider for a drop-down menu that allowed users to discriminate in advertising because the illegal act occurred the moment the user selected an answer from the site's drop-down menu.¹⁸⁹ Thus, although the drop-down menu would make the sugar daddy dating site a partial content provider, it is unlikely that the site would be held liable for the content because a request for an allowance is not per se an illegal exchange of sex for money.

2. Liability for the Site as an Inducer of Illegal Conduct

A second attempt to hold a sugar daddy dating site liable for the actions of its users would be for plaintiffs to show that the site induced its users to violate the law. Under the theory of inducement, a plaintiff could circumvent the site's Section 230 immunity by proving that the site took some affirmative action to assist its users in engaging in illegal sex for money exchanges.¹⁹⁰ General knowledge that prostitution occurs on the site will not be enough to hold a site liable unless the site also profited off the illegal activity without stopping it.¹⁹¹

Proof of an affirmative action will be difficult because most sugar daddy dating sites expressly state in their terms of service that users are not to use the site to engage in illegal activity.¹⁹² As reasoned by the *Dart* court, a site's terms of service can be an indication that it is not inducing users to engage in sex for money exchanges.¹⁹³ Additionally, while a sugar daddy dating site's marketing may arguably induce a user

188. See *Dates, Details, Diamonds*, MEMOIRS OF A SUGARBABY (Feb. 7, 2010, 9:14 AM), <http://bit.ly/WTSJNs>.

189. See *Roommates.com*, 521 F.3d at 1168. This illegal act was then escalated by Roommates.com's use of the same discriminatory and illegal choices in its search function. See *id.*

190. See *NPS LLC v. StubHub*, No. 06-4874-BLS1, 2009 WL 995483, at *13 (Mass. Super. Ct. Jan. 26, 2009).

191. See *id.* at *10. For a discussion as to whether a sugar daddy dating site "profits" from a user who engages in prostitution, see *supra* III.B.3.

192. See, e.g., *SugarDaddyForMe Terms of Use Agreement*, SUGARDADDYFORME, <http://bit.ly/UPvlym> (last visited Jan. 10, 2013) ("[P]lease take note that we prohibit anyone from promoting illegal activities (such as prostitution).").

193. See *Dart v. Craigslist*, 665 F. Supp. 2d 961, 969 (N.D. Ill. 2009). But see *StubHub*, 2009 WL 995483, at *11 (noting a court is not limited to a site's terms of service and may focus also on the site's actions to determine if site induced users to violate the law).

to seek out a sex for money exchange,¹⁹⁴ the site retains legitimate uses as a dating site,¹⁹⁵ which will likely shield it from inducement allegations.¹⁹⁶

In contrast, affirmative acts that would circumvent a sugar dating site's liability could include explicitly marketing the site as a forum to engage in prostitution,¹⁹⁷ providing tips on how to discretely hire a prostitute,¹⁹⁸ charging users who wish to engage in prostitution more than users looking for a traditional relationship,¹⁹⁹ encouraging users to solicit or offer sexual services for money in their profiles,²⁰⁰ or matching users who indicated in their free response essays that they are looking for purely sex for money arrangements.²⁰¹ While these are clearly hypothetical and perhaps outrageous examples of inappropriate actions, they are illustrative of just how much a plaintiff would have to show to overcome a sugar daddy dating site's Section 230 immunity under the theory of inducement.²⁰² In reality, it is unlikely that sugar daddy dating sites will be found to have induced users to participate in prostitution because the sites do not take any clear steps that can be seen as encouraging users to violate the law.

194. See BRANDON WADE, *SEEKING ARRANGEMENT: THE DEFINITIVE GUIDE TO SUGAR DADDY AND MUTUALLY BENEFICIAL RELATIONSHIPS* 103 (2009) (discussing allowances in manner that may be interpreted as supporting sex for money exchanges). Sugar daddy dating sites also lure young college students by using targeted ads. Fairbanks, *supra* note 13 (“A month prior, faced with about \$15,000 in unpaid tuition and overdue bills, Taylor and her roommate typed ‘tuition,’ ‘debt,’ and ‘money for school’ into Google. A website called SeekingArrangement.com popped up.”).

