

## Fighting Fire with Fire: Technology in Child Sex Trafficking

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*"From low-tech methods such as prostituting minors at truck stops, to high-tech methods such as Internet advertising, our children are being used as commodities for sale or trade."<sup>1</sup>*

### INTRODUCTION

Children used as "commodities." It is a sentence that conjures up images from a Dickens novel. The reality of child sex trafficking, however, is more disturbing than any fiction Dickens could portray. Not only are these children treated as commodities, but the traffickers trade these children to be assaulted by adults, often condemning them to an unending cycle of sexual abuse, violence, and trauma.<sup>2</sup> Although law enforcement, courts, and other allied professionals actively respond to this victimization, it nonetheless appears to be a growing industry.

Anecdotal evidence suggests child sex traffickers are utilizing more technological tools to traffic children. However, the debate continues regarding whether current law enforcement responses are effective against this increasingly sophisticated crime. This article and research covering a decade of federal cases sheds light on that question and offers fact-based guidance for future steps to pursue in combatting child sex trafficking.

Over the last two decades, societal and legal institutions have altered their perception and understanding of the phenomenon of human trafficking in several significant ways. In the past, the forced labor of individuals, prostitution of children, and the sexual exploitation of children and adults often occurred in the shadows. These "unseen" crimes existed out of sight of "mainstream America" for a multitude of reasons.<sup>3</sup> Some of the crimes, such as forced labor, seemed to

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1. Press Release, Fed. Bureau of Investigation, Six Charged in Largest Domestic Human Sex Trafficking Case in Houston (Aug. 25, 2009), available at <http://www.fbi.gov/houston/press-releases/2009/ho082509.htm>.

2. Alexis M. Kennedy et al., *Routes of Recruitment: Pimps' Techniques & Other Circumstances that Lead to Street Prostitution*, 15 J. AGGRESSION, MALTREATMENT & TRAUMA 2 (2007).

3. See Joan A. Reid & Shayne Jones, *Exploited Vulnerability: Legal and Psychological Perspectives on Child Sex Trafficking Victims*, 6 VICTIMS & OFFENDERS 207, 207-09 (2011) (explaining that child sex trafficking is often an unseen crime because of "societal tolerance" and "denial of the problem").

occur consciously unnoticed<sup>4</sup> due to the economic benefits society reaped through these practices (such as low cost goods).<sup>5</sup> This made acknowledging the victimization that occurred in the production of goods an uncomfortable truth to recognize.<sup>6</sup> Society largely viewed other crimes, such as prostitution, not with a victim-centered approach, but rather as a law enforcement or vice squad issue.<sup>7</sup> Thus, they were perceived to be crimes affecting certain segments of the population apart from the mainstream rather than as society-wide concerns. Other forms of trafficking, such as child sex trafficking,<sup>8</sup> existed unrecognized, likely due to the gruesomeness of this form of victimization as well as the reality that child sex crimes are particularly underreported.<sup>9</sup> Furthermore, commercial sex crimes often victimize some of the most vulnerable youth whom society has often already discarded and who exist on the fringes in a precarious state.<sup>10</sup>

Despite those attitudes, in the late twentieth century, a movement to re-frame some of these abuses under the umbrella term “human trafficking” gained prominence, both nationally and internationally. This movement reached a watershed in 2000, when the United States passed the Trafficking Victims Protection Act (TVPA)<sup>11</sup> and numerous nations signed the Protocol to Prevent, Suppress, and Punish the Trafficking of Persons, Especially Women and Children (Palermo Protocol). If the purpose of the law is, as Justice Harlan stated, to “form and project,”<sup>12</sup> these documents represent the institutionalization of society’s

4. See Ranee Khooshie Lal Panjabi, *Born Free Yet Everywhere In Chains: Global Slavery in the Twenty-First Century*, 37 DENV. J. INT’L L. & POL’Y 1, 6 (2008) (discussing the profitable nature of free slave labor for those who wish to abuse their fellow human beings).

5. *Id.* See also, *Hidden Slaves Forced Labor in the United States*, 23 BERKELEY J. INT’L L. 47 (2005).

6. Panjabi, *supra* note 4, at 6.

7. See Reid & Jones, *supra* note 3, at 208 (explaining that acts involving the prostitution of a minor are often treated by law enforcement as public nuisance crimes, as opposed to instances of child victimization).

8. The sex trafficking of children has been given many different labels: domestic minor sex trafficking, child prostitution, and commercial child sexual exploitation, to name a few. All of these terms are both helpful and imperfect. This article will use the term “child sex trafficking” to describe the crime. While this term is inadequate, the article will use it for two reasons. First, the article will discuss the main federal statute, Sex Trafficking of Children or by Force, Fraud, or Coercion 18 U.S.C. § 1591 (2008), which uses similar language to address this form of victimization. Secondly, as discussed *infra*: this term is defined to encompass the types of crimes at issue in this article: sexual contact or exploitation of children in exchange for an item of value. For a discussion of the use of this term and the terminology around child sex trafficking. See Reid & Jones, *supra* note 3, at 208–09.

9. Lily Kuo, *Teen Prostitutes Rescued, Pimps Held, in FBI Sweep*, CHICAGO TRIBUNE (June 25, 2012), [http://articles.chicagotribune.com/2012-06-25/news/sns-rt-us-usa-prostitution-childbre85o19h-20120625\\_1\\_teen-prostitutes-child-prostitution-fbi-sweepus](http://articles.chicagotribune.com/2012-06-25/news/sns-rt-us-usa-prostitution-childbre85o19h-20120625_1_teen-prostitutes-child-prostitution-fbi-sweepus).

10. *E.g.*, *United States v. Royal*, 442 F. App’x 794 (4th Cir. 2011) (homeless victim); *United States v. Jimenez-Calderon*, 183 F. App’x 274 (3d Cir. 2006) (defendant targeted “extremely impoverished girls working in Mexican cafes”); Brief of Appellee at 4–5, *United States v. Acosta*, 388 F. App’x 620 (9th Cir. 2010) (No. 08-10463) (victim was both a runaway and “high school dropout”).

11. This statute has been reauthorized and/or amended several times since its initial enactment. The Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386), the Trafficking Victims Protection Reauthorization Act of 2003 (H.R. 2620), the Trafficking Victims Protection Reauthorization Act of 2005 (H.R. 972), and the Trafficking Victims Protection Reauthorization Act of 2008 (H.R. 7311), and the Trafficking Victims Protection Reauthorization of 2013 (P.L. 113-4). “TVPA” in this article refers to the current state of the law at the time of publication and not only the TVPA of 2000.

12. *United States v. White*, 401 U.S. 745, 786 (1971) (Harlan, J., dissenting).

shift in its legal framework for understanding human trafficking. Regarding child sex trafficking, these documents reconceptualized the child involved in commercial sex as a victim of human trafficking rather than a criminal “prostitute.”<sup>13</sup> Since that time, this reframing has gained support on the state level with all fifty states drafting human trafficking laws, some of which specifically provide for child sex trafficking victims to be treated as such and not prosecuted as offenders.<sup>14</sup>

This legislative response to child sex trafficking also reflects an increased visibility of the crime.<sup>15</sup> The legislative actions did not occur in a vacuum, but were preceded by the crime migrating to a more mainstream space. Recently, the visibility of child sex trafficking has increased again. Many attribute this dynamic visibility, for better or worse, to the role of technology in its perpetration.

Various technological advances such as social networking, micro-blogging, and smartphones have enabled people to connect and transfer their activity (criminal or not) from a private space into a public space. The migration of sex trafficking to a digital space can both make the crime more public, but also remove it from places where it has been traditionally recognized and identified. These complications present challenges for accurate identification and assessment of the nature and frequency of child sex trafficking.

Although scholars and professionals in the field have observed technology intensifying child sex trafficking, for many reasons, limited research been done to measure this impact. It is a crime that traditionally occurs with hidden victims who are often in transit.<sup>16</sup> Furthermore, because it remains a very under-reported crime,<sup>17</sup> it is challenging to gather detailed information about methods used to commit it. This continued under-reporting can be the result of many factors. One such factor could be the personal nature of the victimization consistent with that of any other sexual crime. However, the public nature of commercial exploitation can also compound the trauma of the victimization.<sup>18</sup> Furthermore, victims often fear retaliation from their traffickers. Traffickers can be ruthless in their victimization using physical and psychological brutality.<sup>19</sup> In addition to legitimate fear,

13. Shelby Schwartz, *Harboring Concerns: The Problematic Conceptual Reorientation of Juvenile Prostitution Adjudication in New York*, 18 COLUM. J. GENDER & L. 235, 252 (2008).

14. See 2013 State Rating on Human Trafficking Laws, POLARIS PROJECT, (July 31, 2013), [www.polarisproject.org/what-we-do/policy-advocacy/national-policy/state-ratings-on-human-trafficking-laws](http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/state-ratings-on-human-trafficking-laws) (providing a comprehensive list of state trafficking laws).

15. See Maureen Q. McGough, *Ending Modern-Day Slavery: Using Research to Inform U.S. Anti-Human Trafficking Efforts*, 271 NAT'L INST. JUST. J. 26, 26–27 (2013) (discussing the “significant political and social attention” being paid to human trafficking”); see generally Amy Farrell & Stephanie Fahy, *The Problem of Human Trafficking in the U.S.: Public Frames and Policy Responses*, 37 J. CRIM. JUST. 617 (2009) (discussing how the public’s understanding of human trafficking has changed according to changes in the political prioritization of anti-trafficking activities).

16. McGough, *supra* note 15, at 27. See e.g., Trial Brief of United States at 3, *United States v. Greene*, 2011 WL 3920171 (D. Alaska 2011) (No. 3:09-cv-00053) (involving a defendant who frequently recruited victims from bus stops and shelters).

17. McGough, *supra* note 15, at 31.

18. See *United States v. Booker*, 447 F. App’x 726, 728 (7th Cir. 2011) (noting that posting nude photos on the internet of a minor already engaged in prostitution constitutes a “new level” of victimization).

19. McGough, *supra* note 15, at 28; Amy Farrell et al., *Where Are All the Victims?*, 9 CRIMINOLOGY

the under-reporting could also be related to the dynamic between victim and trafficker which can instill fear,<sup>20</sup> conflicting allegiances, or confusion causing the victim to fail to self-identify as victims.<sup>21</sup> Furthermore, even if behaviors related to the crime manifest in a public space, it can be difficult for both the general public as well as the untrained law enforcement member to recognize due to its dynamic adaptability to detection efforts.<sup>22</sup> In fact, the global need to develop effective victim identification is a theme of the 2013 Trafficking In Persons Report.<sup>23</sup> This lack of data can cause institutions to fail to act or to act uninformed causing negative outcomes.

Data of judicial human trafficking opinions can provide insight into how traffickers commit their crimes. The passage of the TVPA has led to increased detection and prosecution of child sex trafficking cases<sup>24</sup> and the resulting body of judicial opinions often describe the crimes in detail. Although this body of judicial opinions cannot provide a measure of the number of child sex trafficking incidents,<sup>25</sup> it can provide a rich collection of data regarding the nature of the child sex trafficking cases that are processed in federal court, including how child sex

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& PUB. POL'Y 201, 203 n.4 (2010); AMY FARRELL ET AL., IDENTIFYING CHALLENGES TO IMPROVE THE INVESTIGATION AND PROSECUTIONS OF STATE AND LOCAL HUMAN TRAFFICKING CASES: EXECUTIVE SUMMARY 3-4, NAT'L INST.. JUST. (April 2012), available at <http://www.urban.org/UploadedPDF/412592-State-and-Local-Human-Trafficking-Cases.pdf>. E.g., *United States v. Stokes*, No. 10-00244-04-CR-W-DW, 2011 WL 1585601 (W.D. Mo. Apr. 25, 2011) (involving a mentally handicapped victim tortured in a bondage sadomasochistic scheme where defendants repeatedly sold victim as a sexual slave for sexual torture both in person and live on the Internet).

20. See HEATHER J. CLAUSON & NICOLE DUTCH, IDENTIFYING VICTIMS OF HUMAN TRAFFICKING: INHERENT CHALLENGES & PROMISING STRATEGIES FROM THE FIELD, U.S. DEP'T OF HEALTH & HUMAN SERVS. 2 (2008) (outlining the challenges and barriers to identifying victims).

21. See, e.g., *United States v. Fuertes*, 435 F. App'x 802, 804-05 (11th Cir. 2011) (detailing victim's repeated lack of cooperation with authorities and allegiance to trafficker); Press Release, Fed. Bureau of Investigation, Ohio Man Sentenced to 30 Years in Prison for Sex Trafficking of a Minor (July 3, 2012), available at <http://www.fbi.gov/cleveland/press-releases/2012/ohio-man-sentenced-to-30-years-in-prison-for-sex-trafficking-of-a-minor> (defendant found victim who had run from foster care and convinced her they were in a relationship, offered her shelter, and prostituted her); Press Release, Fed. Bureau of Investigation, Sex Trafficker Sentenced to Nine Years in Prison (Nov. 29, 2012), available at <http://www.fbi.gov/sanfrancisco/press-releases/2012/sex-trafficker-sentenced-to-nine-years-in-prison-1> (recruited victims by promises of money, drugs, and "a family like environment").

22. See generally Amanda Walker-Rodriguez & Rodney Hill, *Human Sex Trafficking*, FBI LAW ENFORCEMENT BULL. (Mar. 2011), available at [http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/march\\_2011/human\\_sex\\_trafficking](http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/march_2011/human_sex_trafficking); FARRELL ET AL., *supra* note 19 at 7; U.S. DEP'T JUST., ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS: FISCAL YEAR 2011, 31 (2012), available at <http://www.justice.gov/ag/annualreports/agreporthumantrafficking2011.pdf> [hereinafter ATTORNEY GENERAL'S ANNUAL REPORT].

23. U.S. DEP'T OF STATE, TRAFFICKING IN PERSON REPORT 8 (2013) [hereinafter TIP REPORT].

24. U.S. DEP'T. OF JUST., CIVIL RIGHTS DIV., REPORT ON THE TENTH ANNIVERSARY OF THE TRAFFICKING VICTIMS PROTECTION ACT 6 (2010).

