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THE SAVE ACT OF 2015: CONGRESS' ATTEMPT TO REPRIORITIZE ONLINE CHILD SEX TRAFFICKING

ASHLEY A. CARDENAS[†]

INTRODUCTION

Technology and child sex trafficking share a parasitic relationship. As technology continues to advance in the United States, so does online child sex trafficking. In today's society almost anything is within one's fingertips at any given moment. In 2015, sixty-eight percent of Americans owned a smartphone and forty-five percent owned a tablet.¹ This accessibility has been profitable for pimps, as they are now able to reach a broader market more quickly and easily.

Within the past decade, the United States Congress, law enforcement, and anti-human trafficking interest groups have accused online advertisement websites of facilitating child sex trafficking on the Internet.² However, the Communications Decency Act ("CDA"), the First Amendment, and the judiciary's objective to keep the Internet open have hindered Congress' goal of taking down online advertisement websites. The Stop Advertising Victims of Exploitation Act of 2015 ("SAVE Act") is Congress' first comprehensive action to hold website operators liable for online child sex trafficking. Still, no case in any federal court has been brought against a website operator for violations under the SAVE Act, leaving the Act's success uncertain.

[†] J.D. Candidate, 2018, St. John's University School of Law.

¹ Monica Anderson, *Technology Device Ownership: 2015*, PEW RESEARCH CENTER (Oct. 29, 2015), <http://www.pewinternet.org/2015/10/29/technology-device-ownership-2015>.

² See Mark Latonero, *Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds*, U. SOUTHERN CAL. ANNENBERG CTR. ON COMM. LEADERSHIP & POL'Y 21 (Sept. 2011), https://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking_FINAL.pdf.

This Note argues that the SAVE Act will not achieve Congress' goal of prosecuting website operators and stopping the influx of online child sex trafficking advertisements. However, the potential pitfalls of this legislation does not mean the Act should be thrown out in its entirety. Instead, the Act should be rewritten to include well-crafted, yet informative definitions of online child sex trafficking, while also lowering the mens rea requirement and requiring website operators to engage in more due diligence.

Part I outlines the background of Internet sex trafficking in general. Section A discusses the parties involved in online child sex trafficking advertisements, the transition of the crime from the street and onto the Internet, and the benefits the Internet has provided this criminal industry. Section B details how law enforcement and anti-human trafficking interest groups pressure online classified websites to stop these illegal advertisements from being posted.

Next, Part II provides an overview of statutes enacted before the SAVE Act that relate to the Internet and online child sex trafficking advertisements. Section A summarizes the CDA and the First Amendment. Section B discusses the unconstitutionality of the state statutes enacted in New Jersey, Tennessee, and Washington to combat online child sex trafficking advertisements. Section C outlines the current debate on abolishing child sex trafficking from the Internet.

Furthermore, Part III discusses the SAVE Act's history and language as well as its advantages and disadvantages. This part argues that the SAVE Act will be ineffective because of (1) judicial hesitation, (2) inadequate wording, and (3) irresponsible deference.

Finally, Part IV provides solutions to the SAVE Act's deficiencies. Section A proposes new definitions of the terms used in the statute to avoid vagueness and overbreadth and suggests lowering the mens rea standard for website operators. Section B proposes the use of facial recognition programs to find unlawful posts.

I. BACKGROUND

In 2000, Congress enacted the Trafficking Victims Protection Act (“TVPA”),³ which states that child sex trafficking is a severe form of human trafficking.⁴ Therefore, because of the severity of the crime and a child’s inability to consensually engage in commercial sexual activity,⁵ both federal and state laws have mandated that child sex trafficking victims do not need to be forced into sex trafficking to be considered a victim.⁶ In other words, the mere fact that a child under the age of eighteen is involved in commercial sex work makes the transaction automatically illegal.⁷

A. *Child Sex Trafficking—From the Street to the Internet*

According to the National Human Trafficking Resource Center’s (“NHTRC”) hotline statistics, the number of calls it has received and the number of human trafficking cases reported has steadily increased between 2012 and 2016.⁸ Of these reports, the NHTRC estimates that sex trafficking has been the most prevalent type of human trafficking from 2012 to the present.⁹ In addition, the NHTRC reports that online advertisements have been among the top five venues for sex trafficking from 2012 to the present.¹⁰

³ The TVPA was Congress’ first legislative attempt to combat human trafficking. *Id.* at 10.

⁴ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 103, 114 Stat. 1464, 1470 (codified at 22 U.S.C.A. § 7102(9)(A) (West 2015)) (“[S]ex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age . . .”). It is important to note that “[a] victim need *not* be physically transported from one location to another for the crime to fall within these definitions.” U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 9 (2016), <http://www.state.gov/documents/organization/258876.pdf>.

⁵ Ryan Dalton, Note, *Abolishing Child Sex Trafficking on the Internet: Imposing Criminal Culpability on Digital Facilitators*, 43 U. MEM. L. REV. 1097, 1103 (2013).

⁶ Abigail Kuzma, *A Letter to Congress: The Communications Decency Act Promotes Human Trafficking*, 34 CHILD. LEGAL RTS. J. 23, 25 (2013).

⁷ *See id.*

⁸ *Hotline Statistics*, NAT’L HUMAN TRAFFICKING RES. CTR. <https://traffickingresourcecenter.org/states> (last visited Sept. 15, 2017).

⁹ *Id.*

¹⁰ *Id.*

In practice, there are three parties involved in the business of child sex trafficking.¹¹ These parties include the (1) “pimp,” (2) victim, and (3) “John.”¹² The pimp is the person who is trafficking or selling an individual for a commercial sex act.¹³ The victim is the “product,” or “person being sold.”¹⁴ Finally, the John is an individual who buys the victim from the pimp.¹⁵ With the advancement of technology, pimps are able to easily use online classified websites such as Backpage.com (“Backpage”),¹⁶ Eros, CityVibe, MyRedbook, and AdultSearch to post explicit advertisements of their victims.¹⁷ Such advertisements have moved the sale of sex from the street to indoor locations such as “massage parlors, residential brothels, hotels . . . strip club[s] [and] gentlemen’s club[s].”¹⁸ These advertisements typically include, (1) a pimp’s phone number, (2) a description of the sexual act the victim will engage in, (3) a sexually explicit photograph of the victim, and (4) the cost.¹⁹

The use of online classified websites has allowed pimps to advertise in more locations.²⁰ For example, an individual in New Jersey can log on to a computer from home and purchase a

¹¹ Michelle Ibanez & Daniel D. Suthers, *Detection of Domestic Human Trafficking Indicators and Movement Trends Using Content Available on Open Internet Sources*, 47th HAWAII INT’L CONF. ON SYS. SCI. 1556, 1557 (2014), <https://www.computer.org/csdl/proceedings/hicss/2014/2504/00/2504b556.pdf>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* It is important to note that while pimps are the ones trafficking children, Johns can and have been charged by federal courts as traffickers. See Mary Graw Leary, *Fighting Fire with Fire: Technology in Child Sex Trafficking*, 21 DUKE J. GENDER L. & POL’Y 289, 299 (2014).

