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### Traffickers' "F"ing Behavior During a Pandemic: Why Pandemic Online Behavior has Heightened the Urgency to Prevent Traffickers from Finding, Friending, and Facilitating the Exploitation of Youth via Social Media

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# SYMPOSIUM: THE EVOLUTION OF TECHNOLOGY & GENDER-RELATED OFFENSES

## TRAFFICKERS’ “F”ING BEHAVIOR DURING A PANDEMIC: WHY PANDEMIC ONLINE BEHAVIOR HAS HEIGHTENED THE URGENCY TO PREVENT TRAFFICKERS FROM FINDING, FRIENDING AND FACILITATING THE EXPLOITATION OF YOUTH VIA SOCIAL MEDIA

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PROLOGUE . . . . .	534
INTRODUCTION . . . . .	534
I. SOCIAL MEDIA IN GENERAL . . . . .	537
A. SOCIAL MEDIA USE BY YOUTH . . . . .	538
B. SOME NEW, SOME UNKNOWN APPS: NOT TO THE PREDATORS . . . . .	540
II. HUMAN TRAFFICKING GENERALLY . . . . .	543
A. TRAFFICKING OF YOUTH . . . . .	545
B. SEX TRAFFICKING OF YOUTH ONLINE . . . . .	546
C. CURRENT HUMAN TRAFFICKING LEGISLATION CHALLENGES. . . . .	547
1. Challenges in Application of Human Trafficking Laws. . . . .	548
2. Constitutional Challenges to Human Trafficking Laws . . . . .	551
D. CHALLENGES TO PROSECUTION POSED BY NARROW LEGISLATIVE APPLICATION . . . . .	553
III. URGENCY FOR ACTION CREATED BY POB . . . . .	554
IV. SUGGESTIONS TO COMBAT TRAFFICKERS’ “F” USE OF SOCIAL MEDIA . . . . .	558
V. CONCLUSION . . . . .	563

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## PROLOGUE

*“The guy was reaching out to a lot of girls all day long, one girl who is actually in a youth home, she had access to the internet, and he connects with her on a social media platform. He drives all the way up from Columbus to Toledo, picks her up at her foster home and drives her back down to Columbus, and then trafficks [sic] her here in Columbus. You know, 25, 30 years ago he would have never been able to connect with her, but, because of social media that connection was immediately made in over a few hours. . . He found out where she was and she told him, ‘yeah please come get me I want to get out of here.’”<sup>1</sup>*

## INTRODUCTION

During the trans-Atlantic slave trade, millions of native Africans<sup>2</sup> were tricked into slavery.<sup>3</sup> Today trans-continental deception continues, ensnaring victims from every corner of the world, many of whom are vulnerable children deceived and enslaved through violence and abuse.<sup>4</sup> Ranked as the second most prevalent criminal enterprise,<sup>5</sup> human trafficking is a multi-billion-dollar enterprise in the United States and across the world,<sup>6</sup> with many of the victims recruited, solicited and exploited via social media. The correlation between this social media exploitation and the use of technology during the 2020 pandemic (hereinafter referred

1. Ohio Anti-Trafficking Professional, 2018; as reported in Ryan Kunz et. al, *Social Media & Sex Trafficking Process from Connection and Recruitment, to Sales*, UTOLEDO, 4 (2018), <https://www.utoledo.edu/hhs/htsji/pdfs/smr.pdf> (emphasis added).

2. See JAMES A. RAWLEY ET. AL., *THE TRANSATLANTIC SLAVE TRADE*, 16 (revised ed. 2005) (reporting, analyzing and presenting in table format the analyses conducted in 1968 by historian Philip D. Curtin and in 2001 by historian David Eltis, who estimated, respectively, that 9,556,000 and 9,599,000 Africans were transshipped across the Atlantic during the trans-Atlantic slave trade).

3. Karen E. Bravo, *Exploring the Analogy Between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade*, 25 B.U. INT’L L.J. 207, 218 (2007) (noting that a “growing numbers of victims were being enslaved by modern-day traffickers: tricked by schemes offering employment abroad or other prospects of fruitful economic opportunities, or simply sold by parents or other authority figures, men, women, and children around the world were being subjected to sexual or other exploitation without compensation”).

4. See NATIONAL CRIMINAL JUSTICE RESOURCE, NCVRW RESOURCE GUIDE: HUMAN TRAFFICKING FACT SHEET (2017), [https://www.ncjrs.gov/ovc\\_archives/ncvrw/2017/images/en\\_artwork/Fact\\_Sheets/2017NCVRW\\_HumanTrafficking\\_508.pdf](https://www.ncjrs.gov/ovc_archives/ncvrw/2017/images/en_artwork/Fact_Sheets/2017NCVRW_HumanTrafficking_508.pdf) (noting that it is estimated that approximately one-third of sex trafficking cases involve children) (citing NAT’L HUMAN TRAFFICKING RESOURCE CTR., *DATA BREAKDOWN 2015* (2016), <https://humantraffickinghotline.org/resources/2015-nhtc-annual-report>).

5. U.S. DEP’T OF HEALTH & HUMAN SERV., HUMAN TRAFFICKING FACT SHEET (2004), <https://www.hsd1.org/?abstract&did=23329> (“After drug dealing, human trafficking is tied with the illegal arms industry as the second largest criminal industry in the world today, and it is the fastest growing.”).

6. International Labor Organization, *Econ. of Force Labour*, (May 20, 2014), [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_243201/lang-en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang-en/index.htm) (noting that the International Labor Organization estimated that forced labor human trafficking generates annual profits of 150 billion US dollars in 2014).

to as "Pandemic Online Behavior" or "POB") highlights the need for action to mitigate the number of child trafficking victims.

A pandemic is defined as "an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people."<sup>7</sup> The 2020 pandemic stemmed from the novel coronavirus known as SARS-CoV-2, which was first detected in Wuhan, Hubei Province, People's Republic of China in December 2019.<sup>8</sup> The resulting coronavirus disease, COVID-19, rapidly spread globally.<sup>9</sup> In response to the spread of the disease in the United States, the U.S. Secretary of Health and Human Services (HHS) declared a public health emergency on January 31, 2020,<sup>10</sup> with COVID-19 being declared a "national emergency" on March 13, 2020.<sup>11</sup> The United States and countries around the world enacted various regulations restricting the movements of citizens in the interest of public health and safety.<sup>12</sup> Commonly referred to as "stay-at-home" orders,<sup>13</sup> these lock-down orders caused the closure of businesses and schools and forced millions of non-essential employees to isolate themselves in their homes, searching for activities to pass the time and ways to ease boredom. Many Americans worked from home while millions more found themselves unemployed as a result of business closures, furloughs and lay-offs.<sup>14</sup> Schools

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7. Heath Kelly, *Bulletin of the World Health Organization: The Classical Definition of a Pandemic is Not Elusive*, 89 WHO 469, 540–541 (2011); see also *Pandemic*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/pandemic> (last visited Apr. 7, 2021).

8. WORLD HEALTH ORGANIZATION, REPORT OF THE WHO—CHINA JOINT MISSION ON CORONAVIRUS DISEASE 2019 (COVID-19) 4 (2020), <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf> (noting that on December 30, 2019, three samples were collected from a patient with pneumonia of unknown etiology from which the COVID-19 virus was subsequently detected).

9. *Mapping the Coronavirus Outbreak Across the World*, BLOOMBERG (Mar. 31, 2021), <https://www.bloomberg.com/graphics/2020-coronavirus-cases-world-map/> (indicating that the COVID-19 outbreak "spread from the Chinese city of Wuhan to more than 180 countries and territories—affecting every continent except Antarctica").

10. The public health emergency was issued under the authority of Section 319 of the Public Health Service Act. 42 U.S.C. § 247d (2019).

11. Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020).

12. Associated Press, *More Than 1.5 Billion Globally Told to Stay Home to Avoid Coronavirus*, PHILA. INQUIRER (Mar. 23, 2020), <https://www.inquirer.com/health/coronavirus/coronavirus-self-quarantine-stay-at-home-world-orders-20200323.html> (stating that by the end of March 2020, it is estimated that more than 1.5 billion people globally were told to stay home to avoid contracting COVID-19); see Reuters Staff, *Wuhan Lockdown 'Unprecedented', Shows Commitment to Contain Virus: WHO Representative in China*, REUTERS (Jan. 23, 2020, 5:59 AM), <https://www.reuters.com/article/us-china-health-who/wuhan-lockdown-unprecedented-shows-commitment-to-contain-virus-who-representative-in-china-idUSKBN1ZM1G9>. The World Health Organization initially used the term "lockdown" to describe the action taken in January 2020 by the Chinese government restricting the movements of people in an effort to control the COVID-19 spread. *Id.*

13. California's Governor, Gavin Newsom, used the term "stay-at-home" when he issued the statewide order for residents to stay at home to mitigate the spread of the COVID-19 virus. *Governor Gavin Newsom Issues Stay at Home Order*, OFF. OF GOV. GAVIN NEWSOM, <https://www.gov.ca.gov/2020/03/19/governor-gavin-newsom-issues-stay-at-home-order/> (last visited July 9, 2021).

14. Annie Nova, *'It's Nerve-Racking'—Millions of Americans are Still Furloughed and Unsure When They Will Return to Work*, CNBC (Aug. 15, 2020, 10:58 AM), <https://www.cnbc.com/2020/08/15/when-furloughs-become-layoffs-during-pandemic.html>.

were not immune to closures, forcing millions of school-aged children across the country to complete the school year remotely.<sup>15</sup> Parents and guardians expected children to be connected on their computers, laptops, iPads and cell phones in order to participate in online learning. With millions of Americans at home with extra time on their hands, average daily in-home data usage in the United States increased exponentially,<sup>16</sup> with internet traffic peaking at a 70% increase.<sup>17</sup> This POB increase in internet traffic and social media engagement was observed across almost all device categories, with the data usage of gaming consoles and smartphones increasing the most.<sup>18</sup> Increased internet usage and social media engagement thus created increased opportunity for traffickers to access and connect to more youth online.<sup>19</sup>

This Article will address how POB has created an urgent need for legislation that targets traffickers and their customers who specifically use social media to exploit and traffic children. Parts I and II of this Article will provide definitions and general information in order to frame the subsequent discussion regarding the need for increased penalties for traffickers using social media in light of the COVID-19 pandemic. Part I discusses the ever-changing landscape of social media, focusing on children's use of social media in Part I(a) and on traffickers' use of computer programs and software applications ("apps") in Part I(b). Part II discusses general information on human trafficking and specifically discusses youth trafficking in Part II(a). Youth can be trafficked for a variety of reasons, including labor and sex. Although it is important to remember that child victims of labor trafficking also may be sexually abused or may be simultaneous victims of sex trafficking,<sup>20</sup> this Article focuses narrowly on the sex trafficking of youth online in Part II(b) and the correlation with online behavior during the COVID-

15. Dana Goldstein, *Coronavirus Is Shutting Schools. Is America Ready for Virtual Learning?*, N.Y. TIMES (Mar. 17, 2020), <https://www.nytimes.com/2020/03/13/us/virtual-learning-challenges.html>.

16. S. O'Dea, *Impact of Coronavirus (COVID-19) on n-Home Data Usage in the US 2020, by Device*, STATISTA (Mar. 19, 2021), <https://www.statista.com/statistics/1106863/covid-19-daily-in-home-data-usage-change-us-2020/> (reporting that during the COVID-19 outbreak in March, in-home data usage increased by 38% compared to the same time in March 2019).

17. Mark Beech, *COVID-19 Pushes Up Internet Use 70% And Streaming More Than 12%, First Figures Reveal*, FORBES MAGAZINE (Mar. 25, 2020, 3:49 PM), <https://www.forbes.com/sites/markbeech/2020/03/25/covid-19-pushes-up-internet-use-70-streaming-more-than-12-first-figures-reveal/#4f9442cc3104>.