25. The reasons for this are many and include (1) the fact that every instance of child sex trafficking does not result in a report, investigation, or prosecution, let alone a federal prosecution; (2) the discretionary nature of and jurisdictional limits in federal prosecution; (3) the failure of a case to proceed to trial; (4) the lack of a judicial opinion associated with the case; (5) the lack of a factual basis included within a published opinion; (6) and the reality that cases may involve child sex trafficking, but because of the underlying facts of the case, the prosecution may elect to charge or pursue other criminal charges. ATTORNEY GENERAL'S ANNUAL REPORT, *supra* note 22, at 59-60.

trafficking occurs, the effectiveness of law enforcement actions, and the role technology plays in the crime's execution.

This article is the outcome of a comprehensive review of the judicial opinions that occurred over a 10 year period since the passage of the TVPA. While this body of cases should not be the sole basis for public policy, as federal prosecution is a component of a larger narrative, it can offer information. Additionally, federal cases reflect the efforts of both local and federal law enforcement due to the utilization of Internet Crimes Against Children (ICAC) Task Forces, Human Trafficking Task Forces, the Innocence Lost National Initiative, and Project Safe Childhood, which are comprised of both federal and local actors.<sup>26</sup> This collection of data also has the advantage of being a national sample of several hundred cases occurring over the course of more than a decade. Furthermore, the cases operate under a uniform set of federal laws with a uniform set of definitions and a central prosecuting authority.<sup>27</sup> By covering a twelve-year period from the passage of the TVPA through the close of 2012 this research offers specific insight into child sex trafficking cases that generate judicial opinions in federal court. Given the breadth of cases it can also offer insight more generally into the role of technology in the commission of child sex trafficking offenses, their detection, and judicial use of such evidence.

This article is the first of a series to analyze what federal child sex trafficking opinions reveal about the role of technology in child sex trafficking. Part I identifies the methodology and challenges facing a study of child sex trafficking case-law. Part II explores the initial question posed concerning the general role of technology in child sex trafficking in this national sample of federal cases. It demonstrates that technology does play a significant role in child sex trafficking cases in federal court, but it is just one of the many tools traffickers utilize during certain identifiable stages of the child sex trafficking event. Part II then discusses these stages where technology is most pronounced and offers direction for future response to this ever adapting crime. Part III explores the regional aspects of these findings. The article concludes by offering future guidance on how to utilize these findings in tangible initiatives to protect our children from this growing victimization.

## I. RESEARCH FRAMEWORK

### A. Purpose

This article is the first of several to comprehensively analyze federal child sex trafficking cases litigated between 2000 (the year of the adoption of the

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26. See FARRELL ET AL., *supra* note 19, at10 (noting that many trafficking cases were investigated by local law enforcement, but prosecuted in federal court); see also *Internet Crimes Against Children Task Force Program: Program Summary*, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, <http://www.ojjdp.gov/programs/progsummary.asp?pi=3> (last visited Apr. 7, 2014) (noting that the 61 ICAC task forces are comprised of over 2,000 federal, state, and local law enforcement and prosecutorial agencies).

27. Ideally, a multi-state sample of local cases would also provide a rich collection of factual scenarios, but this data is not currently uniformly collected. Moreover, such an analysis would present a challenge of different statutory schemes.

TVPA) and the close of 2012. The purpose of this research is to examine the role of technology in the commission, detection, and prosecution of these child sex trafficking cases processed in federal court. This research seeks to answer the following questions by a review of judicial opinions generated in that timeframe: How have traffickers used technology to facilitate child sex trafficking in federal cases? How have purchasers of sex utilized technology to locate and complete the commercial transaction in the buying of a child for commercial sexual exploitation in federal cases? How has law enforcement used technology to detect and investigate child sex trafficking crimes in federal cases? How has the evidence of this technology been used by the parties or courts in federal litigation? What does this data suggest regarding prescriptive measures to be taken to improve the prevention, investigation, and prosecution of child sex trafficking?

Research into the role of technology is lacking and necessary for both practical and normative reasons. On a practical level, human trafficking in general has captured the attention of the United States government, the United Nations, fifty state governments, and countless non-government agencies at the highest levels, labeling the crime “modern day slavery.”<sup>28</sup> The President of the United States has “accept[ed] the responsibility to prevent, identify and aggressively combat this crime at home.”<sup>29</sup> He has further pledged that the government will “empower investigators and law enforcement with the training they need, and develop cutting-edge tools people can use to stay safe.”<sup>30</sup> Yet, “[d]espite the attention and resources directed at combating this crime, reports indicate that fewer cases of human trafficking have been identified and prosecuted than would be expected based on estimates of the problem. . . .”<sup>31</sup> Consequently, if these stated goals of prevention and response are to be met, then an understanding of how the crime is occurring is essential.

On a more normative level, some public discussion has voiced the concern that some technologies bring child sex trafficking to a more public *and more mainstream* space. The acceptance of this phenomenon implicates a social cost of normalizing child sex trafficking. Such normalization is more than philosophical. It means that mainstream American business such as Village Voice Media (which owns backpage.com), Facebook, as well as all major cell phone companies, will profit from the selling of children for sexual exploitation by adults.<sup>32</sup> This is a disturbing occurrence. However, if this migration to a public space leads to increased detection of child sex trafficking victims, one could advocate that the price of public selling of children is worth the social benefit in the long-term. To

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28. See *Human Trafficking*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/overview> (last visited Apr. 4, 2014) (describing human trafficking as “modern day slavery”); *UN Officials Urge Concerted Action to Eradicate Modern Forms of Slavery*, UN NEWS CENTRE, (Dec. 2, 2013), <http://www.un.org/apps/news/story.asp?NewsID=46634&Cr=slavery&Cr1=#.UzL0Kc5WhLM>; *What is Modern Day Slavery?* U.S. DEPT’ OF STATE, <http://www.state.gov/j/tip/what/> (last visited Mar. 22, 2014).

29. Proclamation No. 8621, 75 Fed. Reg. 82,215 (Dec. 22, 2010).

30. Proclamation No. 8924, 78 Fed. Reg. 1,123 (Dec. 31, 2012).

31. AMY FARRELL ET AL., *supra* note 19, at 1.

32. Letter from National Association of Attorney Generals to Senate Committee on Commerce, Science, & Transportation, and House Committee on Energy & Commerce (July 23, 2013), *available at* [http://www.attorneygeneral.gov/uploadedFiles/Press/CDA\\_Sign\\_On\\_Letter.pdf](http://www.attorneygeneral.gov/uploadedFiles/Press/CDA_Sign_On_Letter.pdf).

inform this debate, information must be gathered to assess both the cost and benefit of these realities.

## B. Challenges

While the growing body of case law does offer a rich collection of factual scenarios to examine, the collection and analysis of these opinions does present obstacles. These challenges are rooted in both the nature of judicial opinion writing and the practical realities of federal prosecution.

This study of cases is a “fact-based inquiry” as opposed to a “statute-based inquiry.” That is to say, unlike typical legal research which seeks to collect cases based on statutes charged, this research collects cases based on facts occurring within the opinions. Therefore, it seeks to capture cases which factually are child sex trafficking, even if not charged as such.<sup>33</sup> Once that body of cases is collected, the research then determines within those factual histories what role, if any, technology plays in the commission, detection, or investigation of the crime. As such, the first challenge to developing a research protocol is to define child sex trafficking.

### 1. Definition of Child Sex Trafficking

Notwithstanding the increased attention directed toward human trafficking in recent decades, definitional ambiguities still exist regarding child sex trafficking. Although statutory definitions exist, debate continues regarding the parameters of child sex trafficking. Therefore, a working definition became necessary for this research to consistently evaluate child sex trafficking cases in federal court.

Federal law includes a statutory definition of child sex trafficking, an area of the law previously addressed primarily through state “prostitution” laws.<sup>34</sup> However, for the purpose of measuring and engaging in a factual analysis of child sex trafficking cases in federal court that definition presents a necessary but insufficient framework to identify a complete collection of child sex trafficking cases, even if not charged as such. It is necessary to consult several sections of the TVPA to understand the contours of the definition.

The TVPA’s crime of Sex Trafficking of Children includes the recruitment, harboring, transportation, provision, or obtaining of a child under 18 for a “commercial sex act.”<sup>35</sup> The TVPA defines a commercial sex act as “any sex act, on account of which anything of value is given to or received by any person.”<sup>36</sup>

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33. This recognition that a case may involve child sex trafficking, even if that crime is not charged, is consistent with previous research of closed human trafficking files. This research found that “[d]espite the existence of evidence of human trafficking in the majority of cases . . . few of the suspects in these cases were actually charged with either state or federal human trafficking offenses.” FARRELL ET AL., *supra* note 19, at 4. See also ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 22, at 64–65 (explaining that cases were charged as either forced labor or sex trafficking, but often involved elements of both).

34. E.g., MINN. STAT. ANN. § 609.322 (West 2009); N.J. STAT. ANN. §2C:34-114 (West 2013); 18 PA. CONS. STAT. ANN. § 5902(b) (West 2012).

35. 18 U.S.C. § 1591 (2012).

36. 18 U.S.C. § 1591 (2012); 22 U.S.C. § 7102(4) (2012).

Therefore, child sex trafficking would include the recruitment, harboring, transportation, provision, or obtaining of a child under 18 for any sex act, on account of which anything of value is given to or received by any person.

However, nowhere in the statute is “sex act” defined.<sup>37</sup> Therefore, the statute is not explicit regarding whether it encompasses only acts of sexual intercourse or physical contact, or if it also includes acts of sexual exploitation as well. That is to say, ambiguities exist regarding whether the statute is facially limited to prostitution, or includes other scenarios such as a suspect who obtains a child for the production of child pornography, sexually oriented business employment, or some other form of child sexual exploitation.<sup>38</sup> However, courts rejected a narrow construction of the statute restricting its reach only to prostitution.<sup>39</sup>

A review of the language of this statute, as well as the legislative history, supports giving “sex act” a broad meaning to include at a minimum sexual contact, intercourse, and exploitation. Prior to the TVPA, Congress had attempted to address some aspects of prostitution of minors through the White-Slave Traffic Act, better known as the Mann Act, originally passed in 1910.<sup>40</sup> An amended statute under that chapter forbids travelling with the intent to engage in “illicit sexual conduct” or engaging in such conduct in a foreign place.<sup>41</sup> Unlike “sex act” in the TVPA, in the Mann Act Congress defined “illicit sexual conduct” by cross-referencing to the definition of “sexual act” found in the federal Chapter 109A, which covers sexual abuse.<sup>42</sup> In so doing, Congress cross-referenced to a chapter with a very different purpose. The purpose of the federal child abuse statutes is to criminalize child sex abuse that occurs on federal lands such as Indian reservations and military bases. As such this definition of “sex act” for these “sexual abuse” laws is logical. Applying this narrow definition to the more broad exploitive prostitution crimes lacks logic in modern times. Notwithstanding this, some courts have followed suit by referencing that definition of sexual acts to define terms in other federal code chapters such as “sexual activity.”<sup>43</sup>

However, in passing the TVPA Congress, with its broad understanding of human trafficking, arguably intended to depart from such a narrow (and confusing) definitional scheme and include all forms of sexual exploitation. The plain text supports this position. Unlike the Mann Act statutes, Section 1591 included neither a narrow definition, nor a cross-reference. The legislative history of the TVPA acknowledges that the TVPA targeted very different harms than just

37. See generally, 18 U.S.C. §1591 (2012); 22 U.S.C. §7102 (2012).

38. See, e.g., *United States v. Larkin*, 629 F.3d 177, 180 (3d Cir. 2010) (defendant sent sexually explicit pictures of his daughter in exchange for money); *United States v. Runyan*, 290 F.3d 223, 232–33 (5th Cir. 2002) (defendant paid child to pose in sexually explicit pictures for sale online); *United States v. Shafer*, 438 F.3d 1225, 1226 (8th Cir. 2006) (defendant paid homeless girl to appear in pornographic video).

39. E.g., *United States v. Marcus*, 487 F. Supp. 2d 289, 306–07 (E.D.N.Y. 2007), *rev’d in part on other grounds*, 560 U.S. 258 (2010) (acknowledging the broad interpretation of a commercial sex act); see also *Kolbek v. Twenty First Century Holiness Tabernacle Church, Inc.*, 2013 WL 6816174, at \*16 (W.D. Ark. Dec. 24, 2013) (same).

40. See generally *White-Slave Traffic Act (Mann Act)*, Ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–2424 (2012)).

41. 18 U.S.C. §§ 2423(b)–2423(c) (2013).

42. 18 U.S.C. § 2423(f) (2012); 18 U.S.C. § 2246(2) (2012).

43. *United States v. Taylor*, 640 F.3d 255, 257 (7th Cir. 2011).



those of the Mann Act or those within the chapter addressing sex offenses on federal lands. In the official Findings for the TVPA, Congress implied that, with respect to children, the TVPA targeted prostitution, child pornography, and other forms of sexual exploitation where something of value is transacted.<sup>44</sup> It did so by describing the sex industry as involving “sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services.”<sup>45</sup> With such a broad description of the sex industry, Congress then explicitly stated the TVPA’s purpose was to combat trafficking in persons, which includes the sex industry as well as others.<sup>46</sup> To that end, Congress acknowledged the existence of other statutes, finding them inadequate to address human trafficking.<sup>47</sup> Congress indicated the need for the TVPA due to a lack of a “comprehensive law. . . that penalizes the range of offenses involved in the trafficking scheme.”<sup>48</sup> This broad definition is confirmed by the Department of Justice’s own descriptive definition of commercial sexual exploitation of children as “sexual abuse of a minor for economic gain . . . involv[ing] physical abuse, pornography, prostitution, and the smuggling of children for unlawful purposes.”<sup>49</sup>

A broad understanding of child sex trafficking is also supported by international law. As stated, the TVPA was passed in the same year as the Palermo Protocol, which was heavily influenced by the United States. Under the Palermo Protocol, “trafficking in persons” includes “the recruitment, transportation, transfer, harbouring or receipt of a person. . . for the purpose of exploitation.”<sup>50</sup> Exploitation includes, “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation.”<sup>51</sup> Therefore, under the Palermo Protocol child sex trafficking can be understood as the recruitment, transportation, transfer, harboring or receipt of a child, or the giving or receiving of payments or benefits to achieve the consent of a person having control over the child, for the purpose of any form of exploitation including but not limited to prostitution.

Because both the text of the TVPA, the Department of Justice, and the international community consider child sex trafficking to include commercial transactions regarding sexual exploitation, this research project adopted such a definition. As such the research sought to collect federal cases in which the facts reflected a person was engaged in the recruitment, enticement, harboring, maintenance, transportation, provision, or obtaining of a child under 18 for a sex act (including any form of sexual exploitation such as the production of pornographic images) where anything of value is exchanged between any party.

