

THE COMMUNICATIONS (IN)DECENCY ACT: THE CURRENT STATE OF THE LAW SURROUNDING SECTION 230, ONLINE HUMAN EXPLOITATION, AND A RENEWED HOPE FOR VICTIMS

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And he that shall receive one such little child in my name, receiveth me. But he that shall scandalize one of these little ones that believe in me, it were better for him that a millstone should be hanged about his neck, and that he should be drowned in the depth of the sea.¹

INTRODUCTION

With the advent of Tim Berners-Lee's creation of the World Wide Web in 1990, and its release to the public by the European Council for Nuclear Research in April of 1993, the world began its whirlwind spin toward both economic and social prosperity as well as moral and criminal depravity.² It did not take long for young and eager entrepreneurs and big corporations to recognize the lucrative opportunity before them, with some of the first internet sales taking place in 1994.³ Unfortunately, even before these sales were made, there were those lurking in the shadows, looking to use this new invention to perpetrate the heinous crimes of child pornography, kidnapping, and human trafficking.⁴

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1. *Matthew* 18:5–6 (Douay-Rheims 1899).

2. See V. Grech, *Publishing on the WWW. Part 5 - A Brief History of the Internet and the World Wide Web*, IMAGES IN PAEDIATRIC CARDIOLOGY, July–Sep. 2001, at 15; see also Larry Greenemeier, *Remembering the Day the World Wide Web Was Born*, SCI. AM. (Mar. 12, 2009), <https://www.scientificamerican.com/article/day-the-web-was-born/>.

3. Maris Fessenden, *What Was the First Thing Sold on the Internet?*, SMITHSONIAN MAG. (Nov. 30, 2015), <https://www.smithsonianmag.com/smart-news/what-was-first-thing-sold-internet-180957414/> (on file with the Ave Maria Law Review).

4. *Operation Innocent Images*, FBI, <https://www.fbi.gov/history/famous-cases/operation-innocent-images> (last visited Sep. 5, 2025) (on file with the Ave Maria Law Review).

In May 1993, just one month after the publicization of the World Wide Web, the first crime involving the sexual exploitation of a minor on the internet was perpetrated.⁵ When a 10-year-old Maryland boy went missing from his hometown, the Federal Bureau of Investigation, with the help of state detectives, uncovered a ring of pedophiles that had recently moved their felonious operation online.⁶ These individuals opened an online chatroom to speak with minor boys and share illicit photos with one another.⁷ This discovery was a shocking realization of the grave evils that this nascent creation, the internet—a great “Pandora’s box”—would bring in the coming years.⁸

Unfortunately, this young Maryland boy was never found, and this is the sad, recurrent reality for many victims of kidnapping and human trafficking every year since then.⁹ Responding to the grave evil of human trafficking, Congress drafted the first comprehensive legislation to combat it: the Trafficking Victims Protection Act of 2000.¹⁰ Prior to the introduction of the Trafficking Victims Protection Act of 2000, however, was the enactment of 47 U.S.C. § 230 as a part of the Communications Decency Act of 1996, which now, as amended, affords interactive internet service providers, such as Reddit.com, general immunity from the conduct of their users, backed by case law.¹¹

The primary question this Note seeks to address is: Whether 47 U.S.C. § 230(c) enables large corporations to turn a blind eye to human trafficking and child pornography and unjustly benefit from the revenue they generate in website traffic and advertisements? Part I will address the current state of the law surrounding 47 U.S.C. § 230 and human trafficking, especially in light of the 2022 decision in *Does v. Reddit* and the Supreme Court’s denial of certiorari. Part II will address current human trafficking statistics and the effects of technological advancements on sexual exploitation. Part III will explore the potential solutions to the Section 230-FOSTA dilemma and

5. *Id.*

6. *Id.*

7. *Id.*

8. See Ann Treacy, *Is the Internet a Pandora’s Box? How Can We Harness It?* (Mar. 1, 2024), <https://blandinonbroadband.org/2024/03/01/is-the-internet-a-pandoras-box-how-can-we-harness-it/> (on file with the Ave Maria Law Review).

