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Barricading the Information Superhighway to Stop the Flow of Traffic: Why International Regulation of the Internet is Necessary to Prevent Sex Trafficking

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COMMENTS

BARRICADING THE INFORMATION SUPERHIGHWAY TO STOP THE FLOW OF TRAFFIC: WHY INTERNATIONAL REGULATION OF THE INTERNET IS NECESSARY TO PREVENT SEX TRAFFICKING

KENDALL VITALE*

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INTRODUCTION

Aija is a young, attractive Latvian who desires to earn a living and escape the difficulties of her life at home.¹ She finds an Internet Café

1. See generally Sue Lloyd-Roberts, *No Experience Necessary*, BBC NEWS, Sept. 29, 2000, <http://news.bbc.co.uk/2/hi/programmes/correspondent/948541.stm> (describing the allure of earning money abroad to Latvian women and the employment opportunities made available through communication technology).

and posts a job application expressing a desire for work as a dancer in Denmark.² Almost immediately, she receives a reply reading, “Hey Aija! You need no experience. If you wish, you can come this week.”³ She is given additional information to fly to Copenhagen, pose as a tourist, and take a taxi to “Club 8.”⁴ Following the instructions, she arrives at the Club only to find that the dancing position is a cover to ensure her arrival and that she is expected to have sex with clients instead.⁵ She is spared, however, when police raid the Club based on information she provided.⁶

Aija is an undercover journalist working to bring awareness to sex trafficking in an effort to protect vulnerable women and children from succumbing to the dangers posed by the sex industry and facilitated by the Internet.⁷ This young woman was fortunate, but others who respond to Internet advertisements for jobs in foreign countries are not so lucky.⁸

The Internet has revolutionized the way people share and access information across the globe by providing a quick and easy forum for ideas, products, and business opportunities.⁹ Educational materials are widespread, business ventures are available to anyone with an idea and a domain name, and commerce takes place at an astounding speed.¹⁰ Although the benefits of the Internet are undeniable, the

2. *Id.*

3. *Id.*

4. *See id.* (demonstrating how sex traffickers provide very detailed instructions to victims to maintain control of the situation and to secure the victim’s arrival).

5. *See id.* (illustrating how traffickers frequently offer false employment in attractive fields, such as a dancer or au pair, to recruit victims into the sex industry).

6. *But see id.* (explaining that despite the police raid on “Club 8,” police action against sex traffickers is relatively rare in Denmark and no charges were brought against the Club’s management).

7. *See id.* (stating that the danger of sex trafficking is particularly high for women from Albania, Thailand, and the former Soviet Union).

8. *See id.* (discussing how sex trafficking victims are often kept as prisoners in abysmal conditions and are even murdered at the hands of traffickers).

9. *See generally Benefits of Internet Use*, CYBERETHICS, <http://www.cyberethics.info/cyethics2/page.php?pageID=70&mpath=/86/88> (last visited July 8, 2011) (describing the convenience the Internet brings to everyday life as a forum that provides a constant flow of limitless information and easier business transactions).

10. *See generally* Bill Gates, *Shaping the Internet Age*, MICROSOFT NEWS

Internet also provides an easily accessible forum for people to participate in illegal activities, such as sex trafficking in the above example.¹¹

Craigslist, the popular classifieds website, recently came under fire when an Illinois sheriff filed a lawsuit against the owners alleging that the website promotes sex trafficking and prostitution.¹² In response, Craigslist attempted to implement restrictions on the “Erotic Services” section of the website in an effort to curb the promotion and fostering of illegal activity, but controversial advertisements selling women and children were still posted and accessible to the public.¹³

On September 15, 2010, the website permanently removed the renamed “Adult Services” section and replaced it with a bar reading “Censored” in response to pressure from Congress and law enforcement officials.¹⁴ While this section of the website is no longer

CENTER,

<http://www.microsoft.com/presspass/exec/billg/writing/shapingtheinternet.mspx> (last visited July 8, 2011) (stating that the current benefits of the Internet allow for growth and accessibility, but also addressing concerns that the Internet will decrease privacy and demoralize society as it becomes even more accessible).

11. See generally Mehagen Doyle, *Bad Apples in Cyberspace: The Sexual Exploitation and Abuse of Children over the Internet*, 21 WHITTIER L. REV. 119, 119-20 (1999) (listing email, chat rooms, and newsgroups as some of the various methods of communication and outlets available for sexual predators to share information with each other and recruit victims on the Internet).

12. See *Lawsuit Accuses Craigslist of Promoting Prostitution*, CNN.COM, Mar. 5, 2009, http://articles.cnn.com/2009-03-05/justice/craigslist.prostitution_1_craigslist-services-section-dart?_s=PM:CRIME [hereinafter *Lawsuit Accuses Craigslist*] (stating that the “Erotic Services” section of Craigslist advertises illegal prostitution, including sex with children and victims of international trafficking, with over 2,800 advertisements for child prostitution discovered during an FBI investigation).

13. See *id.* (explaining that Craigslist implemented a phone verification system to ensure real contact numbers were provided and charged listing fees prior to posting an advertisement, but noting that pimps will be able to alter their ads or payment methods to contravene the regulations); see also Aaron C. Davis, *Craigslist Vows to Improve Monitoring of ‘Adult’ Ads*, WASH. POST, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/13/AR2009051301447.html> (stating that Craigslist removed the “Erotic Services” section of the website and replaced it with an “Adult Services” section that was subject to manual review of all advertisements, but noting concerns that the change would be “little more than cosmetic”).

14. See Cecilia Kang, *Craigslist Says It Has Permanently Taken Down U.S. Adult Services Ads*, WASH. POST, Sept. 15, 2010, available at

available on the Craigslist site accessed through Internet Service Providers (ISPs) within the United States, internet users were still able to view the adult services section on international Craigslist websites accessed through foreign ISPs for an additional four months, even if the foreign website was viewed within the United States.¹⁵

The controversy surrounding Craigslist illustrates the complexities of Internet regulation. Craigslist demonstrates that despite attempts at national regulation, information will remain available for Internet access internationally and sometimes within a country trying to prohibit the specific content on its national ISPs.¹⁶ Additionally, Craigslist and Aija's story provide examples of the Internet's role in the illegal sex industry as a convenient forum for sexual abuse and a facilitator of the growing international problem of sex trafficking.¹⁷ The international community has expressed its strong disapproval of sex trafficking through an international agreement, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children [hereinafter Trafficking Protocol].¹⁸ The signatories to the Trafficking Protocol, however, do

<http://www.washingtonpost.com/wp-dyn/content/article/2010/09/15/AR2010091507351.html> (explaining that law enforcement and government officials focused on Craigslist, rather than on smaller websites promoting adult content, because it was the largest site of its kind in the world and could act as a model for similar websites).

15. For example, internet users in the United States could access an "Erotic Services" section of Craigslist hosted in a foreign country, see *Erotic Services*, CRAIGSLIST, <http://berlin.en.craigslist.de/ers> (last visited Sept. 30, 2010). Craigslist has since removed all "Adult Services" sections located on foreign ISPs. See Stephanie Reitz, *Craigslist Adult Services Section Yanked from International Sites*, HUFFINGTON POST, (Dec. 21, 2010), http://www.huffingtonpost.com/2010/12/21/craigslist-adult-services_1_n_799982.html.

16. Cf. *Germany Plots Cyberattacks on Neo-Nazi Sites*, CNN.COM, Apr. 10, 2001, http://articles.cnn.com/2001-04-10/tech/nazi.spam.idg_1_neo-nazi-websites-dos-attacks?_s=PM:TECH [hereinafter *Germany Plots Cyberattacks*] (illustrating the difficulties of Internet censorship through Germany's struggle to regulate illegal Nazi content hosted on U.S. websites where the information is not prohibited).

17. See Doyle, *supra* note 11, at 121-22 (concluding that the Internet is a convenient forum for sexual abuse because of its widespread availability, governments' lack of international regulation, and users' ability to share information easily across borders).

18. United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children pmbl., Nov. 15, 2000, S. TREATY DOC.

not read the agreement to require regulation of trafficking over the Internet, and the Internet remains an ideal forum for traffickers to conduct illegal business.¹⁹

This Comment argues that the provisions of the Trafficking Protocol must be read to require regulation of the Internet for the Protocol to remain effective in the global fight against sex trafficking. Part II of this Comment discusses sex trafficking in general including who it affects, where it occurs, how it is regulated, and why the Internet is a concern.²⁰ Part III of this Comment addresses why the Trafficking Protocol must be read to include the Internet as a forum requiring regulation and which specific provisions within the Trafficking Protocol apply to the Internet.²¹ Part III also discusses the potential problems with applying the Trafficking Protocol to the Internet and argues that existing domestic regulation must be expanded to comply with the Trafficking Protocol.²² Part IV provides recommendations to help enforce regulation of the Internet on a global scale, and Part V concludes that international cooperation is necessary for effective Internet regulation.²³

No. 108-16, 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003) [hereinafter Trafficking Protocol].

19. See Erin I. Kunze, Comment, *Sex Trafficking via the Internet: How International Agreements Address the Problem and Fail to Go Far Enough*, 10 J. HIGH TECH. L. 241, 279 (2010) (acknowledging that individual nations have taken some action to regulate content online, such as child pornography, but that none have taken action to regulate the Internet on an international scale, regarding the use of the Internet for sex trafficking).

20. See discussion *infra* Part II (discussing the global reach of both sex trafficking and the Internet and how the Internet directly affects sex trafficking).

21. See discussion *infra* Part III.A-B (advocating for the application of the Trafficking Protocol's provisions to the Internet in an effort to prevent sex trafficking on a global scale).

22. See discussion *infra* Part III.C-D (arguing that despite potential concerns regarding freedom of expression and Internet regulation, Internet regulation is still possible and necessary to combat sex trafficking).

23. See discussion *infra* Parts IV-V (suggesting that resources be provided to countries to ensure implementation of Internet regulation in compliance with the Trafficking Protocol, the use of an international monitoring body to assist countries with Internet regulation, and the creation of incentives to ensure international cooperation).

I. BACKGROUND

A. AN OVERVIEW OF SEX TRAFFICKING

Human trafficking is one of the most profitable illegal businesses in the world.²⁴ The Trafficking Protocol defines trafficking as the

recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.²⁵

Individuals are trafficked for forced labor, organ removal, illegal adoption, and sexual exploitation.²⁶ Totaling seventy-nine percent of trafficking overall, sexual exploitation is the most common form of human trafficking and occurs when an individual is forced to perform commercial sex acts.²⁷ Traffickers recruit unsuspecting victims to sell in the various divisions of the sex industry including,

24. See *Human Trafficking*, FLORIDA NATIONAL ORGANIZATION FOR WOMEN, <http://www.flnow.org/trafficking.html> (last visited Nov. 9, 2011) (stating that human trafficking ranks third behind arms and drug trafficking in the most profitable illegal businesses).

25. Trafficking Protocol, *supra* note 18, art. 3(a).

26. See, e.g., *Child Protection from Violence, Exploitation and Abuse: Child Trafficking*, UNICEF, http://www.unicef.org/protection/index_exploitation.html (last visited Sept. 5, 2011) [hereinafter *Child Protection*] (stating that an estimated 1,000 to 1,500 babies are trafficked each year from Guatemala for adoption). See generally *What is Human Trafficking?*, U.N. OFF. ON DRUGS & CRIME [UNODC], http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html#What_is_Human_Trafficking (last visited Sept. 5, 2011) (defining human trafficking as a crime against humanity for the purpose of exploiting another person, and explaining the means and purposes of trafficking and efforts to criminalize and eliminate the practice).