18. O'Dea, *supra* note 16.

19. *Educo Warns: COVID-19 Pandemic Increases the Risk of Children and Adolescents Becoming Victims of Trafficking*, RELIEF WEB (July 30, 2020), <https://reliefweb.int/report/world/educo-warns-covid-19-pandemic-increases-risk-children-and-adolescents-becoming-victims>. Speaking at a conference marking the World Day against Trafficking in July 2020, Laurence Cambianica, head of Protection at Educo, noted that "Many countries have opted for confining families to prevent them from getting sick or spreading the virus. While this measure can be effective on a public health level, it could also increase the risk of children and adolescents becoming victims of trafficking, as it is not always the most appropriate way to protect them from other risks such as violence within the home or the possibility of being caught up in trafficking, abuse and exploitation online." *Id.*

20. National Center on Safe Supportive Learning Environments, *Child Labor Trafficking*, <https://safesupportivelearning.ed.gov/human-trafficking-americas-schools/child-labor-trafficking> (last visited Jun. 5, 2021).

19 pandemic. Part III provides a more detailed discussion of the online behavior resulting from the COVID-19 pandemic ("POB"), which underscores the urgent need to prevent traffickers from finding, friending and facilitating the exploitation of youth via social media. Part IV offers suggestions to prevent social media recruiting and other trafficking behavior using social networking platforms to exploit youth.

### I. SOCIAL MEDIA IN GENERAL

In order to provide a framework for the urgent, enhanced need to protect youth from traffickers on social media, this Section discusses social media generally, its use by children, and platforms frequented by both children and traffickers.

Social media has become a primary method of communication<sup>21</sup> with immense benefits, such as strengthening friendships and relationships, improving digital literacy and promoting collaborative learning. Statistics indicate that in 2016 an astounding 77% of U.S. citizens had a social network profile, representing a 7% growth compared to the previous year.<sup>22</sup> By 2020, statistics indicated that there were approximately 223 million social media users in the U.S.—approximately 80% of the population.<sup>23</sup> It is estimated that the number of worldwide social media users reached 4.2 billion as of January 2021.<sup>24</sup> Increasingly, a significant number of social networkers are minors,<sup>25</sup> with increased usage by adolescents as young as age five.<sup>26</sup> The convenience and constant access provided by mobile devices has contributed to the fact that 92% of teens (aged thirteen to seventeen) report going online daily, including 24% who say they go online "almost constantly."<sup>27</sup> As young people socialize and interact with family and peers, they are also interacting and socializing with strangers and predators on social media.

These predators and strangers (who quickly become "friends" through social media) can often have ties to human trafficking within and outside of the borders of the United States.<sup>28</sup> Noted as a growing problem worldwide, human trafficking

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21. PEW RESEARCH CENTER, SOCIAL MEDIA FACT SHEET (2021), <https://www.pewresearch.org/internet/fact-sheet/social-media/>.

22. H. Tankovska, *Percentage of U.S. Population Who Currently Uses Any Social Media from 2008 to 2021*, STATISTA (Mar. 2021), <http://www.statista.com/statistics/273476/percentage-of-us-population-with-a-social-network-profile/>.

23. *Id.*

24. *Id.*

25. AACAP's 65th Annual Meeting, AACAP NEWS (AM. ACAD. OF CHILD & ADOLESCENT PSYCH., Seattle, Wash.), May/June, 2018, at 121 [https://www.aacap.org/App\\_Themes/AACAP/Docs/member\\_resources/aacap\\_news/2018/AACAP-News-May-June-2018.pdf](https://www.aacap.org/App_Themes/AACAP/Docs/member_resources/aacap_news/2018/AACAP-News-May-June-2018.pdf) (reporting that 75% of teens ages 13–17 have at least one active social media profile).

26. OFCOM, CHILDREN AND PARENTS: MEDIA USE AND ATTITUDES REPORT 2 (2017), [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/108182/children-parents-media-use-attitudes-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/108182/children-parents-media-use-attitudes-2017.pdf) (reporting 3% of 5–7 year olds, 23% of 8–11 year olds, and 74% of 12–15 year olds with social media profiles).

27. Amanda Lenhart, *Teens, Social Media & Technology Overview 2015*, PEW RSCH. CTR. (Apr. 9, 2015), <https://www.pewresearch.org/internet/2015/04/09/teens-social-media-technology-2015/>.

28. Press Release, U.N. Office of Drugs & Crime, Share of Children Among Trafficking Victims Increases, Boys Five Times; COVID-19 Seen Worsening Overall Trend in Human Trafficking, Says UNODC Report (Feb. 2, 2020), <https://www.unodc.org/ropan/en/share-of-children-among-trafficking->

has recently risen to tie with the illegal arms industry as the second most common criminal enterprise in the world.<sup>29</sup> This is despite the fact that the crime often remains hidden and is one of the “most underreported” crimes in the country.<sup>30</sup> Human trafficking has been identified as one of the most significant human rights issues of our time, representing a “debasement of our common humanity that tears at the social fabric of our communities, endangers public health, distorts markets, and fuels violence and organized crime.”<sup>31</sup> Although it is difficult to obtain exact statistics regarding the number of human trafficking victims in the United States, it is well accepted that many victims are minors who are trafficked for sexual servitude and forced labor.<sup>32</sup> Often, traffickers target minor victims through social media sites.<sup>33</sup> In 2012, when traffickers’ use of technology to fuel their illicit business and reach larger audiences was publicly recognized,<sup>34</sup> social media was already a primary tool in a trafficker’s arsenal. Since then, predators have grown increasingly skilled at using various tactics to find, friend and facilitate trafficking of youth.

#### A. SOCIAL MEDIA USE BY YOUTH

Recent surveys indicate that around 75% to 85% of teens have a social media profile<sup>35</sup> and are actively and regularly engaging with others on social media. In the process, they post personal (potentially exploitable) information about themselves online, including their real name, age, cell phone number, home and/or

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victims-increases-boys-five-times-covid-19-seen-worsening-overall-trend-in-human-trafficking-says-u (“Traffickers have integrated technology into their business model at every stage of the process, from recruiting to exploiting victims. Many children are approached by traffickers on social media and they are an easy target in their search for acceptance, attention, or friendship. UNODC has identified two types of strategies: ‘hunting’ involving a trafficker actively pursuing a victim, typically on social media; and ‘fishing,’ when perpetrators post job advertisements and wait for potential victims to respond. The internet allows traffickers to live stream the exploitation of their victims, which enables the simultaneous abuse of one victim by many consumers around the globe.”).

29. U.S. DEP’T HEALTH AND HUMAN SERV., *supra* note 5.

30. KEVIN BALES & RON SOODALTER, *THE SLAVE NEXT DOOR: HUMAN TRAFFICKING AND SLAVERY IN AMERICA TODAY* 104 (2009) (quoting an anonymous government source who indicated: “[t]he truth is, nobody can prove at this point how many US. citizen victims are out there. It’s the most underreported crime, and it carries with it its own reasons for not reporting it”).

31. Barack H. Obama, Remarks by the President to the Clinton Global Initiative (Sep. 25, 2012), <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>.

32. U.S. DEPARTMENT OF EDUCATION, *HUMAN TRAFFICKING OF CHILDREN IN THE UNITED STATES 1* (2013), <https://www2.ed.gov/about/offices/list/oese/oshs/tipfactsheet91913.pdf>.

33. *Id.*

34. Obama, *supra* note 31.

35. *Facts for Families*, AACAP NEWS (AM. ACAD. OF CHILD & ADOLESCENT PSYCH., Seattle, Wash.) May/June, 2018, at 156, [https://www.aacap.org/App\\_Themes/AACAP/Docs/member\\_resources/aacap\\_news/2018/AACAP-News-May-June-2018.pdf](https://www.aacap.org/App_Themes/AACAP/Docs/member_resources/aacap_news/2018/AACAP-News-May-June-2018.pdf); *see also*, GUARDCHILD, SOCIAL MEDIA STATISTICS, <https://www.guardchild.com/social-media-statistics-2/> (reporting that 85% of parents with teenage children ages 13-17 report that their child has a social networking profile) (last visited Jun. 5, 2021).

school address. Youths who created profiles or posted photos of themselves online were more likely to be contacted online by unknown people of any age.<sup>36</sup>

A 2015 Pew Research Center poll found that more than half (56%) of teens, ages thirteen to seventeen, go online several times a day, and 12% report once-a-day use.<sup>37</sup> In 2018, reportedly 95% of teens now say they have or have access to a smartphone, which represents a twenty-two-percentage-point increase from the 73% of teens who said this in 2014–2015.<sup>38</sup> The increased access to smartphones has fueled more persistent online activities, with 45% of teens now reporting that they are online on a near-constant basis.<sup>39</sup> Children as young as three-years-old know how to use smartphones and tablets to go online, with more than half reportedly watching YouTube each week.<sup>40</sup> Although the percentage of social media profiles of three- and four-year-olds is small (approximately 1%), by the time children are adolescents, more than 71% of them have social media profiles.<sup>41</sup> With children as young as five-years-old being accessible on social media sites, the landscape for potential predators and traffickers is limitless.

Although the most-visited social media sites might vary, a few remain popular with youth. A 2014–2015 survey indicated that Facebook was the most-used social media site among American teenagers ages thirteen to seventeen, with 71% of all teens using the site, even as half of teens used Instagram and four-in-ten used Snapchat.<sup>42</sup> A mere three years later, statistics indicated that YouTube, Instagram and Snapchat were used by sizable majorities of this age group, with more than 70% of eighteen- to twenty-four-year-olds engaging on social media.<sup>43</sup> In 2018, the most popular social media platform used by teens was YouTube.<sup>44</sup> Eighty-nine percent (89%) of parents of a child ages five to eleven say their child watches videos on YouTube, as do 81% of those who have a child ages three to four and 57% of those who have a child age two or younger.<sup>45</sup> Although many social media platforms are credited with entertaining and educating children, a

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36. AMANDA LENHART ET AL., TEENS AND SOCIAL MEDIA: THE USE OF SOCIAL MEDIA GAINS A GREATER Foothold IN TEEN LIFE AS THEY EMBRACE THE CONVERSATIONAL NATURE OF INTERACTIVE ONLINE MEDIA 23 (2007), [http://www.pewinternet.org/pdfs/PIP\\_Teens\\_Privacy\\_SNS\\_Report\\_Final.pdf](http://www.pewinternet.org/pdfs/PIP_Teens_Privacy_SNS_Report_Final.pdf).

37. Amanda Lenhart, *Teens, Social Media & Technology Overview 2015*, PEW RSCH. CTR. (Apr. 9, 2015), <https://www.pewresearch.org/internet/2015/04/09/teens-social-media-technology-2015/>.

38. Monica Anderson & Jingjing Jiang, *Teens, Social Media & Technology 2018*, PEW RSCH. CTR. (May 31, 2018), <http://www.pewinternet.org/2018/05/31/teens-social-media-technology-2018/>.

39. *Id.*

40. OFCOM, CHILDREN AND PARENTS: MEDIA USE AND ATTITUDES REPORT 2019 5 (2020), [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0023/190616/children-media-use-attitudes-2019-report.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0023/190616/children-media-use-attitudes-2019-report.pdf).

41. *Id.*

42. Lenhart, *supra* note 37.

43. Anderson & Jingjing Jiang, *supra* note 38.

44. *YouTube, Instagram and Snapchat Are the Most Popular Online Platforms Among Teens*, PEW RSCH. CTR. (May 29, 2018), [http://www.pewinternet.org/2018/05/31/teens-social-media-technology-2018/pi\\_2018-05-31\\_teenstech\\_0-01/](http://www.pewinternet.org/2018/05/31/teens-social-media-technology-2018/pi_2018-05-31_teenstech_0-01/).

45. Brooke Auxier et al., *Parenting Children in the Age of Screens*, PEW RSCH. CTR. (July 28, 2020), <https://www.pewresearch.org/internet/2020/07/28/parenting-children-in-the-age-of-screens/>.



majority of parents are concerned about their child being exposed to inappropriate content on video-sharing sites.<sup>46</sup>

In early 2019, Instagram, Facebook and Snapchat were the most frequently used social media platforms by teens.<sup>47</sup> As the year progressed, a new app on the market, TikTok, became the fastest growing app for American teens, with a reported 60% of TikTok users ages sixteen to twenty-four-years-old.<sup>48</sup> The emergence and resulting rapid engagement of this new app is just one illustration of the rapidly-changing world of social media and the ability to attract an exponential number of users in a short period of time.