¹⁶ “Backpage is an online classified site that hosts advertisements for a wide range of products, including adult services, which can be found under the ‘Escort’ section.” Ibanez & Suthers, *supra* note 11, at 1559.

¹⁷ Latonero, *supra* note 2, at 22; Melissa Farley et al., *Online Prostitution and Trafficking*, 77 ALB. L. REV. 1039, 1074 (2013–2014). While this Note focuses heavily on online classified advertisements, it is important to understand that the online platform used in sex trafficking cases changes based on the circumstances surrounding the case. See Leary, *supra* note 15, at 308–09. Specifically, while “organized child prostitution enterprises” use online classified advertisements “for the most rapid selling of children to the broadest market. . . . [S]ocial platforms such as older online chatrooms and social networking sites today (e.g. Facebook and MySpace) play a more predominant role in cases involving [Johns].” *Id.* at 309.

¹⁸ Farley et al., *supra* note 17, at 1044.

¹⁹ *Id.* at 1043.

²⁰ Ibanez & Suthers, *supra* note 11, at 1558. For example, sex trafficking is now being reported in rural areas outside of major cities. *Id.*

victim's services from a pimp in New York.²¹ The lack of geographical boundaries allows pimps to extend their business, which helps pimps to (1) evade law enforcement, (2) increase the demand for trafficking victims and, therefore, (3) increase profits.²² Additionally, by constantly moving victims and advertising them as "new" and "available for a limited time only," a pimp is able to ensure that his victims are attractive to the John community.²³ These advertisements will also describe the victim as "fresh," "cherry," and "barely legal" to let Johns know that the victim up for sale is underage.²⁴ Online advertisements also help pimps drive up demand by attracting potential Johns that might not have been initially seeking to buy commercial sex.²⁵ For example, an individual might be surfing the web to look at pornography when he comes across an advertisement for sex available near his home.²⁶

Online advertisements make more accessible these illegal sex activities, which creates an incentive for Johns to engage in child sex trafficking. Specifically, Johns now have the ability to remain anonymous during a sale.²⁷ Johns maintain anonymity by inspecting the victim they are paying for through the sexually explicit images within the advertisement.²⁸ The payment for victims can also be anonymous through the use of Bitcoin,²⁹ which is a form of online currency that is not regulated.³⁰ Those in possession of Bitcoin can use this currency to pay for anonymous access to websites containing illegal images and sales of children.³¹

²¹ See Farley et al., *supra* note 17, at 1086.

²² Ibanez & Suthers, *supra* note 11, at 1557. Moreover, frequently moving sex trafficking victims inhibits them from escaping because victims become incapable of "establishing social support systems" or establishing "familiarity with a location." *Id.*

²³ *Id.*

²⁴ Kuzma, *supra* note 6, at 29.

²⁵ Farley et al., *supra* note 17, at 1045–46.

²⁶ *Id.* at 1046.

²⁷ See Leary, *supra* note 15, at 313.

²⁸ See *id.* Such pictures cause sex trafficking victims great harm by "further dehumaniz[ing] the victim and objectif[ing] him or her thus decreasing the likelihood of escape." *Id.* at 313–14.

²⁹ Farley et al., *supra* note 17, at 1044.

³⁰ *Id.*

³¹ *Id.*

The Internet has not only made the purchase of commercial sex easier, but has also inadvertently created a strong comradery among Johns.³² For example, there is a discussion forum conspicuously called "The Erotic Review," which not only advances the John's search for the perfect victim to buy for commercial sex, but educates Johns on how to aggressively negotiate during sales of sex acts.³³ With the advantages both pimps and Johns enjoy from online sex trafficking, Congress is fighting against a well-established criminal network.

Currently, pimps have increased access to children through the Internet,³⁴ which is a pimp's preferred outlet to advertise and sell children into the commercial sex industry.³⁵ It is estimated that each year, 100,000–300,000 children in the United States are in danger of being trafficked for sex.³⁶ Widely accessible technology has allowed pimps to recruit children through social media, chat rooms, and other social websites.³⁷ For example, during an undercover operation in Virginia, a detective discovered that a pimp was using instant messaging to convince girls under the age of eighteen to become "sex slave[s]."³⁸ However, while more pimps recruit children online, pimps still use face-to-face recruitment.³⁹ There are still documented

³² In other words, Johns can, and traditionally have, "use[d] the internet to search for providers, share information about providers, compare experiences, and provide warnings about potential law enforcement." Ibanez & Suthers, *supra* note 11, at 1558.

³³ Farley et al., *supra* note 17, at 1070. Those in the sex industry are against forums such as The Erotic Review or "TER" because,

TER reviews are primarily based on [sexual] performance . . . and appearance . . . You, as a provider, are dehumanized. TER hobbyists, feeding on these reviews, see you as less than human. They are looking for 5-star blowjobs and model looks, rather than a human being with a personality. Instead of respecting your limits and preferences, they expect you to give them what it says you provided someone else in your last review.

Id. at 1071 (quoting *TER Hobbyist = Bad Customer*, TER SUCKS BLOG (Nov. 15, 2006, 6:37 AM), <http://tersucks.blogspot.com>).

³⁴ Leary, *supra* note 15, at 310.

³⁵ See Kuzma, *supra* note 6, at 23.

³⁶ Ibanez & Suthers, *supra* note 11, at 1557.

³⁷ See Leary, *supra* note 15, at 310. The lives of both affluent and impoverished children are exposed by technology. *Id.* at 310–11. Specifically, while online, minors share with their "friends" information such as their (1) school, (2) interests, (3) contact information, and (4) home address. *Id.* at 311.