27. See UNODC, GLOBAL REPORT ON TRAFFICKING IN PERSONS 6 (2009), available at http://unodc.org/documents/Global_Report_on_TIP.pdf (conceding that this figure may be influenced by statistical bias as sex trafficking is the most visible form of human trafficking because it takes place in populated areas, such as city centers, and, as a result, is reported more frequently). *But see What is Trafficking in Persons?*, U.S. DEP'T OF ST., <http://www.state.gov/g/tip/rls/tiprpt/2010/142747.htm> (last visited July 8, 2011) (stating that sex trafficking is one of the major forms of human trafficking and as many as two million children are involved in the global sex trade worldwide, but noting that forced labor trafficking is more prevalent than sex trafficking).

but not limited to: prostitution, pornography, and sex tourism.²⁸ Generating upwards of seven billion dollars a year worldwide, the illegal sex industry is an extremely profitable business.²⁹ To generate a profit, the industry relies on victims, sex traffickers, and, most importantly, consumers.

B. SEX TRAFFICKING REQUIRES VICTIMS, TRAFFICKERS, AND CONSUMERS

1. Victims

Women and children are the most likely victims of sex trafficking, and they are particularly vulnerable in war-torn or developing countries.³⁰ Living situations where a potential victim does not have access to resources, family support, or wealth provide ideal conditions for recruitment by traffickers.³¹ The problem, however, is not limited to impoverished countries; victims are sought after in developed and wealthy countries as well, particularly if they are runaways or homeless.³² These circumstances often leave potential

28. See ECPAT INT'L, QUESTIONS & ANSWERS ABOUT THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN 5 & 12 (4th ed. 2008), available at http://www.ecpat.net/EI/Publications/About_CSEC/FAQ_ENG_2008.pdf [hereinafter QUESTIONS & ANSWERS]

(stating that victims, especially children, can be sold into various sex industries, and noting that although prostitution and pornography are the most prevalent industries, children are also sold into child marriage, domestic servitude, and other illicit services).

29. See Hanh Diep, Comment, *We Pay – The Economic Manipulation of International and Domestic Laws to Sustain Sex Trafficking*, 2 LOY. U. CHI. INT'L L. REV. 309, 311 (2005) (explaining that the illegal sex industry is profitable in part because of the increasing desire for international migration, the reusable nature of the industry's "products," the impunity of offenders, and the violence used to keep women and children working undetected).

30. See Kunze, *supra* note 19, at 244 (attributing the vulnerability of women and children from developing countries to their low earning potential); see also *Fact Sheet: Sex Trafficking*, U.S. DEP'T OF HEALTH & HUM. SERVICES, http://www.acf.hhs.gov/trafficking/about/fact_sex.html (last visited July 8, 2011) (acknowledging that victims of sex trafficking can also be men, though the majority of victims are women and young girls).

31. See generally 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, 116-18 (2002) (stating that traffickers target areas with high unemployment rates, war, a low status of women, and "other disintegrating social networks").

32. See *Trafficking and Sex Tourism*, U.S. DEP'T OF JUST.,

victims unemployed with little education and few economic options.³³ As a result of poor economic circumstances and a lack of support systems, women and children are more susceptible to the numerous ploys used by traffickers when recruiting victims.³⁴

Sex traffickers use a number of methods to lure victims into the sex industry, including fraud, false pretenses, affection, and abduction.³⁵ In some countries, victims are even sold into trafficking by their own families.³⁶ Many women and children are simply lured into the industry through false promises, such as that of employment.³⁷

A false pretense of employment, oftentimes in attractive careers like modeling or jobs promising high wages, is one of the more popular methods of recruitment.³⁸ Once a woman or child accepts the

<http://www.justice.gov/criminal/ceos/trafficking.html> (last visited July 8, 2011) (quoting a 2001 University of Pennsylvania study that states as many as 293,000 American children are at risk of becoming victims of sexual exploitation).

33. *But see* Meredith Flowe, *The International Market for Trafficking in Persons for the Purpose of Sexual Exploitation: Analyzing Current Treatment of Supply and Demand*, 35 N.C. J. INT'L L. & COM. REG. 669, 675 (2010) (explaining that while uneducated women are most at risk, educated women are also vulnerable because they have more freedom to travel and availability to work overseas).

34. *See generally* HEATHER J. CLAWSON ET AL., U.S. DEP'T OF HEALTH & HUM. SERVS., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE 7 (2009), available at <http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/index.pdf> [hereinafter *A Review of the Literature*] (listing characteristics that make women and children vulnerable to trafficking, including poverty; lack of education; limited work opportunities; lack of support; previous sexual abuse; and health or mental health challenges).

35. *See Sexual Trafficking Facts*, INITIATIVE AGAINST SEXUAL TRAFFICKING, <http://www.iast.net/thefacts.htm> (last visited Sept. 5, 2011) (noting that traffickers typically use false job offers to lure potential victims across borders and overseas).

36. *See* Tiefenbrun, *supra* note 31, at 116-17 (explaining that the practice of selling family members typically occurs in countries that engage in other degrading practices towards women and children such as child marriage, female infanticide, and female genital mutilation).

37. *See* April Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J. L. & GENDER 231, 236 (2007) (stating that false promises typically include a job offer, a promise of money, and an overall better life in a wealthy country).

38. *See* Tiefenbrun, *supra* note 31, at 117-18 (describing how traffickers recruit victims through attractive job offers in order to take advantage of unemployment, poor living conditions, and lack of social and family support); *see also* Rieger,

job offer, the trafficker typically requires the victim to hand over any identification documents, creating a dependency on the trafficker.³⁹ Usually, these victims enter into a deal where they are obligated to reimburse the trafficker for transportation to a country for employment or a “better life.”⁴⁰ The victims are then relocated to a foreign country where they do not speak the language and do not have proper identification.⁴¹ Once in the hands of traffickers, victims are subjected to physical and psychological abuse.⁴² With nowhere to turn for help, they are forced to depend on their traffickers and endure abusive conditions.⁴³

Children in particular are susceptible to the methods used by sex traffickers and comprise a large part of the sex trafficking industry.⁴⁴ An increase in demand for younger sexual partners and more “aggressive, dangerous sex” has resulted in an increase of child victims.⁴⁵ Younger children are also in demand because some believe

supra note 37, at 236-37 (giving examples of legitimate jobs used to lure women including “maids, nannies, dancers and models”). *See generally Sexual Trafficking Facts*, *supra* note 35 (explaining how sex traffickers maintain control over victims through initial job offers, violence, and isolation).

39. *See* Amy Larsen, *Teasing Apart the Web of Sex Trafficking*, YALE GLOBALIST (May 21, 2010, 9:54 PM), <http://tyglobalist.org/focus/teasing-apart-the-web-of-sex-trafficking/> (stating that the trafficker’s goal is to break the victim’s spirit).

40. *See* Rieger, *supra* note 37, at 236, 239 (explaining the practice of “debt bondage,” where victims are forced into slavery to pay off the debt incurred by the trafficker for their travel and any increase in debt that is incurred if the victims are provided with subsequent food and boarding).

41. *See id.* at 232, 243 (attributing a trafficker’s ability to control victims to the latters’ valid fears of deportation given their illegal alien status and the fear of ostracism and further victimization upon their return home).

42. *See id.* at 241-42 (describing the psychological methods used to maintain control over victims, including the use of debts, drugs, alcohol, and the manipulation of identification papers).

43. *See id.* at 232, 241 (explaining that traffickers also use the fear of arrest and the victim’s dire financial situation to ensure control and dependence).

44. *See* GLOBAL REPORT ON TRAFFICKING IN PERSONS, *supra* note 27, at 11 (estimating that thirteen percent of victims are girls and nine percent are boys); *see also* Sara Dillon, *What Human Rights Law Obscures: Global Sex Trafficking and the Demand for Children*, 17 UCLA WOMEN’S L.J. 121, 125 (2008) (claiming that children are the group that is most susceptible to trafficking in all parts of the world).

45. *See* Flowe, *supra* note 33, at 675 (stating that children are preferred for “more aggressive, dangerous sex . . . because they are more pliable.”).

children will not expose customers to HIV.⁴⁶ Given their inherent dependence on others, children are among the most vulnerable to sex trafficking when their family or social structure collapses, leaving them without any support.⁴⁷ The danger of sex trafficking to both women and children would not exist, however, without traffickers and consumers.

2. *Traffickers and Consumers*

Traffickers and consumers drive the illegal sex industry. The former are often part of extremely organized crime syndicates.⁴⁸ These syndicates are efficient and resourceful, frequently working with legitimate businesses to provide a cover for their illegal operations.⁴⁹ Traffickers are responsible for recruiting and transporting victims, managing the operations that house and sell trafficked victims, and allocating profits.⁵⁰ Typically, traffickers are men but women are also involved, occasionally acting as recruiters, pimps, and brothel managers.⁵¹

Like any industry, sex trafficking is fueled by supply and demand.⁵² Consumers create the demand by purchasing the services

46. See Dillon, *supra* note 44, at 128 (implying that younger children are less likely to have been exposed to HIV).

47. See *id.* at 130.

48. See Katrin Corrigan, Note, *Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic*, 25 *FORDHAM INT'L L.J.* 151, 159-60 (2001) (describing the organized crime syndicates responsible for sex trafficking as large-scale and extremely profitable with low risk). See generally Lan Cao, *Illegal Traffic in Women: A Civil RICO Proposal*, 96 *YALE L.J.* 1297, 1299 (1987) (discussing the efficiency of the networks involved in sex trafficking, particularly regarding the procurement and transportation of women).

49. See Cao, *supra* note 48, at 1302 (discussing the typical strip club as a front for illegal prostitution and an example of the type of business traffickers utilize to hide their illegal activities).

50. See Flowe, *supra* note 33, at 677 (noting that some activities, such as managing operations and profits, are present in every type of trafficking organization).

51. See *id.* at 678-79 (asserting that victims are also occasionally physically, emotionally, or financially pressured to become traffickers in order to help conceal a trafficker's identity and in order to recruit additional victims from the victims' hometowns).

52. See *Why Trafficking Exists*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/overview/why-trafficking-exists> (last visited Sept. 5, 2011) (stating that human trafficking is fueled by a demand for services and labor and not

of victims of sex trafficking.⁵³

Typical consumers are men searching for excitement and variety in their sex lives.⁵⁴ They purchase women and children for entertainment, sexual gratification, and violence.⁵⁵ Consumers come from all different socioeconomic backgrounds, ethnicities, age groups, and countries.⁵⁶

C. SEX TRAFFICKING OCCURS ACROSS THE WORLD

Sex trafficking is an international problem reaching almost every country in the world.⁵⁷ Victims are usually recruited in source countries that tend to be underdeveloped, and they are brought into various facets of the sex industry in wealthy, destination countries.⁵⁸ Some of the largest source countries are the former Soviet republics and countries in Asia and Latin America; by contrast, the largest

by the large supply of people “vulnerable to exploitation”).