9. See *Operation Innocent Images*, *supra* note 4.

10. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

11. 47 U.S.C. § 230; see also *Does v. Reddit*, 51 F.4th 1137 (9th Cir. 2022) (holding that interactive internet providers have immunity from the criminal acts of their users unless the provider affirmatively supports the conduct or engages in it).

address potential counterarguments. Finally, Part IV will look to the future of human trafficking laws while commenting on the moral duty to enact provisions that will uphold the common good by enforcing criminal and civil penalties, while also caring for these victims, such as the Tim Tebow Foundation's Renewed Hope Act of 2024.¹²

I. SECTION 230 AND ITS CONNECTION TO HUMAN TRAFFICKING
LEGISLATION

The human person ought never to be sold or bought as if he or she were a commodity. Whoever uses human persons in this way and exploits them, even if indirectly, becomes an accomplice of injustice.¹³

As stated, Section 230 of the Communications Decency Act shields interactive internet providers from liability for the criminal or tortious conduct of their users.¹⁴ This protection is afforded to big-name internet corporations through subsection (c) of the statutory text, which states in relevant part:

(c) Protection for “Good Samaritan” Blocking and Screening of Offensive Material . . .

(2) CIVIL LIABILITY. No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1) [subparagraph (A)].¹⁵

12. Renewed Hope Act of 2024, H.R. 9523, 118th Cong. (2024).

13. Pope Francis, *Pope's Quotes: Human Trafficking*, NAT'L CATH. REP. (May 28, 2024), <https://www.ncronline.org/blogs/francis-chronicles/pope-s-quotes-human-trafficking> (on file with the Ave Maria Law Review).

14. See 47 U.S.C. § 230; see also VALERIE C. BRANNON & ERIC N. HOLMES, CONG. RSCH. SERV., R46751, SECTION 230: AN OVERVIEW 2 (2024).

15. 47 U.S.C. § 230(c)(2).

The congressional intent behind this enactment was to promote the use of the internet and interactive website interfaces like Facebook, Reddit, X, etc., by permitting them to regulate deviant accounts, moderators, and spaces without the fear of civil or criminal liability.¹⁶ To accomplish this task, the legislature included the language of subsection (c)(1), which states that these providers “shall [not] be treated as the publisher or speaker of any information provided by another information content provider.”¹⁷ In enacting this new legislation, the federal courts overturned cases like *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, which were few and far between due to the nascency of the internet.¹⁸ *Stratton* held that website providers were liable for the actions of their users because they were the custodians of managing what appeared on their platforms and what was blocked or removed.¹⁹ The court reasoned that, by the use of filtering systems and software, these providers demonstrated sufficient editorial control to be held liable for the posts of third-party users.²⁰

By enacting Section 230 and eliminating the publisher status for interactive internet providers, Congress enabled these large companies to turn a blind eye to grave issues like human trafficking and child pornography while simply trusting them to do the right thing when such violations occurred.²¹ In the 1995 congressional meetings on Section 230, then-Representative Ronald Wyden argued that failing to enact the provision would place the role of determining appropriate content in the hands of “government bureaucrats,” while taking away parents’ ability to control their children’s content.²² What Representative Wyden failed to acknowledge is that, in the context of the sexual exploitation of children, there is no “determination” needed to assess the moral or criminal quality of a given social media post; the depravity is evident. Furthermore, parents have the role of determining what their child is

16. See BRANNON & HOLMES, *supra* note 14, at 3, 6 (quoting S. REP. NO. 104-230, at 194 (1996)) (“This section provides ‘Good Samaritan’ protections from civil liability for providers or users of an interactive computer service for actions to restrict or to enable restriction of access to objectionable online material.”).

17. 47 U.S.C. § 230(c)(1).

18. *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 N.Y. Misc. LEXIS *712 (Sup. Ct. Dec. 11, 1995).

19. *Id.* at 7.

20. *Id.*; see also BRANNON & HOLMES, *supra* note 14, at 7 (commenting on the *Stratton* decision).

