

SEX TRAFFICKING IN THE DIGITAL AGE: THE ROLE OF VIRTUAL CURRENCY-SPECIFIC LEGISLATION IN KEEPING PACE WITH TECHNOLOGY

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I. INTRODUCTION	83
II. BACKGROUND	85
A. <i>The Current State of Virtual Currency Legislation</i>	87
B. <i>Sex Trafficking Legislation</i>	88
C. <i>Internet Sex Trafficking</i>	90
D. <i>Internet Sex Trafficking in Legitimate Forums: The Backpage.com Cases</i>	90
1. <i>Doe ex. rel. Roe v. Backpage.com, LLC</i>	91
2. <i>J.S. v. Village Voice Media Holdings, LLC</i>	92
III. ANALYSIS	93
A. <i>Sex Trafficking of Children by Force, Fraud, or Coercion, 18 U.S.C.A. § 1591</i>	94
1. <i>Definitional Ambiguity in Determining a “Thing of Value”</i>	95
2. <i>Definitional Remedies</i>	96
B. <i>Civil Remedies Under 18 U.S.C.A. § 1595</i>	97
1. <i>Civil Immunity Under the Communications Decency Act</i>	98
2. <i>Suggested Advancements and Prior Actions Against the CDA Loophole</i>	99
C. <i>Advances in Dark Web Human Trafficking</i>	100
D. <i>Criticism of Regulation</i>	101
1. <i>Criticism of Bitcoin and Bitcoin Regulation</i>	101
2. <i>Criticisms of Eliminating CDA Civil Immunity</i>	102
IV. CONCLUSION	103

I. INTRODUCTION

Over the course of the past decade, websites like Craigslist¹ and Backpage² have increasingly become a haven for sex traffickers and pimps, who use such websites to advertise commercial sex with their

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1. CRAIGSLIST, <http://www.craigslist.org/about/sites> (last visited Feb. 12, 2016).

2. BACKPAGE, www.backpage.com (last visited Feb. 12, 2016).

victims via the Internet.³ Sex trafficking is defined as the coercion or force of an adult or minor into prostitution.⁴ Additionally, adult sex trafficking also includes scenarios where an individual is forced to continue sex trafficking after withdrawing initial consent.⁵ Because the Internet is not strictly regulated, sex traffickers are able to post advertisements for sex with their victims with relative ease and with very little chance of apprehension or prosecution.⁶ Arising in tandem with Internet sex trafficking, new forms of currency designed specifically for use in Internet transactions have also cropped up, further complicating the problems associated with Internet sex trafficking by increasing the anonymity of those transactions.⁷ The most popular of these currencies is Bitcoin, which is increasingly used in both legal and illegal Internet channels.⁸

To date, law enforcement agencies have had some success with prosecutions related to Bitcoin and the crimes of money laundering and drug trafficking.⁹ However, these agencies have had no success against many individuals who use Bitcoin for sex trafficking.¹⁰ This is primarily a problem of detection because the wording and interpretation of laws related to sex trafficking are not designed to protect victims from being sex trafficked via the Internet or with the use of digital currency, even on legally operating websites like Backpage.com.¹¹ This Note argues that in order to stop online forms of sex trafficking, Congress must modify

3. 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, 242 (2010).

4. *Trafficking in Persons Report 2013, Definitions and Methodology*, U.S. DEP'T OF STATE (2013), <http://www.state.gov/j/tip/rls/tiprpt/2013/210543.htm>.

5. *Id.*

6. *Id.*

7. Michelle Lillie, *Bitcoin Fuels the Human Trafficking Market*, HUMAN TRAFFICKING SEARCH (Apr. 22, 2014), <http://humantraffickingsearch.net/wp/bitcoin-fuels-the-human-trafficking-market/> (discussing the use of a virtual currency called Bitcoin in online transactions for commercial sex, wherein Bitcoin is said to be favored because it provides a level of transactional anonymity that credit cards cannot).

8. Stephen T. Middlebrook & Sarah Jane Hughes, *Regulating Cryptocurrencies in the United States: Current Issues and Future Directions*, 40 WM. MITCHELL L. REV. 813, 817–19 (2014).

9. See generally Cindy Williamson et al., *Technology in the Fight Against Money Laundering in the Digital Currency Age*, THOMSON REUTERS, at 7–8 (2013), http://www.instituteofat.org/whitepapers/GRC00403_0.pdf.

10. *Id.*

11. Eric Goldman, *Overzealous Legislative Effort Against Online Child Prostitution Ads at Backpage Fails, Providing a Big Win for User-Generated Content*, FORBES, (July 30, 2012, 11:32 AM), www.forbes.com/sites/ericgoldman/2012/07/30/child-prostitution-ads-backpage-legislative-fail/.

existing legislation to close major loopholes that allow sex traffickers to operate publicly without fear of arrest or prosecution. The Note outlines the important details about virtual currency and its use in sex trafficking, and discusses sex trafficking and the market for commercial sex that exists on the Internet.¹² Additionally, it discusses the current state of the law surrounding both the realms of sex trafficking and virtual currency.¹³ It analyzes the finer details of current laws about sex trafficking and virtual currency, with specific attention made to the shortcomings that make sex trafficking through the use of virtual currency possible, and offers suggested methods for amending these laws as to prevent the further abuse of trafficking victims.¹⁴ Further, the Note also discusses some pertinent counterarguments to the regulation of Bitcoin and implications for freedom of speech and privacy on the Internet.¹⁵ It concludes that changes to existing laws are absolutely necessary to stop the growing problem of Internet sex trafficking and the use of virtual currency in the creation of a commercial sex market that has, to date, streamlined the process of selling and purchasing sex with trafficked victims.¹⁶ Specifically, this Note attempts to address the changes or additions to the current body of legislation regarding sex trafficking that could help stop the use of virtual currency in sex trafficking and to ensure that trafficking victims receive justice against their abusers.¹⁷

II. BACKGROUND

Virtual currency has no legal or statutory definition, meaning that courts and legislatures have not issued a governing definition of the term.¹⁸ It is typically defined as any “digital representation of value that is not government-issued legal tender” that is exchanged like currency in return for goods and services.¹⁹ The most commonly used virtual currency is Bitcoin.²⁰ Developed in 2009 by a programmer named Satoshi Nakamoto, Bitcoin has steadily grown into one of the most widely used forms of virtual currency in use today.²¹ The computer

12. *See infra* Part II.