53. See *generally id.* (maintaining that the demand for sex trafficking thrives because of the low risk of prosecution due to insufficient law enforcement and the high profits sex trafficking generates).

54. See DONNA M. HUGHES, BEST PRACTICES TO ADDRESS THE DEMAND SIDE OF SEX TRAFFICKING 14 (2004), available at http://www.uri.edu/artsci/wms/hughes/demand_sex_trafficking.pdf [hereinafter BEST PRACTICES] (arguing that, contrary to popular belief, men who purchase sex do not do so because they are lonely and sexually dissatisfied, and citing a study showing that eighty percent of men who had been caught engaging in commercial sexual exploitation described their sexual relationships with their wives or steady partners as satisfying).

55. See DONNA M. HUGHES, THE DEMAND FOR VICTIMS OF SEX TRAFFICKING 7 (2005), available at http://www.uri.edu/artsci/wms/hughes/demand_for_victims.pdf (noting that men who purchase sex are often looking for control, an opportunity for sex without relationship ties, or sex acts their significant others will not perform).

56. See BEST PRACTICES, *supra* note 54, at 1, 9 (explaining that even though consumers come from every country and background, wealthy countries often create demand for trafficking victims who are driven into the industry by a lack of work opportunity in their home communities).

57. See Melissa Holman, Comment, *The Modern-Day Slave Trade: How the United States Should Alter the Victims of Trafficking and Violence Protection Act in Order to Combat International Sex Trafficking More Effectively*, 44 TEX. INT'L L.J. 99, 102-03 (2008) (noting the global nature of the problem because most trafficking victims are transported to wealthy nations to ensure high profits for the victims' services).

58. See *id.* at 103 (asserting that nations in South Asia, Latin America, and Central and Eastern Europe represent the largest source countries, while Western European and North American countries make up the largest destination countries).

destination countries include the United States, Canada, and Germany.⁵⁹ Some states, such as those in the Caribbean, serve as both source and destination countries.⁶⁰ Oftentimes, these countries are impoverished with ideal conditions for recruitment of victims and a good environment for generating business through established tourism industries.⁶¹ Given the global nature of sex trafficking, international regulation is required to effectively combat this problem.

D. INTERNATIONAL REGULATION EXISTS TO PREVENT SEX TRAFFICKING AND PROTECT VICTIMS

The primary international document governing the regulation of sex trafficking is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.⁶² The Trafficking Protocol supplements the United Nations Convention against Transnational Organized Crime (UNTOC), which presents a unified approach to combating organized crime internationally.⁶³ Created in an effort to establish standardized

59. *See id.* at 103 (stating that traffickers usually recruit from countries where they will have easy access to victims in order to fuel the high demand created by large, wealthy countries).

60. *See* CLARE M. RIBANDO, CONG. RESEARCH SERV., RL30545, TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 9 (2007) (stating that Latin American and Caribbean countries, while primarily source countries, are increasingly becoming destination countries too because of increases in the region's sex tourism as Asian states develop tougher restrictions on the industry).

61. *See* Janet Shan, *Sex Trafficking Alive in Jamaica*, ASSOCIATED CONTENT (Oct. 1, 2007), http://www.associatedcontent.com/article/395660/sex_trafficking_alive_in_jamaica.html?cat=17 (explaining that Jamaica's economic dependence on its tourism industry and the high poverty rate create a situation where residents will do "whatever is necessary to survive," including prostitution and trafficking).

62. *See* Trafficking Protocol, *supra* note 18, pmbl. (stating that an international approach is necessary to effectively combat sex trafficking). The Convention on the Rights of the Child is another international document containing a provision that can be applied to trafficking, but unlike the Trafficking Protocol, the main focus of the treaty is not to criminalize and prevent trafficking. *See* Convention on the Rights of the Child art. 34, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC] (mandating that nations create legislation to protect children from all forms of sexual exploitation and sexual abuse).

63. *See United Nations Convention Against Transnational Organized Crime and Its Protocols*, UNODC, <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (last visited Sept. 5, 2011) (describing the Convention as the first major step towards combating organized crime, as it recognizes an international need to

domestic criminal offenses and enable international cooperation in the prevention of human trafficking, the Trafficking Protocol was the first international document to define human trafficking.⁶⁴ The document intends for all parties to criminalize sexual exploitation, to protect and provide support for trafficking victims, and to cooperate internationally in order to meet the Trafficking Protocol's objectives. To accomplish these objectives, it sets out specific provisions for parties to follow and implement.⁶⁵

The Trafficking Protocol mandates that all nations create legislation to criminalize human trafficking.⁶⁶ According to the Trafficking Protocol, the consent of a victim does not provide a defense for the crime of trafficking.⁶⁷ Additionally, it suggests that nations provide assistance to trafficking victims, including assistance in the form of housing, counseling, medical assistance, employment, and educational opportunities.⁶⁸ Lastly, the Trafficking Protocol mandates that nations take preventative measures to combat human trafficking, such as removing factors that make women and children

fight the problem); *see also*

UNODC, LEGISLATIVE GUIDES FOR THE IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOL THERETO 247 (2004), *available at* http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20

[guides_Full%20version.pdf](http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf) [hereinafter LEGISLATIVE GUIDES] (stating that there are some overlapping provisions between the Convention against Transnational Organized Crime and the Trafficking Protocol and that the additional provisions create complementary obligations for the nations party to the Trafficking Protocol). *See generally* United Nations Convention Against Transnational Organized Crime art. 1, Nov. 15, 2000, S. TREATY DOC. 108-16, 2225 U.N.T.S. 209 (entered into force Sept. 29, 2003) [hereinafter UNTOC] (articulating that the purpose of the treaty is to encourage cooperation and communication between nations and combat organized crime more effectively).

64. *See* Trafficking Protocol, *supra* note 18, art. 3(a) (defining human trafficking as the act of recruiting, transporting, transferring, harboring, or receiving a person through the use of force or other coercive means for the purpose of exploitation).

65. *See id.* arts. 2, 5-7 (requiring parties to pay particular attention to protecting women and children, respect human rights during the assistance and protection of a victim, and promote cooperation between countries).

66. *See id.* art. 5 (specifying that in addition to actual transportation, states must also criminalize "organizing or directing other persons to [traffick in persons]").

67. *See id.* art. 3(a)-(b).

68. *See id.* art. 6(3).

vulnerable to trafficking and reducing the demand that leads to trafficking.⁶⁹

The Trafficking Protocol is enforced through the United Nations Office on Drugs and Crime (“UNODC”).⁷⁰ The UNODC aids nations in implementing the provisions of the Trafficking Protocol by providing assistance in drafting legislation, creating anti-trafficking strategies, and developing resources to enforce laws and reduce trafficking.⁷¹ The UNODC also provides funding and assistance to non-governmental organizations (“NGOs”) to raise awareness about the dangers of trafficking in specific communities.⁷² Recognizing the challenges in combating human trafficking, the UNODC created a “Toolkit to Combat Trafficking in Persons” to educate countries on the causes of trafficking and offer guidance and resources for creating effective policies.⁷³ Through the use of these strategies, the UNODC aims to provide nations with the support and assistance they need to implement effective legislation and follow the provisions set out in the Trafficking Protocol.⁷⁴

69. *See id.* art. 9(4)-(5) (suggesting that states adopt or strengthen educational, social, or cultural measures to reduce the demand for and increase support available to women and children).

70. *See Human Trafficking*, UNODC, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited Sept. 5, 2011) (explaining that as the enforcement body of the Convention Against Transnational Organized Crime, the UNODC also assists nations in implementing the Trafficking Protocol).

71. *See generally id.* (stating that nations receive individual attention, including strengthening local expertise, noting that very few criminals are convicted and victims do not receive the assistance they need).

72. *See Prevention*, UNODC, <http://www.unodc.org/unodc/en/human-trafficking/prevention.html> (last visited Sept. 5, 2011) (stressing the importance of community-led awareness in order to detect and prevent trafficking and acknowledging NGOs working within specific communities to ensure community awareness).

73. *See* UNODC, TOOLKIT TO COMBAT TRAFFICKING IN PERSONS (2008), available at http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf [hereinafter TOOLKIT] (providing information to prevent trafficking, protect victims, and promote international cooperation in one accessible document to all members of a society).

74. *See Human Trafficking*, *supra* note 70 (describing the UNODC’s goal to provide support and assistance in the form of specialized training within nations to ensure the prosecution of traffickers and to encourage international cooperation in fighting human trafficking).

E. THE INTERNET CONTRIBUTES TO THE GROWTH OF SEX
TRAFFICKING

Despite the existence of the Trafficking Protocol, sex trafficking thrives because of the ease with which traffickers conduct business over the Internet.⁷⁵ The Internet allows numerous enterprises, both legal and illegal, to conduct business more efficiently.⁷⁶ It is also accessible to anyone, regardless of whether an individual owns a personal computer, and its unregulated nature allows for sex traffickers to locate and sell victims with minimal risk of prosecution.⁷⁷ The Internet allows sex traffickers and consumers to hide behind their computers and remain anonymous.⁷⁸ Additionally, they are able to share information regarding trafficking operations with relative ease.⁷⁹ Lastly, the Internet provides a forum to advertise sexual services and women and children for sale.⁸⁰

1. *Anonymity*

Anonymity allows the sex industry, and therefore sex trafficking, to flourish. Before the availability of the Internet, organized crimes were committed through underground networks where personal

75. See Amanda Kloer, *The Internet's Role in Human Trafficking*, CHANGE.ORG (Sept. 20, 2009), <http://news.change.org/stories/the-internets-role-in-human-trafficking> (proclaiming social networking sites, the ability to share photos, the availability of pornography sites, e-commerce, and encryption technology as reasons why the sex trafficking industry is growing over the Internet).

76. See DONNA HUGHES, *USE OF THE INTERNET FOR GLOBAL SEXUAL EXPLOITATION OF WOMEN AND CHILDREN 5*, available at <http://www.uri.edu/artsci/wms/hughes/internet.pdf> (last visited Sept. 5, 2011) [hereinafter *USE OF THE INTERNET*] (stating that the Internet is extremely beneficial to businesses in the sex industry, such as mail order bride agents, because it allows them to reach wealthy customers quickly, update web pages almost instantaneously, and advertise for relatively inexpensive prices).

77. See Doyle, *supra* note 11, at 119 (noting that Internet access is available to virtually everyone in the United States through personal home computers, public school systems, and libraries).

78. See Kunze, *supra* note 19, at 242 (explaining that the lack of Internet regulation allows criminals to conceal their identities and avoid detection).

79. See Madeleine Mercedes Plasencia, *Internet Sexual Predators: Protecting Children in the Global Community*, 4 J. GENDER RACE & JUST. 15, 17 (2000) (discussing the ability for sex predators to bond over information shared on the Internet in chat rooms where they receive "virtual validation" for their actions).

80. See Kunze, *supra* note 19, at 281 (stating that even victims who are recruited in-person are in danger of being advertised over the Internet to attract customers from abroad).

connections were essential to consumers looking to obtain illegal products.⁸¹ Similarly, before the Internet, sex traffickers conducted business in person through connections to underground syndicates.⁸² The Internet changed this method of conducting business and opened the formerly underground nature of sex trafficking to the public.⁸³ The public can now anonymously access information regarding illegal sex with the click of a mouse.