³⁸ Brief of Appellee at 7, *United States v. Tashbook*, 144 F. App'x 610 (9th Cir. 2005) (No. 02-10569) 2004 WL 3079528 (C.A.9) at *6–7.

³⁹ Leary, *supra* note 15, at 312.

instances of pimps recruiting children at bus stops, support groups, and on the street in general.⁴⁰ For example, pimps often approach homeless youth and loiter outside of youth shelters waiting to approach teenagers staying there.⁴¹

On average, pimps recruit children between the ages of twelve and fourteen.⁴² When a pimp first comes into contact with a child, the pimp tries to find the child's weaknesses.⁴³ These weaknesses usually stem from past or current trauma, including from mental, emotional, or physical abuse.⁴⁴ Pimps will often use a child's weaknesses to the pimp's benefit.⁴⁵ For example, a pimp will manipulate the child into believing that the pimp can provide him or her the love and support that his or her abusive family does not give the child.⁴⁶ Consequently, the pimp will gain the child's trust and convince the child to participate in the commercial sex industry.⁴⁷ Studies have corroborated this recruitment tactic, showing that abused children "are more likely to visit chat rooms, be solicited sexually online and offline, and receive aggressive sexual solicitations than their nonabused peers."⁴⁸ Therefore, the Internet has helped facilitate the effective recruitment process created by pimps.

B. Growing Pressure on Online Classified Websites

Starting in 2007, Craigslist became the first online classified website to be publicly scrutinized by law enforcement and anti-human trafficking groups. The website was publicly criticized for allowing child sex trafficking within its Adult Services section.⁴⁹

⁴⁰ *Id.* at 312 n.134.

⁴¹ Leary, *supra* note 15, at 310; COVENANT HOUSE, HOMELESSNESS, SURVIVAL SEX AND HUMAN TRAFFICKING: AS EXPERIENCED BY THE YOUTH OF COVENANT HOUSE NEW YORK 6 (2013) ("[T]raffickers loiter in areas where homeless youth are known to gather and then tell them that the shelters are full and offer them a place to stay in lieu of sleeping on the streets.").

⁴² See Kuzma, *supra* note 6, at 23.

⁴³ See Dalton, *supra* note 5, at 1106 (citing PIMPIN' KEN & KAREN HUNTER, PIMPOLOGY: THE 48 LAWS OF THE GAME 21–22 (2007)).

⁴⁴ See Farley et al., *supra* note 17, at 1050.

⁴⁵ Dalton, *supra* note 5, at 1106.

⁴⁶ See *id.* at 1108; Farley et al., *supra* note 17, at 1050.

⁴⁷ See Dalton, *supra* note 5, at 1108.

⁴⁸ Farley et al., *supra* note 17, at 1050.

⁴⁹ Latonero, *supra* note 2, at 21.

Ultimately, in 2010, Craigslist shut down its Adult Services section. As a result, sex trafficking advertisements likely shifted to other online classified websites.⁵⁰

After Craigslist's exit, Backpage became the new target of law enforcement because of its visibility and policies regarding adult advertisements. For example, within a sex trafficking unit of the New York District Attorney's Office, the majority of the child sex trafficking cases prosecuted involved advertisements of child victims posted on Backpage.⁵¹ In addition, Backpage was contacted by law enforcement to delete an advertisement for sex that included a picture of an underage female; however, after the removal of this advertisement, "10 more ads were posted [on Backpage] for the same girl, using the same photos and phone number used in the original ad."⁵²

In response to public criticism, Backpage has stated that it (1) actively monitors content, (2) identifies potential child sex trafficking advertisements and reports those posts to the National Center for Missing and Exploited Children ("NCMEC"), and (3) works extensively with law enforcement to stop online child sex trafficking.⁵³ Additionally, Backpage's terms of use state that the website prohibits users from posting (1) solicitations for sex, (2) any content that "exploits minors," (3) any pictures Backpage deems sexually explicit, and

⁵⁰ Dalton, *supra* note 5, at 1109. Specifically, sex trafficking advertisements increased as follows: A "35.9% increase on Eros.com, 17.5% at CityVibe.com, 16% on MyRedBook.com, 17.5% on Backpage.com, and an astonishing 70% increase on Escorts.com." *Id.* at 1109–10.

⁵¹ Kuzma, *supra* note 6, at 29. In addition, a "Minnesota prosecutor stated, '[w]hen we get a case involving the trafficking of prostitution, usually the story is going to start on Backpage.com.'" *Id.* at 30 (quoting *Anderson Cooper 360 Degrees: Backpage.com Refuses To Shut Down Adult Classified* (CNN television broadcast May 10, 2012)). Moreover, a detective under oath stated that "he has been involved in more than 1,200 prostitution investigations, but 'has never encountered any person, posting ads on the escorts section of Backpage.com who was advertising for legitimate escort services.'" *Id.* at 41 (quoting Sara Jean Green, *New State Law Targeting Sex-Related Ads on Websites Faces Court Test*, SEATTLE TIMES (Jul. 19, 2012, 8:59 PM), <http://www.seattletimes.com/seattle-news/new-state-law-targeting-sex-related-ads-on-websites-faces-court-test>).

⁵² *Id.* at 42 n.180 (quoting Sara Jean Green, *New State Law Targeting Sex-Related Ads on Websites Faces Court Test*, SEATTLE TIMES (Jul. 19, 2012, 8:59 PM), <http://www.seattletimes.com/seattle-news/new-state-law-targeting-sex-related-ads-on-websites-faces-court-test>).

⁵³ Backpage.com, LLC v. Lynch, 216 F. Supp. 3d 96, 107 (D.D.C. 2016).