13. *See infra* Part II.A.

14. *See infra* Part III.

15. *See infra* Part III.D.

16. *See infra* Part IV.

17. *See generally* Part IV.

18. UNITED STATES GOV'T ACCOUNTABILITY OFF., GAO-14-496, VIRTUAL CURRENCIES: EMERGING REGULATORY, LAW ENFORCEMENT, AND CONSUMER PROTECTION CHALLENGES (released Jun. 26, 2014) <http://gao.gov/assets/670/663678.pdf>.

19. *Id.* at 5.

20. *Id.*

21. *Id.*

protocol that comprises Bitcoin allows for the assignment of Bitcoins from one person to another via an online, peer-to-peer system.²² One key point to understand about Bitcoin is that it employs a cryptographic program that makes transactions between users essentially anonymous, which has been instrumental to its use in criminal activities.²³ One of the most common places where Bitcoin is used is the Deep Web, also known as the Dark Web, an area of the Internet that is not indexed by popular search engines like Google and Yahoo.²⁴ To access the Deep Web, users must employ an onion browser, like TOR, short for 'the onion router.'²⁵ TOR allows the user to peel back the so-called layers of the Internet and scan for pages that are not ordinarily picked up by the average search engine.²⁶ The TOR browser does not only allow the user to sift through a rather mysterious area of the Internet, it also covers the user's activity in three anonymous, separate layers of encryption, making it nearly impossible to track.²⁷ Virtual currencies are not backed by any single government and transactions can easily be made on a global scale.²⁸ This makes tracking the virtual currency's source a troublesome task for law enforcement agencies.²⁹

Organized crime operations rake in billions of dollars per year, with statistics estimating that human and sex trafficking generate approximately \$9.5 billion in the United States alone.³⁰ Lucrative transactions like these generate a significant amount of money that would be impossible to conceal without raising a red flag to law enforcement agencies.³¹ Thus, most sex trafficking rings need a way to launder their money, and because Bitcoin allows individuals to anonymously transact on a peer-to-peer basis, the currency provides a novel way for criminals

22. *Id.*

23. *Id.* at 6. Bitcoin balances are linked to strings of numbers and letters that use cryptographic principles to protect against tampering. Cryptography is a mathematical field based on transforming data and is used to increase security in internet transactions. *Id.*

24. Bernice B. Donald & N. Chase Teeple, *Not Your Father's Legal Profession: Technology, Globalization, Diversity, and the Future of Law Practice in the United States*, 44 U. MEM. L. REV. 645, 653 (2014).

25. Sara Peters, *Darknet is Full of Criminals & Governments Giving TOR a Bad Name*, DARKREADING (Sept. 16, 2015), <http://www.darkreading.com/analytics/darknet-is-full-of-criminals-and-governments-giving-tor-a-bad-name/d/d-id/1322211>.

26. Donald & Teeple, *supra* note 24, at 653–57.

27. *Id.* at 654.

28. *Id.*

29. UNITED STATES GOV'T ACCOUNTABILITY OFF., *supra* note 18, at 12.

30. E. J. Fagan, *Bitcoin and International Crime*, THE BALTIMORE SUN (Nov. 25, 2013), http://articles.baltimoresun.com/2013-11-25/news/bs-ebitcoin20131125_1_bitcoin-transactions-law-enforcement.

31. *Id.*

to do just that.³² The idea that a non-government regulated form of digital currency could be used to fund criminal activity led to increased awareness about Bitcoin's potential criminal use from the federal government and national law enforcement agencies.³³ Unfortunately, the problem is so new and unique that the government's ability to create effective methods of stopping individuals from anonymously using digital currency is sorely lacking.³⁴

A. The Current State of Virtual Currency Legislation

The Financial Crimes Enforcement Network (FinCEN) has made some recent steps toward providing guidelines for the use of virtual currency. FinCEN is a bureau of the U.S. Department of the Treasury.³⁵ It collects and analyzes information about financial transactions to combat domestic and international financial crimes.³⁶ In July 2011, FinCEN issued a modified rule defining money transmitters to include individuals who transmit virtual currency,³⁷ based on the concept that in order for criminals to launder their physical currency into digital currency, they must do so through a money transmitting or currency exchange business.³⁸ Additionally, in March 2013, FinCEN released guidance that classified virtual currency exchangers as money service businesses and money transmitters.³⁹ These money-transmitting operations are therefore required to register as such with FinCEN.⁴⁰

While these efforts constitute a step in the right direction, they have been only moderately successful in thwarting the use of digital currency in Internet-based crimes. Law enforcement agencies nationwide have attempted to take action against illicit websites and organizations.⁴¹ The only major successful criminal prosecution of a digital currency-related crime to date was the prosecution of a man named Ross Ulbricht, the

32. *Id.*

33. *New Digital Economy Task Force Report Addresses Digital Economy, Illicit Activity*, THOMSON REUTERS (Mar. 4, 2014), <http://thomsonreuters.com/en/press-releases/2014/digital-economy-task-force-report.html>.

34. *Id.*

35. FINANCIAL CRIMES ENFORCEMENT NETWORK, *What We Do*, WWW.FINCEN.GOV, https://www.fincen.gov/about_fincen/wwd/index.html (last visited Jan. 15, 2016).

36. *Id.*

37. 31 C.F.R. § 1010.100(ff)(5)(i)(A) (2017).