The Internet provides a forum for individuals to explore new ideas and content that they may not normally explore.⁸⁴ Those who may not have researched or shown an interest in child pornography, sex tourism, or other industries fed by trafficking for fear of revealing their identity are now able to access the information from the safety of their home.⁸⁵

2. *Ease of Communication*

In addition to anonymity, the Internet provides a number of new methods for communication between consumers, traffickers, and victims.⁸⁶ Both traffickers and consumers use chatrooms, websites,

81. See Jennifer Stewart, *If This is the Global Community, We Must Be on the Bad Side of Town: International Policing of Child Pornography on the Internet*, 20 HOUS. J. INT'L L. 205, 213 (1997).

82. See Doyle, *supra* note 11, at 122 (stating that consumers used to have to seek out an actual connection to the underground sex trafficking industry in order to purchase child pornography, sex tours, or a child prostitute, but that the Internet eliminated this impediment).

83. See Michelle R. Adelman, Note, *International Sex Trafficking: Dismantling the Demand*, 13 S. CAL. REV. L. & WOMEN'S STUD. 387, 406 (2004) (discussing the adult entertainment industry on the Internet and how the promotion and advertisement of women and children on the Internet generates interest in the sex trafficking industry).

84. See Doyle, *supra* note 11, at 121 (suggesting that the anonymity provided by the Internet encourages users to explore digital content that one would not explore in person, such as pornography).

85. See RICHARD WORTLEY & STEPHEN SMALLBONE, U.S. DEP'T OF JUST., CHILD PORNOGRAPHY ON THE INTERNET 14-15 (2006), available at <http://www.cops.usdoj.gov/files/ric/Publications/e04062000.pdf> (stating that people behave differently when they have access to a computer in the safety of their home; some develop an interest in child pornography only because it is easily accessible on the Internet).

86. See ATHANASSIA P. SYKIOTOU, COUNCIL OF EUR., TRAFFICKING IN HUMAN BEINGS: INTERNET RECRUITMENT 18 (2007), available at http://book.coe.int/sysmodules/RBS_fichier/admin/download.php?fileid=3094 (noting that email, instant messaging, chatrooms, websites, and message boards offer criminals a new,

and email to recruit and purchase victims.⁸⁷ For example, email allowed a forty-one-year-old man to maintain contact with a minor from Vietnam and convince her to live with him in the United States, where he intended to keep her as his sex slave.⁸⁸ The man even hired an accomplice to help him transport the minor and a tutor to help her learn English.⁸⁹ The Internet provided him with an easy and convenient method of maintaining communication with a victim.

Consumers and traffickers are also able to share stories and locations of victims with each other, which validates their behavior and generates business for various sex industries fed by trafficking.⁹⁰ The websites used for communication between traffickers and consumers can also be password protected, providing even more security and protection for traffickers.⁹¹ One of the most infamous websites that both promotes and discusses child sex is the site for the North American Man/Boy Love Association, or NAMBLA.⁹² NAMBLA is targeted as an organization known to engage in sex tourism and, as a result, promote sex trafficking.⁹³ Its website allows

quick, and secure means of communication).

87. *See id.* at 21 (explaining that the Internet also allows for targeting of broad categories of victims and consumers through posting of advertisements).

88. *See* Bill Wallace, *San Jose Man Charged in Sex Prisoner Scheme/Plan to Bring Viet Girl to U.S.*, SFGATE.COM (Sept. 24, 1999), http://articles.sfgate.com/1999-09-24/news/17698600_1_affidavit-informant-scheme (claiming that the man made a total of eleven trips to Asia to meet with and have sex with the underage girl and that he obtained falsified documents for her to come to the United States).

89. *Id.*

90. *See* Plasencia, *supra* note 79, at 17 (explaining that fantasy and support of described sexual encounters encourages action in the “real world”).

91. *See* Donna M. Hughes, *The Use of New Communications and Information Technologies for Sexual Exploitation of Women and Children*, 13 HASTINGS WOMEN'S L.J. 127, 135, 138 (2002) [hereinafter *Use of New Communications*] (explaining that sex traffickers and consumers often use passwords to secure message boards and chatrooms to ensure their conversations are protected and to allow them to search for victims without being traced).

92. *See* Onell R. Soto, *Little-Known Group Promotes ‘Benevolent’ Sex*, SAN DIEGO UNION-TRIBUNE (Feb. 17, 2005, 10:08 PM), <http://legacy.signonsandiego.com/news/metro/20050217-2208-manboy-daily.html> (explaining how NAMBLA's website provides verification of pedophiles' behavior, noting that many pedophiles do not view their conduct as morally wrong). To visit NAMBLA's website, see <http://www.nambla.org/welcome.htm>.

93. *See id.* (stating that many organization members admit to traveling overseas for sex with children, supporting both sex tourism and sex trafficking).

pedophiles to encourage each other and provide information on sex with children, thereby promoting the illegal practice of sex with minors.⁹⁴ Without the Internet, it would be more difficult for sexual predators to communicate.

3. Advertisement

The widespread availability of the Internet allows for sex traffickers to use advertisements to recruit both victims and consumers. Sex traffickers usually recruit victims through some form of fraud or false pretenses, and the Internet provides a new forum to employ these recruitment methods.⁹⁵ Internet advertisements for au pairs, nannies, and models demonstrate how easily an appealing advertisement can attract young girls, encourage them to move overseas for employment, and entrap them in the sex industry.⁹⁶ Additionally, the Internet allows for traffickers to advertise women and children for sale, often under the guise of legitimate businesses.⁹⁷ For example, the mail-order bride industry is a cover commonly used for sex trafficking operations, and traffickers frequently advertise women and young girls for sale through websites claiming to sell foreign brides.⁹⁸ Similarly, websites advertising legal sex tours often use carefully worded ads and images to let customers know they offer children for sex.⁹⁹ These concerns have not gone unnoticed in

94. *See id.* (describing the typical NAMBLA member as a child molester who joins the group to meet and share information with other pedophiles).

95. *See* SYKIOTOU, *supra* note 86, at 13-14 (stating that traffickers utilize advertising websites, search engines, and pop-ups to recruit victims); *see also* discussion *supra* Part II.B.i (discussing the methods used by sex traffickers to recruit victims, including false job offers, affection, and abduction).

96. *E.g.*, Barry Leibowitz, *Joseph Yannai, New York Writer, Pleads Not Guilty to Federal Sex Trafficking Charges*, CBS NEWS (Aug. 9, 2010, 8:11 AM), http://www.cbsnews.com/8301-504083_162-20012959-504083.html (exemplifying a false advertisement for an au pair that led unsuspecting women from Brazil, Hungary, and France into forced sexual labor).

97. *See* Kunze, *supra* note 19, at 281 (discussing the lack of a legal instrument to prevent Internet advertising of sexual services of trafficking victims).

98. *See* Tiefenbrun, *supra* note 31, at 119 (comparing the mail-order bride industry and sex trafficking to massage parlors and prostitution).

99. *See* Ann Gerhart, *Sex-Trafficking Opponents Fight Craigslist's "Adult Services" Ads*, WASH. POST, Aug. 7, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/06/AR2010080606376.html> (noting that Craigslist advertisers include code words such as "young," "fresh" and "new to town" to attract pedophiles, and discussing the use of key words such as "girls," "sex" and

some nations, and a few countries have taken action to regulate content online, specifically regarding the sexual abuse of children.

F. NATIONAL APPROACHES TO INTERNET REGULATION

Australia and the United Kingdom recognize the Internet as a growing problem, both nationally and internationally, in the fight against sexual abuse.¹⁰⁰ The methods used in these two countries focus on combating sex trafficking through the regulation of child pornography.¹⁰¹ Cooperation among the public, government, and private sector allows these methods to be successful in both countries.¹⁰²

Australia currently utilizes a “co-regulatory scheme” at the federal level that enlists the cooperation of the government, the Internet industry, and the public to control Internet content.¹⁰³ Established under the *Broadcasting Services Act*, the scheme operates on complaints of prohibited content.¹⁰⁴ Once a complaint is received, the

“arrange” to distinguish seemingly legitimate websites from ones offering sex with children).

100. See *About the Internet Watch Foundation (IWF)*, INTERNET WATCH FOUND., <http://www.iwf.org.uk/about-iwf> (last visited July 9, 2011) [hereinafter *About the IWF*](explaining that the IWF will attempt to remove or block all images of child pornography hosted on a national or international server); see also *Online Regulation*, AUSTL. COMM. & MEDIA AUTHORITY, http://www.acma.gov.au/WEB/STANDARD.PC/pc=PC_90169#os (last visited Sept. 5, 2011) (describing the goal of the regulatory scheme as addressing concerns regarding illegal content online, in particular child pornography).

101. See Silvia Scarpa, *Child Trafficking: International Instruments to Protect the Most Vulnerable Victims*, 44 FAM. CT. REV. 429, 431 (2006) (describing child pornography as linked to sexual abuse and trafficking).

102. See George Ivezaj, *Child Pornography on the Internet: An Examination of the International Community's Proposed Solutions for a Global Problem*, 8 MICH. ST. J. INT'L L. 819, 839 (1999) (stating that the United Kingdom has a good working relationship between the government and the Internet industry that allows the public and the industry to cooperate in voluntarily carrying out regulations).

103. See generally *Online Regulation*, *supra* note 100 (explaining that the Australian government removes all “potential[ly] prohibited content” hosted in Australia until the Classification Board issues an approval rating).

104. See *Broadcasting Services Act 1992* (Cth) § 147 (Austl.) (listing the types of complaints the public can report as violations of the Broadcasting Services Act, a civil penalty provision, or breach of a license); see also Derek E. Bambauer, *Filtering in Oz: Australia's Foray into Internet Censorship*, 31 U. PA. J. INT'L L. 493, 502-04 (2009) (stating that the ACMA can also independently initiate investigations if it is suspected that content will be classified as “prohibited content”); *Online Content Complaints*, AUSTL. COMM. & MEDIA AUTHORITY,

Australian Communications and Media Authority (“ACMA”) investigates and, if it determines that the content is prohibited and hosted in Australia, directs an ISP to take down the material.¹⁰⁵ If prohibited content is hosted overseas, it is referred to vendors who manage filtering software and the content is added to a list of blocked materials.¹⁰⁶ If the content is deemed to be illegal, the information is also turned over to the Australian Federal Police or to the host country involved.¹⁰⁷

The United Kingdom currently relies on a non-governmental organization working with ISPs to block certain criminal content online, particularly images of child sexual abuse.¹⁰⁸ The Internet Watch Foundation (“IWF”) was established in 1996 and works to reduce prohibited content online with the help of law enforcement, the government, ISPs, and international partners.¹⁰⁹ The IWF relies on a hotline for the public to report criminal content on the Internet.¹¹⁰ Once a report of illegal content online is received, it notifies the host, and the content is removed.¹¹¹ If the content is hosted in another country, the IWF notifies the partner Hotline

http://www.acma.gov.au/WEB/STANDARD/pc=PC_90103 (last visited Sept. 5, 2011) (noting that Internet users may anonymously report content containing child abuse to the ACMA).