As social networking sites change, usage and opportunities for traffickers increase.<sup>49</sup> Information regarding the frequency of social media use by teens and the changes in popularity of social networking sites is easily accessible to everyone, including predators.<sup>50</sup> More importantly, e-mail, instant messages, chat rooms and other connections on these social networking sites continue to provide easy access to unsuspecting children.<sup>51</sup> The rapidly-changing landscape of social media creates challenges for agencies and organizations that are striving to eradicate child trafficking, and the rapid changes provide new platforms and opportunities for traffickers who make it their business to stay abreast of the social media habits of children. The evolving nature of social media underscores the necessity for parents and guardians to stay current with the social media habits of their children. The traffickers are certainly keeping up with the evolving landscape and are working to detect new platforms and reach unsuspecting youth victims.

#### B. SOME NEW, SOME UNKNOWN APPS: NOT TO THE PREDATORS

Parents are generally aware of youth using social media.<sup>52</sup> However, many adults may be unaware of the sites that children frequent on a regular basis.<sup>53</sup>

46. *Id.* (noting that some “46% say their child age 1 and younger who watches YouTube videos has encountered videos that were inappropriate for their age”).

47. McKay Deveraux, *The Dangers of Social Media For Teens*, OUTBACK THERAPEUTIC EXPEDITIONS (Feb. 29, 2020), <https://www.outbacktreatment.com/the-dangers-of-social-media-for-teens/>.

48. Mansoor Iqbal, *TikTok Revenue and Usage Statistics*, BUS. OF APPS (Mar. 31, 2021), <https://www.businessofapps.com/data/tik-tok-statistics/>.

49. See U.N. Office on Drugs & Crime (UNODC), *Global Report on Trafficking in Persons—2020*, RELIEFWEB (Feb. 2, 2021), <https://reliefweb.int/report/world/global-report-trafficking-persons-2020> (noting that the first case of online trafficking recorded by UNODC took place in the early 2000s. As of 2021, internet-based trafficking “spans from the basic advertisement of victims online, to advanced combinations of smartphone apps . . . to recruit victims . . . Technology is [also used] to coerce victims . . .”).

50. A quick “Google” search can provide information regarding the most popular social networking sites by age demographics.

51. See *Social Media Archives*, ENOUGH IS ENOUGH, [https://enough.org/stats\\_social\\_media\\_archives](https://enough.org/stats_social_media_archives) (last visited Jun. 5, 2021) (noting that the Journal of Adolescent Health reported in 2010 that 29% of Internet sex crime relationships were initiated on a social networking site, while 33% of all Internet-initiated sex crimes involved social networking sites).

52. See Katharin Czincz & Julie Unruh, *Teens’ Social Media Use is Up During the Pandemic, and So is Their Parents’ Concerns*, WGNTV (Sep. 21, 2020, 4:36 PM), <https://wgntv.com/news/medical-watch/teens-social-media-use-is-up-during-pandemic-and-so-is-their-parents-concerns/>.

53. See Deveraux, *supra* note 47.

Many of these social media sites are potentially dangerous hotbeds for predators and human traffickers.<sup>54</sup> Apps such as Tinder, Blendr, and Kik allow users to meet new people and exchange information, photos and locations.<sup>55</sup> Snapchat became one of the prime social media apps for children to engage in sexting (the sending of sexually explicit digital images, videos, text messages or emails).<sup>56</sup> Photos and videos can also be shared on Pinterest, VSCO, Voxer and Look.<sup>57</sup> Youth can participate in forums and discussions on Reddit, 4Chan, Amino and Quora<sup>58</sup> and participate in live-streaming and video-chatting via Bigo Live, Houseparty, Periscope, Live.me, YouNow, Marco Polo, Monkey, Twitch, HOLLA and ChatLive.<sup>59</sup> Other apps such as Whisper, Omegle, Qooh.me, Ask.fm, Tellonym, Yolo and Lipsi allow users to hide behind anonymity.<sup>60</sup> All of these apps can easily be hidden behind other apps such as Vault, Video Locker, App Lock and Hide It Pro,<sup>61</sup> providing additional opportunities for engagement in settings unbeknownst to those supervising youth.

While many adults remain relatively ignorant to these sites,<sup>62</sup> those engaged in the sexual exploitation and trafficking of minors are not. Children unwittingly enjoy these apps without knowledge of the dangers lurking therein. Sexually

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54. See Lauren Book, *Anyone Can Be a Victim of Human Trafficking. We Have to Open Our Eyes*, TALLAHASSEE DEMOCRAT (Nov. 22, 2020, 5:00 AM), <https://www.tallahassee.com/story/opinion/2020/11/22/anyone-can-victim-human-trafficking-opinion/6361982002/>.

55. See Kevin Foster, *Authorities: These 15 Apps Can Be Used to Target Minors*, KALB (Aug. 27, 2019, 10:38 AM), <https://www.kalb.com/content/news/Authorities-These-15-apps-can-be-used-to-target-minors-558439181.html>.

56. See Wayne Parker, *The Dark Side of Snapchat and Teens*, VERYWELL FAMILY (June 14, 2020), <https://www.verywellfamily.com/what-is-snapchat-and-its-use-1270338/>; *Sexting*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/sexting> (last visited Apr. 7, 2021); see also *Sexting*, Dictionary.com, <https://www.dictionary.com/browse/sexting> (last visited Apr. 7, 2021).

57. Deveraux, *supra* note 47.

58. *Id.*

59. Eric Tao, *HOLLA*, FORBES (2018), <https://www.forbes.com/profile/eric-tao/?sh=6ab5dffe1c10> (HOLLA, previously known as ChaCha, matches strangers based on pre-selected options such as hobbies, countries, sexual orientation or age groups. After random video chats, users can decide whether they want to meet people of similar background).

60. See Webwise, *Explainer: What is Whisper?*, <https://www.webwise.ie/parents/explainer-whisper/>; Alex Joshua, *Anonymous Chat Apps When You Want To Talk To Strangers*, TECHLIFE (Dec. 14, 2019), <https://www.techilife.com/anonymous-chat-apps-talk-strangers/>; Neillie Johnson, *Lipsi App Review: What Parents Need To Know*, COMMON SENSE MEDIA, <https://www.common SenseMedia.org/app-reviews/lipsi> (last visited Jun. 5, 2021). Lipsi, for example, is marketed to “the young and the bold” and is meant to connect an Instagram account so that “friends can provide you with anonymous feedback.” Johnson, *supra* note 60. Although the app has a disclaimer for users 18 or older, “there is no discernible method for preventing younger kids from downloading it, and many users appear to be younger than 18” *Id.*

61. Anurag, *5 Best Apps to Hide Pictures and Videos on Android*, TURBO FUTURE (Jan. 20, 2021), <https://turbofuture.com/cell-phones/6-Best-Apps-to-Hide-Pictures-and-Videos-on-Your-Android-Device>.

62. See Johnson, *supra* note 60 (many Lipsi users “appear to be younger than 18”); *73% of Twitch Users are Under 35*, INFLUENCER MARKETING HUB, <https://influencermarketinghub.com/twitch-stats/> (last visited Jun. 5, 2021). This article does not suggest that social media sites are not used by adults. *73% of Twitch Users are Under 35*, *supra* note 62. However, statistics indicate that the majority of the less popular social media sites are in the 16–24 year old demographic. *Id.* For instance, Twitch statistics indicate that 41% of their users are 16 to 24. *Id.*

explicit content and predatory traffickers are able to operate on these apps, despite legal attempts to remove them. For example, the popular app TikTok was banned in India in June 2020<sup>63</sup> following a two-week ban in 2019, when an Indian court ruled that it could expose children to sexual predators, pornographic content and cyberbullying.<sup>64</sup> It also came under investigation in the United Kingdom for how it handles the personal data of its young users,<sup>65</sup> stemming from concern that vulnerable youth may be easily located and groomed by traffickers. TikTok and other social media messaging systems provide easy opportunities for traffickers to find, friend and facilitate trafficking of unsuspecting, young social media consumers.<sup>66</sup> This easy opportunity for and exposure to sexual predators and potential traffickers was articulated in a lawsuit filed on behalf of a minor who brought action against owners and operators of the popular messaging service, Kik.<sup>67</sup>

In *Doe v. Kik Interactive, Inc.*, the plaintiff alleged that the owners and operators “knew that sexual predators used its service to contact and solicit sexual activity with minors but had failed to provide any warnings or enact policies to protect minors.”<sup>68</sup> The district court granted the defendant’s Motion to Dismiss, finding, in part, that as providers of an interactive computer service, they were entitled to immunity under the Communications Decency Act (“CDA”) with regard to the minor’s claim for damages under the Trafficking Victims Prevention Act (“TVPA”).<sup>69</sup> In its ruling, the court stated: “Plaintiff has not alleged facts that would plausibly establish that Defendants knowingly participated in the sex trafficking venture involving her; she alleges that Defendants knew that other sex trafficking incidents occurred on Kik. This does not satisfy [the Fight Online Sex Trafficking Act/] FOSTA’s requirement that the conduct underlying the claim violate [the TVPA].”<sup>70</sup> Notably, there was no denial that the social media platform “knew” that its site was being used by traffickers. Rather, the successful Motion to Dismiss was predicated on the grounds that the “knowledge” they possessed was insufficient to satisfy FOSTA’s requirement inasmuch as it required “actual knowledge and overt participation in a venture of sexual trafficking” to defeat CDA immunity.<sup>71</sup> During the pandemic, statistics indicate a

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63. Maria Abi-Habib, *India Bans Nearly 60 Chinese Apps, Including TikTok and WeChat*, N.Y. TIMES (Jun. 29, 2020), <https://www.nytimes.com/2020/06/29/world/asia/tik-tok-banned-india-china.html>.

64. Aditya Kalra & Sudarshan Varadhan, *TikTok Vanishes from Google, Apple App Stores in India After Ban*, REUTERS (Apr. 16, 2019), <https://www.reuters.com/article/us-tiktok-india-court/google-blocks-chinese-app-tiktok-in-india-after-court-order-idUSKCN1RS1HT>.

65. Alex Hern, *TikTok Under Investigation Over Child Data Use*, GUARDIAN (July 2, 2019), <https://www.theguardian.com/technology/2019/jul/02/tiktok-under-investigation-over-child-data-use>.

66. See Kunz, *supra* note 1.

67. *Doe v. Kik Interactive, Inc.*, 482 F. Supp. 3d 1242, 1244 (S.D. Fla. 2020).

68. *Id.* at 1251.

69. *Id.*

70. *Id.*

71. *Id.* (quoting *United States v. Afyare*, 632 Fed. App’x 272, 286 (6th Cir. 2016); see also *Geiss v. Weinstein Co. Holdings, LLC*, 383 F. Supp. 3d 156, 169 (S.D.N.Y. 2019) (“[A]iders and abettors of sex trafficking are liable under the TVPA only if they knowingly ‘benefit[ ]’, financially or by receiving

remarkable increase in the use of social media sites,<sup>72</sup> thus providing enhanced opportunities for predators lurking for new child trafficking victims.<sup>73</sup> In light of this POB, a case similarly situated to *Doe* with properly pled facts could establish “actual knowledge” of trafficking behavior on social media sites and lead to the conclusion that legislation such as the CDA, TVPA and FOSTA<sup>74</sup> could (and should) provide for social media platforms’ increased liability to youth users who are left vulnerable to traffickers. Legislation to this effect is urgently needed to increase accountability and bolster liability to youth victims who are trafficked via social media, as the effects of the pandemic continue indefinitely.

## II. HUMAN TRAFFICKING GENERALLY

The determination of what activities may be deemed “trafficking” varies.<sup>75</sup> “Human trafficking,” “trafficking in persons,” and “modern slavery” are umbrella terms used to refer to both sex trafficking and compelled labor.<sup>76</sup> A generally-agreed definition of trafficking is articulated in the Trafficking Victims Protection Act (“TVPA”),<sup>77</sup> which identifies children involved in prostitution as victims of “severe forms of trafficking.”<sup>78</sup> The TVPA states, in part, that “severe forms of trafficking in persons” is:

- (a) 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
- (b) 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>79</sup>

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anything of value from participating in a venture which has engaged in’ sex trafficking.”) (quoting 18 U.S.C. § 1591(a)); *Noble v. Weinstein*, 335 F. Supp. 3d 504, 524 (S.D.N.Y. 2018) (“Plaintiff must allege specific conduct that furthered the sex trafficking venture. Such conduct must have been undertaken with the knowledge, or in reckless disregard of the fact, that it was furthering the alleged sex trafficking venture. In other words, some participation in the sex trafficking act itself must be shown.”).