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44. 22 U.S.C.A. §7101(b)(2).

45. *Id.*

46. *Id.*; 22 U.S.C.A. § 7101(i)(b)(3).

47. 22 U.S.C.A. § 7101(b)(14).

48. *Id.*

49. MICHAEL B. MUKASEY ET AL., U.S. DEP’T OF JUSTICE, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: WHAT DO WE KNOW AND WHAT DO WE DO ABOUT IT? 1 (2007).

50. Protocol to Prevent, Suppress, & Punish Trafficking in Persons, Especially Women & Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Art. 3(a), U.N. Doc. A/55/383 (Nov. 15, 2000).

51. *Id.*

## 2. Definition of "Anything of Value"

While this definition of child sex trafficking provides some guidance regarding the scope of child sex trafficking, it does not resolve all issues that arise when trying to distinguish child sex trafficking from other forms of child sexual abuse. Section 7102's use of the term "anything of value" is intentionally broad.<sup>52</sup> It is likely an attempt to recognize that criminals sometimes exploit children not with currency but also with other valuables such as shelter, food, protection, or drugs.<sup>53</sup> This form of "survival sex" is well recognized and rightfully included in a definition of child sex trafficking. However, the statute not only utilizes the term "anything" but requires the item exchanged to have some "value."<sup>54</sup> Presumably this was an effort to distinguish conventionally understood child sexual abuse from child sex trafficking. Both of these actions sexually exploit children, but conventionally understood child sexual abuse does not necessarily have a commercial element to it.<sup>55</sup> While child sex trafficking is a form of child sexual abuse to be sure, child sex trafficking is distinct from a situation in which an adult has sexual contact with a child without an exchange or any commercial component.

Complications arise, however, in distinguishing some cases. For example, it is well recognized that offenders often groom children in an effort to have sexual contact with them.<sup>56</sup> This grooming can often include the provision or request for items such as the delivery of pornography, the request for sexually explicit photographs, or the delivery of sexual photographs of the offender- all designed to normalize the sexual contact for the child.<sup>57</sup> While the exchange may be clear, the question remains whether these items can be considered "things of value" for purposes of child sex trafficking. The Federal Sentencing Guidelines offer guidance. The Guidelines have examined the question of whether child pornography can be considered "a thing of value" when exchanged, triggering a sentencing enhancement.<sup>58</sup> In so doing, the Guidelines concluded that when one distributes

52. See 22 U.S.C. § 7102 (2012).

53. See, e.g., *United States v. Galo*, 239 F.3d 572, 573 (3d Cir. 2001) (defendant threatened to have utilities cut off if mother would not give him access to child victim); Press Release, Fed. Bureau of Investigation, Hardin County Woman Charged with Using the Internet to Arrange Sex with a Minor (June 27, 2012), available at <http://www.fbi.gov/springfield/press-releases/2012/hardin-county-woman-charged-with-using-the-internet-to-arrange-sex-with-a-minor> (defendant utilized the Internet to induce victim for sex in exchange for prescription drugs); Press Release, Fed. Bureau of Investigation, Columbian Man Pleads Guilty to Coerced Sex Trafficking of a Child (Oct. 12, 2011), available at <http://www.fbi.gov/kansascity/press-releases/2011/columbia-man-pleads-guilty-to-coerced-sex-trafficking-of-a-child> (defendant recruited homeless victims and forced them to engage in prostitution in exchange for housing); Press Release, Fed. Bureau of Investigation, Fort Lauderdale Man Sentenced to Life for Sex Trafficking of Minors (Jan. 09, 2013) available at <http://www.fbi.gov/miami/press-releases/2013/fort-lauderdale-man-sentenced-to-life-for-sex-trafficking-of-minors> (defendant recruited runaways with promises of food and shelter, but forced them into prostitution to "pay the bills.").

54. 22 U.S.C. § 7102.

55. E.g., 18 U.S.C.A. § 2242 (2007).

56. Kenneth Lanning, *Child Molesters: A Behavioral Analysis*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD, 26-27 (2010), available at [http://www.missingkids.com/en\\_US/publications/NC70.pdf](http://www.missingkids.com/en_US/publications/NC70.pdf).

57. *Id.* at 129-31.

58. U.S.S.G. § 2G2.2(b)(3)(B) (2004).

child pornography in order to obtain other images, the images are “things of value.”<sup>59</sup> It would seem that if the item exchanged is of any value to one of the parties, then it can be considered a “thing of value.” Analogously, if in the course of attempting to engage in the sex act any item of any value to either of the parties is exchanged in any direction, the exchange could trigger the sex trafficking statutes.

Therefore, exchanges of any kind were included under the umbrella term of child sex trafficking.<sup>60</sup> Thus, when a purchaser of sex provides shelter or clothing, that was considered a form of child sex trafficking. This was also true when other transactions occurred, such as pictures exchanged between purchaser and victim, gifts or items of any kind were brought to the intended location of the sexual act, or a trafficker provided items including but not limited to sexualized clothing, make-up, alcohol or drugs.

### 3. Purchaser as Trafficker- First Party and Third Party Trafficking

The list of operative verbs in §1591 to indicate trafficking is exhaustive. A person who recruits, entices, harbors, transports, provides, obtains or maintains a minor for a commercial sex act is a trafficker.<sup>61</sup> This language plainly encompasses third party traffickers often colloquially referred to as a “pimps,” i.e. the people who control victims’ exploitation, often through physical force or intimidation (or in the case of minors, no force is necessary).<sup>62</sup> The question remains, however, as to whether a purchaser of sex is also a trafficker.

Many sources answer this question in the positive. The plain text of the statute suggests as much given the inclusion of very broad terms such as “obtaining” and “enticing.”<sup>63</sup> Many district courts have taken that position, most notably the Western District of Missouri which argues it was the first to charge purchasers of sex with minors as traffickers (hereinafter “first party traffickers”).<sup>64</sup> This is further supported by all the circuit courts to examine the issue, which have held or assumed that purchasers are considered as traffickers under the TVPA.<sup>65</sup> Legislation has even been introduced to finally terminate this argument against the plain text of the statute. The End Sex Trafficking Act of 2013 makes it abundantly clear that purchasers of sex are indeed traffickers and should be pur-

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59. *Id.* at cmt. 1; *United States v. Burman*, 666 F.3d 1113, 1118–19 (8th Cir. 2012).

60. That is not to say all such cases should be charged as child sex trafficking. However, when attempting to measure the factual frequency of events, research should include cases that meet this federal definition factually.

61. 18 U.S.C. § 1591(a)(1) (2006).

62. Holly Davis, *Defining ‘Pimp’: Working Towards a Definition in Social Research*, 18 SOC. RES. ONLINE ¶ 4.12, (2013) available at <http://www.socresonline.org.uk/18/1/11.html> (presenting a traditional, though imperfect, definition of “pimp”); Mary Joe Frug, *A Postmodern Feminist Legal Manifesto*, 105 HARV. L. REV. 1045, 1054 (1992).

63. 18 U.S.C. § 1591(a)(1).

64. See e.g., Press Release, *United States v. Albers* (WDMO), Northland Man Sentenced to 15 Year for Attempted Sex Trafficking of a Child (Sept. 2009); *U.S. v. Mikoloyck*, 2009 WL 4798900 (WD MO Dec. 7, 2009); Press Release, Fed. Bureau of Investigation, Final Defendant Pleads Guilty to Sex Trafficking of a Child, (Dec. 18, 2009).

65. *United States v. Jungers*, 702 F.3d 1066, 1072–75 (8th Cir. 2013) ; *United States v. Cooke*, 675 F.3d 1153 (8th Cir. 2012); see also *United States v. Strevell*, 185 Fed. App’x 841 (11th Cir. 2006); *United States v. Roberts*, 174 Fed. App’x 475, 478–79 (11th Cir. 2006).

sued under federal anti-trafficking efforts.<sup>66</sup> Thus, child sex trafficking applies to both suppliers of minors and consumers of commercial sex acts. Therefore, this article takes the position that not only are those colloquially referred to as "pimps" traffickers, but joins those courts who refer to purchasers of victims as traffickers as well. This article refers to the former as "third party traffickers" and the latter as "first party traffickers."

#### 4. Nature of Judicial Opinions

The obstacles inherent in judicial opinion writing present further challenges to the consistent categorization of cases. This research sought to comprehensively capture child sex trafficking cases processed in federal court. As previously mentioned, quantitatively it is impossible to obtain an exact number of child sex trafficking cases, regardless of the definition utilized. While a search of cases in which defendants were convicted under the relevant TVPA statutes is possible, such would fail to include cases in which the factual events of the case constituted child sex trafficking but the prosecution proceeded on different charges.<sup>67</sup> This occurs for a multitude of reasons including the unavailability of witnesses, the strength of the evidence, pretrial rulings, etc. Furthermore, if a case is strong and results in a negotiated plea, from which no pretrial rulings are appealed, no judicial opinion will be created. Therefore, a search of written judicial opinions based on which statute was charged is inadequate. The research must analyze the cases factually and also attempt to capture facts available from guilty pleas.

Utilizing a factually based search method, as opposed to a statutory based one, is not without compromise. Judicial opinions are by nature neither intended nor required to be complete recitations of every fact in every case. Additionally, if the issue challenged at the motions level, on appeal, or collateral attack does not require a recitation of all the facts, a researcher may be unable to identify a case of child sex trafficking or what role, if any, technology played. While many guilty pleas can result in appeals of pretrial rulings, many child sex trafficking cases resulting in resolutions without factual recitations will necessarily be missed, thus making the number generated conservative. Therefore, they will not be included within the results. Consequently, this research is not meant to be a quantitative accounting of all child sex trafficking cases handled in federal court, but a qualitative one. By adopting this broad definition of child sex trafficking, this research was able to obtain the most comprehensive collection able to be gathered from the opinions available.

#### C. Research Methodology

With these caveats, researchers on this project embarked on attempting to ascertain certain information regarding technology from case opinions. The first step of the research was to isolate the cases of child sex trafficking processed in federal court. Once isolated, researchers sought to examine what role, if any, technology played within the cases. This included analyzing how the traffickers

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66. H.R. 2805, 113th Cong. (2013) (explicitly stating traffickers include those who patronize or solicit a minor for a commercial sex act).

67. ATTORNEY GENERAL'S ANNUAL REPORT, *supra* note 22, at 58-59.

and victims used technology to facilitate the crime and how others used technology to detect and investigate child sex trafficking.<sup>68</sup> Therefore, researchers conducted the following analysis on a circuit by circuit basis including all federal district and appellate courts.<sup>69</sup>

Researchers utilized a commercially available legal research database of Westlaw. When encountering a case without facts in the opinion, researchers attempted to examine lower case opinions, filings, and PACER documents if available to determine the underlying facts. Consideration was given to avoid duplicate counting of cases. Cases could be duplicated in many ways. A case may generate more than one opinion on both the trial and appellate levels. Such cases were counted as one case. Similarly, a case may have fit the criteria of multiple searches. Search data were compared across searches to ensure each case only counted once. Cases involving multiple victims or conspiring defendants were counted as one case for data purposes.

The initial step focused on child sex trafficking cases which utilized traditionally understood trafficking statutes including those developed under the Mann Act, Thirteenth Amendment statutes, and TVPA statutes.<sup>70</sup> The search then sought to identify cases under these statutes, on the district and appellate levels, involving juveniles, minors, children or those “underage.” As discussed, limiting the search to cases in which only child sex trafficking was charged, underestimated the number of cases that could have been labeled as child sex trafficking events. From this list of cases, the facts were examined to determine what role technology played in their development.

What first becomes apparent when attempting to identify child sex trafficking cases with the broad definition of child sex trafficking referred to herein is the overlap with child pornography cases. The overlap is a challenge because some child pornography production cases can include child sex trafficking, while others might not. Given the limited resources of law enforcement, a relevant data point would include the amount of a federal circuit’s docket consumed by child pornography cases compared with human trafficking cases. Therefore, researchers utilized Westlaw to identify all the opinions involving federal child pornography statutes within a circuit.<sup>71</sup>

Although possession of child pornography would not necessarily involve child sex trafficking facts, production of child pornography may. Consequently, researchers isolated from the child pornography cases those that involved production of child pornography. This was done by searching the database for any and all district and appellate cases citing to the child pornography production statutes and narrowed with additional search terms indicating production of child pornography.<sup>72</sup> Once ascertained, researchers manually reviewed the cases

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68. A secondary issue this body of data could uniquely address was what role the evidence played in the trials. This is the subject of a subsequent article working with this database.

69. That is to say each circuit was analyzed by examining the circuit and district court opinions within that circuit that involved child sex trafficking.

70. Trafficking statutes include: 18 U.S.C.A. § 2421 (1998); 18 U.S.C.A. § 2422 (2006); 18 U.S.C.A. § 2423 (2013); 18 U.S.C.A. §§ 1583, 1589, 1590–1594 (2008).

71. This was simply a numerical search and the cases were not sorted for duplicated opinions. Rather, researchers simply searched each circuit for the number of cases.

72. 18 USC §§ 2251--2251A, §§ 2252--2252A.

to identify those whose underlying factual background included events that fell within the aforementioned definition of child sex trafficking.

From this collection of cases garnered through these various methods, researchers examined the factual background to determine if technology was utilized as described. Technology is also a broad term with different meanings in different contexts. The focus of this research included, but was not limited to, communication technologies (including digital, cellular, and video), the Internet, social networking sites, online advertising, digital technologies (digital imaging, cell phones), electronic financial systems, as well as monitoring and recording technologies. The cases were examined, therefore, for the presence of any such technology. At the conclusion of this data collection researchers were able to obtain the approximate number of child pornography cases processed on the district and appellate level in all the opinions generated, as well as the approximate number of child sex trafficking cases. From this, researchers determined what subset of those involved technology.

Researchers also conducted a final Westlaw-based search focused not necessarily on the presence of a statutory citation, but on cases using sex trafficking language and which referenced children or minors. The purpose of this was to capture any cases possibly omitted by the previous statutory searches. As with all the other searches, researchers then searched within those cases generated to identify cases in which technology played a role.