105. See Bambauer, *supra* note 104, at 503-05 (explaining that the ACMA directs the content to the Classification Board, which assigns it a rating — “X18 (non-violent, sexually explicit activity between consenting adults), R18 (likely to disturb or harm minors), RC (refused classification), and, in some cases, MA15+” — in order to determine whether it is prohibited content).

106. See *id.* at 504-05 (regretting that the Classification Board’s decisions are kept secret from the public, “unlike decisions on offline content.”).

107. See *Online Regulation*, *supra* note 100 (explaining that if information hosted on a foreign ISP is deemed to be illegal, the information is passed on to that country’s hotline or law enforcement officers).

108. See *About the IWF*, *supra* note 100 (listing “criminally obscene adult content” hosted in the United Kingdom as additional content regulated by the IWF).

109. See *Hotline*, INTERNET WATCH FOUND., <http://www.iwf.org.uk/hotline> (last visited Sept. 5, 2011) (explaining that the IWF will issue a “take down” notice for criminal content hosted in the United Kingdom).

110. See *generally id.* (stating that complaints can be made anonymously).

111. See IWF Facilitation of the *Blocking Initiative*, THE INTERNET WATCH FOUNDATION, <http://www.iwf.org.uk/services/blocking> (last visited Sept. 27, 2011) (positing that removal of the source is an efficient means of ensuring the content is not available anywhere within the United Kingdom).

within the country.¹¹²

As the regulatory schemes of Australia and the United Kingdom illustrate, the Internet is not regulated or restricted by borders and can reach any person in any nation at any time.¹¹³ Domestic laws, on the other hand, are restricted by national borders and cannot be effective in regulating the Internet without international assistance and consensus.¹¹⁴ This is apparent in both regulatory methods. Both Australia and the United Kingdom attempt to notify foreign countries of illegal content when the content is reported, but they cannot force another country to take action.¹¹⁵ The Trafficking Protocol provides the necessary foundation for implementing an international standard for Internet regulation.

II. ANALYSIS

A. THE UNTOC, AND THEREFORE THE TRAFFICKING PROTOCOL, IS INTENDED TO REGULATE THE INTERNET.

From its inception, the Trafficking Protocol was drafted to incorporate the creation of new technologies, such as the Internet.¹¹⁶ The Vienna Convention on the Law of Treaties (“Vienna Convention”) was drafted in 1969 and dictates the general rules for international treaty interpretation.¹¹⁷ According to Article 31, a treaty

112. *See id.* (noting that while the content is being investigated in its host country, the UK Internet industry voluntarily blocks access to the site using a list provided by IWF).

113. *See* Plasencia, *supra* note 79, at 15 (stating that cyberspace does not have a specific “geographical location”).

114. *See* Kunze, *supra* note 19, at 252-53 (observing that domestic laws alone are insufficient to regulate both an international forum and criminals that are not necessarily present in the location where the act occurs).

115. *See Blocking Initiative*, *supra* note 111 (declaring that if necessary, the IWF reports child sexual abuse images to partner hotlines in foreign countries and cooperates with their law enforcement officials); *see also Online Regulation*, *supra* note 100 (stating that if child pornography is hosted in a foreign country, the information is passed on to the proper officials in that state).

116. *See* U.N. Secretariat, Criminalization within the Scope of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, Note by the Secretariat, ¶ 20, U.N. Doc. CTOC/COP/2008/4 (Sept. 9, 2008) [hereinafter Note by the Secretariat] (requesting that nations take domestic action to enact legislation to criminalize crimes committed over the Internet so that they are covered under the UNTOC).

117. *See* Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155

must be interpreted according to the ordinary meaning given to the treaty's terms in light of its context and the treaty's intent.¹¹⁸ Special meanings are given to terms only "if it is established that the parties so intended."¹¹⁹ Article 32 states that supplementary materials, such as the preparatory work of a treaty, may be used when the interpretation according to Article 31 leaves the meaning of the treaty ambiguous or unclear.¹²⁰ An interpretation consistent with the Vienna Convention — i.e., one based on the "object and purpose" of both the UNTOC and the Trafficking Protocol — provides that the documents allow for Internet regulation.

The UNTOC, which governs organized crime in general and is complementary to and should be interpreted in light of the Trafficking Protocol, specifically addresses technology and criminal activity.¹²¹ According to Article 27(3) of the UNTOC, "States Parties shall endeavor to cooperate within their means to respond to transnational organized crime committed through the use of modern technology."¹²² Additionally, Article 29(1)(h) requires each nation to "initiate, develop, or improve specific training programmes for its law enforcement . . . and other personnel [tasked with enforcing the Convention]," including training programs related to the "[m]ethods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of *modern technology* . . ."¹²³ While these provisions do not specify the Internet as a type of technology requiring regulation, the ordinary understanding of "modern technology" requires the Internet be read into the document.¹²⁴ This interpretation is supported by a conference

U.N.T.S. 331 (stating that a treaty must also be "interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.").

118. *See id.* (requiring the preamble, annexes, and any instruments or agreements accepted by the parties to be considered a part of a treaty's context).

119. *Id.* art. 31(4).

120. *See id.* art. 32 (stating that supplementary means of interpretation may also be used to confirm a meaning derived from the application of Article 31).

121. *See* LEGISLATIVE GUIDES, *supra* note 63, at 247 (acknowledging that, in addition to the provisions of the UNTOC that overlap the Trafficking Protocol's provisions, the UNTOC also contains further obligations for signatories of the Trafficking Protocol involving similar policy fields).

122. UNTOC, *supra* note 63, art. 27(3).

123. *Id.* art. 29(1)(h)(emphasis added).

124. *See* Vienna Convention on the Law of Treaties, *supra* note 117, art. 31

discussing transnational crime and the UNODC, both of which recognize the Internet as a “modern technology” contained within the UNTOC’s provisions.¹²⁵

The United Nations Conference on Transnational Organized Crime (“Conference”) and the UNODC demonstrate that the Internet is a “modern technology” and must be read into the UNTOC. The Conference, which was created to “promote and review the implementation” of the UNTOC, recognizes that organized crime, including sexual exploitation, operates through the Internet and demands action be taken within each nation.¹²⁶ According to the Conference, the UNODC is developing training materials to address this concern and to combat sexual exploitation over the Internet.¹²⁷ In addition, the UNODC specifically states that the UNTOC can be used to promote international cooperation to regulate criminal activity over the Internet.¹²⁸ Both the Conference and the UNODC acknowledge the Internet as a forum for criminal activity falling under the provisions of the UNTOC. Articles 27(3) and 29 must therefore include the Internet as a “modern technology” that necessitates a response from nations party to both the UNTOC and the Trafficking Protocol.

(mandating that a treaty provision be interpreted according to its ordinary meaning). *See generally* Doug Gross, *Internet About to Hit 2 Billion Users*, CNN.COM (Oct. 19, 2010, 3:24 PM), <http://www.cnn.com/2010/TECH/web/10/19/internet.200billion/index.html?iref=allsearch> (arguing that the Internet is a recognized modern technology by its continued growth as it becomes available in developing countries and by continued advances in faster Internet technology).

125. *See* Note by the Secretariat, *supra* note 116, ¶ 20 (naming sexual exploitation over the Internet as a common form of cybercrime covered by the UNTOC and Trafficking Protocol so long as domestic regulation criminalizes the offense).

126. *See id.* ¶ 21 (discussing the need for the UNODC to assist criminal justice systems in “addressing computer-related crime” and its progress in creating training manuals for the “investigation and prosecution of computer-related crime . . .”).

127. *See id.* (noting that nations must make available such training materials to be in compliance with Article 29).

128. *See Expert Group Meeting on International Cooperation Against Transnational Organized Crime with Specific Regard to Cybercrime*, UNODC, <http://www.unodc.org/unodc/en/treaties/expert-working-group-on-cybercrime.html> (last visited July 9, 2011) [hereinafter *Expert Group Meeting*] (noting that the UNTOC specifically mentions technology, including computers, and must necessarily govern crimes committed over the Internet).

Further supporting the inclusion of the Internet within the UNTOC's provisions are the *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocol Thereto* ("Legislative Guides").¹²⁹ The *Legislative Guides* state that law enforcement must remain current with technological advances because new technology will undoubtedly be utilized to commit crimes.¹³⁰ In creating the UNTOC and the Trafficking Protocol, the drafters clearly recognized the need for law enforcement to keep pace with technology in order to be effective in combating criminal activity. Traffickers have adapted and altered their activities in order to take advantage of the Internet and increase their business.¹³¹ In order to be effective in combating criminal activity, law enforcement must be prepared to monitor and regulate the Internet in accordance with the UNTOC.

Recognition by the drafters of the UNTOC, the Conference, and the UNODC of the Internet as a forum requiring regulation supports the inclusion of the Internet as a "modern technology" within the provisions of the UNTOC. Because the UNTOC is intended to supplement the Trafficking Protocol, the Internet must be included within the Trafficking Protocol as well.¹³²

B. THE LANGUAGE OF THE TRAFFICKING PROTOCOL REQUIRES REGULATION OF THE INTERNET

According to Article 9 of the Trafficking Protocol, nations are obligated to establish policies, enact legislation, and take other

129. See LEGISLATIVE GUIDES, *supra* note 63, at xv (stating the purpose of the *Legislative Guides* is "to assist States seeking to ratify or implement" the UNTOC and its Protocols).

130. See *id.* at xvii (asserting that advances in technology allow criminals to profit, move, and hide from the authorities if law enforcement is unable to keep pace with such developments).

131. See Corrigan, *supra* note 48, at 160-61 (explaining how the Internet allows traffickers to advance their business because it does not have physical borders); see also Stewart, *supra* note 81, at 213 (discussing how the Internet is now used to obtain and distribute child pornography whereas child pornography was previously distributed through the mail).

132. See Trafficking Protocol, *supra* note 18, pmb., art. 1 (noting that the provisions of the Protocols to the UNTOC must be interpreted together with the UNTOC in light of their respective purposes).

measures to prevent trafficking.¹³³ Because the Internet contributes to the rise of sex trafficking and the vulnerability of women and children, the Internet must be regulated in accordance with Article 9 of the Trafficking Protocol.¹³⁴ Additionally, Article 10 of the Trafficking Protocol provides guidelines for communication between nations in order to implement successful Internet regulation.¹³⁵

1. Article 9 Requires Regulation of the Internet to Prevent and Discourage Sex Trafficking

Failure to create legislative policies to regulate the Internet is a violation of Article 9(1), which mandates that nations “establish policies, programs, and other measures” to prevent human trafficking and revictimization.¹³⁶ The *International Framework for Action to Implement the Trafficking in Persons Protocol* (“*Framework for Action*”) is a “technical assistance tool” published by the UNODC to help nations implement the Trafficking Protocol and provide suggestions for applying specific provisions.¹³⁷ According to the recommendations for Article 9(1) provided in the *Framework for Action*, nations should “[r]eview the gaps between existing legislation” and the “obligations and national needs” of the UNTOC and the Trafficking Protocol.¹³⁸

The Trafficking Protocol obligates nations to take measures to prevent trafficking.¹³⁹ The Internet is undoubtedly a forum used to

133. See *id.* art. 99 (listing examples of measures to prevent trafficking including research, media campaigns, cooperation with NGOs, and the elimination of poverty).