72. H. Tankovska, *Percentage of U.S. Population with a Social Network Profile from 2008 to 2020*, STATISTA (Mar. 22, 2021), <http://www.statista.com/statistics/273476/percentage-of-us-population-with-a-social-network-profile/>.

73. Katherine, *How do Social Media and Covid-19 Affect Human Trafficking?*, NOVEL HAND, <https://novelhand.com/social-media-covid-19-human-trafficking/> (last visited May 21, 2020).

74. CDA, TVPA and FOSTA will be discussed in further detail *infra* Section II.C.

75. Mark Latonero, *Human Trafficking Online: The Role of Social Networking and Online Classifieds*, UNIV. OF SOUTHERN CAL. ANNENBERG, SCH. FOR COMM. & JOURNALISM, at 10, RSCH. SERIES (2011), [http://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking\\_FINAL.pdf](http://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking_FINAL.pdf) (noting that the definition of trafficking varies under a range of assumptions and laws on the subject).

76. *Policy Issues—Human Trafficking*, U.S. DEP’T OF STATE, <https://www.state.gov/policy-issues/human-trafficking/> (last visited Jun. 5, 2021).

77. See discussion *infra* Section II.C.

78. Trafficking Victims Protection Act of 2000 § 103, 22 U.S.C. § 7102(9) (2012).

79. *Id.* § 7102(11).

Notably, the three qualifiers of force, fraud and coercion are not required in cases involving underage victims. Furthermore, despite the fact that some individuals and organizations erroneously believe that trafficking requires the movement of victims,<sup>80</sup> the previous legal requirement of “movement or transportation” of a child is no longer necessary to find that sexual exploitation of a child amounts to trafficking.<sup>81</sup>

In a similar vein, the United Nations Palermo Protocol—implemented in 2000 to “Prevent, suppress and punish trafficking in persons”—defines “trafficking in persons” as:

“[T]he recruitment, transportation, transfer, harbouring (sic) 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, force labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>82</sup>

The United Nations Protocol includes the prostitution of children under age 18 as trafficking.<sup>83</sup>

The paradigm of prosecuting, protecting and preventing (commonly referred to as the “3P” paradigm) continues to serve as the fundamental framework used around the world to combat human trafficking.<sup>84</sup> This is reflected in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which supplements the Palermo Protocol and the TVPA.<sup>85</sup> Under this paradigm, instead of penalties and fines being assessed against individuals

80. John Richmond, *Message from the Ambassador-at-Large*, in U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 2019, <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

81. Ellen Wright Clayton, Richard D. Krugman, & Patti Simon, *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, THE NATIONAL ACADEMIC PRESS, 2013, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/243838.pdf>; *Research & Resources: Facts About Commercial Sexual Exploitation of Children (CSEC) and Domestic Trafficking*, GEMS, <http://www.gems-girls.org/about/research-resources>.

82. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United National Convention Against Transnational Organized Crime, Dec. 25, 2003, 2237 U.N.T.S. 2319, [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THERETO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf).

83. *Id.* (“The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons.’”).

84. *3Ps: Prosecution, Protection, and Prevention*, Office to Monitor and Combat Trafficking In Persons, U.S. DEP’T OF STATE, <https://www.state.gov/3ps-prosecution-protection-and-prevention/> (last visited Apr. 21, 2020).

85. *Id.*

involved in human trafficking, they are held criminally accountable and prosecuted just like other crimes such as rape or kidnap.<sup>86</sup> Additional measures, which include housing, education, and a support system are included to ensure the physical and psychological well-being of children and protect them from being re-trafficked or re-victimized.<sup>87</sup> Governments are also charged with increasing anti-trafficking efforts by implementing strategic plans (such as media outreach) to spread awareness and strengthening borders to prevent the growth and continuation of human trafficking.<sup>88</sup> To implement this framework, the paradigm requires national and international cooperation to investigate and punish these organized trafficking crimes.<sup>89</sup>

#### A. TRAFFICKING OF YOUTH

Despite diplomatic and programmatic tools to advance the “3P” paradigm via global and national laws prohibiting trafficking, billions of dollars continue to be generated from human trafficking every year.<sup>90</sup> The criminals engaged in this lucrative business prey on the most vulnerable members of society,<sup>91</sup> including children. It has been noted that in today’s society human traffickers rarely have to coerce or kidnap their victims.<sup>92</sup> All they have to do is “open a door to ‘opportunity’ and the [victims] walk right in.”<sup>93</sup> Dubbed “parasitic traffickers” they have been described as “students of opportunity, seducing or stealing their victims where they can. . . .”<sup>94</sup> These traffickers have been aptly described as “innovative and entrepreneurial.”<sup>95</sup> Innovation in this current climate dictates use of technology and social media. Creating increased internet use and social networking, POB has provided traffickers a cavernous “door” and unprecedented ability to advertise their services worldwide and to exploit a greater number of victims.<sup>96</sup> In 2009, it was estimated that “at any given time, 50,000 predators are prowling for children on the Internet.”<sup>97</sup> With the increased use of social media during the

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86. *Id.*

87. *See generally* U.N. OFFICE ON DRUGS AND CRIME, INTERNATIONAL FRAMEWORK FOR ACTION: TO IMPLEMENT THE TRAFFICKING IN PERSONS PROTOCOL (2009), [https://www.unodc.org/documents/human-trafficking/Framework\\_for\\_Action\\_TIP.pdf](https://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf).

88. Susie Johnson, *Human Trafficking: Preventing, Protecting, Prosecuting* (UNITED METHODIST WOMEN/HUMAN TRAFFICKING TEAM), at 2, <https://www.unitedmethodistwomen.org/ht/packet.pdf> (last visited Jun. 5, 2021).

89. *Id.*; BALES & SOODLATER, *supra* note 30, at 7.

90. *Economics of Forced Labour*, INT’L LAB. ORG. (May 20, 2014), [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_243201/lang-en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang-en/index.htm) (The International Labor Organization estimated in 2014 that forced labor human trafficking generates annual profits of 150 billion US dollars).

91. BALES & SOODLATER, *supra* note 30, at 7.

92. *Id.* at 13.

93. *Id.*

94. *Id.* at 16.

95. *Id.*

96. Latonero, *supra* note 75 (noting that while traditional channels of trafficking remain in place, online technologies give traffickers the unprecedented ability to exploit a greater number of victims and advertise their services across geographic boundaries).

97. BALES & SOODLATER, *supra* note 30, at 91.

pandemic, the numbers of both predators and potential victims has simultaneously increased.<sup>98</sup>

Recognized globally as a crime, the “business” of human trafficking is mostly conducted underground.<sup>99</sup> Estimates indicate that 4.8 million people are trapped in forced sexual exploitation.<sup>100</sup> Due to the hidden nature of this enterprise, it is difficult to obtain accurate statistics on the involvement of minors, but estimates suggest that about half of trafficking victims in the U.S. are children.<sup>101</sup> Child sex trafficking in the United States (also commonly referred to as “commercial sexual exploitation of children” or “CSEC”<sup>102</sup>) has been “found to occur in all fifty states.”<sup>103</sup> A 2005 report issued by the FBI concluded that “between 244,000 and 325,000 American children and youth are ‘at risk’ each year of becoming victims of sexual exploitation, including as victims of commercial sexual exploitation (e.g. child pornography, juvenile prostitution, and trafficking in children for sexual purpose).”<sup>104</sup> As astonishing as the numbers are, victims of trafficking generally tend to travel unnoticed through society, basically hidden in plain sight.<sup>105</sup>

## B. SEX TRAFFICKING OF YOUTH ONLINE

Sex trafficking is the most prevalent form of human trafficking in America today and includes forced prostitution, involuntary work in strip clubs and massage parlors, and child pornography.<sup>106</sup> A U.S. Department of Justice report noted that “[t]he United States is widely regarded as a destination country for trafficking in persons.”<sup>107</sup> Reports of predators finding child victims on the internet are not limited to situations involving forcible sexual assault and pedophilic molesting, but more often fit a model of statutory rape, i.e., “adult offenders who meet,

98. Katherine, *supra* note 73.

99. See generally Meredith Dank, Ph.D. et al., *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities* (2014), <https://www.ncjrs.gov/pdffiles1/nij/grants/245295.pdf>.

100. *Forced Labour, Modern Slavery and Human Trafficking*, INT’L LAB. ORG. (Apr. 22, 2021), <http://www.ilo.org/global/topics/forced-labour/lang-en/index.htmj>.

101. *11 Facts About Human Trafficking*, Do Something, <https://www.dosomething.org/us/facts/11-facts-about-human-trafficking> (last visited Jun. 5, 2021).

102. *Commercial Sexual Exploitation of Children*, OJJDP, <https://ojjdp.ojp.gov/programs/commercial-sexual-exploitation-children> (last visited Jun. 5, 2021); see also Charisa Smith, *No Quick Fix: The Failure of Criminal Law and the Promise of Civil Law Remedies for Domestic Child Sex Trafficking*, 71 U. MIAMI L. REV. 1 (2016).

103. Smith, *supra* note 102, at 9.

104. BALES & SOODALTER, *supra* note 30, at 90.

105. See U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 2017 2* (2017), <https://www.state.gov/wp-content/uploads/2019/02/271339.pdf> (noting that human trafficking is a hidden crime “in which perpetrators take advantage of power imbalances and coerce and intimidate their victims into silence”).

106. Trafficking Victims Protection Act of 2000 (TVPA), as amended by the Justice for Victims of Trafficking Act of 2015 (JVTA).

107. HEATHER J. CLAWSON, *ESTIMATING HUMAN TRAFFICKING INTO THE UNITED STATES: DEVELOPMENT OF A METHODOLOGY FINAL PHASE TWO REPORT* (2007), <https://www.ncjrs.gov/pdffiles1/nij/grants/221035.pdf>.

develop relationships with, and openly seduce” children.<sup>108</sup> This grooming of potential child victims is often initiated on the internet.<sup>109</sup> As a result of POB, traffickers have greater access to groom more victims by finding and then friending them through social media in order to facilitate exploitation. This expanded opportunity highlights the need for urgent implementation of legislation to combat the victimization of today’s youth.

### C. CURRENT HUMAN TRAFFICKING LEGISLATION CHALLENGES

Legislation intended to target the trafficking of youth victims includes the aforementioned TVPA<sup>110</sup> and FOSTA.<sup>111</sup> The TVPA provides, in part, for the training of school resource officers to recognize and respond to signs of human trafficking, improving support for missing and exploited children, and improving victim screening and services and judicial training.<sup>112</sup> Other federal laws have increased efforts to investigate and punish sex trafficking offenses, such as the Justice for Victims Act of 2015, which includes provisions authorizing existing federal and state task forces and components to target offenders who exploit children,<sup>113</sup> and the Stop Enabling Sex Traffickers Act of 2017 (“FOSTA-SESTA Bill”), which imposes liability for the “private blocking or screening of offensive material” relating to sex trafficking of children or sex trafficking by force, fraud or coercion.<sup>114</sup> Legislation that targets specific “at-risk” populations, such as children and youth in the child welfare/dependency system<sup>115</sup> and missing children, has also been implemented. One example is the Preventing Sex Trafficking and Strengthening Families Act of 2014, which requires child welfare agencies to develop policies and procedures to identify, document and determine appropriate

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108. Janis Wolak et al., *Online “Predators” and Their Victims: Myths, Realities, and Implications for Prevention and Treatment*, AM. PSYCH. ASS’N (2008), <http://www.apa.org/pubs/journals/releases/amp-632111.pdf>.

109. *Id.* (noting that most internet-initiated sex crimes involve adult men who use the Internet to meet and seduce underage adolescents into sexual encounters).

110. Trafficking Victims Protection Act, 22 U.S.C. §§ 7101–10 (2000).

111. Allow States and Victims to Fight Online Sex Trafficking Act, Fight Online Sex Trafficking Act, Pub. L. No. 115-164, 132 Stat. 1253 (2018) (codified as amended at 18 U.S.C. §§ 1591, 1595, 2421A and 47 U.S.C. § 230).

112. Trafficking Victims Protection Act, 22 U.S.C. § 7104.

113. Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, 129 Stat. 227.

114. Stop Enabling Sex Trafficking Act of 2017, S.1693, 115th Cong. (2017–2018), <https://www.congress.gov/bill/115th-congress/senate-bill/1693/summary/01>.