195. See Nathan Koppel, *A Q&A With Brandon Wade, Mr. Sugar Daddy*, WALL ST. J. L. BLOG (Aug. 17, 2011, 11:00 AM), <http://on.wsj.com/pBi6Su> (claiming most people on the site have chemistry and do not have sex during the first meeting).

196. See *Dart*, 665 F. Supp. 2d at 969 (noting Craigslist's “Adult Services” section had legitimate uses).

197. See *id.* at 968 (suggesting that Craigslist could be liable for inducing users if section titled “Adult Services” unquestionably called for users to post unlawful content).

198. In *Dart*, the plaintiff alleged that users were using a secret language to advertise prostitution. *Id.* at 962. The court, however, implicitly found that Craigslist could not be liable for the secret language used to mask illegal transactions because it did not induce users to advertise in this way. *Id.* at 967.

199. See *NPS LLC v. StubHub*, No. 06-4874-BLS1, 2009 WL 995483, at *10 (Mass. Super. Ct. Jan. 26, 2009) (noting that inducement may be found when the site has a profit motive for encouraging the illegal activity of its users).

200. See *Dart*, 665 F. Supp. 2d at 968.

201. See *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1166 (9th Cir. 2008) (holding site liable for designing search system that made roommate matches based on discriminatory answers that users provided).

202. See, e.g., *StubHub*, 2009 WL 995483, at *10-12.

3. Criminal Charges against the Site for Promoting or Profiting from Prostitution

The last potential approach to holding a sugar daddy dating site responsible for the acts of its users would be for a prosecutor to charge the site with promoting prostitution. Although the offense of promoting prostitution often includes third parties who receive earnings or proceeds from the commercial sexual activities of another,²⁰³ courts have held that third parties such as hotels and cab drivers are only liable when there is proof that the third party knowingly facilitated the act of prostitution.²⁰⁴ Because sugar daddy dating sites are not literal pimps who physically procure prostitutes for patrons, the sites can be compared to hotels and cab drivers.²⁰⁵ Thus, while sugar daddy dating sites may arguably have general knowledge that the site facilitates prostitution, just as a hotel or cab driver may have knowledge that a patron is engaging in prostitution, such knowledge may not be specific enough to hold the site liable for promoting the prostitution.²⁰⁶ Rather, a prosecutor would likely have to produce evidence that the sugar daddy dating site knew it was facilitating prostitution between two specific users by physically pairing the two users up for the sole purpose of engaging in an illegal sexual act.²⁰⁷

Similarly, even though a sugar daddy dating site could indirectly profit from prostitution via membership fees, this form of profiting would likely be insufficient to hold a site guilty of promoting prostitution. Promoting prostitution based on profiting would require evidence of an agreement between the site and the user stating that the two parties would share in the proceeds of monies gained from the performance of sexual acts.²⁰⁸ Although sugar daddies and sugar babies have a membership agreement with the sugar daddy dating site and pay a

203. See 2 WHARTON'S CRIMINAL LAW § 266 (2011).

204. See CRIMINAL LAW IN NEW YORK § 27:26 (2011) (providing examples of hotels and cab drivers who promoted prostitution).

205. See 63C AM. JUR. 2D *Prostitution* § 15 (2011) (defining "pimping" as knowingly living off the earnings of a prostitute).

206. See *People v. Prevete*, 10 Misc.3d 78, 80 (N.Y. App. Term 2005) (implying degree of specificity of knowledge was found where cab driver was dispatched by escort service, drove prostitute to a customer and then waited outside for prostitute to come back with proceeds of job).

207. See *id.* If a prosecutor succeeds on a charge of promoting prostitution, the sugar baby involved in the act for which the sugar daddy dating site was found guilty could then sue the site for civil damages under a state anti-predator law. See Keleher, *supra* note 85, at 583. However, sugar babies may be bound by choice of law clauses in a site's terms of service agreement, which may not afford them recovery in a jurisdiction with an anti-predator law. *Terms of Use Agreement*, SEEKINGARRANGEMENT, <http://bit.ly/q7vK4r> (last visited Jan. 10, 2013) (applying California law to disputes between site and its customers).

208. See 63C AM. JUR. 2D *Prostitution* § 15 (2011).

per month membership fee, the membership fee does not fluctuate from month to month based on the member's monies earned from prostitution.²⁰⁹ Therefore, membership fees for a sugar daddy dating site will likely be insufficient to find a site guilty of profiting from prostitution.