38. Danton Bryans, *Bitcoin and Money Laundering: Mining for an Effective Solution*, 89 IND. L. J. 441, 456–59 (2014).

39. UNITED STATES GOV'T ACCOUNTABILITY OFF., *supra* note 18, at 13–14.

40. *Id.*

41. *Id.* at 2–3.

creator of an online drug-trafficking market called Silk Road, in 2014.⁴² Additionally, a number of money transmitting businesses, such as E-Gold and Liberty Reserve,⁴³ faced charges for taking physical currency in exchange for Bitcoin without a license.⁴⁴

Human and sex trafficking crimes nevertheless persist with notoriously low conviction rates. The United Nations Office on Drugs and Crime performed a study finding that worldwide, forty percent of countries surveyed reported ten convictions or less per year between 2010 and 2014.⁴⁵ Further, fifteen percent of the countries surveyed, amounting to approximately 128 countries, reported no convictions at all.⁴⁶ The report tragically highlights that in spite of the low or nonexistent conviction rates worldwide, the number of people trafficked for sexually exploitative purposes continues to grow.⁴⁷ Unsurprisingly, and in addition to a low conviction rate in the United States, there are no cases involving the successful prosecution of sex traffickers who use virtual currency. This, however, does not indicate that no such operations exist.

B. Sex Trafficking Legislation

The Trafficking Victims Protection Act, or TVPA, is the main source of federal sex trafficking legislation.⁴⁸ Passed in 2000 by President Bill Clinton,⁴⁹ the TVPA is a comprehensive packet of statutes that focuses on victim-centered approaches to dealing with sex trafficking.⁵⁰ Congress designed the legislation to allow for increased government-based efforts to end human and sex trafficking.⁵¹ By enacting the TVPA, Congress acknowledged the psychological as well as the physical effects of

42. See generally *United States v. Ulbricht*, 79 F. Supp. 3d 466 (S.D.N.Y. 2015).

43. Catherine Martin Christopher, *Whack-A-Mole: Why Prosecuting Digital Currency Exchanges Won't Stop Online Money Laundering*, 18 LEWIS & CLARK L. REV. 1, 24–7 (2014). E-Gold and Liberty Reserve were both money exchange systems. E-Gold was a company that allowed users to anonymously exchange money via credit card into digital currency. Liberty Reserve worked much the same way, with users exchanging credit for digital currency that could be used anonymously. *Id.*

44. *Id.* at 26.

45. U.N. OFF. ON DRUGS AND CRIME, *Global Report on Trafficking In Persons*, 1 (2014).

46. *Id.*

47. *Id.*

48. UNITED STATES DEP'T OF JUSTICE CIVIL RIGHTS DIV., REPORT ON THE TENTH ANNIVERSARY OF THE TRAFFICKING VICTIMS PROTECTION ACT (Oct. 29, 2010), <http://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/tvpaanniversaryreport.pdf>.

49. *Id.* at 4.

50. *Id.*

51. *Id.*

trafficking.⁵² As a result, the TVPA also includes victim protection and prevention programs.⁵³ Additionally, and perhaps most importantly, it broadly expanded the reach of criminal anti-trafficking laws.⁵⁴

Sex trafficking is defined under 18 U.S.C.A. § 1591 as a transaction in which a person, “knowingly . . . entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or . . . —benefits, financially or by receiving anything of value— . . .” from the sale of commercial sex with a trafficked individual.⁵⁵ This sex trafficking statute criminalizes the trafficking of minors and adults who are compelled by force, fraud, or coercion to engage in commercial sex.⁵⁶ More than twenty million people are bought and sold each year around the world for the purpose of sexual exploitation, two million of whom are children.⁵⁷ Experts estimate that ninety-eight percent of those affected are women and girls.⁵⁸ Sex trafficking victims forced into prostitution are overwhelmingly poor and come from socially disadvantaged racial groups.⁵⁹

Sex trafficking victims commonly endure physical and emotional abuse coupled with subsequent trauma, the effects of which can last a lifetime.⁶⁰ Trafficked women are forcibly raped, beaten, and exposed to sexually transmitted diseases from purchasers, commonly known as “johns.”⁶¹ In spite of the horrors that trafficked women and children face to daily, sex trafficking is a lucrative operation overall. It provides a source of financial gain that is essentially recyclable.⁶² By using cheap human labor, the market in sex trafficking is approximately as financially beneficial as the markets for drug and arms trafficking.⁶³ Sex trafficking is an industry that is growing rapidly both in the United States and around the world as a result of the increased globalization of business

52. *Id.*

53. *Id.*

54. *Id.*

55. Sex Trafficking of Children by Force, Fraud, or Coercion, 18 U.S.C.A. § 1591 (West 2015).

56. *Id.*

57. *Global Sex Trafficking Fact Sheet*, EQUALITY NOW, <http://www.equalitynow.org/sites/default/files/Sex%20Trafficking%20Fact%20Sheet.pdf> (last visited Nov. 1, 2015).

58. *Id.*

59. Catherine MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L.L. REV. 271, 276 (2011).

60. *Id.* at 286–88.

61. *Id.*

62. Susan Tiefenbrun, *The Saga of Susannah—A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 139 (2002).

63. *Id.*

and tourism.⁶⁴ As mentioned, however, sex trafficking is not just a global market, but is also a lucrative business in the U.S. as well. In eight major U.S. cities, for example, the underground commercial sex market can bring in anywhere from \$39.9 to \$290 million per year.⁶⁵

C. Internet Sex Trafficking

Sex trafficking, which is immensely profitable in traditional forms of currency, is also moving onto the Internet. Bitcoin and other forms of virtual currency provide channels by which traffickers and “johns” alike can operate in a much more unregulated and anonymous financial system.⁶⁶ Prior to the advent of virtual currency, law enforcement agencies could “follow the money,” so to speak, to track the individuals operating sex trafficking rings with relative ease.⁶⁷ Thus, a task that was relatively straightforward before has now become increasingly complex due to Bitcoin and other virtual currencies.⁶⁸ Using the Internet for trafficking purposes provides law enforcement with a curious and specific set of new problems. Not only can traffickers use virtual currency to remain anonymous, but they can also encrypt and hide the location of Internet Protocol, or IP addresses, and run hidden services from behind firewalls.⁶⁹ These are all tactics that make tracing the trafficking to its source extremely difficult, if not impossible, both in legitimate and non-legitimate Internet forums.⁷⁰