(4) content that participates “in human trafficking.”⁵⁴ However, studies have shown that terms of use provided by websites do nothing to combat demand of online child sex trafficking.⁵⁵ For example, in a study of fake commercial sex advertisements posted on Craigslist and Backpage, researchers found that of the 218 men that responded to the advertisement, forty-seven percent were still interested in purchasing sex after being told three times that the individual for sale was likely under the age of eighteen.⁵⁶

Although Backpage is a feeding ground for exploiters to buy and sell commercial sex with children, Backpage has been able to circumvent legal action by seeking refuge in the CDA and the First Amendment.⁵⁷ Consequently, the scrutiny of Backpage has sparked debates among the public and the courts about whether the First Amendment protects website operators from being liable for online child sex trafficking.⁵⁸ Proponents of an unrestrictive Internet argue that if website operators were no longer protected under the CDA, freedom of speech would be harmed because websites would try to limit or ban user-generated content to avoid liability.⁵⁹ Conversely, advocates against online child sex trafficking argue that the First Amendment was not created to enable children to be sold on the Internet.⁶⁰ However, in September 2016, the United States Supreme Court allowed a Senate committee to subpoena Backpage in an effort to investigate Backpage’s role in the child sex trafficking industry.⁶¹ This action signals that the highest

⁵⁴ *Terms*, BACKPAGE.COM, <https://my.backpage.com/classifieds/TermsOfUse> (last visited Sept. 15, 2017).

⁵⁵ See Farley et al., *supra* note 17, at 1077–78.

⁵⁶ *Id.* (citing SCHAPIRO GROUP, MEN WHO BUY SEX WITH ADOLESCENT GIRLS: A SCIENTIFIC RESEARCH STUDY 12 (2010)). Also, requiring that advertisements provide the content providers’ phone numbers does not deter pimps, as they can just buy temporary cell phones. *Id.* at 1077–78.

⁵⁷ See *infra* Part II.A & Part II.B.

⁵⁸ See Wendi Adelson, *Child Trafficking and the Unavoidable Internet*, 19 SW. J. INT’L L. 281, 285 (2013).

⁵⁹ Noah Tischler, Note, *Free Speech Under Siege: Why the Vitality of Modern Free Speech Hinges on the Survival of Section 230 of the Communications Decency Act*, 24 TEMP. POL. & CIV. RTS. L. REV. 277, 278 (2014).

⁶⁰ Adelson, *supra* note 58, at 285.

⁶¹ Jackie Wattles, *Supreme Court Refuses To Block Backpage Subpoenas in Sex Trafficking Investigation*, CNN (Sept. 13, 2016, 4:18 PM) <http://money.cnn.com/2016/09/13/news/companies/backpage-supreme-court-subpoena/>.

court in the nation might be capable of holding website operators liable, or at least willing to hold them to a higher standard of regulation.

II. POLICY AND THE INTERNET

Both Congress and state legislatures have tried to find ways to effectively regulate the Internet. Congress, with the adoption of the CDA and the power of the First Amendment, has tried to leave the Internet a free space where individuals can buy, sell, and post their beliefs, ideas, and opinions without holding websites liable for these third-party postings. State legislatures, on the other hand, have taken a more aggressive approach to crime on the Internet, and have enacted statutes that try to eradicate child sex trafficking on the Internet.

A. *A Summary of the CDA and the First Amendment*

1. Section 230 of the Communications Decency Act of 1996

Under the CDA, interactive websites⁶² are immune from being liable for illegal content posted to its site by a third-party user.⁶³ For example, if an individual posts defamatory comments on a website such as Facebook, that individual is considered a third-party user and therefore, Facebook will not be liable for that individual's comments.⁶⁴ Additionally, these websites are immune from being liable for both making a "good faith" effort to block "objectionable" material, and refraining from monitoring for such content.⁶⁵ Furthermore, in situations where website

⁶² Examples of interactive websites include, "eBay, Amazon.com, America Online, Inc. (AOL), and other websites that host third-party content." Stephanie Silvano, Note, *Fighting a Losing Battle To Win the War: Can States Combat Domestic Minor Sex Trafficking Despite CDA Preemption?*, 83 FORDHAM L. REV. 375, 386 (2014).

⁶³ 47 U.S.C. § 230I(1) (2012).

⁶⁴ See Silvano, *supra* note 62, at 386–87.

⁶⁵ Specifically, the CDA states that interactive websites will not be liable for "any action voluntarily taken in *good faith* to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise *objectionable*, whether or not such material is constitutionally protected" 47 U.S.C. § 230I(2)(A)(2012) (emphasis added).

operators become aware that an advertisement on their site is connected to child sex trafficking, there is no legal duty to delete or block such advertisement.⁶⁶

Despite the CDA's broadness, the CDA is unable to hinder the enforcement of other federal criminal statutes.⁶⁷ However, federal courts are hesitant to find that a website operator has violated a federal criminal law and will instead defer to the immunities given to website operators under the CDA.⁶⁸ For example, in *Doe v. Bates*, Yahoo! was accused of violating federal criminal law by knowingly facilitating child sex trafficking through a forum on its site.⁶⁹ The court in *Bates* held that the CDA prohibited Yahoo! from being punished for content posted by third-party users,⁷⁰ as other courts have also done,⁷¹ even if there is evidence of a website encouraging child sex trafficking.⁷² In particular, courts reason that there can always be arguments that a website owner or operator may have encouraged illegal activity, but courts should defer to the immunities provided by the CDA to avoid disregarding Congress' purpose in enacting the CDA.⁷³

2. The First Amendment

The First Amendment of the United States Constitution allows citizens to freely express themselves on the Internet.⁷⁴ Congress cannot limit the content an individual posts on a website "because of its message, its ideas, its subject matter, or its content."⁷⁵ However, Congress has the ability to ban speech that is obscene.⁷⁶ Congress also has the power to "regulate the

⁶⁶ See *id.* § 230.

⁶⁷ *Id.* § 230(e)(1).

⁶⁸ See, e.g., *Doe v. Bates*, No. 5:05-CV-91-DF-CMC, 2006 WL 3813758, at *3–5 (E.D. Tex. Dec. 27, 2006).

⁶⁹ *Id.* at *1.

⁷⁰ *Id.* at *3–5. The court went on to explain that "[w]hile the facts of a child pornography case such as this one may be highly offensive, Congress has decided that the parties to be punished and deterred are not the internet service providers but rather are those who created and posted the illegal material . . ." *Id.* at *4.

⁷¹ See, e.g., *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1271–72 (W.D. Wash. 2012).

⁷² *Id.* at 1272.

⁷³ *Id.*

⁷⁴ See U.S. CONST. amend. I.

⁷⁵ *Police Dep't of City of Chi. V. Mosley*, 408 U.S. 92, 95 (1972).