134. See discussion *supra* Part.II.E (discussing the impact of the Internet on the international growth of sex trafficking given the ability for sex traffickers to act anonymously, communicate easily, and advertise illegal services online).

135. See *id.* art. 10 (requiring nations to cooperate with each other and share information to combat trafficking on an international scale).

136. *Id.* art. 9(1).

137. See generally UNODC, INTERNATIONAL FRAMEWORK FOR ACTION TO IMPLEMENT THE TRAFFICKING IN PERSONS PROTOCOL (2009), available at http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf [hereinafter FRAMEWORK FOR ACTION] (outlining the challenges with, the general measures to assist in, and specific actions to support in implementing the Trafficking Protocol).

138. See *id.* at 26 (requiring nations to amend, complete, or create legal measures to assist trafficking victims if legal measures do not exist or are insufficient according to the Trafficking Protocol).

139. See Trafficking Protocol, *supra* note 18, art.9(1) (using the word “shall” to

recruit and traffic victims, as evidenced by its growing popularity in the trafficking industry.¹⁴⁰

If a nation does not have legislation regulating the use of the Internet to facilitate trafficking, there exists a “gap” between the obligations of the Trafficking Protocol and “existing regulation.”¹⁴¹ In order to resolve such a gap, Article 9(1) mandates that a nation create legislative policies to regulate the Internet and protect women and children from trafficking.

According to Article 9(4), nations are also required to take measures, including those involving international cooperation, to remove factors that make women and children vulnerable to trafficking.¹⁴² The Internet is both a factor that makes women and children vulnerable to trafficking and a factor that requires international cooperation for effective regulation.¹⁴³ In order to fully comply with Article 9(4), nations must regulate the Internet on an international scale.

Because the Internet is so intertwined with everyday life in modern society across the globe, women and children are more vulnerable to exploitation through websites, email, and other means of communication and advertisement through the Internet.¹⁴⁴ Almost

ensure nations establish policies in accordance with the Trafficking Protocol).

140. *E.g.*, Sowmia Nair, *Child Sex Tourism*, U.S. DEP’T OF JUST., <http://www.justice.gov/criminal/ceos/sextour.html> (last visited Sept. 5, 2011) (discussing the growing use of the Internet in the sex tourism industry, which increases the demand for child prostitutes and, as a result, trafficked children); *see* Tiefenbrun, *supra* note 31, at 119 (stating that “[t]he Internet is the latest hot spot for promoting global trafficking . . .”).

141. *See* FRAMEWORK FOR ACTION, *supra* note 137, at 26 (requiring the creation of legislation to ensure the protection of trafficking victims).

142. *See* Trafficking Protocol, *supra* note 18, art.9(4) (listing “poverty, underdevelopment and lack of equal opportunity” as some of the factors that make women and children vulnerable to trafficking).

143. *See* Paul Przybylski, *A Common Tool for Individual Solutions: Why Countries Should Establish an International Organization to Regulate Internet Content*, 9 VAND. J. ENT. & TECH. L. 927, 928 (2007) (explaining that content is accessed through an ISP and is available throughout the world, even if the ISP is hosted in another country); UNICEF *Launches Study on Child Pornography in the Philippines*, HUMANTRAFFICKING.ORG (Apr. 2005), <http://www.humantrafficking.org/updates/130> [hereinafter *UNICEF Launches Study*] (discussing how a lack of regulation combined with children’s attraction to the Internet leave children vulnerable to predators).

144. *See generally* Jonathan Mandell, *Are Gadgets, and the Internet, Actually*

everyone has access to the Internet and many people use it on a daily basis.¹⁴⁵ The widespread availability of the Internet gives traffickers instant access to women and children with the click of a mouse.¹⁴⁶ Sex traffickers target specific age groups and genders by searching for victims on popular websites, like dating websites, or through chatrooms.¹⁴⁷ The Internet's highly unregulated nature creates a dangerous environment for the innocent Internet user. The Internet provides a convenient and successful forum for traffickers to recruit victims and, as a result, facilitates an environment where women and children become vulnerable to sex trafficking.¹⁴⁸

International sex trafficking is a global crime and, as a result, Internet regulation must be handled at an international level. National regulation cannot reach or be applied to Internet content hosted in other countries.¹⁴⁹ For example, content hosted on an ISP in Germany can still be accessed in the United States, and global cooperation is necessary in order to effectively regulate sex trafficking on the Internet.¹⁵⁰ Failing to take international action is a failure to effectively remove a factor that makes women and children vulnerable to trafficking and, therefore, a violation of Article 9(4).¹⁵¹

Article 9(5) further supports regulation of the Internet because it requires nations to adopt legislation or other pertinent measures to

Addictive, CNN.COM (July 1, 2007), available at http://articles.cnn.com/2007-07-01/tech/la.tech.addictions_1_internet-addiction-blackberry-blackout-crisis-center?_s=PM:TECH (questioning whether the extreme dependence of society on the Internet is an actual addiction).

145. *See id.* (asserting that one out of every eight Internet users in the United States displays signs of Internet addiction, such as neglect of relationships with other people due to excessive Internet use).

146. *See generally* SYKIOTOU, *supra* note 86, at 21 (stating that the Internet is "user-friendly, fast, and anonymous" and is beneficial for traffickers because they do not have to leave their home to recruit victims).

147. *See id.* (asserting that chatrooms and specialized websites target a more direct audience or individual as compared to mass emails or pop-up advertisements, which target broader audiences).

148. *See id.* (stating that traffickers use the Internet the way other legitimate businesses do to attract clients and advertise their business).

149. *See* Przybylski, *supra* note 143, at 929 (explaining that national laws are only applicable to ISPs located within that nation).

150. *See id.* (explaining that national regulation will not be sufficient for restricting Internet content because the prohibited content will still be accessible if it is hosted on another country's ISP).

151. Trafficking Protocol, *supra* note 18, art. 9(4).

“discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”¹⁵² According to the UNODC, the minimum standard for complying with Article 9(5) requires measures that reduce the demand for trafficked victims in “countries of origin, transit, and destination” and measures that reduce the vulnerability of potential victims in source countries.¹⁵³ While the language in both Article 9(5) and the *Framework for Action* does not require the implementation of measures to eliminate the demand for trafficking victims in its entirety, it is clear that countries must take at least some action in order to comply with the Trafficking Protocol.¹⁵⁴

The availability of information on the Internet regarding women and children for sale increases the demand for sex industries fed by human trafficking.¹⁵⁵ A quick Internet search provides information and access to pornography, prostitution, sex tourism, and child sex crimes.¹⁵⁶ The widespread availability of this information over the Internet normalizes sexual exploitation.¹⁵⁷ As content promoting the exploitation of women and children is increasingly viewed as normal and acceptable, others are encouraged to participate, and the demand for trafficked individuals grows.¹⁵⁸ Regulation of the Internet will

152. *See id.* art. 9(5) (using the word “shall” to indicate a mandatory action).

153. FRAMEWORK FOR ACTION, *supra* note 137, at 41.

154. *See id.* (providing guidelines for implementing measures to combat trafficking, including identifying ways to address the causes of trafficking and identifying the groups vulnerable to trafficking in order to establish successful methods for reducing demand).

155. *See* Adelman, *supra* note 83, at 406 (“[T]he growth in the transnational sex industry is spurred by the immense promotion and marketing of women and children for sex tourism, as electronic mail-order brides, and in pornography.” (citation omitted)); *see also* Donna M. Hughes, *Combating Sex Trafficking: A Perpetrator-Focused Approach*, 6 U. ST. THOMAS L.J. 28, 40 (2008) [hereinafter *Combating Sex Trafficking*] (discussing the impact that tolerance of sexual exploitation has on fueling the demand for trafficked victims).

156. *See* Plasencia, *supra* note 79, at 16 (stating that the Internet has led to an increase in the availability of information and pornography dealing with child sex); *see also* Nair, *supra* note 140 (blaming the Internet and the availability of information on child sex for the increase in child sex tourism).

157. *See* Kunze, *supra* note 19, at 286 (explaining how the widespread availability of information relating to sexual abuse creates the risk that the behaviors will become socially acceptable because it legitimizes and desensitizes people to sexual abuse).

158. *See id.* (maintaining that information regarding the sexual exploitation of women and children on the Internet normalizes deviant sexual behavior because it

help prohibit access to material that exploits women and children and, as a result, will reduce the demand for trafficked individuals.¹⁵⁹ Failure to regulate the Internet is not only failing to discourage the demand for sex trafficking, it is encouraging and facilitating sex trafficking while violating the Trafficking Protocol.

2. *Article 10 Provides Guidelines on what Information Nations Should Communicate to Regulate the Internet*

Article 9 fully supports regulation of the Internet to protect the trafficking of individuals, but it does not articulate how nations should handle regulating the Internet on an international scale. Article 10, however, provides guidelines on how nations should communicate with each other to work towards regulating the methods used by human traffickers.¹⁶⁰ Article 10(1)(c) mandates that relevant authorities within each nation “cooperate with one another by exchanging information” on the “means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims”¹⁶¹

Currently, no international forum exists for countries to discuss what content needs to be regulated and how to actually enforce current regulation.¹⁶² The UNODC, however, represents a neutral third party and can be utilized to this extent given that it actively works with policy-makers and law enforcement bodies across the globe.¹⁶³ Article 10(2) also mandates that law enforcement receive

encourages those who thought their sexual fantasies were abnormal to pursue their fantasies).

159. *Cf. id.* (alleging that information regarding sexual exploitation on the Internet provides an incentive to those who may not have explored the illegal sex industry otherwise if not for the available information).

160. *See* Trafficking Protocol, *supra* note 18, art. 10(1)(c) (requiring nations to cooperate and exchange information with one another to the extent their domestic law allows to determine the methods used by sex traffickers).

161. *Id.*

162. *See* Przybylski, *supra* note 143, at 942 (arguing that the solution to Internet regulation lies in the creation of an international organization rather than domestic regulation).

163. *See generally* Prevention, *supra* note 72 (stating that the UNODC works with policy-makers and civil society across to the globe to collect data and provide accurate information and updates on individual nations’ progress in combating sex trafficking).

training on the methods used by traffickers.¹⁶⁴ By sharing and comparing information on how the Internet is used on an international scale to traffic victims, the international community will be better prepared to combat human trafficking.¹⁶⁵ According to Article 10, failure to work together on an international scale to determine the methods used to traffic victims and failure to provide training to law enforcement to combat these methods is a violation of the Trafficking Protocol.¹⁶⁶

C. APPLICATION OF THE TRAFFICKING PROTOCOL TO THE INTERNET COULD RESULT IN RESISTANCE TO THE PROTOCOL'S PROVISIONS AND DISAGREEMENT ON CONTENT REGULATION

One of the biggest problems in applying the provisions of the Trafficking Protocol to the Internet is the potential impact on the cooperation and participation of various countries, particularly the United States.¹⁶⁷ The United States is a large consumer in the sex trafficking industry, specifically with respect to child prostitution and sex tourism.¹⁶⁸ Given the power of the United States and its

164. See Trafficking Protocol, *supra* note 18, art.10(2) (noting that the training should also include information on the prevention, protection, and prosecution of human trafficking).