With over 90% of federal cases resolving in guilty pleas,<sup>73</sup> researchers recognized that many child sex trafficking cases also resolve in such a manner.<sup>74</sup> Therefore, researchers also analyzed press releases available online from the individual U.S. Attorney's offices in each district. Such a computation would not include all child sex trafficking pleas, as no uniform standard exists for U.S. Attorney's Offices press releases. This gathering of information, however, was instructive. Through this process researchers identified additional child sex trafficking cases in which technology was utilized.<sup>75</sup>

After the counting of over 5000 cases and the content review of over 3000 cases, researchers identified over 700 cases of child sex trafficking with approximately 78% of those cases involving technology.<sup>76</sup> It was then necessary to categorize the role of technology within the factual scenarios. Previous scholarship by boyd, *et al* had identified typical phases of child sex trafficking events.<sup>77</sup> Addi-

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73. LINDSAY DEVERS, U.S. DEP'T OF JUST, PLEA AND CHARGE BARGAINING 1 (2011).

74. Eighty-six percent of sex transportation cases, which can implicate sex trafficking resolved in guilty pleas. MARK MOTIVANS & TRACEY KYCKELHAHN, DEP'T OF JUST., BUREAU OF JUSTICE STATISTICS BULLETIN: FEDERAL PROSECUTION OF CHILD SEX EXPLOITATION OFFENDERS, 2006, at 6 (2007), available at <http://www.bjs.gov/content/pub/pdf/fpcseo06.pdf>.

75. Obviously, many press releases do not include adequate facts to determine if a case was a child sex trafficking case. Such releases were not included as child sex trafficking cases in this research.

76. See App. A. A discussion of the circuit distinctions and reasons for this will be discussed *infra*.

77. danah boyd, et al., *Human Trafficking and Technology: A Framework for Understanding the Role of Technology in the Commercial Sexual Exploitation of Children in the U.S.*, MICROSOFT RES. 3 (last visited Apr. 4, 2014), <http://research.microsoft.com/en-us/collaboration/focus/education/htframework-2011.pdf>.

tionally, the OSCE has applied a business model analysis to human trafficking, identifying economic phases occurring within human trafficking events.<sup>78</sup> Researchers adopted and modified these two models into an amended framework identifying fifteen phases of a typical child sex trafficking event. Focusing on those relevant to the question presented, researchers then categorized which of the following phases of a human trafficking event implicated technology: (1) recruitment or abduction of victims; (2) bringing of victims to commercial venue; (3) transit, housing, and daily control of victims; (4) retention of victims; (5) the searching, locating, and purchasing of victims by buyers; (6) money exchange and money laundering; (7) facilitation of underground partnerships among traffickers; (8) exchange of victims among traffickers; (9) protection of business; (10) identification and reporting of victims or perpetrators; (11) investigation. Within one case, technology could play multiple roles, a very limited role, or none at all.<sup>79</sup>

## II. NATIONAL OBSERVATIONS

Child sex trafficking cases processed in federal court offer information regarding both national and regional trends. This body of cases reflects the growing number of child sex trafficking cases as well as the significant role technology is playing in them as a whole. Although national trends can be observed, the diversity of the cases themselves as well as the trends of the individual circuits, demonstrate the breadth of both the crime and the methods utilized to combat it. While these trends offer confirmatory evidence of the growth of the crime and technology's role within it, the distinctions among the circuits raise questions about the qualitative effectiveness of the current approach to child sex trafficking.<sup>80</sup> This qualitative assessment indicates effectiveness is related to the type of defendant targeted in the investigation, and the focus of the local prosecutors.

### A. Technology is playing a role in a vast majority of child sex trafficking cases processed in federal court

The research methodology yielded a potential pool of over 3,000 cases. Researchers then manually reviewed the opinions and press releases and identified 715 cases which recounted facts of child sex trafficking. That is to say in these

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78. Alexis Aronowitz et al., OSCE, ANALYZING THE BUSINESS MODEL OF TRAFFICKING IN HUMAN BEINGS TO BETTER PREVENT THE CRIME, 17-20 (2010), *available at* <http://www.osce.org/cthb/69028?download=true>.

79. Finally, researchers examined the secondary question contained within this body of judicial opinion. They analyzed how technology affected evidence presented at trial. Ultimately all evidence must relate to the presence or absence an element of the offense. Researches then examined the relevance of this technologically based evidence and its role in the determination of guilt or innocence. The results of that research will be published in an upcoming paper.

80. This national data needed to be classified by some method. This study classified the cases by circuit for comparison purposes. Each circuit included not only appellate, but district court cases (excluding duplicates) within the circuit. While the cases could have been categorized by many methods (geographically, by district, etc.), this method was selected as the most appropriate. Due to the changing priorities of individual U.S. Attorneys, the difficulty in identifying geographic boundaries, and the multi-jurisdictional nature of task forces, this method offered the most workable and constant solution.

cases the facts contained a description of an event in which an adult was engaged in or attempted to be engaged in the recruitment, enticement, harboring, maintenance, transportation, provision, or obtaining of a child for a sexual act or exploitation where anything of value was exchanged between any party. This figure does not represent the number of child sex trafficking cases prosecuted since 2000. It is instead a collection of cases with two characteristics: (1) the case produced a judicial opinion available in Westlaw or a press release; and (2) that opinion or press release indicated facts in which someone at least attempted to recruit, entice, harbor, maintain, transport, provide or obtain a child for a commercial sex act (as previously defined). Some of the opinions are post-conviction, while others were generated during pretrial motions. Some are district court opinions and others are from circuit courts of appeals.

This figure is distinct from, but consistent with, other measurements of cases involving child sex trafficking. The TVPRA requires the Attorney General to issue an annual report on human trafficking efforts by the federal government. This report includes the number of persons charged or convicted under 18 USC §§ 1581, 1583, 1584, 1589-92, or 1594.<sup>81</sup> This report reflects convictions in sex trafficking cases (not limited to child sex trafficking) ranging from 15 in 2001 to 113 in 2011, with a total in that decade of 531.<sup>82</sup> Prior reports indicate figures as low as only 129 defendants referred to U.S. Attorney's Offices with child sex trafficking concerns and 75 human trafficking (labor and sex trafficking) defendants convicted between 2000 and 2005.<sup>83</sup> This figure within this research is also consistent with the State Department's Annual Trafficking in Persons Report which indicated only 4,228 convictions worldwide for non-labor trafficking cases.<sup>84</sup> For fiscal year 2012, the Child Exploitation and Obscenity Section of the Department of Justice (CEOS) in coordination with U.S. Attorney's Offices throughout the country initiated 18 prosecutions involving child sex trafficking and DOJ convicted 138 traffickers of which 105 were sex traffickers of adults and children.<sup>85</sup> Comprehensive state data is not currently collected and the FBI is developing software to capture all human trafficking data.<sup>86</sup>

The research for this article found that, on average, technology played some

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81. Interagency Task Force to Monitor and Combat Trafficking, 22 U.S.C. § 7103(d)(7)(I) (2013).

82. The figures in the Report reflect the difficulty in ascertaining numbers as straightforward as convictions for child sex trafficking. The Report does not list the convictions for child sex trafficking *per se*. It lists the sex trafficking of adults obtained by the Human Trafficking Prosecution Unit (HTPU) of the Civil Rights Division, and then all the sex trafficking convictions "D.O.J. wide" which apparently include adult and minor sex trafficking. ATTORNEY GENERAL'S ANNUAL REPORT, *supra* note 22, at 65-66. Some of the statistics are limited to convictions under 18 U.S.C. § 1591, but other numbers claim to include convictions under other sections. *Id.* at 60 n.17. It is also not clear if these figures measure convictions by charge, defendant, victim, or utilize a different method.

83. MOTIVANS & KYCKELHAHN, *supra* note 75, at 1-2. Fortunately, the FBI Uniform Crime Reporting Program (UCR) will be revised as of 2013 to collect more detailed information. In response to the TVPRA of 2008, sec. 237 the National Incident Based Reporting System (NIBRS) will collect statistics on offenses including purchasing prostitution. ATTORNEY GENERAL'S ANNUAL REPORT, *supra* note 22, at 19-20, 27.

84. TIP REPORT, *supra* note 23 at 46.

85. *Id.* at 382-83.

86. *Id.* at 383.



role in approximately 78% of child sex trafficking cases identified.<sup>87</sup> While that figure includes a role in either the perpetration of the crime or the investigation of the crime, rarely did law enforcement use technology to investigate a child sex trafficking event where no technology was used in its perpetration. Typically, the activity occupied some technological space, which allowed the government to identify it and utilize the digital trail left in its wake. When the measure was limited to trafficking statute cases, the percentage with technology remained consistent. Not surprisingly, however, when one looked only at child sex trafficking cases which involved child pornography charges the percentage increased to 93%.<sup>88</sup> That 78% figure is fairly representative of most of the circuits, with nine of the 12 circuits (1-11 and the DC Circuit) finding 70-90% of their child sex trafficking cases involved technology.<sup>89</sup> The average percentage per circuit was 78.9%.<sup>90</sup>

However, this also illustrates some broader differences. For example, the Eleventh Circuit (Alabama, Florida, Georgia) represented the most opinions referencing technology (133) as well as the second highest percentage (approximately 89%) of child sex trafficking opinions with technology. Conversely, the Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, N. Marian Islands) handled the second highest amount of child sex trafficking opinions (117) but the lowest percentage of opinions that referenced technology (57%).<sup>91</sup> Therefore, the two largest volume jurisdictions of child sex trafficking cases diverged greatly with the Ninth Circuit seeing technology play a role in approximately half as many cases as the Eleventh Circuit.

This difference between the Ninth and Eleventh Circuits is somewhat curious given that the Ninth Circuit possesses, by many different measures, the largest criminal docket. The Ninth Circuit is comprised of nine states as well as Guam and the Northern Mariana Islands. The Eleventh Circuit is comprised of only 3 states, Alabama, Florida, and Georgia.<sup>92</sup> The Ninth Circuit had the largest number of pending district court cases for 2013.<sup>93</sup> By contrast, the Eleventh Circuit ranked fifth in this category.<sup>94</sup> Similarly, in 2013, the Ninth Circuit commenced the most sex offense cases and the Eleventh Circuit was fourth.<sup>95</sup> Al-

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87. See App. A.

88. See *id.*

89. The remaining federal circuit court, the Federal Circuit Court of Appeals, has subject matter jurisdictional limits which would not include child sex trafficking and was not included in this analysis.

90. See App. A

91. The Third Circuit had technology active in 93% of its opinions. However that sample size of child sex trafficking cases was only one third of that for the 11th Circuit.

92. The total Population of the 9th Circuit is 61,742,908 people. The total Population of the 11th Circuit is 33,268,699 people. 2010 Population Finder, U.S. CENSUS BUREAU, <http://www.census.gov/popfinder/> (last visited Apr 11, 2014).

93. Table D Cases: U.S. District Courts – Criminal Cases Commenced, Terminated, and Pending (Including Transfers) During the 12-Month Periods Ending March 31, 2012 and 2013, UNITED STATES COURTS, <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2013/tables/D00CMar13.pdf>. (last visited Apr. 7, 2014).

94. *Id.*

95. Table D-3: U.S. District Courts – Criminal Defendants Commenced, by Offense and District, During the 12-Month Period Ending March 31, 2013, UNITED STATES COURTS,

most three times as many felony cases were commenced in the Ninth Circuit (18,341) than in the Eleventh Circuit (6,913) for the period ending March 31, 2013.<sup>96</sup> While the Ninth Circuit only commenced 153 violent offense prosecutions other than robbery, homicide and assault during that same period, the Eleventh Circuit ranked fourth in this category commencing only 87.<sup>97</sup> Similarly, the Ninth Circuit commenced the most sexual offense prosecutions (557) and the Eleventh Circuit the fourth most (353) in that category.<sup>98</sup> While the Fifth Circuit Court of Appeals has the most pending criminal cases (2,102), in 2013 the Eleventh Circuit is third on that list (1,417).<sup>99</sup> Therefore, that the Eleventh Circuit consistently is fourth or fifth among circuits and is first in child sex trafficking and technology is significant.

One concern about the rather high percentage of judicial opinions reflecting technology is that federal cases may offer a skewed result because they require an interstate nexus often provided by the use of the Internet or computer. This concern, however, is ameliorated due to the extensive coordination between state and local law enforcement. Sixty-one Internet Crimes Against Children (ICAC) Task Forces comprised of over 3,000 federal, state, and local law enforcement members generate a large number of child pornography, child sexual exploitation, and commercial sexual exploitation of children cases.<sup>100</sup> These, therefore, can be generated from state, local, or federal investigations because the task forces are comprised of state, local, and federal members who share information and resources. Similarly, all 93 United States Attorneys manifest the Project Safe Childhood Initiative. This Initiative “coordinates the resources and expertise of myriad federal, state, and local governmental and non-governmental agencies.”<sup>101</sup> Originally these focused solely on technology facilitated crimes against children, but expanded in 2011 to all crimes of sexual exploitation against children, reflecting the growing overlap of these types of crimes. Additionally, DOJ funded Human Trafficking Task Forces exist in 42 jurisdictions throughout the country. “These task forces bring together federal, state and local law enforcement and victim services organizations to investigate all forms of human trafficking and assist the victims.”<sup>102</sup> Indeed, one of the hallmarks of the government’s

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<http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2013/tables/D03DMar13.pdf> (last visited Jan. 14, 2014).

96. Table D-1: U.S. District Courts-Criminal Cases Commenced, Terminated, and Pending (Including Transfers), During the 12-Month Period Ending March 31, 2013, UNITED STATES COURTS, <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2013/tables/D01DMar13.pdf> (last visited Apr. 7, 2014).

97. Table D-3, *supra* note 97.

98. *Id.*

99. Table B-1. U.S. Court of Appeals – Appeals Commenced, Terminated, and Pending, by Circuit, During the 12-Month Period Ending March 31, 2013, UNITED STATES COURTS, <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2013/tables/B01Mar13.pdf> (last visited Apr. 7, 2014).

100. See INTERNET CRIMES TASK FORCE, <https://www.icactaskforce.org/Pages/Home.aspx> (last visited Apr. 5, 2014) (“The ICAC Program is a national network of 61 coordinated task forces representing over 3,000 federal, state, and local law enforcement and prosecutorial agencies.”).

101. ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 22, at 29, n.5.

102. DOJ-Funded Human Trafficking Task Force, NIJ (March 24, 2009), <http://www.nij.gov/journals/262/human-trafficking-task-forces.htm>.

anti-trafficking efforts is the partnering and collaboration with state and local prosecutors to identify and develop cases.<sup>103</sup> The Federal Bureau of Investigation has described its task force investigations as ones that “usually begin as local enforcement actions.”<sup>104</sup> These cases, therefore, reflect local law enforcement as well.