⁷⁶ See *Roth v. United States*, 354 U.S. 476, 484 (1957).

content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest.”⁷⁷

The Supreme Court in *New York v. Ferber* concluded that “the government has a compelling interest in protecting minors from sexual exploitation and abuse.”⁷⁸ There, the Supreme Court held that child pornography is not protected under the First Amendment.⁷⁹ In assessing whether an image is child pornography, the United States District Court for the Southern District of California created a six-factor test in *United States v. Dost*.⁸⁰ The test is designed to determine whether the focus, setting, pose, clothing, or suggested intention within the image is sexually explicit.⁸¹ An image is sexually explicit when the child in a picture is actually exposing, or simulating exposure of, their genitals to elicit a sexual response.⁸² However, under the precedent of *Ferber*, an image does not need to be *obscene* to be child pornography.⁸³

B. State Laws Prohibiting Online Child Sex Trafficking

The states with the most notable attempts to pass laws criminalizing online child sex trafficking include New Jersey, Washington, and Tennessee.⁸⁴ Federal district courts questioned

⁷⁷ *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989).

⁷⁸ *Adelson, supra* note 58, at 285; *New York v. Ferber*, 458 U.S. 747, 756–57 (1982).

⁷⁹ *Ferber*, 458 U.S. at 764.

⁸⁰ 636 F. Supp. 828, 832 (S.D. Cal. 1986), *aff'd sub nom.* *United States v. Wiegand*, 812 F.2d 1239 (9th Cir. 1987), and *aff'd*, 813 F.2d 1231 (9th Cir. 1987).

⁸¹ *Id.*

⁸² The phrase “sexually explicit conduct” that the court refers to in the *Dost* test is defined as “actual or simulated . . . lascivious exhibition of the genitals or pubic area of any person.” *Dalton, supra* note 5, at 1134 (quoting 18 U.S.C. § 2256(2)(A) (2012)).

⁸³ Specifically, the Court stated that a judge “need not find that the material appeals to the prurient interest of the average person; it is not required that sexual conduct portrayed be done so in a patently offensive manner; and the material at issue need not be considered as a whole.” *Ferber*, 458 U.S. at 764.

⁸⁴ The statutes enacted in these three states were similar in their attempts to combat online child sex trafficking. The New Jersey statute stated that “a person commits the offense of advertising commercial sexual abuse of a minor” when

(1) the person knowingly publishes, disseminates, or displays, or causes directly or indirectly, to be published, disseminated, or displayed, any advertisement for a commercial sex act, which is to take place in this State and which includes the depiction of a minor; or (2) the person knowingly

the constitutionality of these statutes because the statutes may conflict with the CDA and may violate the United States Constitution.⁸⁵ These federal courts reasoned that states do not have the authority to create a statute to combat online sex trafficking when such statute would threaten the freedom of speech or disregard established federal law.⁸⁶

The common problems within the New Jersey, Washington, and Tennessee online child sex trafficking statutes include inadequate wording and lack of clarity. For example, in *Backpage.com, LLC v. McKenna*, the court ruled the Washington state statute's definition of "commercial sex act" as exchanging "something of value" had the capability to punish innocent activity.⁸⁷ In other words, partly because Washington's statute defined commercial sex act beyond "economic exchange,"⁸⁸ it was ruled as overbroad.⁸⁹ In addition, in *Backpage.com, LLC v. Cooper*, the court ruled that the Tennessee statute's failure to define "sexual act" would require people to guess what constituted a sexual act under the statute.⁹⁰ The court in *Cooper* reasoned that an overbroad term such as "sexual act" should have an "objective criteria" that keeps the term within the boundaries of "child sex trafficking."⁹¹

purchases advertising in this State for a commercial sex act which includes the depiction of a minor.

N.J. STAT. ANN. § 2C:13-10(b) (West 2013). Similarly, the Washington statute made it a felony for an individual to "knowingly publish[], disseminate[], or display[] or cause[] directly or indirectly, to be published, disseminated, or displayed, any advertisement for a commercial sex act, which . . . includes the depiction of a minor." *Backpage.com, LLC v. Cooper*, 939 F. Supp. 2d 805, 816 (M.D. Tenn. 2013) (quoting WASH. REV. CODE ANN. § 9.68A.104 (West 2013) (repealed 2012)). Lastly, in Tennessee, the statute stated that "[a] person commits the offense of advertising commercial sexual abuse of a minor" when he or she "knowingly sells or offers to sell an advertisement that would appear to a reasonable person to be for the purpose of engaging in what would be a commercial sex act . . . with a minor." TENN. CODE ANN. § 39-13-315 (West 2012).

⁸⁵ *Backpage.com, LLC v. Hoffman*, No. 13-cv-03952 (DMC) (JAD), 2013 WL 4502097, *5–6, 12 (D.N.J. Aug. 20, 2013); *Cooper*, 939 F. Supp. 2d at 816, 845.

⁸⁶ See, e.g., *Cooper*, 939 F. Supp. 2d at 813.

⁸⁷ *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1281 (W.D. Wash. 2012).

⁸⁸ *Hoffman*, 2013 WL 4502097, at *9–10.

⁸⁹ *McKenna*, 881 F. Supp. 2d at 1280.

⁹⁰ *Cooper*, 939 F. Supp. 2d at 834.

⁹¹ *Id.*

C. Criticism of an Internet Crackdown—The Issue of Visibility

There is much debate about whether a federally mandated abolishment of child sex trafficking on the Internet would save lives or cause more harm. On one side of the debate, the increased use of the Internet for trafficking children makes the crime more visible.⁹² Visibility, some argue, leads to an increase in saving children because law enforcement will be able to easily identify instances of the crime.⁹³ This belief may be supported by findings of online undercover operations resulting in “a large number of successful prosecutions.”⁹⁴ However, bringing child sex trafficking into the “mainstream” is problematic because it may lead to “normalizing” the sale of children.⁹⁵ Advocates of eradicating online child sex trafficking believe that the movement of child sex trafficking from the street to the Internet is removing the crime from an area where the public has learned to identify it.⁹⁶ Nevertheless, a problem with child sex trafficking on the street is the crime’s ability to avoid exposure.⁹⁷

According to the opposing side of the debate, visibility is essential to stop online child sex trafficking advertisements from disappearing into the dark web. Backpage’s attorney, Liz McDougall, argued that “shutting down cooperative U.S. online services drives criminal traffic to websites operating in the Internet underground and offshore (of which there are thousands).”⁹⁸ Therefore, as one scholar explained, we are left with two choices, “[k]eep the website and allow it to sell both old sofas and young girls for sex, or abolish it, and peer around the dark recesses of the Internet to find these exploited children.”⁹⁹ For now, until law enforcement becomes more familiar with the dark web, the best choice in the fight to combat online child sex trafficking is to implement effective monitoring and reporting requirements.