D. Internet Sex Trafficking in Legitimate Forums: The Backpage.com Cases

Internet sex trafficking is not strictly limited to the Deep Web and other inaccessible parts of the Internet, unfortunately. Unbeknownst to many Internet users, women are trafficked daily through legitimate

64. *Id.*

65. Meredith Dank et al., *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major U.S. Cities*, URBAN INSTITUTE 2 (Mar. 2014), http://www.urban.org/research/publication/estimating-size-and-structure-underground-commercial-sex-economy-eight-major-us-cities/view/full_report. The cities examined in the study included Atlanta, Dallas, San Diego, Miami, Seattle, Washington D.C., Denver, and Kansas City. *Id.*

66. Ernie Allen, *Black E-Economy Hiding Traffickers' Profits*, CNN (June 26, 2013, 7:46 PM), <http://thecnnfreedomproject.blogs.cnn.com/2013/06/26/black-e-economy-hiding-traffickers-profits/>.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

websites.⁷¹ Those websites face little to no repercussion for facilitating the trafficking of women and sometimes minor children.⁷² Traffickers use social media websites to lure and coerce women into sex trafficking.⁷³ This often occurs when young women accept friend requests from strangers in order to appear more popular.⁷⁴ Further, classified advertisement websites, such as Craigslist, see frequent advertisements for sex with trafficked minors.⁷⁵

I. Doe ex. rel. Roe v. Backpage.com, LLC

The most important example of the use of classified advertisements for sex trafficking comes from a recent case, *Doe ex. rel. Roe v. Backpage.com, LLC*.⁷⁶ Here, three child victims of sex trafficking sued Backpage.com, a Craigslist-like website that uses Bitcoins for transactions.⁷⁷ They claimed that Backpage.com had violated the Trafficking Victims Protection Reauthorization Act (TVPRA) and the Massachusetts Anti-Human Trafficking and Victim Protection Act.⁷⁸ They also brought claims related to unfair business practices and violation of copyright law.⁷⁹ The design of Backpage.com is organized to protect individuals who use the site for advertising purposes.⁸⁰ There are a number of safeguards in place that can cause difficulties for law enforcement.⁸¹ For example, Backpage.com strips all metadata from photos before they are posted.⁸² This metadata can include the date, time, and coordinates to the location where the photo was taken.⁸³ Since Backpage.com allows the use of Bitcoin, it thus does not require users to input credit card information, legal names, phone numbers, addresses, or any other means of identification.⁸⁴ Further, the website does not force

71. Erica Fink, *Pimps Hit Social Networks to Recruit Underage Sex Workers*, CNN (Feb. 27, 2013, 7:30 AM), <http://money.cnn.com/2013/02/27/technology/social/pimps-social-networks/>.

72. *Id.*

73. *Id.*

74. *Id.*

75. Ryan Dalton, *Abolishing Child Sex Trafficking on the Internet: Imposing Criminal Culpability on Digital Facilitators*, 43 U. MEM. L. REV. 1097, 1108 (2013).

76. *Doe ex. rel. Roe v. Backpage.com, LLC*, 104 F. Supp. 3d 149 (D. Mass. 2015).

77. *Id.* at 152–53.

78. *Id.* at 154.

79. *Id.*

80. *Id.* at 152.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

users to verify the age of escorts who are being advertised on the site.⁸⁵ This lack of regulation enabled the three plaintiffs in the *Backpage.com* case to be trafficked and sold for sex on approximately 900-1,000 separate occasions.⁸⁶

The plaintiffs lost on all of the charges except those that could be recovered for actual damages suffered due to copyright infringement.⁸⁷ Most importantly, the court ruled that Backpage.com was immune from suit due to a provision in the Communications Decency Act of 1996, or CDA, which precludes civil claims under the TVPRA.⁸⁸ The original purpose of the Communications Decency Act was to allow for the further development of the Internet, and to promote the expansion of online marketplaces.⁸⁹ The legislative history of the CDA further suggests that Congress did take the protection of children on the Internet into account in the creation of the CDA,⁹⁰ but perhaps did not foresee the statute being used to remove civil liability from an advertising company that became essentially implicit in the trafficking of minors.

2. *J.S. v. Village Voice Media Holdings, LLC*

Courts appear split with regard to their rulings on civil immunity under the CDA, however. A recent case decided in Washington proves just that. In *J.S. v. Village Voice Media Holdings, LLC*, three minor sex trafficking victims sued Village Voice Media Holdings, the parent company of Backpage.com.⁹¹ The case reached the Washington Supreme Court in late 2015.⁹² The plaintiffs argued that the company aided in the development of a platform for promulgating sex trafficking on Backpage.com.⁹³ Village Voice and Backpage.com moved to dismiss, stating that they were immune from civil liability under the CDA.⁹⁴ The court stated that the case turned on whether Backpage.com was acting as an information service provider or if it had aided in the development of

85. *Id.*

86. *Id.* at 153.

87. *Id.* at 165.

88. *Id.* at 160 (citing 47 U.S.C.A. § 230 (West 1998)).

89. Stephanie Silvano, *Fighting a Losing Battle to Win the War: Can States Combat Domestic Minor Sex Trafficking Despite CDA Preemption?*, 83 *FORDHAM L. REV.* 375, 385 (2014).

90. *Id.* at 385.

91. *J.S. v. Village Voice Media Holdings, LLC*, No. 3:12-CV-06031-BHS, 2013 WL 811438 (W.D. Wash. Mar. 5, 2013).

92. *J.S. v. Village Voice Media Holdings, LLC*, 359 P.3d 714 (Wash. 2015).

93. *Id.* at 715.