## B. The Role of Technology is Longstanding and Case Specific

Although the data is limited, civil society and some experts suggest that technology has helped transform the growth and characteristics of child sex trafficking.<sup>105</sup> This has important implications for how to respond to a changing crime. This study confirms that technology is often integral to child sex trafficking. However, it also suggests that when child sex trafficking is defined broadly, technology has played a long-standing role in cases at least since the early years of the TVPA. What has changed, however, are the platforms used.

Just as with the law abiding consumers, the technologies most utilized by the public are dynamic, with people migrating to newer technologies more suited to their needs. Currently there has been significant mainstream media discussion of the role of online advertising in child sex trafficking.<sup>106</sup> However, older but similar technologies have been previously utilized by traffickers and purchasers to connect and exchange children for something of value. For example, older cases involve the use of message boards,<sup>107</sup> bulletin boards,<sup>108</sup> internet relay chat,<sup>109</sup> and chatrooms.<sup>110</sup> These often provided similar opportunities for pur-

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103. ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 22, at 6–8, 13–14, 19, 29–30; TIP REPORT, *supra* note 23, at 383.

104. Press Release, Fed. Bureau of Investigation, 105 Juveniles Recovered in Nationwide Operation Targeting Underage Prostitution, (July 29, 2013), *available at* <http://www.fbi.gov/news/pressrel/press-releases/105-juveniles-recovered-in-nationwide-operation-targeting-underage-prostitution>.

105. See MARK LATONERO, CTR. ON COMM’N LEADERSHIP & POL’Y, HUMAN TRAFFICKING ONLINE: THE ROLE OF SOCIAL NETWORKING SITES AND ONLINE CLASSIFIEDS 8 (2011). See also SHARED HOPE INTERNATIONAL, A COMPARATIVE EXAMINATION OF SEX TOURISM AND TRAFFICKING IN JAMAICA, JAPAN, THE NETHERLANDS, AND THE UNITED STATES 15 (2012) (finding that technology is “the single greatest facilitator of the commercial sex trade” in nearly all the countries it studied); LAWYERS MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS, 36–37 (Jill Laurie Goodman & Dorchon A. Leidholdt eds., 2011) (2011), *available at* <https://www.nycourts.gov/ip/women-inthecourts/LMHT.pdf> (finding that technology is an effective tool in marketing, recruiting and controlling the market for sex trafficking).

106. See, e.g., Nicholas D. Kristof, *How Pimps Use the Web to Sell Girls*, N.Y. TIMES, Jan. 26, 2012, at A31; Lily Kuo, *Teen Prostitutes Rescued, Pimps Held, in FBI Sweep*, REUTERS, June 25, 2012, *available at* <http://www.reuters.com/article/2012/06/25/us-usa-prostitution-child-idUSBRE85O19H20120625>.

107. E.g., *United States v. Scott*, 426 F.3d 1324, 1325–26 (11th Cir. 2005).

108. E.g., *United States v. Lebovitz*, 401 F.3d 1263, 1265 (11th Cir. 2005) (defendant responded to an internet bulletin board to obtain sex with a minor).

109. E.g., Press Release, U.S. Dept. of Justice, San Diego Man Sentenced for Traveling to Colorado to Engage in Illicit Sexual Conduct with a Minor (Nov. 26, 2008) *available at* [http://www.justice.gov/usao/co/news/2008/November08/11\\_26\\_08.html](http://www.justice.gov/usao/co/news/2008/November08/11_26_08.html) (defendant posted he was interested in “sponsoring” a mother and child by having sex with both).

110. E.g., *United States v. Naiden*, 424 F.3d 718, 720 (8th Cir. 2005) (“ILuvOlderMen” chatroom), *United States v. Mentzos*, 462 F.3d 830, 836 (8th Cir. 2006) (telephone teen dating chat line); *United States v. Brown*, 526 F.3d 691, 697–98 (11th Cir. 2008) (AOL chatroom called “Fam Taboo”).

chasers to connect with victims or third party traffickers by being labeled with names that blatantly announce their purpose.<sup>111</sup> These locations offered those seeking children for sex and those offering children for sex a location where they could connect and also a location where offenders could be validated.<sup>112</sup> Throughout the decades offenders have also used other technologies or more innocuous fora to connect buyers with victims as well.<sup>113</sup> More recent cases, however, reflect the current more popular online marketplace: online advertising sites such as craigslist and backpage.com.<sup>114</sup> Third party traffickers advertise the availability of victims for sexual exploitation in the “adult services” section. Similarly, the use of cell phones at various stages of the child sex trafficking crime is more recent, and also reflects the growth of mobile devices in society at large.<sup>115</sup>

This observation suggests that child sex trafficking has perhaps always used technology but is migrating its platform. The migration could be seen as simply reflecting a national adaptation to more efficient technologies. However, it also reflects a migration to a more *public* space. This raises disturbing questions regarding the “mainstreaming of child sex trafficking.”

Although technology plays a part throughout the spectrum of child sex traf-

111. E.g. *United States v. Worsham*, 479 F. App'x 200, 201-02 (11th Cir. 2012) (“pedomoms”); *United States v. Paris*, 583 F.3d 756, 758 (11th Cir. 2009) (“open minded parents”). See also, *United States v. Grossman*, 233 F. App'x 963, 965 (11th Cir. 2007) (“preteen, baby and toddlers sex”); *United States v. Hornaday*, 392 F.3d 1306, 1308 (11th Cir. 2004) (describing the chatroom “loving families” as “an internet chatroom where people communicate via realtime messages about having sex with children”); *United States v. Stoterau*, 524 F.3d 988, 995 (9th Cir. 2008) (“rentboy.com”).

112. Lanning, *supra* note 57, at 127-28; e.g. Appellee's Answering Brief at 3 *United States v. Goodall*, 479 F. App'x 143 (9th Cir. 2012) (N. 2:10-CR-4010PMP-PAL) (online message board for parents or guardians with children to meet and arrange sex with children).

113. E.g. *United States v. Brown*, 498 F.3d 523, 526 (6th Cir. 2007) (traffickers utilized CB radio to advertise victims' availability); *United States v. Cox*, 577 F.3d 833, 834 (7th Cir. 2009) (“telephone party line”); Press Release, Fed. Bureau of Investigation, Former Klansman Who Traveled to Ga. for Sex with Two Underage Girl Sentenced to 20 Years in Prison (July 14, 2011), available at <http://www.fbi.gov/atlas/press-releases/2011/former-klansman-who-traveled-to-georgia-for-sex-with-two-underage-girls-sentenced-to-20-years-in-prison>

(“online forum for kids”); *Townsend v. United States*, No. 2:11-CV-113, 2012 WL 1808862, at \*1 (S.D. Ohio May 16, 2012) (defendant sent messages via UrbanChat.com attempting to have victim go to Florida to engage in prostitution); *United States v. Delaney*, 443 F. App'x 122, 124 (6th Cir. 2011) (defendant met victim in science chatroom).

114. E.g., Brief of Appellant, at 4-10, *United States v. Clark*, 442 F. App'x 774 (4th Cir. 2011) (No. 10-5335) (noting defendant used craigslist to both recruit victims and then advertise victims); Press Release, Fed. Bureau of Investigation, Toledo Man Indicted on Two Counts of Juvenile Sex Trafficking (June 4, 2012) (advertised victims on backpage.com) available at <http://www.fbi.gov/cleveland/press-releases/2012/toledo-man-indicted-on-two-counts-of-juvenile-sex-trafficking>; Press Release, Fed. Bureau of Investigation, Sacramento Man Sentenced to 12 Years and Seven Months for Sex Trafficking of a Minor (Nov. 08, 2010) (met victim on MySpace.com, but advertised her on escort advertisements) available at <http://www.fbi.gov/sacramento/press-releases/2010/sc110810.htm>.

115. See Aaron Smith, *Americans and Their Cell Phones*, PEW INTERNET AND AMERICAN LIFE PROJECT (Aug. 15, 2011), <http://www.pewinternet.org/2011/08/15/americans-and-their-cell-phones/> (noting mobile phones “have become a near ubiquitous tool for information seeking and communicating”); see also *United States v. Paris*, 2007 WL 3124724 at \*1, \*3 (D. Conn. Oct. 24, 2007) (traffickers use cellphone to monitor victims); Affidavit in Support of Criminal Complaint (2:09-CR-00196-LA) at 5, *United States v. Avery*, 2010 WL 2430909 (E.D. Wis. June 14, 2010) (defendant checked cellphone and required victim to call and report when victim had a “date”, the location, and money charged).

ficking cases, the platforms do change as the nature of the cases change. For example, for more organized child prostitution enterprises, online advertising appears to be the forum of choice for the most rapid selling of children to the broadest market.<sup>116</sup> However, more social platforms such as older online chatrooms and social networking sites today (e.g. Facebook and MySpace) play a more predominant role in cases involving primary party traffickers.<sup>117</sup> Arguably, therefore, these federal cases demonstrate that technology continues to play a large role in child sex trafficking cases which attract the attention of the federal government. Such cases have involved technology for some time.

### C. Technology is utilized most frequently in four specific phases of child sex trafficking crimes

While there may be a diversity of technology platforms utilized, as well as a diversity of factual scenarios, technology's role in child sex trafficking cases consistently clusters around four phases of a child sex trafficking event. Technology is playing an integral part in child sex trafficking and the access to victims by first and third party traffickers. Technology also implicates law enforcement's efforts to combat it.

#### 1. Offender Primary Uses of Technology

The 2013 TIP Report noted that "[a]s technology and globalization make the world more interconnected traffickers' ability to recruit and exploit their victims was also intensified."<sup>118</sup> These results confirm that perception with offenders utilizing technology most frequently in their recruitment or abduction of victims and then in the later stage of advertising or otherwise making them available to purchasers for exploitation. Federal case law supports this observation.

In distinguishing these two phases of (a) recruitment and (b) connecting buyers and victims, it is necessary to highlight the differences between two common types of cases. As previously discussed, this research reflects the conclusion of a growing number of trial and circuit courts that a buyer of sex can be a trafficker.<sup>119</sup>

In other words, it appears from the language of the TVPA that a purchaser, being one who *obtains* a child for the purposes of engaging in a commercial sexual act with him or her, can be a human trafficker. In such cases, therefore, this recruitment phase includes not only efforts by a third party trafficker to lure a

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116. Organized enterprise does not necessarily mean organized crime or the most sophisticated child sex trafficking rings. It instead is meant to distinguish cases of singular unorganized prostitution. Rather, those cases involve at least one pimp engaged in the trafficking of victims. *E.g.*, *United States v. Patterson*, 576 F.3d 431, 434 (7th Cir. 2009).

117. *E.g.* Brief of Appellee *United States* at 3-10, *United States v. Sands* 461 F. App'x 584 (9th Cir. 2011) (No. CR-10-20MDWM); Press Release, Corpus Christi man sentenced to over 11 years for receiving child pornography (March 23, 2011) available at <http://www.ice.gov/news/releases/1103/110323corpuschristi.htm>.

118. TIP REPORT, *supra* note 23, at 9.

119. *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013); *United States v. Grady*, No. 4:09CR00485JCH, 2010 WL 441513 (E.D. Mo. Feb. 4, 2010). Furthermore, many third party traffickers not only have victims engage in commercial sex acts with others, but engage in sex acts with the victim as well. *E.g.*, *United States v. Evans*, 285 F.3d 664, 670 (8th Cir. 2002).

minor into his or her control so the minor can be made available to other parties for purchase. But also, this research includes cases in which the first party trafficker recruits the victim or the victim's family/guardian/custodian to have the child engage in a commercial sexual act with him.<sup>120</sup> Because this category covers both scenarios, it comprises a significant area in which technology is utilized to facilitate child sex trafficking.

### i. Recruitment

Traffickers often target particularly vulnerable youth as potential victims. This requires traffickers to ascertain a location where they can easily identify and approach vulnerable and needy minors.<sup>121</sup> A population most at risk for CSEC and child sex trafficking are disenfranchised, economically vulnerable, runaway or thrown away children as well as those living in unsafe situations.<sup>122</sup> As the 8th Circuit insightfully noted, youth is "only one aspect of [a victim's] vulnerability. Other factors include[. . . .] background and lack of parental guidance."<sup>123</sup> Prior to the advent of the Internet, such children were often located by searching bus terminals, recruiting at schools or foster homes, or through "intra-familial pimping."<sup>124</sup>

Technology has altered these means by increasing access to minors both quantitatively and qualitatively. Due to the rise of the Internet and mobile devices, children are living much more exposed lives through social networking, personal web pages, and participation in online communities.<sup>125</sup> Quantitatively, youth throughout the world are living their lives online and mobile devices mean a constant access to youth is the norm.<sup>126</sup> This phenomenon is not limited

120. E.g. *United States v. Carter*, 2006 WL 997867 at \*1 (E.D. Ca. Apr. 17, 2006) (defendant offered an undercover officer posing as a mother \$500.00 in exchange for sex with her daughter and niece); *United States v. Brownlee*, 2011 WL 2112535, at \*1 (WD Pa. May 26, 2011) (defendant contacted a mother on the internet attempting to purchase a child for sex).

121. See Megan Annitto, *Consent, Coercion and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL'Y REV. 1, 9-10 (2011) (citing likely locations of vulnerable and needy minors); *United States v. Brooks*, 610 F.3d 1186 (9th Cir. 2010) (runaway picked up by traffickers); Affidavit in Support of Search Warrant at 8, *United States v. Greene*, 2011 WL3920171 (D. Alaska, 2011) (No. 3:09-cr-C0053).

122. Annitto, *supra* note 121, at 9-10; NAT'L CTR. ON DOMESTIC & SEXUAL VIOLENCE, COORDINATION, COLLABORATION, CAPACITY: FEDERAL STRATEGIC ACTION PLAN ON SERVICES FOR VICTIMS OF HUMAN TRAFFICKING IN THE UNITED STATES, 2013-2017, at 8-9 (2013), [http://www.ncdsv.org/images/HHS-DHS-DOJ\\_FederalStrategicActionPlanOnServiceForVictimsOfHumanTrafficking\\_4-2013.pdf](http://www.ncdsv.org/images/HHS-DHS-DOJ_FederalStrategicActionPlanOnServiceForVictimsOfHumanTrafficking_4-2013.pdf) [hereinafter STRATEGIC ACTION PLAN]; LAWYERS MANUAL ON HUMAN TRAFFICKING, *supra* note [X], at 8). A "throwaway" child is a child who is asked to leave or prevented from returning to the home or an inadequate alternative. HEATHER HAMMER, DAVID FINKELHOR, & ANDREA J. SEDLAK, U.S. DEP'T OF JUST., RUNAWAY/THROWAWAY CHILDREN: NATIONAL ESTIMATES AND CHARACTERISTICS 2 (2002).