115. KATE WALKER, CALIFORNIA CHILD WELFARE COUNCIL, ENDING THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: A CALL FOR MULTI-SYSTEM COLLABORATION IN CALIFORNIA 10 (2013), [https://youthlaw.org/wp-content/uploads/2015/01/Ending-CSEC-A-Call-for-Multi-System\\_Collaboration-in-CA.pdf](https://youthlaw.org/wp-content/uploads/2015/01/Ending-CSEC-A-Call-for-Multi-System_Collaboration-in-CA.pdf) (a California Child Welfare Council study found between 50–80% of commercial sexual exploitation victims were involved with child welfare at some point); *see also*, U.S. DEP’T OF HEALTH AND HUMAN SERVICES: ADMIN. FOR CHILDREN, YOUTH AND FAMILIES, GUIDANCE TO STATES AND SERVICES ON ADDRESSING HUMAN TRAFFICKING OF CHILDREN AND YOUTH IN THE UNITED STATES 3 (2013), [http://centerforchildwelfare.fmhi.usf.edu/kb/humantraf/acyf\\_human\\_trafficking\\_guidance2013.pdf](http://centerforchildwelfare.fmhi.usf.edu/kb/humantraf/acyf_human_trafficking_guidance2013.pdf) (the Connecticut Department of Children and Families found in one study that 86 out of 88 children identified as child sex trafficking victims were involved with child welfare services in some capacity).



services for child victims of sex trafficking and those at risk.<sup>116</sup> The Bringing Missing Children Home Act (a part of the Justice for Victims of Trafficking Act of 2015) amended existing federal laws regarding state reporting requirements concerning missing children.<sup>117</sup> The Victims of Child Abuse Act Reauthorization Act of 2018 reauthorized funding to childrens' advocacy centers throughout the country, providing holistic services to children who are victims of child abuse.<sup>118</sup>

These legislative acts have been instrumental in the fight against youth traffickers. However, despite this instrumentality, these laws have been subject to both constitutional and practical challenges related to the fight against youth traffickers, especially when clandestine trafficking occurs via social media. This section will address those challenges and highlight the need for immediate legislative amendments to mitigate the effects of predators finding, friending and facilitating trafficking of youth, particularly in light of POB.

### 1. Challenges in Application of Human Trafficking Laws

Although sex trafficking is a state crime throughout the United States,<sup>119</sup> trafficking activities frequently affect interstate or foreign commerce, thus implicating federal laws.<sup>120</sup> The most consequential of these federal laws is the TVPA. Originally passed in 2000 with the intent to “protect [potential victims], prosecute [traffickers] and prevent” human trafficking, the TVPA has been reauthorized five times since its initial implementation.<sup>121</sup> In 2017, Congress reauthorized the TVPA<sup>122</sup> after three bills were introduced to hasten its reauthorization.<sup>123</sup> In recognition of the prevalent use of the internet in trafficking cases, H.R. 1865, the “Allow States and Victims to Fight Online Sex Trafficking Act of 2017” was signed into law in 2018.<sup>124</sup> Under H.R. 1865, also known as “FOSTA,” the government may prosecute the owners or operators of websites who knowingly assist, support, or facilitate “the prostitution of another person” or who act with reckless disregard contributing to sex trafficking.<sup>125</sup> FOSTA amended the TVPA

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116. Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919 (2014) (amending 42 U.S.C. § 671(a)(34)(A) (2012 & Supp. III 2015)).

117. Bringing Missing Children Home Act, Pub. L. No. 114-22, § 116, 129 Stat. 227, 244 (2015) (amending 42 U.S.C. § 5780 (2012 & Supp. III 2015)).

118. Victims of Child Abuse Act Reauthorization Act, Pub. L. No. 115-424, 132 Stat. 5465 (2019).

119. Charles Doyle, *Sex Trafficking: An Overview of Federal Criminal Law*, CONG. RSCH. SERV., 1 (2015), <https://fas.org/sgp/crs/misc/R43597.pdf> (providing a summary of state statutes regarding sex trafficking).

120. Trafficking Victims Protection Act, 22 U.S.C. § 7101(b)(12) (2000), *supra* note 114.

121. *Federal Anti-Trafficking Laws*, HUMAN TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking/federal-law>.

122. 22 U.S.C. § 7101 (2017).

123. *See* H.S. 22II, Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2017; Abolish Human Trafficking Act of 2017, S. 1311, 115th Cong. (2017); and Trafficking Victims Protection Act of 2017, S. 1312, 115th Cong. (2017).

124. 47 U.S.C. § 230 (2018).

125. Section 3(a) creates 18 U.S.C. § 2421A, a new federal offense that prohibits the use or operation of websites (and other means or facilities of interstate commerce) with the intent to promote or facilitate

to permit claims for civil damages against interactive computer service providers under § 1595, provided that “the conduct underlying the claim constitutes a violation of section 1591.”<sup>126</sup> Operators of websites were previously protected from legal liability for content posted by third parties under Section 230 of the Communications Decency Act of 1996 (“CDA”).<sup>127</sup> FOSTA ensured that the

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prostitution. The bill also provides for an aggravated felony if the defendant recklessly disregards that the crime contributed to sex trafficking as prohibited by 18 U.S.C. § 1591(a).

126. Kendra Albert, et al., *Fosta in a Legal Context*, 1 HACKING HUSTLING (Jul. 30, 2020), <https://hackinghustling.org/fosta-in-a-legal-context>.

127. Communications Decency Act, 47 U.S.C. § 230:

§230. Protection for private blocking and screening of offensive material

**(a) Findings**

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

**(b) Policy**

It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for “Good Samaritan” blocking and screening of offensive material

**(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).<sup>1</sup>

**(d) Obligations of interactive computer service**

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering

immunity previously provided by the CDA did not extend to cases involving human trafficking.<sup>128</sup> As stated in FOSTA, “[Section 230] was never intended to provide legal protection to websites that unlawfully promote and facilitate prostitution and websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims.”<sup>129</sup> Theoretically, website operators can no longer use the CDA as a defense to shield sites that knowingly promote sex trafficking and prostitution.

The impact of these laws was evident when the FBI seized the Backpage.com website and arrested its co-founders, charging them with facilitating prostitution

services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

**(e) Effect on other laws**

**(1) No effect on criminal law**

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

**(2) No effect on intellectual property law**

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

**(3) State law**

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

**(4) No effect on communications privacy law**

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

**(f) Definitions**

As used in this section:

**(1) Internet**

The term “Internet” means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

**(2) Interactive computer service**

The term “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

**(3) Information content provider**

The term “information content provider” means 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.

**(4) Access software provider**

The term “access software provider” means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content. (June 19, 1934, ch. 652, title II, §230, as added Pub. L. 104–104, title V, §509, Feb. 8, 1996, 110 Stat. 137; amended Pub. L. 105–277, div. C, title XIV, §1404(a), Oct. 21, 1998, 112 Stat. 2681–739.)

128. Lura Chamberlain, *FOSTA: A Hostile Law With A Human Cost*, 87 *FORDHAM L. REV.* 2171 (2019).

129. 47 U.S.C. § 230 (2018).

and money laundering.<sup>130</sup> The resulting case, *U.S. v. Lacey*, survived the defendants' Motion to Dismiss the indictments against them.<sup>131</sup> However, courts have yet to realize general liability of social media platforms, even when they serve as hotbeds for communication resulting in youth trafficking.<sup>132</sup>

## 2. Constitutional Challenges to Human Trafficking Laws

Constitutional protections for website operators and their patrons form another obstacle to effective youth trafficking legislation.<sup>133</sup> Those arguments include the notion that H.R. 1865/FOSTA has violated both the First and Fifth Amendments. Specifically, organizations, like the international group, Human Rights Watch (HRW), contend that FOSTA has censored its efforts to advocate for the rights of sex workers.<sup>134</sup> In a seminal case, several groups—including advocacy and human rights organizations, two individuals, and an archival collection of internet content—brought suit against the United States and the U.S. Attorney General, challenging the constitutionality of FOSTA under the First and Fifth Amendments and the Ex Post Facto clause.<sup>135</sup> The plaintiffs argued that (1) FOSTA's content-based restrictions were overbroad and failed to satisfy strict scrutiny; and (2) FOSTA's restrictions on speech were impermissibly vague.<sup>136</sup> The plaintiffs were concerned that their dissemination of information and resources and hosting of others' online speech concerning sex workers could be characterized as "promoting" or facilitating" prostitution<sup>137</sup> and would therefore chill much-needed advocacy and protection for legal sex workers. The two individual plaintiffs—Andrews, an advocate for sex worker rights and a co-founder of several groups that advocate for the health, safety, and human rights of sex workers; and Koszyk, a licensed massage therapist—alleged that website providers' reactions to the implementation of FOSTA (such as shutting down sections of their websites) would result in harm to their business and advocacy efforts.<sup>138</sup> The district court granted the government's motion to dismiss, ruling that the plaintiffs lacked standing to bring a pre-enforcement challenge to FOSTA, FOSTA did not apply to the described conduct, and there was no credible threat of prosecution.<sup>139</sup>

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130. *United States v. Lacey*, 423 F. Supp. 3d 814, 817 (D. Ariz. 2019).

131. *United States v. Lacey*, 423 F. Supp. 3d 748 at 763 (D. Ariz. 2019) ("Defendants arguments that the First Amendment demands a scienter requirement beyond specific intent to promote prostitution are unavailing, as the *mens rea* standard of specific intent to promote prostitution does not criminalize lawful activity.").

132. *Doe v. Kik Interactive, Inc.*, 482 F. Supp. 3d 1242, 1242 (S.D. Fla. 2020) (granting defendant social media provider's Motion to Dismiss claim filed by minor alleging violation of TVPA).

133. See Chamberlain, *supra* note 128, at 2171 (explaining a more in-depth discussion of FOSTA's arguable unconstitutionality).

134. Melissa Gira Grant, *Broad Anti-Trafficking Laws Faces its First Constitutional Challenge*, APPEAL (June 28, 2018), <https://theappeal.org/broad-anti-trafficking-law-faces-its-first-constitutional-challenge/>.

135. *Woodhull Freedom Found. v. United States*, 334 F. Supp. 3d 185, 189 (D.D.C. 2018).

136. *Id.*

137. *Id.* at 199–200.

138. *Id.* at 193.

139. *Id.* at 98–204.

On appeal, the D.C. Circuit reversed and remanded, holding that Andrews, the sex workers' advocate, established standing, as her intended conduct was "arguably proscribed by FOSTA and the threat of future enforcement is substantial,"<sup>140</sup> and Koszyk, the massage therapist, also established standing, as he "demonstrated that a favorable decision would create a significant increase in likelihood that he would obtain relief."<sup>141</sup>

Allowing these challenges to FOSTA does not dilute its intent. However, to ensure that all proper parties are protected, the legislature should consider amending FOSTA to explicitly state that entities and individuals may rebut the presumption that their websites violate the law if they can show that their online content is *de facto* education and/or advocacy for legal activities (including legal sex work), i.e., not in violation of any state or federal trafficking statutes. Scholars have also proposed amendments to FOSTA reextending immunity to internet service providers that "take[] reasonable steps to prevent or address unlawful uses of its services once warned about such uses" or require the providers to have "purposefully encourage[d] cyber stalking, nonconsensual pornography, sex trafficking, child sexual exploitation, or . . . principally hoste[d] such material."<sup>142</sup> Such a legislative mandate would help ensure that social media platforms implement adequate policies and procedures that would allow them the benefits of rebuttal in suits brought by trafficking victims.

Some platforms have already reacted to the tenets of the law by removing or revamping portions of their internet sites. Craigslist shut down their Personals page on March 23, 2018,<sup>143</sup> and Reddit removed several forums that users previously used to advertise and obtain escort services and other casual sexual encounters.<sup>144</sup> Other social networking sites such as Telegram and Mega have been vigilant about disabling links to files shared on their platform and closing users' accounts. NBC News reported that in the first three months of 2020, Telegram took down 26% more groups and channels for child abuse than it did over the same period in 2019—18,815 compared to 14,950.<sup>145</sup> However, the efforts of these and other social networking sites to detect and correct trafficking behavior online is often no match for savvy traffickers who develop "elaborate, cross-

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140. Woodhull Freedom Found. v. United States, 948 F.3d 363, 374 (D.C. Cir. 2020).