C. *Potential Solutions to Eradicating Prostitution in the Sugar Culture*

The Sugar Culture as a whole remains elusive to the confines of both criminal and civil law. If traditional channels for fostering prostitution begin to migrate onto sugar daddy dating sites, it may be necessary to develop solutions that will avoid uncertainties regarding the legality of sugar arrangements. Three possible solutions are to (1) legalize and regulate prostitution, (2) restructure current prostitution laws to clearly include certain sugar arrangements, or (3) police the Sugar Culture by infiltrating sugar daddy dating sites.

Legalizing and regulating prostitution has been suggested as a means of both eradicating the physical dangers of street-level prostitution and providing a safer environment for female sex-trade workers.²¹⁰ Legalizing prostitution would also eliminate the need for any categorization of sugar arrangements.²¹¹ But, legalizing prostitution is unlikely to have a large effect on the Sugar Culture because the need to remove physical harm or violence within sugar arrangements has not emerged to date. Unlike street-level prostitutes who may live in fear or under the complete control of a pimp,²¹² sugar babies are voluntarily participating in the Sugar Culture to pay off debt or enjoy previously unattainable luxuries.²¹³ Thus, while legalizing prostitution would solve the legal issues previously discussed, it would do little to protect young

209. See, e.g., *How SeekingArrangement Works*, SEEKINGARRANGEMENT, <http://bit.ly/bRZ9cC> (last visited Jan. 10, 2013). When viewed in this light, to be guilty, a sugar daddy dating site would have to charge a sugar baby membership fees based on the allowance the sugar baby receives from the sugar daddy. See *NPS LLC v. StubHub*, No. 06-4874-BLS1, 2009 WL 995483, at *10-12 (Mass. Super. Ct. Jan. 26, 2009) (noting that inducement may be found when the site has a profit motive for encouraging the illegal activity of its users).

210. See Moira Heiges, *From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking*, 94 MINN. L. REV. 428, 433 (2009).

211. See *supra* Part III.A.

212. See Abigail Zuger, *Many Prostitutes Suffer Combat Disorder, Study Finds*, N.Y. TIMES, Aug. 18, 1998, <http://nyti.ms/XSSmZy> (finding that prostitutes may suffer from post-traumatic stress disorder); Melissa Farley, *Prostitution: Factsheet on Human Rights Violations*, PROSTITUTION RES. & EDUC., <http://bit.ly/FdI3u> (last visited Jan. 10, 2013) (noting that college students selling themselves to pay for tuition is a form of prostitution).

213. See Padawer, *supra* note 13.

sugar babies from engaging in activities that could result in long-term psychological harm.²¹⁴

Second, the language of the MPC's prostitution law could be changed to make it easier to prosecute Category One and some Category Three arrangements. Currently, the MPC's "as a business" clause could protect Category One arrangements by requiring a fact-based inquiry into the purpose of each arrangement.²¹⁵ Such an inquiry could make it time consuming for prosecutors to pursue unguaranteed charges. To make it easier for prosecutors to secure charges, the MPC's language could be modified to outlaw sexual acts performed "for the financial enrichment of one party."²¹⁶ With this change, the prosecutor would no longer have to prove that the sugar baby engaged in the exchange as part of a "business." Instead, the prosecutor would simply need to show that the sex for money exchange occurred and that it was performed for some financial benefit.

This recommendation would have the greatest effect on Category One arrangements because forgoing an inquiry into the "business" of the sugar baby diminishes the amount of proof that the state must produce to secure a charge. However, the recommendation may have little effect on some questionable Category Three arrangements because the accused sugar baby would be able to refute that the exchange was performed for financial enrichment by showing that the exchange was part of a social companionship and that the fee was merely incidental.²¹⁷ Even borderline illegal arrangements will likely be resolved in favor of the accused because courts are reluctant to inquire into citizens' private relationships.²¹⁸ Therefore, a change in the language of prostitution laws might make it easier to prosecute some sugar arrangements, but this

214. See Melissa Farley, "Bad for the Body, Bad for the Heart": Prostitution Harms Women Even if Legalized or Decriminalized, 10 VIOLENCE AGAINST WOMEN 1087, 1094-96 (2004), available at <http://bit.ly/SmTV0h> (arguing that legalizing prostitution does little to prevent psychological harm).