94. *Id.* at 716.

advertising content.⁹⁵ If the website helped develop the advertising content, then it would not be immune from liability under the CDA.⁹⁶

The plaintiff's arguments advocated against immunity under the CDA.⁹⁷ The claims focused on Backpage.com's policy of allowing individuals to advertise without using legitimate contact information.⁹⁸ They argued that Backpage.com had intentionally developed the website to require little information, which would allow sex traffickers to advertise freely.⁹⁹ Further, they claimed that Backpage.com knew that the lax information requirements were aimed at helping pimps and traffickers evade law enforcement.¹⁰⁰ Finally, the plaintiffs contended that the content requirements on Backpage.com made the website look as though it was helping to combat trafficking while allowing trafficking to proceed.¹⁰¹ The case was remanded for further proceedings consistent with the court's opinion that the claims survived a motion to dismiss by defendants.¹⁰² Essentially, the court ruled that if the plaintiff's facts could be proven, then Backpage.com does not have CDA-based civil immunity.¹⁰³

III. ANALYSIS

The capacity for statutes that criminalize sex trafficking to be so easily overruled in the digital arena, as they were in the *Backpage.com* case, is a major flaw. The conflict between statutes protecting freedom of expression on the Internet and statutes protecting individuals from sex trafficking is one that the sex trafficking statutes are bound to lose. Currently, sex trafficking legislation can be primarily found in the text of the Victims of Trafficking and Violence Prevention Act,¹⁰⁴ a package of statutes initially passed in 2000 to combat human and sex trafficking.¹⁰⁵ The Violence Prevention Act (VPA) encompasses the TVPA, reinstated

95. *Id.* at 717.

96. *Id.*

97. *Id.* at 717–18.

98. *Id.*

99. *Id.*

100. *Id.* at 718.

101. *Id.*

102. *Id.*

103. *Id.*

104. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 [hereinafter abbreviated as VPA] (2000).

105. *Id.*

most recently as the Trafficking Victims Protection Reauthorization Act (TVPRA) in 2013.¹⁰⁶

Unfortunately, the TVPRA fails at preventing either third-party websites like Backpage.com or sex traffickers themselves from posting advertisements for commercial sex with trafficked women and children. The loophole that allows the CDA to trump claims under the single largest packet of statutes protecting sex trafficking victims must be closed. Closing this loophole begins by addressing the lack of adequate legislative language regulating virtual currency. For example, 18 U.S.C.A. § 1591, the statute defining and criminalizing sex trafficking, does not define a “thing of value” to include virtual currency.¹⁰⁷ In order to meet the challenges that Bitcoins increased use entails, the statutes must be able to encompass the use of virtual currency for the furtherance of criminal actions overall.

A. Sex Trafficking of Children by Force, Fraud, or Coercion, 18 U.S.C.A. § 1591

The TVPRA of 2013 encompasses a number of statutes related both to the criminal prosecution and civil liability of sex traffickers.¹⁰⁸ For the purpose of this analysis, the most important section of the TVPRA is 18 U.S.C.A. § 1591.¹⁰⁹ While the TVPRA is a step in the right direction in the fight against sex trafficking, it has failed to keep pace with the advent of Internet-based sex trafficking. The Internet is a constantly evolving form of international connection and communication. Therefore, statutes must be forward-looking in order to account for the rise of Internet and digital currency-based sex trafficking.

106. *Trafficking Victims Protection Reauthorization Act*, ALLIANCE TO END SLAVERY & TRAFFICKING, <https://endslaveryandtrafficking.org/trafficking-victims-protection-reauthorization-act/> (last visited Nov. 5, 2015). The Trafficking Victims Protection Reauthorization Act, or TVPRA, was most recently renewed as an amendment to the Violence Against Women Act in 2013. This version of the TVPRA renewed anti-trafficking programs, provided for special services for exited victims, and gave prosecutors more tools and resources to further the goal of ending sex trafficking. *Id.*

107. 18 U.S.C.A. § 1591 (West 2015).

108. *Current Federal Laws*, POLARIS, <https://polarisproject.org/current-federal-laws> (last visited Mar. 19, 2017).

109. 18 U.S.C.A. § 1591 (West 2015).

1. Definitional Ambiguity in Determining a “Thing of Value”

This section of the criminal code is a supplement to the TVPRA and provides new tools for combating all forms of trafficking.¹¹⁰ However, because the use of digital currency as a means of furthering sex trafficking is quite new, flaws exist in the law’s current structure. No case law discussing Bitcoin or other forms of digital currency in the context of sex trafficking prosecutions exists. This present blind spot in case law exists because 18 U.S.C.A. § 1591’s language centers on the exchange between two parties engaged in the purchase of sex.¹¹¹ The text states explicitly that individuals must benefit financially or receive something of value in exchange for participating in trafficking.¹¹² However, the statute itself does not define what that “thing of value” might be, and there is no case law discussing Bitcoin as a “thing of value.”

In another section of the TVPRA, “anything of value,” as it is written in the statute, is used broadly.¹¹³ Academics suggest that the term is used broadly for a number of reasons.¹¹⁴ The foremost reason is that sex traffickers often exploit victims in exchange for nontraditional things of value.¹¹⁵ Some examples of things of value include drugs, food, or shelter.¹¹⁶ These examples have been considered things of value in previous case law, but no such example exists for digital currency.¹¹⁷ Digital currency is not physically tangible in the same way as food or drugs are, however. This might cause difficulties for judges and attorneys in future criminal cases.

Other non-tangible items are considered things of value under the TVPRA. For example, one situation that fell under section 1591 included the exchange of sexual favors in a sex trafficking case.¹¹⁸ In a similar

110. U.S. DEP’T OF JUSTICE, INVOLUNTARY SERVITUDE, FORCED LABOR, AND SEX TRAFFICKING STATUTES ENFORCED <http://www.justice.gov/crt/involuntary-servitude-forced-labor-and-sex-trafficking-statutes-enforced> (last updated Aug. 6, 2015).

111. 18 U.S.C.A. § 1591 (West 2017).

112. *Id.*

113. 22 U.S.C.A. § 7102 (West 2017).

114. *See, e.g.,* 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).

115. Mary Graw Leary, *Fighting Fire with Fire: Technology in Child Sex Trafficking*, 21 DUKE J. OF GENDER L. & POL’Y. 289, 298 (2014).

116. *Id.*

117. *Id.* at 299.