⁹² Leary, *supra* note 15, at 294.

⁹³ *Id.*

⁹⁴ *Id.* at 315–16.

⁹⁵ *Id.* at 294.

⁹⁶ *Id.* at 291.

⁹⁷ *Id.* at 292.

⁹⁸ Dalton, *supra* note 5, at 1111 (quoting Liz McDougall, *Backpage.com Is an Ally in the Fight Against Human Trafficking*, SEATTLE TIMES (May 6, 2012, 3:00 PM), old.seattletimes.com/html/opinion/2018143440_guest07mcdougall.html).

⁹⁹ Adelson, *supra* note 58, at 289.

Finally, there are also arguments that the commercial sex industry is safer when conducted in indoor locations, such as hotel rooms, rather than on the street.¹⁰⁰ However, there is little evidence to support this argument.¹⁰¹ In fact, evidence shows that no matter *where* sex acts occur, victims of sex trafficking are still harmed physically and emotionally.¹⁰² Regardless, child sex trafficking is a crime and an effective federal law needs to be enacted to combat it.

III. CONGRESS' SOLUTION TO INTERNET SEX TRAFFICKING: THE "SAVE" ACT

Multiple Congress members have been disturbed by courts not holding website operators liable for facilitating online child sex trafficking. For example, according to Congresswoman Ann Wagner, who authored and introduced the SAVE Act, "[s]exual predators can browse advertisements and have child prostitutes sent to their hotel rooms as if they were ordering a pepperoni pizza."¹⁰³ Therefore, Congress created the SAVE Act to effectively stop this crime by extending liability to all entities that facilitate online child sex trafficking.

The SAVE Act amends Section 1591 of the United States Code,¹⁰⁴ which is the federal law criminalizing child sex trafficking.¹⁰⁵ Specifically, the SAVE Act "prohibit[s] *knowingly*: (1) advertising commercial sex acts involving a minor . . . or (2) benefitting financially or otherwise from such advertising knowing that the individual involved was a minor."¹⁰⁶ In other words, for a website operator to be liable for child sex trafficking,

¹⁰⁰ See Farley et al., *supra* note 17, at 1044.

¹⁰¹ *Id.*

¹⁰² *Id.* One sex worker speaking from experience explained

"[y]ou are not safer because you work indoors . . . the same predators and hustlers are meeting you with the same intentions except they look like straight people who go to medical school and have Blackberrys. I consider myself in the same risk and danger zones as a street worker."

Id. at 1039.

¹⁰³ *Not for Sale: The SAVE Act of 2014*, HOUSE.GOV: WAGNER <https://wagner.house.gov/notforsale> (last visited Sept. 15, 2017).

¹⁰⁴ Pub. L. No. 114-22, § 118, 129 Stat. 227, 247 (2015). The SAVE Act is a part of the Justice for Victims of Trafficking Act.

¹⁰⁵ See 18 U.S.C.A. § 1591 (West 2014); see also Dalton, *supra* note 5, at 1121.

¹⁰⁶ S.178, 114th Cong. § 118 (2015) (emphasis added).

the website operator must be consciously advertising children for sex or know that it is earning money from a child sex trafficking advertisement.

The SAVE Act's passage is important, because the websites where child sex trafficking advertisements are found have servers across the nation.¹⁰⁷ Therefore, more cases can come under federal jurisdiction because of the government's power to regulate interstate commerce.¹⁰⁸ Congress' goal of combating online child sex trafficking likely would be accomplished by having a federal statute that criminalizes the advertisements of children found online, and punishing those entities that allowed the advertisements to be posted.

The SAVE Act also has the ability to positively affect state laws related to selling minors online. Reports show that across the United States there is a wide-spread misunderstanding of what trafficking means.¹⁰⁹ As explained in Part II of this Note, there have been many failed attempts by state legislatures to produce a statute that effectively combats this cyber crime.¹¹⁰ Therefore, a federal statute that clearly criminalizes the advertisement of children for sex, and punishes those responsible, could not only deter future trafficking, but also lead to more successful prosecutions of website operators across the nation.

There are three issues with the SAVE Act that will hinder its effectiveness. First, this Act leaves room for a court to rule in favor of promoting a free Internet rather than ending online child sex trafficking. Second, the Act is set to be ineffective because its language is too vague and overbroad to constitutionally and practically hold website operators liable. Finally, the SAVE Act failed to define a "good faith" effort to remove an illegal advertisement, as stated in the CDA.

¹⁰⁷ See Latonero, *supra* note 2, at 21.

¹⁰⁸ See *id.*

¹⁰⁹ U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT 389 (2016), <http://www.state.gov/documents/organization/258876.pdf> ("NGOs reported continued instances of misunderstandings among state and local officials about the definition of trafficking, citing cases where law enforcement erroneously rule out trafficking because victims have some freedom of movement.").

¹¹⁰ See *supra* Part II.B.

Congress has made it clear that the United States strives to protect the Internet from government intervention.¹¹¹ However, Congress also works to prevent and penalize any illegal activity that occurs on the Internet.¹¹² Faced with two conflicting policies, courts have become proponents of an Internet free of government intervention by refusing to uphold statutes regulating websites.¹¹³ For this reason, courts are reluctant to hold website operators liable for the crime of online child sex trafficking.¹¹⁴ As illustrated in Part I, courts liberally grant immunity to website operators, only attaching liability when a website operator: (1) is contractually obligated to remove content; (2) fully encourages illegal activity; or (3) creates content that is illegal.¹¹⁵ In this environment, the Act's survival depends on clear language to avoid courts exercising this deference.