215. Prostitution laws in some jurisdictions outlaw sexual acts "for hire." See, e.g., KAN. STAT. ANN. § 21-6419 (West 2011). In these jurisdictions, sugar babies will likely raise a defense, claiming they are not "for hire" because they do not form arrangements with every sugar daddy who is interested in them. Jess Bunny, *Choosing Your Sugar Daddy*, LIVING THE SUGAR DADDY LIFESTYLE (Jan. 28, 2008, 1:58 PM), <http://bit.ly/WTYKK6> (discussing how babies choose the daddy with whom they want to enter an arrangement).

216. Once the MPC language is changed, states would then need to enact or amend state prostitution laws in order for any change to take effect. ROBINSON & DUBBER, *supra* note 153, at 6.

217. See *People v. Johnson*, 376 N.E.2d 381, 384 (Ill. App. Ct. 1978) (stating that prostitution laws are not meant to apply to sexual acts exchanged as part of a social companionship); *Commonwealth v. Potts*, 460 A.2d 1127, 1135 (Pa. Super. Ct. 1983).

218. See generally Karst, *supra* note 158 (discussing courts' unwillingness to inspect the inner-workings of a private, romantic relationship).

change will fall short of eradicating all sex for money exchanges within the Sugar Culture.

Finally, the most effective approach to weeding out the possibility of prostitution within the Sugar Culture may be for law enforcement to develop a fuller and more precise account of sugar members' actions by infiltrating sugar daddy dating sites. By having law enforcement officers pose as sugar daddies and babies seeking or offering illegal sexual exchanges, officers can successfully identify and charge sugar members who are engaging in Category One and questionable Category Three arrangements. This exact method was used after the court in *Dart* declined to require Craigslist to shut down its "Adult Services" section.²¹⁹ Afterwards, law enforcement began targeting the section so heavily that Craigslist voluntarily shut the section down,²²⁰ an obvious win, albeit out of court, for the law. Targeting sugar daddy dating sites could be just as successful, eliminating members seeking to engage in prostitution on a case-by-case basis until the sites are forced to take matters into their own hands by either discontinuing services or more effectively monitoring activities on the sites.

IV. CONCLUSION

With the annual rise of college tuition and an immense amount of outstanding student loan debt, young college girls have turned to sugar daddies to get the bills paid.²²¹ Critics of the Sugar Culture inaccurately claim that sugar arrangements are simply a new form of prostitution.²²² This broad interpretation fails to take into account the different types of arrangements within the Sugar Culture.

To date, sugar daddy dating sites may not be the most pressing issue regarding prostitution, but enough is known to suggest and perhaps predict that increasingly questionable individuals and activities may migrate to these sites.²²³ If this shift should happen, current criminal

219. See Mitchum & Garcia, *supra* note 131 (noting Craigslist succumbed to legal pressure by shutting down its "Erotic Services" section before trial and replacing it with an allegedly closely monitored "Adult Services" section); *Dart v. Craigslist*, 665 F. Supp. 2d 961, 969 (N.D. Ill. 2009) (stating that law enforcement could police newly created "Adult Services" section and pursue illegal ads individually).

220. See Christopher Leonard, *Craigslist Closes Adult Services Section*, WASH. TIMES, Sept. 4, 2010, available at <http://bit.ly/cTJPPo>; see also Daniel Fisher, *Backpage Takes Heat, But Prostitution Ads are Everywhere*, FORBES (Jan. 26, 2012, 10:25 AM), <http://bit.ly/cTJPPo> (noting Craigslist "Adult Services" section remains closed today).

221. See Padawer, *supra* note 13.

222. See *id.*

223. See Keleher, *supra* note 85 (discussing how street-level prostitution has moved online to sites such as Craigslist and Backpage); Fisher, *supra* note 220 (noting that closure of Craigslist's "Adult Services" section has only caused online prostitution to move to other sites for advertising purposes).

laws and constitutional privacy concerns may effectively allow prostitution-type arrangements to foster within the Sugar Culture. In addition, the fact that a website is largely immune from liability for the conduct of its users could create grave problems should sugar daddy dating sites become the next hotbed for online prostitution. Accordingly, as the physical world migrates to the Internet, these sites should remain under the watchful eye of law enforcement to ensure that sugar daddy dating sites are not creating forums where illegal sex for money exchanges become shielded from the law's reach.