123. *United States v. Evans*, 285 F.3d 664, 672 (8th Cir. 2002). See also *United States v. Brice*, 649 F.3d 793, 794 (D.C. Cir. 2011) (noting that defendants "preyed upon young girls at 'very difficult times' in their lives").

124. E.g., Annitto, *supra* note 121, at 13.

125. MARY MADDEN ET AL., PEW RES. CTR., TEENS, SOCIAL MEDIA, AND PRIVACY 2 (2013), [http://www.pewinternet.org/files/2013/05/PIP\\_TeensSocialMediaandPrivacy\\_PDF.pdf](http://www.pewinternet.org/files/2013/05/PIP_TeensSocialMediaandPrivacy_PDF.pdf) (noting that while youth are sharing more information through social media, they are concerned about privacy, and attempt to limit access) [hereinafter MADDEN, TEENS, SOCIAL MEDIA, AND PRIVACY].

126. *Id.*

to particularly wealthy youth, but as these technologies become more common and generally available, increasing numbers of impoverished youth are also available digitally.<sup>127</sup>

While research suggests that American youth may take more active steps concerning their privacy, these steps may be inadequate. Many youth limit access to their information to friends and contacts, but they average several hundred friends, who can share their information with people who would not otherwise have access.<sup>128</sup> Among these supposed “friends,” youth are (unknowingly) sharing information of great value, such as where they attend school (71%), interests, email (53%), and where they live (71%). One fifth of youth surveyed post their cell phone numbers online. As such, they are not only more accessible to a potential trafficker, but their vulnerabilities are also more easily identified and exploited.<sup>129</sup>

Anecdotal discussions of recruitment suggest that some traffickers recruit more frequently through social networking sites and other analogous mediums.<sup>130</sup> Research of federal court cases reflect a slightly different narrative.

The recruitment style seems to be influenced by the type of trafficker. While certainly many cases reflect an increased use of media (beyond social networking sites) to recruit,<sup>131</sup> many of the cases involving active third party traffickers continue to involve in person recruitment and the use of others within the criminal network, often other female victims, to recruit in person as well.<sup>132</sup> Third party traffickers often initially recruit their victims in person and then use social networking sites, texting, or other media to continue the recruitment process.<sup>133</sup>

127. See Margie Mason, *Facebook Sex Trafficking: Social Network Used to Kidnap Indonesian Girls*, HUFFINGTON POST (Oct. 29, 2012), [http://www.huffingtonpost.com/2012/10/29/facebook-sex-trafficking\\_n\\_2036627.html](http://www.huffingtonpost.com/2012/10/29/facebook-sex-trafficking_n_2036627.html) (discussing increase of recruiting child sex trafficking kidnap victims through social networking availability to impoverished people); MARY MADDEN ET AL., PEW RES. CIR., *TEENS AND TECHNOLOGY* 2013, 4 (2013), [http://www.pewinternet.org/files/old-media/Files/Reports/2013/PIP\\_TeensandTechnology2013.pdf](http://www.pewinternet.org/files/old-media/Files/Reports/2013/PIP_TeensandTechnology2013.pdf) (noting that 93% of teens have a computer or access to one; 69% of teens in households under \$30,000 own a cell phone).

128. MADDEN, *TEENS, SOCIAL MEDIA, AND PRIVACY*, *supra* note 125 at 6.

129. *E.g.*, United States v. Werlein, 664 F.3d 1143, 1145 (8th Cir. 2011) (defendant used a fake Facebook profile to befriend adolescent girls and induce them to meet for sex); Brief for Appellee at 6-16, United States v. Tashbook, 114 F. App'x 610 (9th Cir. 2005) (No. 02-10569) (defendant targeted young girls through AOL Instant Messaging telling them he would make them famous if he posed nude for them); United States v. Yarbrough, 334 F. App'x 266, 267 (11th Cir. 2009) (defendant began talking to a 15-year-old he knew when having difficulty at home and convinces her to run away).

130. Linda Smith & Samantha Healy Vardaman, *A Legislative Framework for Combating Domestic Minor Sex Trafficking*, 23 REGENT U. L. REV. 265, 288-89 (2010).

131. *E.g.*, Brief of Appellant at 4-10, United States v. Clark, 442 F. App'x 774 (4th. Cir. 2011) (No. 10-5335), 2011 WL 1131396 (online advertising used to recruit and advertise); United States v. Studabaker, 578 F.3d 423, 426 (6th Cir. 2009) (offender attempted to recruit through neopets.com, which is a site that allows users to create virtual pets); Press Release, Fed. Bureau of Investigation, Ill. Man Pleads Guilty to Interstate Sex Offense (Nov. 14, 2012) *available at* <http://www.fbi.gov/boston/press-releases/2012/illinois-man-pleads-guilty-to-interstate-sex-offense> (defendant met victim on Internet role playing game).

132. *E.g.*, United States v. Wilson, 2010 WL 2991561 (S.D. Fla. July 27, 2010) (demonstrating how the sex traffickers shared resources and recruitment responsibilities amongst themselves). *See also* Affidavit, United States v. Strom, 2013 WL 6271932 (No. 12-CR-00184-AJT) (E.D. Va 2012) (females used to help recruit other female prostitutes).

133. *E.g.* United States v. Patterson, 576 F.3d 431, 434 (7th Cir. 2009); Press Release, Fed. Bureau

Therefore, as traffickers utilize technology to increase recruitment, they are doing so *in addition to* in person recruiting, rather than in place of it.<sup>134</sup>

While these numbers are likely to grow among third party traffickers, the significant portion of cases in which technology is an important driver in recruitment are those in which the recruiter is the buyer and, therefore, first party trafficker.<sup>135</sup> Not surprisingly, these offenders seek potential victims wherever they can reach the largest number. Prior to the Internet this often required one to gain a position of trust from a location in which many children were present.<sup>136</sup> Today, however with a computer or mobile device, one can encounter large numbers of minor children through social networking sites, newsgroups, internet chat rooms, etc. Therefore, through these means a purchaser or trafficker will frequently seek children for sexual exploitation locations.<sup>137</sup> Moreover, vulnerable parents are also at risk. While often a third party trafficker seeks to recruit victims directly, a first party trafficker can also attempt access through parents or guardians. Such individuals may be under economic pressure and ripe for exploitation,<sup>138</sup> or they may be depraved and willing co-conspirators.<sup>139</sup> Traffickers utilize these opportunities to recruit victims as well as the families/guardians of

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of Investigation, Milwaukee Man Sentenced to 14 Years in Prison for Sex Trafficking of Young Girl (Jan. 21, 2011).

134. E.g., *United States v. Stoterau*, 524 F.3d 988, 995 (9th Cir. 2008) (defendant met victim in person at a support group for homosexuals, but later advertised online); *United States v. Daniels*, 685 F.3d 1237, 1241 (11th Cir. 2012) (defendant picked up victim off the street and became "her prostitution manager"); *United States v. Myers*, 430 F. Appx 812, 813-14 (11th Cir. 2011) (defendant recruited from bus stop with promise of becoming model and advertised her online).

135. That is not to say that all child sexual abusers are traffickers. As discussed *supra*, what distinguishes a child abuse case from a child trafficking case for the purposes of this research is the exchange of something of value. Even given this distinction, the author recognizes that under certain factual scenarios distinguishing between the child abuser who gives gifts to groom and one who gives gifts in exchange for sexual contact can be impossible. While for purposes of this research, this broad definition of trafficking was adopted. For purposes of charging offenders the author agrees a more narrow definition may be appropriate.

136. Lanning, *supra* note 56, at 7-9.

137. Margie Mason, *Facebook Sex Trafficking: Social Network Used To Kidnap Indonesian Girls*, HUFFINGTON POST (Oct. 29, 2012, 2:03 AM), [http://www.huffingtonpost.com/2012/10/29/facebook-sex-trafficking-\\_n\\_2036627.html](http://www.huffingtonpost.com/2012/10/29/facebook-sex-trafficking-_n_2036627.html); Gosia Sawicka, *U.S. Predators Use Video Games to Lure Canadian Kids*, CBC NEWS (April 2, 2013, 3:04 AM), <http://www.cbc.ca/news/canada/manitoba/u-s-predators-use-video-games-to-lure-canadian-kids-1.1314943>; E.g., *United States v. Delaney*, 443 F. App'x 122, 124 (6th Cir. 2011) (science chatroom); *United States v. Naiden*, 424 F.3d 718, 720 (8th Cir. 2005) ("ILuvOlderMen" AOL Chatroom); Press Release, Fed. Bureau of Investigation, *Former Klansman Who Traveled to Ga. for Sex with Two Underage Girl Sentenced to 20 Years in Prison* (July 14, 2011), available at <http://www.fbi.gov/atlanta/press-releases/2011/former-klansman-who-traveled-to-georgia-for-sex-with-two-underage-girls-sentenced-to-20-years-in-prison> (online forum for children).

138. *United States v. Berk*, 652 F.3d 132 (1st Cir. 2011) (defendant identified economically vulnerable parents on Craigslist and attempted to convince them to accept money for exchange for sex with daughter); *United States v. Brownlee*, 2011 WL 2112535 at \*1-2 (W.D. Pa. 2011) (defendant tries to offer parent money for sex with daughter).

139. *United States v. Wernick*, 691 F.3d 108, 111 (2d Cir. 2012) (defendant traded child pornography for sex with a parent's children); *United States v. Block*, 635 F.3d 721 (5th Cir. 2011) (defendants arranged for FBI informant to engage in and photograph sexual conduct with one of the defendants' daughter); *United States v. Brown*, 526 F.3d 691, 696-98 (11th Cir. 2008) (defendant offered to trade his daughter for sex with undercover agent's daughter).



victims.<sup>140</sup>

It is predicted, however, that over time the majority of recruitment, just like the relationship commencement outside of the criminal context, will occur online or through cellphones. In person recruiting, however, will continue as long as it is fruitful. This raises important implications for prevention and response to child sex trafficking.

## ii. Connecting Purchasers and Victims

Connected to this recruitment practice is the phase of the trafficking event in which the child is made available for purchase. This can occur publicly, when the child or a third party advertises the child through a variety of media including online advertising.<sup>141</sup> Just as in a legal context, successful advertising occurs more frequently online and through mobile devices.<sup>142</sup> The rationale for this is that more buyers can be located online. The same is true for child sex trafficking. Indeed, online advertising is more advantageous to potential purchasers of children because it allows them to conduct the transaction without risk of public exposure by traveling to a location to identify children. This becomes apparent in cases where law enforcement arranges undercover operations in which they pose as traffickers advertising minors for exploitation and quickly identify purchasers<sup>143</sup> or, where law enforcement pose as juveniles vulnerable to recruitment by traffickers and quickly identify traffickers.<sup>144</sup>

Not only is this online advertising a successful method to connect buyers and victims, digital images also appear to be useful to traffickers in an additional way. Increasingly, traffickers are using digital technologies to photograph victims engaged in sexual activity or suggestive poses.<sup>145</sup> The collateral effect of this could be twofold. First, the sharing of these images publicly could further dehumanize the victim and objectify him or her thus decreasing the likelihood of

140. E.g., *United States v. Anderson*, 509 F. App'x 868, 871 (11th Cir. 2013) (defendant arranged a sexual encounter with an undercover law enforcement agent posing as a stepfather with two boys).

141. E.g., *United States v. Stoterau*, 524 F.3d 988, 995 (used rentboy.com website to advertise); Press Release, Fed. Bureau of Investigation, Toledo Man Indicted on Two Counts of Juvenile Sex Trafficking (June 4, 2012) available at <http://www.justice.gov/usao/ohn/news/2012/04junebrady.html> (defendant advertised on backpage.com).

142. Lucia Moses, *Tablets Overtake Smartphone as the Big Shopping Device*, ADWEEK (May 22, 2013, 6:38 AM), <http://www.adweek.com/news/advertising-branding/tablets-overtake-smartphones-big-shopping-device-149654>; *United States v. McDarragh*, 351 F. App'x. 558 (2d Cir. 2009) (defendant sent e-mails to erotic services advertisements on Craigslist); *United States v. Cooke*, 675 F.3d 1153, 1155 (8th Cir. 2012) (defendant responded to internet ad placed by law enforcement advertising services of underage girls); *United States v. Skow*, 2012 WL 4514282, at \*4 (N.D. Ga Oct. 1, 2012) (defendant attempted to purchase a 15-year-old girl from Guatemala with whom he intended to live and have sex).

143. E.g. *United States v. Steele*, 513 F. App'x 834, 835 (11th Cir. 2013).

144. E.g., *United States v. Slaughter*, 2011 WL 1337401 at \*1 (N.D. Ga Apr. 6, 2011) (undercover officer posing as girls posting and on Craigslist Casual Encounters to buy beer); *United States v. Phillips*, 2009 WL 1918931 at \*7 (N.D. W.Va 2009) (undercover officers used MySpace to attract predators).

145. See *United States v. Booker*, 447 F. App'x 726, 727 (7th Cir. 2011) (trafficker took nude photos of victim and posted them on the internet along with an ad for her services); *United States v. Larkin* 629 F.3d 177, 180 (3d Cir. 2010) (defendant sent nude photography of her daughters to known pedophiles); *United States v. Rivera*, 546 F.3d 245, 247-48 (2d Cir. 2008) (defendant took nude photographs of victim after intercourse).

escape. Second, an exploiter can demand and control a victim's compliance by threatening to expose the victim to his or her family.<sup>146</sup>

#### D. Investigative Uses of Technology

The role of law enforcement is to identify crime and respond to it both proactively and reactively. It is no surprise, therefore, that the other two most frequent categories in which technology plays an active role mirror those aforementioned categories frequented by offenders. While many commentators lament the growing role of technology in trafficking, there is also a recognition of the potential for technology to assist law enforcement.<sup>147</sup> Across the circuits, technology is essential in identifying potential suspects and victims, and in the actual investigation of child sex trafficking.