21. See generally Jill Steinberg & Kelly M. McGlynn, *Trafficking and Child Exploitation Online: The Growing Responsibilities of Entities Operating Online Platforms*, BALLARD SPAHR (Mar. 7, 2022), <https://www.ballardspahr.com/insights/alerts-and-articles/2022/03/trafficking-and-child-exploitation-online-the-growing-responsibilities-of-entities-operating-online> (on file with the Ave Maria Law Review).

22. BRANNON & HOLMES, *supra* note 14, at 6 (quoting 141 CONG. REC. H8470 (daily ed. Aug. 4, 1995) (statement of Rep. Ron Wyden)).

exposed to—with or without the enactment of Section 230. Through its enactment, however, the role of determining what is appropriate simply shifted from the so-called “bureaucrat,” and onto the corporation, which has a vested interest in the financial benefits that may come from failing to enforce a particular rule or regulation.

As the congressional Committee on Energy and Commerce highlighted in 2023, one need only look to the recent controversies surrounding the media company Meta, which is the parent company to both Instagram and Facebook, to see that the issues of child pornography and human trafficking are still very much alive and continue to slip through the cracks of mainstream social media sites to this day.²³ To combat the growing prevalence of human trafficking and other online forms of child sexual exploitation, and in recognition of the shortcomings of Section 230, Congress enacted the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 (“FOSTA”) under the first Trump administration.²⁴ This new act added a fifth exception to Section 230 immunity for interactive internet providers.²⁵ Accordingly, Section 230 was amended to include subsection (e), which explicitly stated that Section 230(c)(2) does not apply where the underlying conduct of the provider violates any other federal or state law consistent with it, such as statutes prohibiting sexual exploitation or human trafficking.²⁶

The ratification of FOSTA and the implementation of subsection (e) was certainly a step in the right direction for fighting human trafficking and child pornography; however, the application of this new provision was still left, in part, to judicial interpretation until late 2022. In the case of *Does v. Reddit*, the Ninth Circuit had an excellent opportunity to fight child pornography and human trafficking at the statutory level.²⁷ Reddit is, in many ways, the epitome

23. See generally Todd Sprangler, *Instagram Algorithms Connect ‘Vast’ Network of Pedophiles Seeking Child Pornography, According to Researchers*, VARIETY (June 7, 2023, 7:08 PM), <https://variety.com/2023/digital/news/instagram-pedophile-network-child-pornography-researchers-1235635743/> (on file with the Ave Maria Law Review); see also WSJ: “Instagram Connects Vast Pedophile Network” U.S. HOUSE ENERGY & COM. COMM. (June 14, 2023), <https://energycommerce.house.gov/posts/wsj-instagram-connects-vast-pedophile-network> (on file with the Ave Maria Law Review).

24. H.R. 1865, 115th Cong. (2018).

25. *Id.*; see also BRANNON & HOLMES, *supra* note 14, at 27–32 (listing five exceptions to 47 U.S.C. § 230 as follows: federal criminal law, intellectual property law, consistent state law, electronic communications privacy act, and, of course, FOSTA).

26. 47 U.S.C. § 230(e).

27. See generally *Does v. Reddit*, 51 F.4th 1137 (9th Cir. 2022).

of interactive internet websites available and in the mainstream today.²⁸ It is broken up into millions of different active forums known as “subreddits.”²⁹ These subreddits are designed and moderated mostly by voluntary active users.³⁰ Furthermore, according to the National Center on Sexual Exploitation, several thousand of these subreddits are dedicated to pornographic content, and some even openly admit to being exceptionally transgressive in nature, theming their forums on topics such as incest, surreptitious recordings, and even those that potentially advertise human trafficking and child pornography directly.³¹