Under the SAVE Act, website operators will be inclined to, and will be able to, look the other way while thousands of human trafficking advertisements flood its website. Under the Act's language, a violation does not occur unless the website operator either knowingly benefits from a child sex trafficking advertisement, or knows that the victim was under the age of eighteen.¹¹⁶ To order owners of websites "to have [a] specific intent to facilitate the crime" of sex trafficking, or to have "actual knowledge" of an advertisement for the sale of a child for commercial sex makes it challenging to punish website operators.¹¹⁷ In addition, requiring actual knowledge for prosecution incentivizes a website operator to refrain from monitoring its site to avoid liability.¹¹⁸

Furthermore, the SAVE Act fails to rectify the inadequate definition of commercial sex act stated in Section 1591(c)(3). The statute defines "commercial sex act" as "any sex act, on account of which anything of value is given to or received by any

¹¹¹ Erin I. Kunze, Note, *Sex Trafficking Via the Internet: How International Agreements Address the Problem and Fail To Go Far Enough*, 10 J. HIGH TECH L. 241, 254 (2010).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ See, e.g., *Doe v. Backpage.com, LLC*, 817 F.3d 12, 15 (1st Cir. 2016); *Backpage.com, LLC v. Cooper*, 939 F. Supp. 2d 805, 813 (M.D. Tenn. 2013).

¹¹⁵ Dalton, *supra* note 5, at 1126.

¹¹⁶ S.178, 114th Cong. § 118 (2015).

¹¹⁷ Adelson, *supra* note 58, at 287.

¹¹⁸ Kuzma, *supra* note 6, at 39.

person.”¹¹⁹ The phrase “anything of value” is too vague and overreaching.¹²⁰ The Section leaves open the possibility that a legal exchange of anything, including food, clothes, attention, etc., for sex will be deemed a commercial sex act.¹²¹ However, courts reason that for these anti-trafficking statutes to be constitutional, a commercial sex act should only include the exchange of monetary value.¹²² In addition, the phrase “any sex act,” within the definition of commercial sex act, is too broad.¹²³ There needs to be a definition of this phrase containing “objective criteria” to stay within the boundaries of child sex trafficking and avoid conflict with the First Amendment.¹²⁴

Finally, the term “advertising” needs to be specifically defined to provide courts with more direction in online child sex trafficking cases. Currently, what constitutes advertising of child sex trafficking under the SAVE Act is unclear.¹²⁵ If Congress’ goal is to impose liability for child sex trafficking advertisements, Congress needs to give courts a step-by-step test to help analyze advertisements that are at issue. Without clear direction, courts will be unable to use the Act to hold any individual or entity liable for child sex trafficking crimes.

The SAVE Act neglected to address the overbroad “good faith” clause within the CDA.¹²⁶ As explained in Part II, website operators are immune from liability under the CDA for attempting to take down sex trafficking advertisements in good faith.¹²⁷ However, the CDA does not provide a definition of what good faith means in terms of removing a sex trafficking advertisement, leaving the definition to the discretion of the courts.¹²⁸ For Congress and the courts to effectively combat

¹¹⁹ 18 U.S.C.A. § 1591(e)(3) (West 2014). As explained in Part II, similar language within a state statute was held unconstitutional by a federal district court.

¹²⁰ *See* Backpage.com, LLC v. McKenna, 881 F. Supp. 2d 1262, 1281 (W.D. Wash. 2012).

¹²¹ *See id.*

¹²² *See* Backpage.com, LLC v. Hoffman, No. 13-cv-03952 (DMC) (JAD), 2013 WL 4502097, at *9–10 (D.N.J. Aug. 20, 2013).

¹²³ As explained in Part II, the failure to define a sex act leaves too much room for misinterpretation.

¹²⁴ Backpage.com, LLC v. Cooper, 939 F. Supp. 2d 805, 834 (M.D. Tenn. Jan. 3, 2013).

¹²⁵ *See generally* 18 U.S.C.A. § 1591 (West 2014).

¹²⁶ *Id.*

¹²⁷ 47 U.S.C. § 230(c)(2)(a) (2012).

¹²⁸ *Id.*

online child sex trafficking, deference should not be given to website operators and statutory guidelines should be implemented.

IV. COMBATING INTERNET HUMAN TRAFFICKING IN A TECHNOLOGICAL WORLD

To effectively diminish the influx of child sex trafficking advertisements, the SAVE Act should be rewritten to include the suggestions given by federal district courts, and to instill uniform constitutional policing standards on how to find and report child sex trafficking advertisements. However, before such advantages can arise, the SAVE Act must: (1) include more conclusive language, (2) include a lower mens rea standard, (3) include informative definitions, and (4) impose a uniform standard of how to find and delete unlawful posts.

A. *Rewriting the SAVE Act*

As described in Part III, the wording in the SAVE Act creates the possibility for the courts to deem the Act unconstitutional. The Act needs new definitions of the terms advertising, commercial sex act, and sex act that make explicit what types of online conduct are illegal. In addition, the mens rea in this Act is too high to be able to hold website operators liable on a consistent basis, and a more practical standard must be added. Therefore, the Act should be rewritten to include clear definitions and a lower mens rea standard to increase the likelihood that courts will hold website operators liable for online child sex trafficking.

1. Mens Rea

The mens rea element of the SAVE Act should be changed to include the phrase “reasonably should know,” rather than requiring website operators to actually know of a child sex trafficking advertisement. To avoid vagueness, the Act should specify that reasonably should know means a reasonable website operator should be aware of an unlawful child sex trafficking advertisement in such situations including, but not limited to: (1) the posting of multiple advertisements with the same picture of a child under the age of eighteen; and (2) the advertisement was flagged by a facial recognition program as containing a sexually explicit photograph of a child under the age of eighteen.

Such a definition would hold websites, such as Backpage, accountable for instances where the website takes actions to remove an advertisement linked to child sex trafficking, but allows multiple advertisements with the same image used in the removed advertisement to be posted.¹²⁹ Therefore, this new required level of intent, accompanied with a clear definition, makes it more likely that federal courts will punish websites with high volumes of sex trafficking advertisements that are easily detectable.

The addition of another mens rea element would not offend the federal courts that strictly adhere to the CDA and First Amendment. With the CDA, courts tend to find in favor of immunity—or the inability to hold a website operator liable for third-party content—when it seems to be too close to tell if a website operator actually facilitated illegal activity.¹³⁰ Nevertheless, this new mens rea element and definition would make it difficult for a court to rule that a website operator was not aware of multiple advertisements with the same image that has been flagged as containing a child. In addition, the added mens rea element would not threaten the First Amendment freedom of speech, because the term only deals with child sex trafficking, which is not protected under the First Amendment.¹³¹

2. Commercial Sex Act

A commercial sex act should be defined as paying another individual or entity money, or an electronic form of currency such as Bitcoin, in exchange for a sex act performed by or with a child under the age of eighteen.¹³² Under this definition, the specificity of what the exchange is, rather than “anything of value,”¹³³ reduces the possibility that the Act will be found unconstitutional. Importantly, this new definition includes John’s preferred cryptocurrency for the sale of children.¹³⁴ Therefore, if a court comes across a case where Bitcoin were used in an online child sex trafficking sale or advertisement, instead of

¹²⁹ See Kuzma, *supra* note 6, at 42 n.180.