118. *United States v. Cook*, 782 F.3d 983 (8th Cir. 2014).

way, digital currency is not tangible, but it has value nonetheless.¹¹⁹ It is used in place of physical currency and acts in the same way as physical currency.¹²⁰ Thus, it should be considered a thing of value for the purposes of sex trafficking prosecutions. However, the lack of specific language in section 1591 and in the TVPRA as a whole could prove problematic.

2. Definitional Remedies

With seventy-eight percent of sex trafficking cases employing the Internet in one sample study, it is obvious that more sex trafficking is taking place in Internet forums.¹²¹ The TVPRA should account for Internet use in sex trafficking cases preemptively, rather than prophylactically. Doing so would require only minor additions or alterations and would likely save judges and attorneys time by eliminating the argument altogether. Further, digital currency's place in the digital world as a real form of currency lends credence to the argument that it should be considered a real form of currency in statute. If other tangible and intangible goods are accepted as things of value, then digital currency should as well.

Addressing this issue in the statute would help in the prosecution of sex trafficking both on the Dark Web and in legitimate forums. For example, consider the resulting backlash against Backpage.com for its role in the sex trafficking of women and minors.¹²² Major credit card companies refused to do business with the website as a result of sex trafficking allegations.¹²³ These companies included Visa, Mastercard, and American Express.¹²⁴ Because three major credit card companies pulled away from Backpage.com, Bitcoin was the last remaining option.¹²⁵ Premium advertisements use Bitcoin as the currency of

119. Michael J. Casey & Paul Vigna, *Bitcoin and the Digital Currency Revolution*, THE WALL ST. J. (Jan. 23, 2015, 12:44 PM), <https://www.wsj.com/articles/the-revolutionary-power-of-digital-currency-1422035061>.

120. *Id.*

121. Leary, *supra* note 115, at 304–05.

122. Kim Bellware, *Credit Card Companies Abandon Backpage.com over Sex Trafficking Complaints*, HUFFINGTON POST (July 1, 2015, 12:48 PM), http://www.huffingtonpost.com/2015/07/01/backpagecom-credit-cards_n_7705708.html.

123. *Id.*

124. *Id.*

125. Sasha Aslanian, *For Sex Industry, Bitcoin Steps in Where Credit Cards Fear to Tread*, NAT'L PUB. RADIO (Dec. 15, 2015), <http://www.npr.org/sections/alltechconsidered/2015/12/15/456786212/for-sex-industry-bitcoin-steps-in-where-credit-cards-fear-to-tread>.

choice.¹²⁶ One sheriff's department has made more than 800 arrests from Backpage.com ads.¹²⁷ The lack of traceability of Bitcoin could make the arresting process more difficult.¹²⁸

Advertising for sex with minors is illegal under section 1591.¹²⁹ Recognizing digital currency as legitimate could help clear up any discrepancies regarding its use as a thing of value in criminal prosecutions. The terms "thing of value" and "anything of value" apply to intangible items in many instances, but not without causing additional arguments in the courts over whether these terms should apply.¹³⁰

B. Civil Remedies Under 18 U.S.C.A. § 1595

Under the TVPRA, section 1595 governs the process for bringing civil claims against perpetrators of sex trafficking.¹³¹ However, individuals who have brought claims under this section have been unsuccessful.¹³² Third party service providers like Backpage.com and others are granted civil immunity because section 1595 encompasses civil claims arising out of criminal actions.¹³³ This means that websites that host advertisements are not liable for doing so under the TVPRA.¹³⁴ The Communications Decency Act (CDA) bars these claims.¹³⁵ This creates a conflict between the TVPRA and CDA that allows third party

126. *Id.*

127. *Id.*

128. *Id.*

129. 18 U.S.C.A. § 1591 (West 2015).

130. Charles Doyle, *Sex Trafficking: An Overview of Federal Criminal Law*, CONG. RESEARCH SERV. (June 25, 2015), <https://www.fas.org/sgp/crs/misc/R43597.pdf>. For examples of the terms "thing of value" and "anything of value" applying to intangible objects, see *United States v. Hines*, 541 F.3d 833, 836–37 (8th Cir. 2008) (finding that a deputy sheriff's offer of help with evictions constituted a thing of value); *United States v. Fernandez*, 272 F.3d 938, 944 (7th Cir. 2010) (finding that expungement of convictions by a prosecutor was a thing of value).

131. 18 U.S.C.A. § 1595 [hereinafter section 1595] (West 2015).

132. See, *infra* Part II(D)(1). *Doe ex. rel. Roe v. Backpage.com, LLC*, 104 F. Supp. 3d 149 (D. Mass. 2015) is a prime example of the manner in which the CDA works to create civil immunity for Internet entities like Backpage. *Id.*; see also *Doe No. 14 v. Internet Brands, Inc.*, 767 F.3d 894 (9th Cir. 2014), *opinion withdrawn and superseded sub nom. Doe v. Internet Brands, Inc.*, 824 F.3d 846 (9th Cir. 2016) (citing civil immunity under the CDA for Modelmayhem.com after the site permitted the posting of an advertisement by two users who lured plaintiff under the guise of a fake audition, drugged and sexually assaulted her on videotape, and posted the footage as a pornographic film on the Internet).

133. *Backpage.com*, 104 F. Supp. 3d at 158–59 (D. Mass. 2015).

134. *Id.*

135. *Id.*

providers to avoid liability for hosting advertisements and financially benefitting from such behavior.

1. Civil Immunity Under the Communications Decency Act

While the issue of civil immunity under the CDA is ancillary to the main analysis regarding Bitcoin and sex trafficking, broad changes in this area could be more useful than specific definitional changes overall. 47 U.S.C.A. § 230 of the CDA governs this issue.¹³⁶ In relevant part, the CDA states that “no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”¹³⁷ The CDA was originally created in 1996, when the Internet was barely used in households nationwide.¹³⁸ This section is part of a larger bundle of statutes designed to protect children from exposure to pornography or other harmful material online.¹³⁹ Unfortunately, over the years, judges have interpreted section 230 as exempting third-party hosts from liability for user-generated content.¹⁴⁰ The original congressional intent of the provision was not to provide a loophole through which every third-party host could obtain civil immunity.¹⁴¹ Instead, Congress intended section 230 to protect third-party hosts who made a good faith effort to protect children from sexual abuse.¹⁴² Many third-party hosts systematically misrepresent their good faith efforts.¹⁴³ These online hosts will make an arbitrary attempt to help law enforcement officers find sex trafficking victims while continuing to draw in a substantial amount of revenue from advertising.¹⁴⁴ This civil immunity bars any civil claims against third-

136. 47 U.S.C. § 230 (1998).