Unfortunately, the plaintiffs (better understood as victims) in *Does v. Reddit*, experienced the misery of this website in its most potent sense when photos and videos of their minor daughter began circling the platform.³² Over one hundred requests were made to the Reddit administration to have these photos removed, and while most of the requests were honored, Reddit users continued to repost the images to a variety of these subreddits.³³ The plaintiffs filed suit against Reddit, Inc., alleging that it benefitted from the deviant and transgressive content posted on its platform through the solicitation of advertisements on popular subreddits, and that it failed to take reasonable steps to mitigate or prevent the posting of such content.³⁴

The Court, however, rejected the plaintiff’s position, interpreting “*underlying the claim*” as constituting a *strict* “violation of section 1591 of that title.”³⁵ Therefore, following this decision, the new exception only applies to an interactive internet provider in the event that the provider *actually* violates either 18 U.S.C. §§ 1591 or 1595 by its own conduct.³⁶ It was not enough for the plaintiffs in this case to demonstrate that the crime of child pornography was in fact committed, nor was it enough to demonstrate that

28. See generally Alison Eldridge, *Reddit*, BRITANNICA MONEY (Apr. 5, 2025), <https://www.britannica.com/money/Reddit> (on file with the Ave Maria Law Review).

29. *Id.*

30. *Id.*

31. Gemma Kelly, *How Image-Based Sexual Abuse Flourishes on Reddit*, NAT’L CTR. ON SEXUAL EXPLOITATION (Mar. 9, 2022), <https://endsexualexploitation.org/articles/how-image-based-abuse-flourishes-on-reddit/> (on file with the Ave Maria Law Review).

32. *Reddit*, 51 F.4th at 1139.

33. *Id.*

34. *Id.* at 1139–40.

35. *Id.* at 1142–43 (quoting 47 U.S.C. § 230(e)(5)(A)) (stating that an interactive internet provider must have actual knowledge of, or participation in, a human trafficking venture to merit civil or criminal liability).

36. *Id.*; see also 18 U.S.C. §§ 1591, 1595.

Reddit benefitted from such conduct.³⁷ Instead, the plaintiffs would have had to demonstrate that Reddit actually knew of and willingly participated in the posting of the illicit images to hold Reddit liable under either section of 18 U.S.C.³⁸

Interestingly, the Court goes as far as to explicitly state that “the statute does not target those that merely ‘turn a blind eye to the source of their [revenue].’”³⁹ Moreover, “knowingly benefitting” from the trafficking or posting of child pornography “requires actual knowledge and ‘a *causal relationship* between affirmative conduct furthering the sex-trafficking venture and receipt of a benefit.’”⁴⁰ The problem with this standard for determining liability, however, is that it essentially dissolves and makes redundant the fifth exception created by FOSTA.⁴¹

First, in 1996, Congress found it important to enact 47 U.S.C. § 230(c) to protect interactive internet providers, like Reddit, Inc., from liability for the criminal or tortious conduct of third-party users.⁴² Then, in 2017, Congress found it necessary to implement additional protections, or *exceptions*, to subsection (c) through the enactment of FOSTA, to add circumstances where an interactive internet provider *would* be held liable for the third-party acts of a user.⁴³ Now, in 2022, the Ninth Circuit impliedly determined that there are effectively *no* exceptions to subsection (c), since the statutory language, interpreted strictly, only holds interactive internet providers liable when it is their *own* conduct that violates 18 U.S.C. §§ 1591 or 1595.⁴⁴ The inconsistency is patent, and is, indeed, the subject of a jurisdictional split with some circuits and states favoring the Ninth Circuit’s approach to 47 U.S.C. § 230(e)(1),⁴⁵ and other jurisdictions favoring a broader approach, permitting some liability for the third-party conduct of platform users.⁴⁶

Finally, on May 30, 2023, like the Ninth Circuit, the Supreme Court of the United States had the opportunity to weigh in on the very pressing and

37. *Id.* at 1145–46.

38. *Id.* at 1145 (“To run afoul of § 1591, a defendant must knowingly benefit from and knowingly assist, support, or facilitate sex trafficking activities. Mere association with sex traffickers is insufficient absent some knowing ‘participation’ in the form of assistance, support, or facilitation.”).