165. See *International Cooperation Can Help Tackle Organized Crime*, UNODC (Oct. 18, 2010), <http://www.unodc.org/unodc/en/frontpage/2010/October/international-cooperation-can-help-tackle-organized-crime-unodc-head.html> (describing the UNODC's Executive Director's plea to increase cooperation among UNCTOC member states to enforce the Convention's provisions to the greatest extent).

166. See Trafficking Protocol, *supra* note 18, art. 10(1) (using the word "shall" to signify an obligation by the signatories to communicate with other nations when appropriate).

167. See Przybylski, *supra* note 143, at 930, 936 (discussing the problems of unified Internet regulation in general given the difference in the types of content protected and prohibited in various countries and the reluctance of the United States to regulate Internet content in general due to concern that regulation would violate the First Amendment of the U.S. Constitution).

168. See Susan W. Tiefenbrun, *Sex Sells But Drugs Don't Talk: Trafficking of Women Sex Workers*, 23 T. JEFFERSON L. REV. 199, 209 (2001) [hereinafter *Sex Sells but Drugs don't Talk*] (naming the United States as a primary destination point for victims of sex trafficking); see also Vickie F. Li, *Child Sex Tourism to Thailand: The Role of the United States as a Consumer Country*, 4 PAC. RIM L. & POL'Y J. 505, 516 (1995) (stating that most sex tourists traveling to Thailand are from the United States, along with Germany and Australia); Kunze, *supra* note 19, at 244 (stating an estimated 50,000 women were trafficked into the United States

involvement in the sex trafficking industry, the Trafficking Protocol will not be fully effective if the United States does not comply with its provisions regarding Internet regulation.

The United States has taken some measures to regulate the Internet, but they are not sufficient to fully protect women and children from trafficking.¹⁶⁹ With the exception of regulations regarding child pornography, the United States is vigilant in protecting freedom of speech and has struck down various national laws attempting to further regulate the Internet.¹⁷⁰ Given the United States' stance on Internet regulation in general, it is likely that the nation will take issue with the application of the Trafficking Protocol to the Internet.¹⁷¹

The country's concerns regarding potential infringement of First Amendment rights prevent sufficient regulation necessary to protect trafficking victims and should be considered a violation of the Trafficking Protocol, specifically Article 9.¹⁷²

In addition to the United States' reluctance to restrict free speech, there is already evidence to suggest that the United States is wary of the scope of the Trafficking Protocol. The United States has signed the Trafficking Protocol, but has reserved "the right to assume

in 2002).

169. See 18 U.S.C.A. § 2252 (2006) (prohibiting the production, possession, and distribution of any sexually explicit visual content involving a minor, including material transmitted or possessed on a computer); see also *Osborne v. Ohio*, 495 U.S. 103, 125-26 (1990) (holding that laws forbidding the possession of child pornography do not violate the First Amendment).

170. See, e.g., *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 661, 663-65 (2004) (deciding that the Child Online Protection Act (COPA), an attempt to restrict minors' access to material deemed harmful, implemented too many restrictions on adults' protected speech); see also *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 874-76 (1997) (holding the Communications Decency Act, an effort to regulate obscene and indecent material on the Internet, unconstitutional and in violation of the First Amendment).

171. Cf. *Reno*, 521 U.S. at 874-76 (illustrating the reluctance of the United States to limit speech, even if that speech can cause potential harm).

172. See Trafficking Protocol, *supra* note 18, art. 9(1), (4) (requiring that nations establish policies and take measures to prevent human trafficking, including measures to remove factors that make women and children vulnerable to trafficking); see also discussion *supra* Part II.B (explaining that the Internet must be regulated under the Trafficking Protocol in order to effectively combat sex trafficking because such Internet use is a factor that directly contributes to and supports the trafficking industry).

obligations under this Protocol in a manner consistent with its fundamental principles of federalism.”¹⁷³ Just as the United States reserved the right to protect federalism, it can also reserve the right to protect freedom of speech.¹⁷⁴ However, as previously discussed, the United States is not entirely opposed to Internet regulation, so it is possible that an agreement may be reached so as to preserve freedom of speech while also protecting women and children from trafficking.¹⁷⁵

Another difficulty in applying the provisions of the Trafficking Protocol to the Internet is that there must be an international consensus on the type of content to be regulated in order for regulation to be effective. Currently, countries have varying opinions on what constitutes illegal content.¹⁷⁶ There are supporters of international Internet regulation that do not believe a single regulatory system is possible given countries’ varying tolerances of Internet material.¹⁷⁷

173. *Signatories to the CTOC Trafficking Protocol*, UNODC (Sept. 26, 2008), <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html> [hereinafter *Signatories*].

174. *Cf. List of Declarations Made with Respect to Treaty No. 185*, COUNCIL OF EUR., <http://www.conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=185&CM=8&DF=1/19/2007&CL=ENG&VL=1> (last visited July 9, 2011) [hereinafter *List of Declarations*] (listing the United States a non-member state of the Council of Europe that signed the Council of Europe’s Convention on Cybercrime, but reserved the ability to apply the child pornography restrictions only to the extent they complied with the United States Constitution and federal obscenity law).

175. *See Children’s Internet Protection Act*, FED. COMM. COMM’N, <http://www.fcc.gov/guides/childrens-internet-protection-act> (last visited Oct. 10, 2011) (describing the regulations under the Children’s Internet Protection Act, which prohibits offensive content on school and library computers). It is beyond the scope of this Comment to speculate on the specifics of a new international agreement to regulate the Internet.

176. *See* Steven M. Hanley, *International Internet Regulation: A Multinational Approach*, 16 J. MARSHALL J. COMPUTER & INFO. L. 997, 1001-03 (1998) (stating that the United States and the European Union have similar views on intolerable information, but other nations classify material, such as depictions of Western philosophy, as harmful).

177. *See id.* at 1012, 1016 (stating that one inflexible approach to Internet regulation is impossible because it does not allow for a range of control and does not allow for variances in tolerable content); *see also* Przybylski, *supra* note 143, 942-43 (explaining that international regulation of the Internet is possible if an international organization monitors national internet regulation rather than establishing a “uniform regulatory scheme for all countries”).

Currently, Internet regulation is left up to individual nations.¹⁷⁸ There is resistance to international Internet regulation because countries believe that such regulation would force them to abide by and agree with the country that has the most severe Internet laws, causing them to give up previously enjoyed rights and freedoms.¹⁷⁹ Even if countries can agree that regulation of the Internet is needed, consensus on the type of content to be regulated is necessary for regulation to be effective.¹⁸⁰ Recognizing that information online can result in actual harm may help countries reach a consensus on what content should be regulated.

All nations that have a protected freedom of expression have recognized a need to limit that freedom for various, legitimate reasons, ranging from national security to the prevention of crime.¹⁸¹ Some of these regulations, such as the prohibition of child pornography, acknowledge that content posted on the Internet can cause actual harm.¹⁸² Similar to child pornography, information posted online relating to the sale of a woman or a child causes actual harm because it results in trafficking and sexual abuse.¹⁸³ By protecting and allowing information and advertisements relating to the sale of women and children, nations are essentially permitting the harming of individuals and are promoting sex trafficking, something

178. See Hanley, *supra* note 176, at 1009 (maintaining that international law regulating the Internet does not currently exist and noting that creation of international regulations would be difficult given the political and cultural differences between countries).

179. See *id.* at 1011 (noting that countries interested in preserving specific societal values over free speech will have stricter regulation of the Internet when compared to a country that places a higher value on freedom of speech).

180. See *id.* (stating that “[w]hen countries disagree with each other’s laws, they tend to isolate themselves to sustain control.”).

181. See Convention for the Protection of Human Rights and Fundamental Freedoms art. 10.2, Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953); see also *Miller v. California*, 413 U.S. 15, 36-37 (1973) (holding that obscenity is not protected under the First Amendment); *Brandenburg v. Ohio*, 395 U.S. 444, 449 (1969) (holding that the First Amendment does not protect speech that is likely to incite or produce “imminent lawless action”).

182. See Child Pornography Prevention Act of 1996, Pub. L. No. 104-208, § 121, 110 Stat. 3009, 3009-26 (1996) (acknowledging that production, distribution, and display of child pornography causes physical, psychological, and emotional harm).

183. See Kunze, *supra* note 19, at 285 (stating that information posted online regarding the sexual abuse of women and children normalizes deviant behaviors and results in actual harm).

that they vowed to prevent by signing the Trafficking Protocol.

Signatories to the Trafficking Protocol have already agreed to take action and prevent sex trafficking, and there is not a significant dispute over whether trafficking is permitted in any one country.¹⁸⁴ The Craigslist controversy demonstrates that even elected officials in the United States have expressed disapproval of and a desire to remove sex advertisements that allegedly promote trafficking and child prostitution, even in light of the country's strong desire to protect freedom of speech.¹⁸⁵ Viewing online material as something that causes actual, physical harm may remove reservations involving freedom of expression and may result in agreement between countries on the type of content requiring regulation.¹⁸⁶

D. CURRENT DOMESTIC REGULATION MUST BE EXPANDED TO SUCCESSFULLY REGULATE THE INTERNET

The current regulatory schemes of Australia and the United Kingdom demonstrate that Internet regulation can be successful, but even these regulations do not go far enough to meet the requirements outlined in the Trafficking Protocol. These regulatory schemes are successful in preventing access to child pornography on the

184. Cf. Adam D. Thierer, *Web Restrictions Unlikely to Muzzle Neo-Nazi Speech*, CATO INST. (Jan. 15, 2001), http://www.cato.org/pub_display.php?pub_id=4400 (describing the disagreement between the United States and Germany on the United States' protection of neo-Nazi websites, which are illegal in Germany but accessible if they are hosted on an American ISP). This situation is different because neo-Nazi groups are legal in the United States and not in Germany. *Id.* The Trafficking Protocol, by contrast, mandates that nations criminalize sex trafficking, so there is no fundamental disagreement between the signatories over whether traffickers should be allowed to operate their illegal business. See Trafficking Protocol, *supra* note 18, art. 5 (requiring nations to adopt legislative measures to criminalize human trafficking, being an accomplice to trafficking, and organizing or directing others to engage in trafficking).

185. See Ryan Singel, *'Adult Services' Shutdown is Permanent, Craigslist Tells Congress*, WIRED.COM (Sept. 15, 2010, 4:22 PM), <http://www.wired.com/epi/center/2010/09/adult-services-shutdown-is-permanent-craigslist-tells-congress/> (revealing that members of Congress wanted the "Adult Services" section shut down, even members who are strong supporters of the First Amendment and freedom of speech on the Internet).

186. See Kunze, *supra* note 19, at 284 (arguing that trafficking conducted over the Internet is, in fact, "conduct," not content, and regulation should not be considered a violation of freedom of expression).

Internet.¹⁸⁷

However, both models only remove and block materials related to child pornography, allowing access to other harmful information and outlets for sexual predators.¹⁸⁸ By failing to remove websites and block access to additional content relating to sex trafficking, both regulatory measures fail to establish policies that prevent human trafficking as required by the Trafficking Protocol.¹⁸⁹ Specifically, the failure to remove or block content relating to trafficking is also a failure to remove a factor that makes women and children vulnerable to trafficking as required in Article 9(4).¹⁹⁰ Content that is allowed to remain online also increases the demand for trafficking victims and violates Article 9(5).¹⁹¹ Both the Australian and the United Kingdom frameworks demonstrate that Internet regulation is possible and provide sufficient starting points for other countries. However, these regulatory schemes need to be expanded in order to comply with the Trafficking Protocol.