##### 1. Identification

Technology is playing an increasing role in the identification of potential victims and perpetrators of child sex trafficking. Vice units are moving from the street to cyberspace.<sup>148</sup> In approximately 40 percent of the child sex trafficking cases studied, technology was used to initially identify either a victim or trafficker. Using technology police have access to the increasingly common locations where potential purchasers interact with traffickers of children for sex. The cases manifest this ability in two important ways. First, law enforcement is able to enter into these spaces in a variety of capacities. They can monitor certain electronic meeting places by examining online advertising sites, chat rooms, multi-player gaming situations to try to identify either children at risk, offenders offering children in some capacity, or offenders seeking children.<sup>149</sup> Law enforcement can also take a more active role by assuming identities in some of these spaces and directly interacting with offenders. Thus, they can draw out defendants and confirm their identities or intents through digital communication technologies such as instant messaging, video chat, and email.<sup>150</sup> Additionally, they can arrange sting operations in which they pose as potential traffickers and are contacted by purchasers seeking commercial exploitation of children.<sup>151</sup> They can also pose as

146. *E.g.* United States v. Rand, No. 11-60088-CR-COHN, 2011 WL 4962289, at \*4 (S.D. Fla. Sept. 26, 2011).

147. TIP REPORT, *supra* note 23 at 14.

148. *See* Carmen Cox, *Hidden America: Police Target Pimps in 57 Cities*, ABC NEWS RADIO (June 26, 2012) <http://abcnewsradioonline.com/national-news/hidden-america-police-target-pimps-in-57-cities.html>.

149. *E.g.*, United States v. Hornaday, 392 F.3d 1306, 1308 (11th Cir. 2004) ("Loving Families" chat room); United States v. Leightey, 432 F. App'x 836, 838-39 (11th Cir. 2011) (Yahoo! chatroom); United States v. King, 560 F. Supp. 2d 906, 910 (N.D. Cal. 2008) (Craigslislist).

150. *E.g.* United States v. Christensen, 598 F.3d 1201, 1202-03 (9th Cir. 2010) (used instant messaging to find underage sexual encounters); United States v. Haaby, 2012 WL 1718047 at \*1 (D.Or. 2012) (defendant emailed and instant messaged his victim).

151. *E.g.*, United States v. Calp, 113 F. App'x 358, 359-60 (10th Cir., 2004) (U.S. Customs Service created false website); United States v. Robertson, 350 F.3d 1109, 1111-12 (10th Cir. 2003) (police pose as child sex tourism trafficker and defendant orders boys for sex and flies to Colorado to complete purchase); United States v. Orr, 622 F.3d 864, 866-68 (7th Cir. 2010) (defendant attempted to convince a male police officer posing as a woman to move to his state with her children to train them to be "sexual slaves").

potential victims.<sup>152</sup> Finally, they can pose as potential purchasers and interact with those selling children by arranging a physical meeting where they can apprehend the perpetrators.<sup>153</sup>

## 2. Investigation

These technologies can enable police to engage in more far reaching, proactive investigations, that exceed in scope the traditional “vice detail” of previous policing. This approach is both safer for law enforcement, and affords the opportunity for collecting digital evidence through transcripts of conversations and exchanges, useful in building a more solid case.<sup>154</sup> Not surprisingly, the police are utilizing this technology. This study found 34% of the opinions or press releases include facts of a sting operation (either as proactive investigation or the police taking on the identify of a targeted minor).

This type of investigation can reap significant quantitative benefits. A comparison between the Fifth (Louisiana, Mississippi, Texas) and Eleventh Circuits is instructive. The Eleventh Circuit has the highest raw number of child sex trafficking opinions and press releases as well as the second highest percentage of cases involving technology. While there may be many reasons for this outcome, the Eleventh Circuit also reports the highest number of opinions in which undercover operations are mentioned. Just under half of its cases (47%) resulted from undercover operations. This aggressive approach of using undercover operations signifies that approximately one fourth of the undercover operations reported in the opinions generated from the Eleventh Circuit.<sup>155</sup> By contrast, the Fifth Circuit was among the circuits with the lowest number of opinions reflecting child sex trafficking (the second smallest at thirty-four opinions and the 1<sup>st</sup> Circuit at thirty-one), also the lowest number of cases reflecting technology (twenty-three), and among the lowest percentage of cases with technology playing a role (67%). Notably, the Fifth Circuit opinions also reflected the lowest number of stings (six).<sup>156</sup> While there can be many reasons for this distinction, these numbers support the theory that undercover operations can produce a

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152. *E.g.*, *United States v. Phillips*, No. 3:06-CR-47, 2009 WL 1918931, at \*7 (N.D. W.V. July 1, 2009) (posing as a victim in MySpace); *see also* *United States v. Vohwinkel*, No. 2:10-cr-00085-RLH-LRL, 2010 WL 3614167, at \*1 (D. Nev. Aug. 27, 2010) (posing as a victim on craigslist).

153. *E.g.*, *United States v. Diaz*, 597 F.3d 56 (1st Cir. 2010) (police posing as purchaser).

154. For example, the Western District of Missouri participated in “Operation Guardian Angel” which was a product of a human trafficking taskforce comprised of state and federal law enforcement entities. The taskforce placed ads advertising “little girls” for sex. Defendants responded to the location where audio and video equipment recorded their conversation and payment prior to arrest. *E.g.*, *United States v. Mikoloyck*, 2009 WL 4798900 (W.D. Mo. Dec. 7, 2009) (defendant responded to ad on placed on Craigslist by police officers that offered sexual conduct with underage females); Press Release, Fed. Bureau of Investigation, Final Defendant Pleads Guilty to Sex Trafficking of a Child, (Dec. 18, 2009); Press Release, Fed. Bureau of Investigation, Former Naval Recruiter Sentenced for Attempted Sex Trafficking of a Child, (Oct. 19, 2009); Press Release, Fed. Bureau of Investigation, Mississippi Man Pleads Guilty to Sex Trafficking of a Child (July 16, 2009).

155. *E.g.*, *United States v. Skow*, No. 1:11-cr-373-CAP-ECS, 2012 WL 4514282 (N.D. Ga. Sept. 13, 2012), *report and recommendation adopted*, 2012 WL 4511336 (N.D. Ga. Oct 1, 2012); *United States v. Shutts*, No. 07-20816-CR, 2007 WL 4287666 (S.D. Fla. Dec. 5, 2007), *report and recommendation adopted*, 2008 WL 162662 (S.D. Fla. Jan. 16, 2008).

156. *See infra* Part III.

large number of successful prosecutions.

Undercover operations can vary a great deal in their intensity, from an ad on Craigslist to complex scenarios.<sup>157</sup> The Eleventh Circuit cases include several more sophisticated operations.<sup>158</sup> Therefore, it would seem that an aggressive and successful approach to intervention in child sex trafficking cases necessarily includes utilizing technologies such as false online advertisements, false child sex tourism companies, or posing as fictitious offenders in certain online communities.

This is underscored when compared with a more typical circuit such as the Seventh Circuit (Illinois, Indiana, Wisconsin). The Seventh Circuit cases reflect an average amount of child sex trafficking cases charged under the typical trafficking statutes and a slightly higher than average percentage of cases in which technology is involved. However, in raw numbers, the Seventh Circuit produced approximately 60% less opinions reflecting sex trafficking cases in federal court than the Eleventh Circuit. The Seventh Circuit also reported half as many sting operations or proactive investigations as the Eleventh Circuit. This data would suggest again that quantitatively proactive investigations do indeed yield successful prosecutions of child sex trafficking offenders. Additionally, these investigations are becoming increasingly linked to technology.

The qualitative benefits of this form of proactive technology based investigation remain a more complicated question. While such investigations do appear to produce a larger number of offenders, the offenders they target may not be the optimal goal. For example, a typical undercover operation referenced in the cases includes law enforcement placing an advertisement online that appears to be offering minors for sexual purposes. Then when offenders contacted them, they would arrange to meet where the offender would be apprehended and charged with travelling with the intent to engage in illicit sexual conduct or a similar offense.<sup>159</sup> In a less traditional child sex trafficking scenario, although arguably as common, police may pose as a minor in an online community and accept an offender's advances and stated intent to engage in illicit sexual conduct.<sup>160</sup> These stings result in the offender appearing to meet his intended victim

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157. *E.g.*, *United States v. Cooke*, 675 F.3d 1153, 1155 (8th Cir. 2012) (police place an ad offering minor girls for prostitution and defendant responds); *United States v. Calp*, 113 F. App'x 358, 359-60 (10th Cir., 2004) (police pose as child sex tour operators).

158. *See United States v. Vance*, 494 F.3d. 985, 988 (11th Cir. 2007) (police pose as tour company for child sex tourism); *see also United States v. Strevell*, 185 F. App'x 841, 842-43 (11th Cir. 2006) (police pose as tour company for child sex tourism).

159. *See* 18 U.S.C. § 2423(b) (defining "Travel With Intent To Engage in Illicit Sexual Conduct"); *e.g.*, Press Release, Fed. Bureau of Investigation, Former Naval Recruiter Sentenced for Attempted Sex Trafficking of a Child (Oct. 19, 2009), available at <http://www.fbi.gov/kansascity/press-releases/2009/kc101909.htm> (defendant found guilty for attempting to obtain a minor for a commercial sex act and prosecuted under the Trafficking Victims Protection Act); *see also United States v. Cooke*, 675 F.3d 1153, 1155 (8th Cir. 2012) (defendant used the internet in his attempted sex trafficking of a minor).

160. *E.g.*, *United States v. Mentzos*, 462 F.3d 830, 834 (8th Cir. 2006); Press Release, Fed. Bureau of Investigation, Former Klansman Who Traveled to Georgia for Sex with Two Underage Girls Sentenced to 20 Years in Prison (July 14, 2011) (defendant sent undercover police officers posing as underage girls sexual video and photos).

with items he intended to exchange and is arrested.<sup>161</sup> Such operations are frequent and produce a large number of offenders. The offenders, however, are often not the main traffickers who pimp and control the victims, but rather potential purchasers of the children.<sup>162</sup> Such efforts no doubt decrease the risk to children that they will be exploited by attacking the demand side of child sex trafficking. However, they risk doing very little for the supply side which can be extremely brutal for victims.

Undercover operations that aim at the supply side also occur. A typical operation involves examining online advertisements which appear to be offering minors for commercial sex and contacting them posing as a potential customer.<sup>163</sup> For example, in *United States v. Diaz*, police identified advertisements on Craigslist which appeared to be offering a minor for sexual services.<sup>164</sup> They then called the number listed and met the victim at a hotel room when she and others arrived.<sup>165</sup> Police apprehended the defendant who brought them to that location.<sup>166</sup>

While clearly aimed at the supply of child sex trafficking victims, initially these operations connect law enforcement only with the victims, not the traffickers. Although victims may be accompanied by another in the trafficking operation, it is by no means guaranteed.<sup>167</sup> While federal law, and many state laws, have safe harbor provisions in the statutes which are intended to protect minor victims from being charged with crimes such as prostitution if they are trafficking victims, this does not necessarily mean that the brief arrest of the victim will not occur or that the victim will cooperate with law enforcement to apprehend the trafficker. With less than twenty states having safe harbor provisions, some research suggests that juveniles can often be arrested.<sup>168</sup> This outcome does not reach third party trafficking. Therefore, such operations do have a large potential, but only when this initial contact with the victim signifies a critical stage in an ongoing process, rather than an end of a successful operation.

161. E.g., *United States v. Thomas*, 255 F. App'x 422, 423 (11th Cir. 2007) (offender contacts undercover federal agent posing as a mother trafficking her minor child); *United States v. Vohwinkel*, No. 2:10-cr-00085-RLH-LRL, 2010 WL 3614167, at \*1 (D. Nev. Aug. 27, 2010) (police respond to advertisement looking for young girl).

162. Brief of Appellant at 3–5, *United States v. Castellan*, 382 F. App'x 326 (4th Cir. 2010) (No. 09-4910) (police place Craigslist ad posing as a mother of girls she was willing to exploit and diplomat responded to the ad); *United States v. Vohwinkel*, No. 2:10-cr-00085-RLH-LRL, 2010 WL 3614167 at \*1 (D. Nev. 2010) (police respond to ad looking for young girl).

163. E.g. *United States v. Diaz*, 597 F.3d 56, 59-60 (1st Cir. 2010) (detective responded to Craigslist ad that appeared to be offering a minor for sexual services).

164. *Id.* at 59–60.

165. *Id.*

166. *Id.*; see also e.g., Press Release, Fed. Bureau of Investigation, Maryland Couple Sentenced to Prison Terms for Running a Prostitution Operation Involving a Minor (Oct. 12, 2012) (police respond to an ad offering children for sex and discover defendants ran a prostitution business); Brief for the United States, *United States v. Jennings*, 662 F.3d 988 (8th Cir. 2011) (No. 10-3365) (police arrest defendant when he comes to pick up victim after her “appointment” and subsequently identify 51 total victims).

167. See e.g., *Diaz*, 597 F.3d at 59; *United States v. King*, 560 F. Supp. 2d 906, 910–11 (N.D. Cal. 2008).

168. FARRELL ET AL., *supra* note 19 at 56 (noting that in their study of 140 closed human trafficking cases, 35% of sex trafficking victims were arrested).

Law enforcement must at this point begin a long term investigation into the scenario which brought the victim to them, often encountering significant, albeit understandable, obstacles. The obstacles include victims who do not self-identify as victims. Moreover, many victims cannot or do not cooperate with law enforcement due to the complex relationship often found between victim and offender, out of intimidation and fear, or resulting from endured trauma.<sup>169</sup> Additionally, traffickers can be proactive in preventing their apprehension by only exposing to arrest the victims or lower level figures within their organization.