141. *Id.*

142. Danielle Keats Citron & Benjamin Wittes, *The Problem Isn't Just Backpage: Revising Section 230 Immunity*, 2 GEO. L. TECH. REV. 453, 471 (2018).

143. Janet Burns, *Craigslist Dumps Personal Ads Over New Online Sex-Trafficking*, FORBES (Mar. 28, 2018, 3:44 PM), <https://www.forbes.com/sites/janetwburns/2018/03/23/craigslist-dumps-personal-ads-over-new-online-sex-trafficking-law/#42dae3f328b5>.

144. Elizabeth Nolan Brown, *Hours After FOSTA Passes, Reddit Bans "Escorts" and "SugarDaddy" Communities*, REASON (Mar. 22, 2018, 10:35 AM), <https://reason.com/2018/03/22/reddit-bans-escort-subreddits/>.

145. Olivia Solon, *Child Sexual Abuse Images and Online Exploitation Surge During Pandemic*, NBC NEWS (Apr. 23, 2020), <https://www.nbcnews.com/tech/tech-news/child-sexual-abuse-images-online-exploitation-surge-during-pandemic-n1190506>; see also Stop Child Abuse (@stopCA), TELEGRAM, (DATE) <https://t.me/s/stopCA>.

platform strategies to dodge detection.”<sup>146</sup> Laws need to specifically target the use of social media for these trafficking activities.

#### D. CHALLENGES TO PROSECUTION POSED BY NARROW LEGISLATIVE APPLICATION

Although the passage of these laws may be considered a victory of sorts in reducing the number of victims of human trafficking, their narrow application (for instance, imposing liability on website operators) is making little impact on the prosecution of predators who use social media to find, friend and exploit vulnerable children. From funding and investigation obstacles to general economic principles and the technological literacy of traffickers, prosecution of online youth traffickers continues to be stymied.<sup>147</sup>

Despite the estimated tens of millions of human trafficking victims worldwide, the United States Department of State reported less than 10,000 worldwide convictions of human traffickers in 2019.<sup>148</sup> Extreme case loads, limited funding and poor training for personnel increase the challenge of effectively addressing the crime of trafficking.<sup>149</sup> In addition, many trafficking victims are reluctant to testify against their traffickers,<sup>150</sup> with victims often discouraged from testifying as a result of delays in the prosecutorial process.<sup>151</sup> Add the fact that witnesses to trafficking are scarce<sup>152</sup> (with many potential available witnesses being reluctant to cooperate with authorities),<sup>153</sup> and the common result is a potential trafficking case with insufficient evidence for prosecution.<sup>154</sup> This tragically leaves predators free to prey on those who are least likely to fight back successfully.

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146. Olivia Solon, *Child Sexual Abuse Images and Online Exploitation Surge During Pandemic*, NBC NEWS (Apr. 23, 2020), <https://www.nbcnews.com/tech/tech-news/child-sexual-abuse-images-online-exploitation-surge-during-pandemic-n1190506>.

147. See generally Andrea J. Nichols & Eric C. Heil, *Challenges to Identifying and Prosecuting Sex Trafficking Cases in the Midwest United States*, 20 FEMINIST CRIMINOLOGY 7, 7–35 (Jan. 2015), <https://doi.org/10.1177/1557085113519490> (noting challenges to identification and prosecuting of trafficking cases including trafficking techniques such as coercion, online solicitation, hidden venues, and interstate movement, as well as issues with police reporting and investigation. Further noting that challenges involved with police reporting errors and evidentiary requirements, the statute of limitations, overlapping jurisdictions, and issue with victim testimony further highlight obstacles to prosecuting sex trafficking cases).

148. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 2019*, 38 (2019), <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> (“Worldwide convictions of human traffickers listed in [the] Report were fewer than 10,000 while estimates of the number of victims of human trafficking remain in the tens of millions”).

149. *Id.* at 6 (indicating that “[e]ffective anti-trafficking law enforcement efforts . . . are faced with cases that exceed their processing capacity.”).

150. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 2017* 32 (2017), <https://www.state.gov/wp-content/uploads/2019/02/271339.pdf>.

151. *Id.* at 7 (“Significant delays in prosecution can discourage victims from testifying or pursuing a case . . .”).

152. *Id.* at 6.

153. *Id.* at 6 (noting the difficulty in obtaining cooperation of family members and others who facilitate sexual exploitation as a “widespread challenge”).

154. *Id.* at 6.

The technological savvy of traffickers further complicates investigation and prosecution efforts, with traffickers using enhanced mechanisms of encryption such as “networks of technologies and platforms that obfuscate traditional IP addresses,”<sup>155</sup> including encrypted messaging apps and poorly policed file-sharing services. Reduction in the workforce due to the pandemic has resulted in reduced human capital in industries that police social networking content and prosecute trafficking offenders.<sup>156</sup>

Social media “friends” also engage in the growing threat of “sextortion,” where offenders hack, coerce, deceive or otherwise obtain incriminating photos or information from a child and then threaten exposure if that child does not perform sex acts via web cameras.<sup>157</sup> Reports of child sexual exploitation activity to cybertip hotlines reportedly increased by an average of 30% globally in April 2020.<sup>158</sup>

### III. URGENCY FOR ACTION CREATED BY POB

Since trafficking does not require physical movement of the victims, the internet provides unlimited opportunities for exploitation of children. One might think that the restriction on society’s movement during the pandemic would serve to reduce the incidences of trafficking. However, it may have had the opposite result.<sup>159</sup> Increased demand for entertainment and economic deficiencies across the world created an environment that enhanced trafficking behavior.<sup>160</sup> In some instances, general economic principles encouraged rather than deterred behavior of human traffickers.<sup>161</sup> High demand for trafficking victims, coupled with relatively low cost and low risk of detection, emboldened traffickers.<sup>162</sup> The high profitability of trafficking and the easy availability of social networking sites created inexpensive and expeditious opportunities for online sexual exploitation of children across state and country lines.<sup>163</sup> The pandemic allowed traffickers to both market their victims to individuals accessing online platforms from the

155. *Id.* at 32.

156. See Jon Allsop, *The Media Industry's Preexisting Conditions*, COLUM. JOURNALISM REV (May 18, 2020), [https://www.cjr.org/the\\_media\\_today/layoffs\\_buzzfeed\\_quartz\\_vice.php](https://www.cjr.org/the_media_today/layoffs_buzzfeed_quartz_vice.php) (noting that since the inception of the pandemic “tens of thousands of media workers, at companies of all sizes, [had] been affected [by layoffs and furloughs]”).

157. TRAFFICKING IN PERSONS REPORT 2017, *supra* note 150, at 32.

158. Solon, *supra* note 146.

159. *Social Media-Based Trafficking on the Rise During Coronavirus Pandemic*, UN NEWS (Nov. 11, 2020), <https://news.un.org/en/story/2020/11/1077402>.

160. Dustin Racioppi, *People Don't Want to Talk About It, but Reports of Kids Being Exploited Online Have Spiked Amid Coronavirus Pandemic*, USA TODAY (Oct. 22, 2020, 5:00 AM), <https://www.usatoday.com/story/news/nation/2020/10/22/coronavirus-child-abuse-nj-online-child-exploitation-reports-increase/6004205002/>.

161. *Id.*

162. *Human Trafficking*, NAT'L HUMAN TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/type-trafficking/human-trafficking> (last visited Jun. 5, 2021).

163. MaryAnne Bobrow, *COVID-19's Impact on Human Trafficking*, MPI (July 29, 2020), <https://www.mpi.org/blog/article/covid-19-s-impact-on-human-trafficking>.

comfort of their homes and simultaneously increase their victim base by finding, friending and grooming unsuspecting youth using social media.<sup>164</sup>

During the 2020 pandemic, live streaming of entertainment increased exponentially.<sup>165</sup> Using web cameras (often referred to as “webcamming”), viewers are able to engage in live, interactive sexual experiences with trafficking victims via video chat rooms, also known as “cam or camming sites.” Within months of the COVID-19 lockdowns, cam sites reported striking spikes in usage.<sup>166</sup> Allowing viewers to interact with “performers” in real time, these sites offer “individualized and diverse erotic potential.”<sup>167</sup> Sites such as OnlyFans, a website where people subscribe to see the kind of pictures and videos that are banned from more mainstream social media (such as Instagram and Facebook), reported a 75% increase in overall new sign-ups (3.7 million new sign-ups) between March and April 2020.<sup>168</sup> CamSoda similarly reported that the number of new viewers to its cam site “doubled [in 2020 through April of 2020] when compared to early 2019.”<sup>169</sup> The easy accessibility and increased use of cam sites has added an additional layer of potential victimization for trafficked youth, despite these sites purporting to impose age restrictions. As with other illegal exploitation of youth, such as youth abused and/or prostituted, traffickers are not intimidated or deterred by stated restrictions. In fact, live-streaming of sexual abuse using web cameras or cellphones, which had also proliferated in recent years, saw a marked increase in “on-demand, child sexual abuse and exploitation” since COVID-19 lockdowns.<sup>170</sup> Although the element of physical touch is absent in these cam site

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164. Christopher Johnson, *How Are Human Traffickers Taking Advantage of the Pandemic?*, REUTERS (Oct. 17, 2020 9:34 PM), <https://www.reuters.com/article/us-global-trafficking-expertview/how-are-human-traffickers-taking-advantage-of-the-pandemic-idUSKBN27300T>.

165. Wendy Lee, *Netflix Broke Subscriber Records in 2020. Will it Slow Down?*, L.A. TIMES (Jan. 20, 2021), <https://www.latimes.com/entertainment-arts/business/story/2021-01-19/netflix-signs-up-record-number-of-subscribers-in-2020> (reporting that the streaming platform, Netflix, broke its record for net additional subscribers in 2020, gaining 37 million for the year—compared with its previous record gain of 28.6 million new subscribers in 2018—and for the first time surpassed 200 million subscribers worldwide).

166. Mark Hay, *Cam Sites Are Seeing a Spike During Quarantine, but Not Just Because People Are Horny*, VOX (Apr. 21, 2020), <https://www.vox.com/the-goods/2020/4/21/21219207/camming-coronavirus-online-sex-work> (reporting that adult cam site owners say they have seen a “massive viewership spike” with the “majority of humanity now on lockdown”).

167. Mark Hay, *Cam Sites Are Porn's Hot New Thing, but They're More Conservative Than You Think*, MASHABLE (Aug. 14, 2020), <https://mashable.com/article/cam-sites-vs-tube-porn-rules/> (noting that “camming offers such individualized and diverse erotic potential that it’s easy to think of it as a definitively superior product, slowly eclipsing the appeal and profitability of old school porn”).

168. Gabrielle Drolet, *The Year Sex Work Came Home*, N.Y. TIMES (Apr. 10, 2020), <https://www.nytimes.com/2020/04/10/style/camsoda-onlyfans-streaming-sex-coronavirus.html>.

169. *Id.*

170. Michael Sullivan, *Child Sex Abuse Livestreams Increase During Coronavirus Lockdowns*, NPR (Apr. 8, 2020, 11:58 AM), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/08/828827926/child-sex-abuse-livestreams-increase-during-coronavirus-lockdowns> (reporting that “Europol, the U.K.’s National Crime Agency, the Swedish Police Authority and others have already seen an increase in online child sexual exploitation since COVID-19 lockdowns”).



encounters, the camera simply serves as a sort of filter and does not change the nature of what makes the trafficking of youth victims a crime.

With the use of technology, traffickers never need to meet their victims in person. In 2004, 85% of victims that met their traffickers online eventually met them in person.<sup>171</sup> By 2015, only 45% of victims reported meeting their trafficker in person.<sup>172</sup> Youth's increased allowance for computer and technology time during the pandemic increased the risk of exposure to being found and friended via online connections and provides traffickers the ease of assessing children's vulnerabilities and grooming them to expedite relationship building.