137. *Id.* at (c)(1). An information content provider is essentially a person or an organization that is “responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.” Section 230(f)(3). It should further be noted that an interactive computer service is “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.” *Id.*

138. Kiley Crossland, *Federal Judge: Backpage Not Liable for Ads Pimping Children*, WORLD MAGAZINE (May 27, 2015), http://www.worldmag.com/2015/05/federal_judge_backpage_not_liable_for_ads_pimping_children.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

party hosts themselves that might arise under the TVPRA.¹⁴⁵ Instead, sex trafficking victims can only make claims against the actual traffickers.¹⁴⁶

2. Suggested Advancements and Prior Actions Against the CDA Loophole

In 2013, a study performed by Advance Interactive Media Group estimated that the total amount of profits from commercial sex advertisements that year would exceed \$45 million.¹⁴⁷ Backpage.com was expected to generate eighty percent of those profits.¹⁴⁸ That same year, the National Association of Attorneys General asked Congress to amend the loophole in the CDA that allowed rampant sex trafficking to continue on advertisement websites.¹⁴⁹ The letter noted the fact that the CDA is broadly interpreted to provide both civil and criminal immunity to third-party Internet hosts.¹⁵⁰ The Association focused on protections granted to third-party Internet hosting sites against criminal liability.¹⁵¹ Further, it touched on the CDA's most recent interpretation by the courts, which blocked state and local authorities from prosecuting third-party service providers.¹⁵² It asked Congress to amend the CDA to restore to state and local law enforcement agencies the authority to investigate and prosecute anyone who participates in the furtherance of sex trafficking.¹⁵³ Unfortunately, the Association failed to push Congress toward amending the CDA.¹⁵⁴

Courts have varied in their interpretations of the CDA, regardless of efforts to change the law itself. The *J.S. v. Village Voice* case could prove to be a positive step toward eliminating lax policies on personal information in advertisements.¹⁵⁵ This could help close the loophole

145. *Congress Files Bill to Amend TVPA to Combat Demand; State Attorneys General Ask Congress to Amend CDA*, SHARED HOPE INTERNATIONAL, <http://myemail.constantcontact.com/Breaking-Policy-News--TVPA-and-CDA-Up-for-Amendment.html?soid=1102296469105&aid=wwt76OPdJ2U> (last visited Apr. 1, 2017).

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. Letter from Cris Koster, Mo. Attorney Gen. & Marty Jackley, S.D. Attorney Gen., to John Rockefeller IV, Chairman, Comm. on Commerce, Sci., & Transp., U.S. Senate, et al. (July 23, 2013) <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1465&context=historical>.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *See supra* Part II.D.2.

created by the allowance of untraceable Bitcoin payments on Backpage.com. The ruling was controversial, and many were upset by the fact that the CDA may not protect Backpage.com.¹⁵⁶ The Congressional record from the creation of the CDA belies its original intent to protect so-called Good Samaritan service providers.¹⁵⁷ These service providers were those that took steps to screen indecent or offensive material for customers.¹⁵⁸ By allowing advertisers to remain anonymous via the use of false names and virtual currencies, it appears that Backpage.com has done the opposite.

C. Advances in Dark Web Human Trafficking

Human trafficking of all forms is notoriously difficult to trace on the Dark Web, but the U.S. government is making strides.¹⁵⁹ The Defense Advanced Research Projects Agency (DARPA), an arm of the Department of Defense, is foremost in this area.¹⁶⁰ DARPA created a program called Memex, a high-powered search engine designed to trawl the Dark Web.¹⁶¹ Evidence of trafficking is difficult to find on the Dark Web because the majority of connections are on a virtually untraceable peer-to-peer basis.¹⁶² Memex could change the way that trafficking is discovered and tracked on the Dark Web.¹⁶³ Its search capabilities are strong enough to remove layers of anonymity from previously hard-to-catch transactions.¹⁶⁴ However, Memex is still in its initial phases.¹⁶⁵ Disseminating it to law enforcement and trafficking prevention agencies is far in the future.¹⁶⁶

In the meantime, additional steps could be taken to help track and eliminate Dark Web human trafficking, which is funded by Bitcoin. Every Bitcoin transaction is logged in a central registry called a

156. Martha Bellisle, *Washington Supreme Court Rules against Backpage.com*, ASSOCIATED PRESS (Sept. 3, 2015 7:31 PM), bigstory.ap.org/article/4b231e3c058e41fe8492562bc523fc7a/washington-supreme-court-rules-against-backpagecom.

157. 141 Cong. Rec. H8469-H8470 (daily ed. Aug. 4, 1995), <http://www.cybertelecom.org/cda/samaritanref.htm>.

158. *Id.*

159. Larry Greenemeier, *Human Traffickers Caught on Hidden Internet*, SCI. AM. (Feb. 8, 2015), <http://www.scientificamerican.com/article/human-traffickers-caught-on-hidden-Internet/>.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

blockchain.¹⁶⁷ Getting started with Bitcoin involves creating an address for Bitcoin exchanges to take place.¹⁶⁸ Users can make multiple addresses free of charge and are encouraged to discard prior addresses after a single use.¹⁶⁹ Bitcoin's cryptographic protocol makes tracing transactions difficult, and each address user has a screen name.¹⁷⁰ However, when a transaction comes from a Bitcoin wallet, it contains a data signature.¹⁷¹ These signatures could potentially be used to track a particular individual's transactions, or provide insight into purchases.