¹³⁰ *Id.* at 39 (citing Backpage.com, LLC v. McKenna, 881 F. Supp. 2d 1262, 1272 (W.D. Wash. 2012)).

¹³¹ See *supra* Part II.A.2.

¹³² The need for the definition of commercial sex act to include an exchange of money is necessary for the statute to avoid being struck down. See *supra* Part II.A.3.

¹³³ 18 U.S.C.A § 1591(e)(3) (West 2015).

¹³⁴ Farley et al., *supra* note 17, at 1044.

a credit card or cash, the court would have clear direction. Furthermore, a sex act within the definition of commercial sex act should be defined as either vaginal, oral, or anal sexual intercourse, masturbation, physical contact with or exposure of the pubic area, genitals, breasts, buttocks, insertion of any body part or object into another's body, or sadomasochism.¹³⁵ The addition of specific conduct within the definition of a sex act keeps the overall definition of a commercial sex act within the boundaries of child sex trafficking, and consistent with the First Amendment.

3. Advertising

Within the Act, advertising the sale of a child for commercial sex should be defined as posting a sexually explicit photo on the Internet of a child under the age of eighteen with the goal of attracting an individual to pay for that underage child to perform a sex act. This definition mirrors the holding in *Ferber*, as well as the six factor test created in *Dost*, because it describes child pornography.¹³⁶ With this definition in place, a court may find liability in the posting of “an advertisement depicting a child—wearing lingerie in a hotel room or on a bed, posed unnaturally considering the age of the child, displaying a willingness to engage in sexual activity, and intended to elicit a sexual response in the viewer—[because it] meets the definition of ‘lascivious exhibition.’”¹³⁷ Therefore, the broader definition of advertising assists courts by directing them to rule on online child sex trafficking cases using the already established *Dost* test to determine if the advertisement is lawful.

B. More Safeguards, Less Deference

It is well-established that technology is essential in the actual investigation of child sex trafficking.¹³⁸ At a minimum, the SAVE Act should mandate that online websites install and thoroughly utilize facial recognition programs. Recently, Microsoft created a free program called “PhotoDNA Cloud Service” for the sole purpose of finding images exploiting children

¹³⁵ See *Backpage.com, LLC v. Cooper*, 939 F. Supp. 2d 805, 834 (M.D. Tenn. Jan. 3, 2013) (citing TENN CODE ANN § 39-17-1002(8) (West 2012)).

¹³⁶ See *supra* Part II.A.2.

¹³⁷ *Dalton*, *supra* note 5, at 1135.

¹³⁸ *Leary*, *supra* note 15, at 314.

to report to law enforcement and the NCMEC.¹³⁹ This program is capable of finding duplicated pictures “with incredible accuracy” among the 1.8 billion images posted daily onto the Internet.¹⁴⁰ This service can still uncover duplicates even if an image has been distorted or altered in any way.¹⁴¹

The implementation of a facial recognition program, such as the PhotoDNA Cloud Service, would likely not be held unconstitutional because of its noninvasive nature. This service is free and does not require a change in software and, therefore, will not make a website “take significant and costly compliance measures or risk criminal prosecution.”¹⁴² Additionally, in *Backpage.com, LLC v. Lynch*, the court reasoned that a website cannot argue that a law mandates burdensome compliance when the website already has extensive protocols in place.¹⁴³ Therefore, websites such as Backpage that actively monitor, identify, report, and remove child sex trafficking advertisements would not be able to argue the unconstitutionality of the PhotoDNA Cloud Service.¹⁴⁴

A popular suggestion in the legal community is the use of filters. Filters have the potential of blocking certain “keywords, jargon or images from the ad posting process.”¹⁴⁵ With a crime that heavily relies on underground terminology, removing such language would help to combat demand. However, some potential pitfalls arise because terminology can easily be changed. Therefore, while filters are removing a code word that implies child sex trafficking, the child sex trafficking community may already have created a new word. Also, such filters may become unconstitutional because they remove lawful speech. Therefore, facial recognition programs are the most promising tools in uncovering unlawful behavior online.

¹³⁹ *FAQ, MICROSOFT: PHOTODNA CLOUD SERVICE* <https://www.microsoft.com/en-us/PhotoDNA/FAQ> (last visited Sept. 15, 2017).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Backpage.com, LLC v. Lynch*, 216 F. Supp. 3d 96, 102 (D.D.C. 2016) (quoting *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 392 (1988)).

¹⁴³ *Id.* at 107.

¹⁴⁴ *See id.*

¹⁴⁵ Farley et al., *supra* note 17, at 1078.

CONCLUSION

With the rise of the Internet, sex trafficking advertisements have become more prevalent. However, online child sex trafficking is a heavily underreported crime.¹⁴⁶ Underreporting is partially due to the “public nature” of the sexual exploitation, which adds to the trauma experienced by the victim.¹⁴⁷ In addition, if a victim tries to testify, pimps may threaten to kill or harm the victim and the victim’s family.¹⁴⁸ If victims know that if they speak publicly about their experiences and nothing will change, victims will be less inclined to speak out. Less reporting makes it less likely that victims will be recovered and that these cases will be prosecuted.

Congress’ adoption of the SAVE Act is a step toward limiting online child sex trafficking advertisements; however, the Act does not adequately stop the influx of advertisements on websites such as Backpage. In addition, the Act’s language is too weak to hold website operators liable for illegal content on its website that it reasonably should be aware of. To effectively limit child sex trafficking advertisements, the Act needs to be rewritten to (1) include more conclusive language, (2) include a lower mens rea standard, (3) include informative definitions, and (4) impose a uniform standard of how to find and delete unlawful posts.

¹⁴⁶ Leary, *supra* note 15, at 291.

¹⁴⁷ *Id.* Other factors that lead to underreporting include fear of pimps and failure to identify themselves as a victim of sex trafficking. *Id.* at 291–92.

¹⁴⁸ Farley et al., *supra* note 17, at 1083.