The dangers of the increased connectivity created by POB was acknowledged by the Federal Bureau of Investigation's online crime division (the Internet Crime Compliance Center (IC3)), which issued a March 2020 warning that human traffickers were increasingly using online platforms, including popular social media and dating platforms, to recruit and to advertise sex trafficking victims.<sup>173</sup> This increased use was similarly documented by some social media platforms. For instance, the social messaging site Telegram revealed a startling uptick in users reporting child abuse related content.<sup>174</sup> Between March and July of 2019, Telegram's "Stop C-A (Child Abuse)" data reported a total of 23,204 reports of inappropriate conduct involving children.<sup>175</sup> During the same time period in 2020, there were 49,394 reports of child abuse content—an almost 47% increase.<sup>176</sup> The significant increase in content exploiting children during the early months of the pandemic is indicative of the increased use of social media connections created as a result of POB.

With ease of online connectivity, traffickers' recruitment of victims may have also been enhanced by the opportunity to exploit the economic impact of the pandemic. Although this paper specifically addresses the pandemic's impact on the role of social media in recruiting and exploiting youth for trafficking, the potential increase in human trafficking linked to the exploitation of the economic impact on families cannot be ignored.<sup>177</sup> Beyond the spread of the coronavirus

171. Kunz, *supra* note 1, at 9.

172. Dr. Vanessa Bouché, *Survivor Insights: The Role of Technology in Domestic Minor Sex Trafficking*, THORN, 1, 6 (2018), [http://2715111qnwey246mkc1vzqg0-wpengine.netdna-ssl.com/wp-content/uploads/2018/06/Thorn\\_Survivor\\_Insights\\_061118.pdf](http://2715111qnwey246mkc1vzqg0-wpengine.netdna-ssl.com/wp-content/uploads/2018/06/Thorn_Survivor_Insights_061118.pdf).

173. Public Service Announcement, Federal Bureau of Investigation, Human Traffickers Continue to Use Popular Online Platforms to Recruit Victims, Alert Number I-031620-PSA (Mar. 16, 2020), <https://www.ic3.gov/media/2020/200316.aspx>.

174. Stop Child Abuse (@stopCA), TELEGRAM, <https://t.me/s/stopCA> (stating that this channel "publishes daily updates on banned CA-related content. Report via the in-app button or by emailing stopCA@telegram.org") (last visited Jun. 5, 2021).

175. *Id.*

176. *Id.*

177. See generally Joe Wallen, *Without a Trace: Human Traffickers Exploit the Pandemic to Separate Children from Their Families*, TELEGRAPH (July 28, 2020, 12:38 PM), <https://www.telegraph.co.uk/global-health/science-and-disease/without-trace-human-traffickers-exploit-pandemic-separate-children/> (recounting incidences of parents being promised lucrative jobs for their children in India's megacities only for them to disappear).

and efforts to quarantine worldwide, the pandemic caused the largest global recession in history.<sup>178</sup> The economic consequences of the pandemic impacted countries with unprecedented speed and severity. In the last two weeks of March 2020, almost 10 million people in the United States applied for unemployment benefits.<sup>179</sup> The unemployment numbers increased through June 2020 to upwards of 17 million.<sup>180</sup> With a noticeable 10.2% reduction in the unemployment rate in July 2020, the Bureau of Labor and Statistics nevertheless recorded a July 2020 unemployment rate at an unprecedented 16.3 million.<sup>181</sup> Despite the slow opening of offices and businesses across the nation, millions remained actively seeking employment,<sup>182</sup> often turning to the internet to search for job opportunities. This presented yet another opportunity for traffickers to entice potential victims (including parents of potential youth victims) with online fake or deceptive job recruitment,<sup>183</sup> using attractive ads and inflated earning potential. The ease of accessibility via social media presented a convenient worldwide marketing channel for traffickers to generate income.

The economic impact borne from layoffs and furloughs associated with the pandemic also provided incentive for trafficking of children by family members and associates in search of ways to generate income.<sup>184</sup> The concept of family trafficking of youth is unfortunately not novel. Arrests made in Florida in 2020 under "Operation Stolen Innocence"<sup>185</sup> illustrate the ongoing familial victimization of youth.<sup>186</sup> After a two-year investigation into a network that trafficked an

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178. See Investopedia Staff, *A Review of Past Recessions*, INVESTOPEDIA (Jan. 26, 2021), <https://www.investopedia.com/articles/economics/08/past-recessions.asp>.

179. See generally Avie Schneider, *Staggering: Record 10 Million File For Unemployment In 2 Weeks*, NPR (Apr. 2, 2020, 8:31 AM), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/02/825383525/6-6-million-file-for-unemployment-another-dismal-record>.

180. U.S. Bureau of Labor and Statistics., *Economic News Release: Employment Situation Summary*, (Aug. 7, 2020, 8:30 AM), <https://www.bls.gov/news.release/empst.nr0.htm>.

181. *Id.*

182. U.S. Bureau of Labor and Statistics, *Effects of COVID-19 Pandemic on the Employment Situation News Release and Data*, <https://www.bls.gov/covid19/effects-of-covid-19-pandemic-and-response-on-the-employment-situation-news-release.htm> (last visited Apr. 16, 2021).

183. Polaris, "On-Ramps, Intersections, and Exit Routes: A Roadmap for Systems and Industries to Prevent and Disrupt Human Trafficking" at pg. 20. <https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking.pdf> (reporting the frequency of sex traffickers to recruit victims through illegitimate job offers for modeling or dancing, sometimes facilitated through fake business profiles, event pages on Facebook, or on Craigslist. Employment ads indicate "inflated earning potential, extreme promises regarding immigration benefits, same day pay, no need for experience or training, housing and transportation costs provided, and vague and elusive conditions regarding the job itself.")

184. Jennifer Rigby, *Children for Sale: How the Pandemic is Forcing Poverty-Stricken Parents to Make Desperate Choices*, TELEGRAPH (Sep. 28, 2020, 12:34 PM), <https://www.telegraph.co.uk/global-health/climate-and-people/children-sale-pandemic-forcing-poverty-stricken-parents-make/>.

185. Press Release, Department of Justice, *More Than 170 Charged Following A Large-Scale Human Trafficking Investigation* (Nov 17, 2020), <https://www.justice.gov/usao-ndfl/pr/more-170-charged-following-large-scale-human-trafficking-investigation>.

186. Jeff Burlew, 'Operation Stolen Innocence': More Than 170 Charged in Florida Child Sex Trafficking Network, USA TODAY (Nov. 17, 2020), <https://www.usatoday.com/story/news/nation/2020/11/17/170-plus-people-charged-massive-child-sex-trafficking-investigation-tallahassee/6331680002/>.

adolescent (beginning when she was 13), Tallahassee police arrested 178 people on charges including human trafficking.<sup>187</sup> The child had been trafficked with her own mother and others “orchestrating her agony.”<sup>188</sup> In the midst of the COVID-19 pandemic, parents and relatives turned to online exploitation for easy money, many considering the use of youth in that pursuit to be benign, because the children were not being physically touched by the perpetrators.<sup>189</sup>

POB provided a plethora of enhanced opportunities for traffickers to find and friend youth victims and facilitate their exploitation as more people used the internet daily and turned to social media to create and foster connections. Despite the availability of one or more COVID-19 vaccines, the Centers for Disease Control and Prevention (CDC) indicates that it will be important for everyone to continue using all the tools available to us in the future, including social distancing and working from home, to prevent the continued spread of disease.<sup>190</sup> The practices that led to POB will continue indefinitely, which highlights the urgent need for action to prevent any further increases in youth trafficking online.

#### IV. SUGGESTIONS TO COMBAT TRAFFICKERS’ “F” USE OF SOCIAL MEDIA

COVID-19’s effect on POB demands that enhanced steps be taken to protect children from being found, friended and their trafficking facilitated via social media. No one agency or organization alone can be tasked with eradicating trafficking. Communities and individual members of society must be made aware of the dangers of social media as it relates to trafficking of children; however, a symbiotic approach of government, non-governmental organizations and social networking sites is necessary for the “3P”<sup>191</sup> paradigm that children deserve—successful prevention, protection and prosecution. Enhanced penalties for using social media to facilitate trafficking must be implemented, and the creation of more demand-reduction strategies are imminently needed. Prohibitions against social media use by traffickers, monitoring of supply chains, accountability for network researchers, advanced cybercrime investigators, enhanced resources for victims and increased diversity and inclusion in relevant agencies and organizations need to occur promptly. Examples and suggestions for each are provided below.

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187. *Id.*

188. *Id.*

189. Martha Mendoza, *AP Exclusive: Big Child Webcam Sex Bust Reveals Rising Abuse*, AP NEWS (May 9, 2017), <https://apnews.com/article/74b81f79e9024124a1cfe43a0ce9eec2> (commenting on the economic influence contributing to a Philippines National Bureau of Investigation sex bust).

190. *Frequently Asked Questions About Vaccination*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Mar. 12, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html> (emphasis in original).

191. *Four “Ps”: Prevention, Protection, Prosecution, Partnerships*, U.S. DEP’T OF STATE (Oct. 4, 2013) <https://ctcwcs.files.wordpress.com/2016/07/four-ps.pdf> (noting the “3P” paradigm of prevention, protection and prosecution, which “continues to serve as the fundamental international framework used by the United States and the world to combat contemporary forms of slavery”).

### 1. Prohibitions against Social Media

Laws should consider enhanced penalties for traffickers who use social media to entice, groom and/or exploit victims. It is established that soliciting sex from a minor is criminal activity. Police stings feature potential “johns” being arrested oftentimes after initial and/or ongoing contact with a minor or law enforcement personnel posing as a minor occurred via social media. The initial anonymity and covert nature of social media instills a degree of confidence in a potential trafficker that exacerbates the numbers of child victims. Traffickers are emboldened by the clandestine nature of social media, increasing the likelihood that they will engage in trafficking youth, as there is a perception of a low probability of discovery. FOSTA<sup>192</sup> gives state and federal prosecutors greater power to pursue websites that host sex-trafficking ads and enables victims and state attorneys general to file lawsuits against those sites.<sup>193</sup> Stricter penalties should be considered where the victims intended to be protected by FOSTA are children. Where an individual is found to purposely engage with a minor via social media with specific or general intent to lure the minor into any aspect of human trafficking, the individual should be held criminally liable and subject to penalties that exceed current penalties for soliciting minors both at the state and at the federal level. For instance, if a state’s current criminal statute makes it a second or third-degree felony for solicitation of a minor, where there is evidence that the defendant purposely engaged with said minor via social media in an effort to lure the minor into the abyss of human trafficking, the defendant should be subject to prosecution for a first-degree felony with higher penalties.

### 2. Monitoring Supply Chains

The trafficking of children via social media must also be tackled at the root by monitoring supply chains. Technology companies and social media sites (including messaging apps and live-streaming services) need to increase their efforts to detect abuse and solicitation of children on their platforms. In cases where social media services are being exploited by traffickers—in addition to potential criminal prosecution under H.R. 1865—private-sector technology companies should be subject to civil liability under both federal and state laws when it is determined that they have either failed to take reasonable measures to protect potential victims (via some form of anti-trafficking initiatives or policies) or that use of their services and networks are a proximate cause of any human trafficking activity.

Since the passage of FOSTA, online providers have largely been able to avoid civil liability. They have been insulated from liability because they have been able to claim that they are merely passive “service” providers and not “content” providers, which has provided little incentive for them to increase monitoring

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192. Tom Jackman, *Trump Signs 'FOSTA' Bill Targeting Online Sex Trafficking, Enables States and Victim to Pursue Websites*, WASH. POST (Apr. 11, 2018, 11:41 AM), <https://www.washingtonpost.com/news/true-crime/wp/2018/04/11/trump-signs-fosta-bill-targeting-online-sex-trafficking-enables-states-and-victims-to-pursue-websites/>.

193. *Id.*

of supply chains. In addition, FOSTA's explicit applicability to federal law has created a challenge in pursuing claims against online providers in state court.<sup>194</sup> However, in light of the POB and increased danger of youth trafficking, the need to impose more responsibility that translates to liability both in state and federal court is imminent. Courts have taken note of the insulation provided by FOSTA, and, while careful to ensure protection of a "free and open internet,"<sup>195</sup> they have shown an inclination towards increased civil liability of online providers. As such, where a plaintiff's complaint avers sufficient facts showing a relationship between an online provider and traffickers—by which they "contracted and conspired to advertise [said plaintiff] for commercial sex and evade law enforcement"—a plaintiff's complaint can survive a Motion to Dismiss.<sup>196</sup> In reviewing cases in the light most favorable to trafficked plaintiffs, the courts should give strong consideration to facts involving youth whose trafficking was initiated and facilitated through social media sites. Legislators should similarly take note and amend FOSTA to explicitly apply to both state and federal civil cases. Increasing the potential liability for social media platforms could provide incentives for providers to invest in additional policies and processes for monitoring trafficking supply chains, particularly those involving vulnerable children.