However, the case law does reflect that when this contact is treated as the beginning of an investigation, those investigative efforts lead to convictions of these third party traffickers. Critical to the investigations, therefore, are two components. First, in an increasingly digital world, police must be trained in identifying and utilizing a trail of digital evidence. This trail offers law enforcement investigatory opportunities it did not previously possess. For example, law enforcement has used Interpol to circulate a cropped picture of an offender which lead to the offender's identification as well as the identification of three other sexual offenders, including the arranger of "sex tourism" trips to Thailand.<sup>170</sup> Less dramatically, law enforcement has responded to online advertisements and when victims appear, used the phone numbers in the advertisements to trace back to defendant and his attempts to contact the victim.<sup>171</sup>

This technological component, however, is not a *replacement* for traditional investigation technique for child sex trafficking cases. Rather, it must be *supplemental* to the challenging work of identifying and investigating child sex trafficking cases brought to law enforcement's attention. This electronic trail is most useful if it accompanies the second critical component of child sex trafficking investigation: police work on the street, online, and in all aspects of the physical and digital world. This is consistent with Farrell's research into promising prosecution practices which noted the importance of perseverance and utilizing relationships with victim service providers and other stakeholders, collection of corroborating evidence, and safe housing for victims in successful prosecutions.<sup>172</sup> An example of this occurred during a three day national Operation Cross Country VII where local, state, and federal partners arrested 159 alleged traffickers in seventy-six cities. They also recovered 105 exploited children. The "truck stops, casinos, street tracks and websites" lead to organized prostitution rings.<sup>173</sup> At the time of the rescues, law enforcement was prepared with "victim assistance coun-

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169. LAWYERS MANUAL ON HUMAN TRAFFICKING., *supra* note 105 at 32-37.

170. Press Release, Fed. Bureau of Investigation, New Jersey Man Sentenced on International Sex Tourism and Child Pornography Charges (Nov. 16, 2009) *available at* <http://www.justice.gov/opa/pr/2009/November/09-crm-1236.html>.

171. Press Release, United States Attorney's Office, Minnesota, Fed. Bureau of Investigation, Duluth Man Indicted for Sex Trafficking of a Child (May 20, 2013) *available at* <http://www.justice.gov/usao/mn/countyindicted.html>.

172. *See generally*, FARRELL ET AL., *supra* note 19, at 8 (stating the challenges of investigating and prosecuting human trafficking offenses).

173. Press Release, Fed. Bureau of Investigation, 105 Juveniles Recovered in Nationwide Operation Targeting Underage Prostitution (July 29, 2013) *available at* <http://www.fbi.gov/news/pressrel/press-releases/105-juveniles-recovered-in-nationwide-operation-targeting-underage-prostitution>; Michael S. Schmidt, *F.B.I. Charges 159 Men With Forcing Teenage Girls into Prostitution*, N.Y. TIMES, July 29, 2013, at A11.

selors working with local child service organizations to place teenagers in foster or group homes” and not to prosecute them.<sup>174</sup> However, it should be noted, it was later reported that “due to lack of long-term housing options for these victims, some of them may be detained in juvenile detention until beds become available.”<sup>175</sup>

Success in these cases, therefore, requires a two pronged approach. Police must be equipped with interpersonal skills to build trust to overcome the possible obstacles posed by complicated relationships between victims and traffickers. This includes both skills and infrastructure support to respond to victims’ immediate physical and psychological needs at the point of recovery.<sup>176</sup> Additionally, police must have the technical skills to investigate the electronic trail that starts with the initial contact and leads back to the trafficker. This is essential to impacting this group of offenders.<sup>177</sup>

The data reflects quantitative results to proactive investigations, but a risk of qualitative gaps. If the yield of such investigations is the apprehension of victims, purchasers, and low level figures in a trafficking organization, the question arises as to whether such technology based interventions are the best use of resources. Perhaps other more significant targets are being missed in the current approach to child sex trafficking. This research further suggests however, that when such operations utilize both interpersonal investigative techniques and technical ability the possibility of apprehending the most appropriate targets increases.<sup>178</sup>

Experts have recently begun raising this question regarding whether the awareness of an online presence of trafficking is having a counter intuitive effect on law enforcement by misdirecting the resources to only the most obvious and less sophisticated offenders.<sup>179</sup> In their recent discussion of both the rise of mobile technologies in child sex trafficking,<sup>180</sup> as well as the role of online advertisements,<sup>181</sup> Latonero and others have most clearly raised this important issue.

174. Schmidt, *supra* note 175.

175. Elizabeth Flock, *Some Child Sex Trafficking Victims ‘Rescued’ by Recent FBI Sting Could End Up in Jail*, U.S. NEWS AND WORLD REPORT (August 7, 2013).

176. See *National Colloquium 2012 Final Report*, ECPAT-USA (May 2013), <http://ecpatusa.org/wp/wp-content/uploads/2013/08/National-Colloquium-2012-Report-B.pdf> (discussing the current shelter and services response to domestic minor sex trafficking).

177. E.g., *United States v. Robinson*, No. 1:10-CR-00129-MHS-RGV, 2010 WL 5662091, at \*3–4 (N.D. Ga. Nov. 29, 2010) (law enforcement respond to advertisement of apparent minor. When she appears they successfully speak at length with her and obtain enough information to locate trafficker).

178. For example, law enforcement investigating a missing girl case observed someone had accessed her MySpace account. They traced that activity to an identity which was linked to an online advertisement with the victim. That ad was linked to the defendant whom the police apprehended and identified by the hotels from which the access was occurring. *United States v. Davis*, 453 F. App’x 452, 454 (5th Cir. 2011); *see also United States v. Doyle*, No. 06-CR-224, 2007 WL 601922 (7th Cir. 2007) (defendant used internet to facilitate sexual activity of a minor).

179. See, MARK LATONERO ET AL., *THE RISE OF MOBILE AND THE DIFFUSION OF TECHNOLOGY-FACILITATED TRAFFICKING* 30–31 (2012), available at <https://technologyandtrafficking.usc.edu/files/2011/08/HumanTrafficking2012.pdf> (suggesting that that technology-facilitated trafficking is more diffuse and adaptive than initially thought).

180. *Id.* at 11–13.

181. LATONERO ET AL., *HUMAN TRAFFICKING ONLINE*, *supra* note 105, at 12–13.

Analogizing to drug trafficking, some suggest that the apprehension of the purchaser of sex is analogous to the apprehension of the drug user or low level drug dealer. Such apprehensions have a value but do little in the larger "war on drugs."<sup>182</sup>

More research is certainly needed in this area. While the analogy between narcotic and human trafficking is attractive, some important distinctions remain. First, the undercover operation which brings the victim into the presence of law enforcement can be an important opportunity to rescue a victim. Unlike a narcotic apprehension of a drug user, the intervention between a victim of child sex trafficking and his or her trafficker could result in protection for the child, even if briefly. Similarly, the decreasing the demand for child sex trafficking victims can make the trafficking of person less profitable and more risky. As a result it may stem the movement of organized crime from the trafficking of narcotics to the trafficking of children.<sup>183</sup> Secondly, case law suggests that when police treat these encounters as the beginning of the investigation into the major trafficker, rather than as the end of a "prostitution investigation" significant offenders can be apprehended.<sup>184</sup>

### III. CHILD SEX TRAFFICKING IS REGIONAL

Thus far, this article has addressed some of the national trends in the child sex trafficking cases occurring in federal court. It is a mistake, however, to treat child sex trafficking as a uniform enterprise. Cases involving advertisements are distinct from those involving truck stops.<sup>185</sup> Singular trafficking cases differ from organized criminal enterprises.<sup>186</sup> These crimes also manifest differently depending upon the location in which they occur. In some important aspects, the cases vary a great deal between jurisdictions. For example, in some areas, such as the Eleventh Circuit, law enforcement engages in many proactive undercover operations, some of which are quite sophisticated. Consequently, many of the cases have similar factual premises. However, other circuits reflect a greater diversity in their cases.<sup>187</sup> For example, some cases in the Seventh Circuit reflect a shared

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182. Drug Enforcement Admin: 1985-1990 62 (available at <http://www.justice.gov/idea/about/history/1985-1990.pdf>).

183. UNITED NATIONS OFFICE ON DRUGS AND CRIME, HUMAN TRAFFICKING: AN OVERVIEW (2008), at 7-8.

184. *E.g.*, United States v. Nyuon, No. CR12-40017-01-KES, 2013 WL 1338192 (S.D. Mar. 29, 2013); Press Release, Fed. Bureau of Investigation, Md. Couple Sentenced to Prison Terms for Running a Prostitution Operation Involving a Minor (Oct. 12, 2012) available at <http://www.fbi.gov/washingtondc/press-releases/2012/maryland-couple-sentenced-to-prison-terms-for-running-a-prostitution-operation-involving-a-minor> (police response to online advertisement of minor leads to discovery of comprehensive trafficking business from which police obtain cell phones linked to online advertisements, hotel keys, narcotics, and business cards).

185. Brief of Appellant at 4-10, United States v. Clark, 442 F. App'x 774 (4th. Cir. 2011) (No. 10-5335), 2011 WL 1131396; *see, e.g.*, United States v. Starks, 17 F. App'x 530, 532 (9th Cir. 2001) (truck stop); United States v. Sutherland, 191 F.App'x 737, 741-42 (10th Cir. 2006) (truck stop).

186. *See* Press Release, Fed. Bureau of Investigation, Virginia Gang Leader Sentenced to 40 Years for Leading Juvenile Sex Trafficking Ring (Sept. 14, 2012) (multi-state, multi-victim trafficking ring run by gang members); United States v. Cortez-Meza, 411 F. App'x 284, 285-86 (11th Cir. 2011) (national network or brothels).

187. For example, the Seventh Circuit has a varied cross section of cases involving organized sex



narrative of sex trafficking victims being transported from rural or less urban areas to large cities such as Chicago.<sup>188</sup> However, several cases in the Second Circuit (Connecticut, New York, Vermont) reflect significant child exploitation in more rural areas uncovered by proactive investigations but demonstrate a more organized child trafficking arena in more urban settings.<sup>189</sup> The Third Circuit (Delaware, New Jersey, Pennsylvania, Virgin Islands), containing several of the nation's busiest highways, handled several cases where technology played a small role in child sex trafficking due in part to the fact that many cases originated out of trafficking rings selling victims of prostitution at truck stops where no technology is needed to connect purchaser and victim.<sup>190</sup>

More research is needed to understand the reasons for these regional differences. These reasons could have several implications. They may indicate gaps in law enforcement's response to child sex trafficking. These divergent regional scenarios could reflect distinct legal priorities among different United States Attorneys or limited capabilities among law enforcement. That raises serious concerns that local law enforcement efforts are interrupting only certain types of child sex trafficking, and, thereby, possibly missing significant offenders. Such information could inform how to best deploy limited resources. It would also be an indicator that additional training is necessary to allow law enforcement to identify child sex trafficking when it is encountered.

If these differences exist because of factual differences in the actual child sex trafficking crimes occurring in those regions, then the changes may reflect a positive adaptability of law enforcement to this crime. If the diversity exists because it is a true reflection of the local character of the child sex trafficking in these specific regions, such information would serve as an important reminder to law enforcement of the significance of human intelligence in the community. While national trends are an important part of law enforcement, being aware of the local manifestation of the same crime in one's jurisdiction is a critical component of smart policing. Although a federal circuit covers a large area, an examination of the district and appellate decisions still offers guidance. Such information allows jurisdictions to create relevant prevention messaging. It is also a necessary component in training law enforcement, allied professionals, and the public on how to recognize and detect this hidden crime. Furthermore, it enables limited resources for proactive investigations to be more surgically utilized.

#### IV. FUTURE

Child sex trafficking is a growing industry in the United States. Not surprisingly investigation and prosecution of such matters is growing as well. A

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trafficking rings (*United States v. Patterson* 576 F.3d 431 (7th Cir. 2009)), sting operations in which the police pose as minors online (*United States v. Doyle*, No. 06-CR-224, 2007 WL 601922, at \*1 (E.D. Wis. Feb. 23, 2007), and money exchanged for ability to take exploitive pictures of victim (*United States v. Kincaid*, 571 F.3d 648, 650 (7th Cir. 2009).

188. E.g., Criminal Complaint at 5, *United States v. Avery* (2010 WL 2430909 (E.D. WI, 2010)(NO: 09-cr-196); *United States v. Patterson*, 576 F.3d 431,434 (7th Cir. 2009).

189. E.g., *United States v. Wells*, 2010 WL 363339 (D. Conn. Jan 25, 2010).

190. *United States v. Hayes*, , 2007 WL 2768685 (M.D. Pa. Sept. 20, 2007); *United States v. Maes*, 2009 WL 5064621 (M.D. Pa. Dec. 23, 2009); *United States v. Oliver*, 434 F. App'x 152 (3d Cir. 2011).

component of that growth includes the technology that facilitates the execution of that crime and the amount of evidence police are currently able to collect therefrom.

This research suggests that technology plays a particularly significant role in the recruitment and the connecting of buyers to victims. This information is significant for both prevention and detection of child sex trafficking. Prevention messaging regarding child sex trafficking must be aimed at children, guardians, and bystanders alike. Prevention of exploitation can no longer be divided into separate silos of Internet safety, protection from child pornography, protection from trafficking, or protection from other threats. Child sex trafficking prevention messaging should be expanded to include a digital component and to educate these parties about the many different forms and platforms utilized in recruitment. Conversely, Internet safety messaging must also expand to include prevention of child sex trafficking online. This must specifically address both the quantitative and qualitative access to children. Both these expansions need to also recognize that more traditional forms of recruiting have not been replaced, but supplemented.

This research also confirms the positive outcome of utilizing technology to identify and apprehend traffickers. It further underscores the adaptable nature of this crime as it expands into new technologies without abandoning profitable traditional exploitative practices. As such, the research confirms both the ongoing need for traditional methods of law enforcement investigation as well as an understanding of digital opportunities for investigation. Because detection in a public space can be done by civilians as well as law enforcement, the fact that child sex trafficking is becoming identifiable in new ways suggests opportunities for prevention by educating civilians as well as law enforcement. Finally, law enforcement and policy makers would benefit from exploring not only the evidence of child sex trafficking at these points, but also the way in which exploration of these points could lead to more organized and sophisticated offenders.

## APPENDIX A

| Circuit | Child Sex Trafficking Cases | Cases with Technology | Percentage |
|---------|-----------------------------|-----------------------|------------|
| 1st     | 31                          | 27                    | 87.09%     |
| 2nd     | 42                          | 34                    | 81%        |
| 3rd     | 45                          | 42                    | 93%        |
| 4th     | 48                          | 33                    | 69%        |
| 5th     | 34                          | 23                    | 68%        |
| 6th     | 63                          | 49                    | 78%        |
| 7th     | 58                          | 46                    | 79%        |
| 8th     | 79                          | 69                    | 87%        |
| 9th     | 117                         | 66                    | 56%        |
| 10th    | 44                          | 33                    | 75%        |
| 11th    | 133                         | 119                   | 89%        |
| DC      | 21                          | 18                    | 86%        |
| Totals  | 715                         | 559                   | 78%        |