D. Criticism of Regulation

1. Criticism of Bitcoin and Bitcoin Regulation

In spite of the potential dangers of allowing Bitcoin to remain unregulated, some critics argue that the United States would be discouraging monetary competition by doing so.¹⁷² This argument rests on the premise that the U.S. government should not regulate Bitcoin solely for its role in facilitating criminal activity because the dollar, backed by the Federal Reserve, has been facilitating criminal activity for years.¹⁷³ This novel argument compares the one-hundred dollar bill to Bitcoin, stating that the two are similar in their use for criminal activity.¹⁷⁴ Few people carry hundred-dollar bills on a regular basis, and the bill itself has been suspected to have been used in the underground economy more than any other denomination.¹⁷⁵ Regardless of its potential nefarious uses, the hundred-dollar bill is still produced in bulk, with a reported 9.2 billion one-hundred dollar bills in circulation as of 2013.¹⁷⁶ Thus, because the government-backed paper dollar is still the typical criminal's denomination of choice, these critics argue that the

167. *How Does Bitcoin Work?*, BITCOIN, available at <https://bitcoin.org/en/how-it-works> (last visited Apr. 1, 2017).

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. William J. Luther, *The U.S. Has No Business Regulating Bitcoin Because of Illegal Dealings*, U.S. NEWS & WORLD REP. (Feb. 23, 2015), <http://www.usnews.com/opinion/economic-intelligence/2015/02/23/us-has-no-business-regulating-bitcoin-because-of-illegal-dealings>.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

U.S. government should have no place regulating Bitcoin as though it is disproportionately responsible for funding crime.¹⁷⁷

Critics of Bitcoin itself would promote banning the currency, and indeed, countries like Russia and China have already taken steps to do so.¹⁷⁸ But the anonymity and lack of government backing of Bitcoin are the two things that make the currency most appealing to the millions of individuals who use it.¹⁷⁹ Thus, banning it outright would be nearly impossible. However, the idea that it should not be regulated because U.S.-backed dollars are also used to fund crime is absurd. The fairest course of action would be to strike a balance between unfettered use and complete prohibition. One suggestion would be to create a system that would allow law enforcement officers to trace the transactions that take place via Bitcoin by code or serial number, as is already possible for dollar bills and credit cards alike. This solution would neither completely destroy anonymity nor amount to overregulation, but would allow for a modicum of enhancement for law enforcement agencies to locate and track criminal activity.

2. Criticisms of Eliminating CDA Civil Immunity

The civil immunity granted by the Communications Decency Act has frequently barred sex trafficking victims from suing third-party Internet content providers, even though these content providers permitted the posting of advertisements containing sex trafficking victims.¹⁸⁰ Activist groups promoting Internet freedom have consistently argued for a broad interpretation of civil immunity under section 230 of the CDA.¹⁸¹ Internet freedom proponents argue that the CDA should provide an automatic bar to all civil suits against third-party Internet content providers.¹⁸² This argument is founded on the belief that civil immunity is necessary to create and maintain diversity of content on the Internet.¹⁸³

However, third-party Internet content providers have not been found to be civilly immune in cases where the provider has a role in creating or

177. *Id.*

178. Anita Ramasastry, *Bitcoin: If You Can't Ban It, Should You Regulate it? The Merits of Legalization*, JUSTIA (Feb. 25, 2014), <https://verdict.justia.com/2014/02/25/bitcoin-cant-ban-regulate>.

179. *Id.*

180. Shea M. Rhodes, *Why Section 230 of the Communications Decency Act Does Not Bar Civil Lawsuits Brought By Sex Trafficking Victims Against Backpage.com*, VILL. SCH. L. INST. TO ADDRESS CRIM. SEXUAL EXPLOITATION 1, <http://cseinstitute.org/wp-content/uploads/2016/01/CDA-Backpage-Policy-Paper.pdf> (last visited Apr. 1, 2017).

181. *Id.* at 5.

182. Rhodes, *supra* note 180, at 4.

183. *Id.* at 5.

developing the content of the website.¹⁸⁴ When Internet content providers design the rules of their websites in such a way that promotes trafficking, as in *J.S. v. Village Voice*, then they are not immune from civil suit.¹⁸⁵ Websites like Backpage.com consistently refuse to alter the rules for posting advertisements.¹⁸⁶ For example, any user who posts an advertisement using Bitcoin automatically receives a ten percent reduction of the fee paid to post the advertisement.¹⁸⁷ This induces advertisers to use the more anonymous form of payment, thus making the transaction more difficult to track.¹⁸⁸ When an Internet content provider creates a system of rules that makes it easy to advertise and buy services from trafficking victims, and does nothing to curb that behavior, civil immunity from those victims' lawsuits should be denied.

IV. CONCLUSION

In the digital age, crimes committed via the Internet are a fact of life. As a result, sex traffickers are likely to take advantage of the Internet in one form or another, either through legitimate or illegitimate means. If sex trafficking occurs on the Internet with the use of Bitcoin, the appearance of these cases in the courts will grow, and many courts will be forced to decide whether Bitcoin is a "thing of value." Courts will also need to decide whether the Communications Decency Act should permit civil immunity for Internet content providers that allow sex trafficking to occur on their websites. These will be issues of first impression for many judges and attorneys alike, with little case law or legislation to act as a guiding force.

At present, in the absence of case law, other means of approaching this problem could be taken. This Note raises two such issues: Altering the language of sex trafficking statutes to bring Bitcoin into the realm of a "thing of value," and closing the loophole in the Communications Decency Act that provides civil immunity to Internet content providers.¹⁸⁹ Critics of measures such as these provide some good arguments as to why regulation of any kind on the Internet could snowball into a larger hindrance on Internet freedom.¹⁹⁰ However, taking into account the rights of ordinary citizens as well as sex trafficking

184. *Id.* at 6.

185. *Id.*

186. *Id.* at 7–9.

187. *Id.* at 8.

188. *Id.*

189. *See generally supra* Part III.

190. *See generally supra* Part III.D.

victims, courts must find a way to strike a balance between freedom and security in creating laws related to digital crime.