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194. 47 U.S.C. § 230(e)(1) (stating that it does not provide immunity from federal criminal statutes); 47 U.S.C. § 230(e)(5)(B)–(C) (stating that it has no effect on criminal prosecutions brought under state law "if the conduct underlying the charge constitutes a violation of" 18 U.S.C. § 1591); 47 U.S.C. § 230(e)(5)(A) (explaining that the CDA only denies immunity to claims brought in a *civil* action under 18 U.S.C. § 1595); *M.L. v. Craigslist Inc.*, No. C19-6153 BHS-TLF, 2020 WL 6434845, at \*10 (W.D. Wash. Apr. 17, 2020), *report and recommendation adopted*, No. C19-6153 BHS-TLF, 2020 WL 5494903 (W.D. Wash. Sept. 11, 2020) ("[B]ecause Congress limited 47 U.S.C. § 230(e)(5)(A) to federal causes of action under 18 U.S.C. § 1595, the presumption is that Congress intentionally excluded state law claims from this provision.").

195. 164 Cong. Rec. 49 (Mar. 21, 2018) (debating on the Allow States and Victims to Fight Online Sex Trafficking Act of 2017).

196. *M.L. v. Craigslist Inc.*, No. C19-6153 BHS-TLF, 2020 WL 6434845, at \*1–2 (W.D. Wash. Apr. 17, 2020), *report and recommendation adopted*, No. C19-6153 BHS-TLF, 2020 WL 5494903 (W.D. Wash. Sept. 11, 2020) at \*10 Here, Plaintiff was able to allege sufficient facts that there was a relationship between Craigslist and her traffickers, where they contracted and conspired to advertise Plaintiff for commercial sex and evade law enforcement. *Id.* Plaintiff alleged that, beginning when she was 12 years old, 1) traffickers would use Craigslist to post advertisements and photographs of Plaintiff to solicit commercial sex purchases; 2) traffickers would create the advertisements in accordance with Craigslist's Terms of Use and used the Craigslist guidelines to create, develop, and format the advertisements (by, for example, a policy to blur and crop images posted on its "erotic services" section of the website which policy traffickers used to obscure her age and identity); 3) traffickers would pay Craigslist a fee to post the advertisements on the "erotic services" section of the website; 4) traffickers and purchasers knew that Craigslist allowed them to advertise and purchase sex trafficking victims; 5) Craigslist facilitated and assisted anonymous communications between sex purchasers and traffickers; 6) Craigslist was aware that its website hosted, facilitated, and aided the trafficking of minors; and 7) Craigslist benefitted from her advertisements on its website because traffickers paid a fee to post the advertisement and the advertisements attracted large numbers of users to its website. *Id.*

### 3. Technology Researchers' Accountability

Technology researchers should be tasked with finding ways to use the same technology that traffickers use to identify trafficking cases and combat human trafficking generally. Technology companies need to enhance the use of artificial intelligence ("A.I.") tools to quickly detect predatory behavior and potential victims of human trafficking. As President Barack Obama remarked, we have to "turn . . . the tables on the traffickers. Just as they are now using technology and the Internet to exploit their victims, we [need to] harness technology to stop them."<sup>197</sup> Internet providers should likewise be strongly encouraged to implement stricter policing of social media sites and stronger detection measures of youth trafficking behavior. Social media platforms closed or amended pages on their sites in response to the passage of FOSTA.<sup>198</sup> The threat of adverse consequences was sufficient to effect a change in behavior of these sites. Legislation explicitly stating the breadth of liability should similarly alter technology researchers' behavior (including those researchers employed by social media platforms), resulting in more enhanced measures to prevent traffickers from using those sites to find, friend and ultimately facilitate the exploitation of youth on social media sites.

### 4. Advanced Cybercrime Investigators

Advanced investigators with skills to secure cyber evidence must be employed to ensure swift and effective prosecution of social media-related trafficking of minors. Detecting trafficking online is a precise science necessitating that investigators "know exactly where to go . . . [know how] to go undercover and live the hacker cyber scene, know its structure and pretend to be someone [else] in order to retrieve the data that [they] are looking for."<sup>199</sup> Although there are dedicated cybercrime units in agencies such as the Federal Bureau of Investigation,<sup>200</sup> in order to specifically address trafficking behavior on social media, investigators need to be equipped to glean digital evidence from all possible sources (including but not limited to visa blacklists, bitcoin transactions and sex advertisements<sup>201</sup>) and recognize patterns in online activity that could indicate youth trafficking. It is also critical that investigators collect evidence in a manner that ensures admissibility in court. Increased resources dedicated to training cybercrime investigators are needed to ensure efficient and effective collection and preservation of evidence that can lead to prosecution and can mitigate and/or deter future trafficking of youth victims.

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197. Obama, *supra* note 31.

198. Burns, *supra* note 143. See also, Brown, *supra* note 144, and Solon, *supra* note 145.

199. Inna Lazareva, *Meet The Virtual Vigilantes Who Bust Human Traffickers From Their Laptops*, REUTERS (June 19, 2018), <https://www.reuters.com/article/us-global-trafficking-technology-hackers/meet-the-virtual-vigilantes-who-bust-human-traffickers-from-their-laptops-idUSKBN1JG00F> (quoting Sharon Nimirowski, head of White Hat, an Israeli cyber security firm staffed by former military intelligence agents).

200. *The Cyber Threat*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/investigate/cyber> ("The FBI is the lead federal agency in the United States for investigating cyber attacks and intrusions.") (last visited Jun. 5, 2021).

201. Lazareva, *supra* note 199 (noting that "digital evidence gleaned from visa blacklists, bitcoin transactions and sex ads can help to bust traffickers by predicting where victims might go, via which routes and who is likely to buy or sell them").

### 5. Enhanced Resources for Victims

Within the U.S. legislative “3P” paradigm of “prevention, protection and prosecution” to combat human trafficking,<sup>202</sup> prevention education is key. Youth need to be educated beyond the frequently-discussed topics of cyberbullying and sharing inappropriate content on the internet and need to be educated specifically about trafficking on the internet via social media. In order to emphasize the wide-reach of social media, information should be provided as an aspect of broader programs that focus on healthy sexual development and should avoid victimization.<sup>203</sup> Information disseminated to adolescents and teens should be developmentally appropriate<sup>204</sup> and should be disseminated via the same medium used by traffickers to facilitate exploitation.<sup>205</sup> Targeted prevention for most at-risk youth populations (particularly those vulnerable marginalized youth<sup>206</sup>) and education about laws that criminalize trafficking behavior also are essential.

Within the “protection” scheme of the “3P” paradigm, activists have also articulated the “three Rs” of “rescue, rehabilitation and reintegration.”<sup>207</sup> In the 2020 “Trafficking In Persons” (“TIP”) report, the United States reported that “[t]he government decreased protection efforts,” serving fewer trafficking victims from the previous year.<sup>208</sup> In the wake of a worldwide pandemic that has caused an increase in child abuse and trafficking, it is imperative that the government increase and expand its protection services to victims. For children who were solicited and exploited via the internet, the third prong of the protection framework (reintegration) must include the teaching of technology literacy. For a child whose exploitation and abuse commenced with the use of social media, it is imperative that resources are provided in order to ensure that these children have

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202. *Four “Ps”*, *supra* note 191.

203. *See, e.g.*, Wolak, *supra* note 108, at 122.

204. *See, e.g.*, *Secondary Education: Human Trafficking—Video and Teacher’s Guide*, UNODC, <https://www.unodc.org/e4j/en/secondary/teaching-guide-human-trafficking/previewing-the-human-trafficking-video.html> (last visited Apr. 19, 2021) (noting that parents, schools and other community educators can draw from available resources for raising awareness about human trafficking and teaching youth about traffickers’ exploitation mechanisms); BAYLOR UNIV., HOW TO TALK ABOUT HUMAN TRAFFICKING WITH CHILDREN AND ADOLESCENTS, (Apr. 2, 2019), <https://onlinegrad.baylor.edu/resources/conversations-human-trafficking-children-teens/>; *Human Trafficking Prevention Education—Guidance for Implementation of Youth Programs*, U. OF DAYTON (Aug. 2016), [https://udayton.edu/artsscience/ctr/hrc/abolition\\_ohio/\\_resources/2018/human-trafficking-prevention-education-final.pdf](https://udayton.edu/artsscience/ctr/hrc/abolition_ohio/_resources/2018/human-trafficking-prevention-education-final.pdf).

205. *See, e.g.*, U.S. DEP’T of Homeland Sec., *Tools that Teach: What is Human Trafficking?*, YOUTUBE (May 16, 2016), <https://www.youtube.com/watch?v=35uM5VMrZas>.

206. Staca Shehan & Angela Aufmuth, *Domestic Child Sex Trafficking and Children Missing from Care*, 65 U.S. ATT’Y BULLETIN 33 (Nov. 2017), <https://www.justice.gov/usaof/page/file/1008856/download> (noting that “predators who exploit children through the buying or selling of sex frequently target children who have a history of childhood abuse, disconnected families, and/or a history of running away from home”).

207. *See generally* Saurav Ghimire, *The Three Rs of Justice to Human Trafficking Victims (Rescue, Rehabilitation and Reintegration)*, 1 KATHMANDU SCH. L. REV. 104, 105 (2012).

208. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT, 20TH ED., 525 (Jun. 2020), <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>.

the knowledge necessary to engage safely on the internet and the ability to balance online engagements with in-person relationships.

#### 6. Diversity and Inclusion in Relevant Agencies and Organizations

It is critical for educational and rehabilitative information and communication to be age appropriate and culturally conducive. Traffickers may target runaway youth<sup>209</sup> and youth in foster care because of their increased vulnerability, due to a lack of family, emotional relationships and support.<sup>210</sup> Traffickers may also target minority youth<sup>211</sup> and youth subject to poverty, conflict, gender inequality, sexual and gender-based violence and discrimination. Agencies that monitor, investigate and prosecute digital sex crimes and child trafficking need to be intentional in striving for diversity and inclusion in their ranks in order to ensure that personnel are adequately prepared and equipped to meet the diverse needs of the children. This should also be an immediate goal for agencies and organizations that teach and support potential victims and survivors.

### V. CONCLUSION

The breadth and depth of human trafficking of youth exceeds the available resources to eradicate this horrific enterprise. Although eradication may not currently be viable, all attempts must be made to protect children from becoming trafficking victims. One step, one action at a time: "feather by feather the goose can be plucked."<sup>212</sup> Parental oversight, education and awareness are key factors in the battle against human trafficking, but beyond those basics, implementation and enforcement of legislation and policies that hold traffickers accountable are crucial. Prohibitions against social media should be considered, with agencies ensuring enhanced monitoring of supply chains and accountability of technology researchers. Training for advanced cybercrime investigators is also key, with enhanced resources provided to victims of human trafficking. Throughout the implementation of changes towards eradicating human trafficking via social media, diversity and inclusion should be evident in all areas.

POB is a phenomenon whose effects will be felt around the world indefinitely. This behavior and its ongoing practice highlight the urgent need for a recalibration of laws governing trafficking to provide broader civil liability to participants of this horrific enterprise and harsher penalties for traffickers who use social media to find, friend and facilitate their illicit "business." Our children deserve no less.

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209. See *Child Labor Trafficking*, *supra* note 20.

210. CHILDREN'S RIGHTS REPORT, CHILD SEX TRAFFICKING, <https://www.childrensrights.org/newsroom/fact-sheets/child-sex-trafficking/> (noting that the National Center for Missing and Exploited Children estimates that one out of eight endangered runaway youths is likely a victim of human trafficking).

211. See FEDERAL BUREAU OF INVESTIGATION, 2014 CRIME IN THE UNITED STATES, TABLE 43B (2014) <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-43> (last visited [Mo. Day, 20XX]) (noting that in 2014, 52% of all juvenile arrests for commercial sex acts were African-American children).

212. World Proverbs, *Eight Proverbs About the Word Plucked*, (last visited Apr. 21, 2021), <http://www.listofproverbs.com/keywords/plucked/>.