III. RECOMMENDATIONS

A. THE UNODC MUST PROVIDE RESOURCES TO COUNTRIES FOR INTERNET REGULATION

To enforce international regulation of the Internet, the UNODC should focus its efforts on providing recommendations and support

187. See John Ozimek, *IWF: Child Abuse Domains Down, Reports Up*, REGISTER (Apr. 29, 2009, 9:47 AM), http://www.theregister.co.uk/2009/04/29/iwf_goodness/ (reporting a twenty-one percent decrease in the number of domains confirmed to host child sexual abuse images since 2006, attributable to the development of the IWF).

188. See *Frequently Asked Questions*, AUSTL. COMM. & MEDIA AUTHORITY, http://www.acma.gov.au/WEB/STANDARD/pc=PC_310147 (last visited Sept. 5, 2011) (listing depictions of actual or simulated sexual activity, child pornography, bestiality, or sexual violence as prohibited sexual content); see also *Laws Relating to the IWF's Remit*, INTERNET WATCH FOUND., <http://www.iwf.org.uk/hotline/the-laws> (last visited Sept. 5, 2011) (allowing the removal or blocking of Internet content relating to real or depicted sex with children).

189. See Trafficking Protocol, *supra* note 18, art. 9(1) (mandating that nations establish policies and other measures to prevent human trafficking).

190. See *id.* art. 9(4) (requiring states to strengthen or create measures, including international measures, to remove factors that make women and children vulnerable to trafficking).

191. See *id.* art. 9(5) (directing nations to adopt measures to reduce the demand for trafficking of women and children).

to countries on how to effectively regulate the Internet to prevent sex trafficking. According to the Conference, the UNODC is developing materials to assist countries with Internet regulation.¹⁹² Unfortunately, the Conference was held in 2008 and materials are still not available.¹⁹³ For every year the UNODC fails to provide adequate resources for Internet regulation, women and children are being recruited and sold over the Internet.¹⁹⁴

B. THE UNODC MUST ACT AS AN INTERNATIONAL MONITORING BODY

The UNODC must act as a monitoring body in order to effectively regulate the Internet on an international scale.¹⁹⁵ The regulatory schemes of both Australia and the United Kingdom illustrate how centralized organizations working with governments, ISPs, and the public to identify and remove illegal and inappropriate content can be successful. Within their respective countries, both methods are successful in locating websites hosting harmful material, such as child pornography, and issuing “take-down” notices to the ISPs.¹⁹⁶ However, both methods also demonstrate the need for regulation to be expanded to an international scale as the majority of the websites

192. See Note by the Secretariat, *supra* note 116, ¶ 21 (stating that the UNODC is developing materials to assist criminal justice systems in prosecuting and addressing crimes committed over the Internet).

193. The Conference was held from October 8-17, 2008. *Id.*

194. See Steven Turnham & Amber Lyon, *Online Sex Ads Complicate Crackdowns on Teen Trafficking*, CNN.COM (Sept. 15, 2010, 9:52 AM), <http://www.cnn.com/2010/CRIME/09/14/us.craigslist.sex.ads/index.html?iref=allsearch> (acknowledging that while Craigslist has been shut down, other websites will continue to sell women and children).

195. See Przybylski, *supra* note 143, at 942-43 (arguing that an international organization monitoring the Internet is the only way to effectively regulate the Internet on an international scale because of the localized expertise and resources an organization can obtain).

196. See Chloe Herrick, *Online Complaints Increase Three Fold: ACMA*, COMPUTERWORLD, (Oct. 14, 2010, 5:00 PM), http://www.computerworld.com.au/article/364349/online_complaints_increase_three_fold_acma/ (stating that the number of complaints received by the ACMA has increased and a total of 3,828 investigations were launched from 2008-2009); see also *Child Abuse ‘Big Business Online’*, BBC NEWS, May 12, 2010, <http://www.bbc.co.uk/news/10108720> (noting that the IWF received more than “38,000 reports of illegal content in 2009,” identified 8,844 web pages as containing child sexual abuse, and issued forty take-down notices for website hosted in the United Kingdom).

identified as harmful fall outside of the countries' borders.¹⁹⁷ An international organization, such as the UNODC, utilizing the cooperation of governments, citizens, and ISPs and operating on an international level would allow for efficient communication and provide the resources to regulate sexual abuse over the Internet across the globe.¹⁹⁸

There are a number of benefits to having one central monitoring body operating through the UNODC. The UNODC could serve as a neutral forum for representatives from each country to meet with Internet businesses from around the world.¹⁹⁹ In this setting, the UNODC could operate as an arbitrator in discussions between countries to determine appropriate Internet regulation.²⁰⁰ Countries would also have direct access to foreign ISPs to discuss Internet regulation.²⁰¹ Operating with the support of the UNODC, the monitoring body would be responsible for observing and regulating Internet activity, addressing concerns from nations, and making changes to monitoring schemes if necessary.²⁰² A central monitoring body operating through the UNODC would have the ability to unite countries towards a more uniform approach to Internet regulation.²⁰³

The UNODC can either assemble members to act as the

197. See Herrick, *supra* note 196 (explaining that a total of 1,907 out of 1,932 identified by the ACMA as containing potentially harmful material originated overseas).

198. See Przybylski, *supra* note 143, at 947-50 (asserting that an international monitoring organization would provide a neutral forum for negotiations between governments and ISPs and would allow for access to experts and data).

199. See *id.* at 942-43 (stating that an international organization allows for countries to meet with each other and for Internet businesses to negotiate appropriate Internet regulation).

200. See *id.* at 951 (proposing that an international monitoring body also act as an arbitrator between nations that have differing opinions on illegal material or to avoid disputes over jurisdictional issues regarding illegal content).

201. See *id.* at 948-49 (noting that an international organization would provide a neutral platform for foreign ISPs and governments to communicate with each other by providing one meeting place and point of contact to bring all parties together for negotiation and discussion).

202. See *id.* at 943 (stating that an international monitoring body also provides a forum to "[p]ool expertise" and stressing the importance of a monitoring body's ability to respond to changing situations and technical developments with something as "fast-paced and changing as the Internet").

203. See *id.* at 944 (explaining that membership in an international organization often changes the beliefs and actions of its members).

monitoring body or utilize its partner organization, the United Nations Global Initiative to Fight Human Trafficking (“UN.GIFT”).²⁰⁴ One benefit of utilizing UN.GIFT as a monitoring body is the group’s exclusive focus on human trafficking, which would make it a more focused, well-informed monitoring body.²⁰⁵ Additionally, the organization is managed not only by the UNODC, but the International Labor Organization (“ILO”), the International Organization for Migration (“IOM”), the United Nations Children’s Fund (“UNICEF”), the Office of the High Commissioner for Human Rights (“OHCHR”), and the Organization for Security and Co-operation in Europe (“OSCE”).²⁰⁶ These organizations would provide additional support, information, and resources to the monitoring body.

The monitoring body should be modeled after the current regulatory methods in Australia and the United Kingdom. Both methods act on complaints and tips from the public.²⁰⁷ If countries create domestic regulatory systems similar to Australia and the United Kingdom, any submissions of web content regarding sex trafficking and abuse that fall outside a country’s jurisdiction can be forwarded to the international monitoring body to address.²⁰⁸ However, in order to ensure a country will comply with the monitoring body’s request, the monitoring body and the international community must offer incentives.

204. *See generally About UN.GIFT*, UNGIFT.ORG, <http://www.ungift.org/knowledgehub/en/about/index.html> (last visited Sept. 5, 2011) (stating that UN.GIFT was launched in 2007 by the UNODC “to promote the global fight on human trafficking” and works with “governments, businesses, academia, civil society, and the media”).

205. *See id.* (discussing the importance of encouraging cooperation among varying anti-trafficking activities to work together towards a common goal).

206. *See id.* (stating that UN.GIFT works with numerous organizations and bodies to “build[] on national efforts throughout the world.”).

207. *See* discussion *supra* Part III.D (explaining the structure of the regulatory methods in Australia and the United Kingdom).

208. *See* discussion *supra* Part III.D (discussing how the regulatory systems in Australia and the United Kingdom forward illegal material hosted on a foreign ISP to the appropriate country’s hotline).

C. THE UNODC AND THE MONITORING BODY MUST PROVIDE
INCENTIVES FOR COUNTRIES TO JOIN AND ABIDE BY THE
TRAFFICKING PROTOCOL

As previously discussed, countries may resist Internet regulation.²⁰⁹ There must be an incentive to regulate content relating to sex trafficking in order to have the support of powerful countries, like the United States.²¹⁰ Isabelle Rorive has developed a regulatory scheme that can be applied to various nations throughout the world.²¹¹ Essentially, countries with Internet regulation laws can reach out to other countries hosting an objectionable website and request that the ISP remove the content under the threat of having all assets within the requesting country frozen.²¹²

While Rorive's scheme was intended to apply to the United States and Europe, the idea will work with any two countries with a business interest.²¹³ If a powerful state opts out of the Trafficking Protocol, the Internet content hosted in that state could still be accessed if financial pressure is placed on the ISPs. An economic incentive could be beneficial to ensuring international cooperation and continued support of the Trafficking Protocol.

CONCLUSION

As technology continues to advance, international cooperation is necessary to combat sex trafficking. The Trafficking Protocol requires that the Internet be regulated on an international scale in

209. See discussion *supra* Part III.C (discussing the possible reluctance of nations to regulate the Internet because of the potential for infringement on freedom of expression).

210. Cf. Declan McCullagh, *U.S. Won't Support Net "Hate Speech" Ban*, CNET NEWS (Nov. 15, 2002), <http://news.cnet.com/2100-1023-965983.html> (quoting a U.S. Justice Department spokesman as saying that the United States would not cooperate with an international effort "that abridges a constitutional protection" when asked if the United States would sign a treaty banning hate speech).

211. *But see* Przybylski, *supra* note 143, at 941-42 (finding fault with Rorive's method because it was intended to apply only to individual countries and regions rather than internationally).

212. See *id.* (stating that under Rorive's plan, as long as ISPs comply with the notice from another country, they will not face any legal action).

213. See *id.* (focusing the critique of Rorive's plan on the difficulties in limiting such a regulatory scheme to interactions between individual states as opposed to developing an international scheme rather than suggesting that the plan is only limited to the United States and Europe).

order to effectively prevent trafficking.²¹⁴ In order to ensure compliance with the Trafficking Protocol, the UNODC must provide support and resources to countries struggling with implementation of its provisions.²¹⁵ Without effective regulation of the Internet, countries are providing sex traffickers with an unregulated forum to conduct their illegal activity and are failing to protect women and children from victimization.²¹⁶

214. See discussion *supra* Part III.A-B (examining the provisions of the Trafficking Protocol and how they apply to the Internet).

215. See discussion *supra* Part IV.A-B (proposing the creation of an international monitoring body through the UNODC to assist nations in implementing successful Internet regulation in compliance with the Trafficking Protocol).

216. See discussion *supra* Part II.E (discussing the dangers the Internet poses to women and children by allowing a forum for sex predators and traffickers to recruit victims).