39. *Id.* (quoting *United States v. Afyare*, 632 F. App’x 272, 286 (6th Cir. 2016)).

40. *Id.* (quoting *Geiss v. Weinstein Co. Holdings LLC*, 383 F. Supp. 3d 156, 169 (S.D.N.Y. 2019)).

41. *See* 47 U.S.C. § 230(e).

42. *See* BRANNON & HOLMES, *supra* note 14; *see also* 47 U.S.C. § 230.

43. *See* H.R. 1865, 115th Cong. (2017–2018).

44. *Reddit*, 51 F.4th at 1145–46; *see also* 18 U.S.C. §§ 1591, 1595.

45. *Id.* at 1141.

46. *See generally* *In re Facebook, Inc.*, 625 S.W.3d 80 (Tex. 2021).

important issues of human trafficking, child pornography, and general sexual exploitation when the case of *Petitioners v. Reddit, Inc.* was brought before it.⁴⁷ Unfortunately, only one Justice voted to hear the case, and thus, certiorari was denied.⁴⁸ This denial was shocking, and even gained slight public attention in the media.⁴⁹ There may have been no *significant* jurisdictional split among the courts of appeals warranting a grant of certiorari; however, the issue at bar appeared to be one of great public importance and would have certainly contained great precedential value.⁵⁰

The fight against human trafficking is a fight against modern-day slavery,⁵¹ and from what it looks like, the current state of 47 U.S.C. § 230, which is supposed to enable the fight against human trafficking, is actually enabling corporations to turn a “blind eye” to the source of their wealth, while the lowly get sold into slavery or sexually exploited online.⁵² In the case of Reddit and other social media platforms that embrace all sorts of sexual fetishes and deviations, the eye that is being turned can hardly be considered “blind.” In 2021, the CEO of Reddit stated in an interview with *Axios*:

You can look at [porn] as exploitative. And, indeed, much of it is. And that’s not the content that we want on Reddit, . . . But there’s another aspect that’s empowering. And these are people sharing stories of themselves, pictures of themselves. And we are perfectly supportive of that.⁵³

In conjunction with these statements, he added, “we have rules on Reddit—no involuntary sexualization,” and he continued, highlighting the

47. See generally *Doe v. Reddit, Inc.*, 143 S. Ct. 2560 (2023) (Mem.).

48. *Id.*

49. See Ariane de Vogue, *Supreme Court rejects lawsuit that sought to hold Reddit responsible for hosting child pornography*, CNN POLITICS (May 30, 2023, 10:17 ET), <https://www.cnn.com/2023/05/30/politics/reddit-responsibility-immunity-supreme-court-child-pornography/index.html> (on file with the Ave Maria Law Review).

50. See generally *Supreme Court Procedures*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-court-procedures> (on file with the Ave Maria Law Review) (last visited Jan. 7, 2026).

51. See *Human Trafficking is Modern Day Slavery*, ADMIN. FOR CHILD. & FAMS. (Feb. 13, 2013), <https://www.acf.hhs.gov/archive/blog/2013/02/human-trafficking-modern-day-slavery> (on file with the Ave Maria Law Review).

52. *Does v. Reddit*, 51 F.4th 1137, 1145 (9th Cir. 2022) (quoting *United States v. Afyare*, 632 F. App’x 272, 286 (6th Cir. 2016)).

53. Anugrah Kumar, *Reddit CEO doubles down on allowing porn after platform was included on ‘Dirty Dozen List’*, THE CHRISTIAN POST (Mar. 8, 2021), <https://www.christianpost.com/news/reddit-ceo-doubles-down-on-allowing-porn-on-platform.html> (on file with the Ave Maria Law Review).

website's ban on the sexualization of minors.⁵⁴ Such statements expose the irony behind the protection provided to websites like Reddit.com. The laudatory remarks of the CEO regarding the oversexualization of his platform—coupled with the apparent ignorance of the underworking of his subreddits—suggests a degree of culpable negligence that should supplement the “knowing and active participation” requirement under 18 U.S.C. § 1591.⁵⁵ This is especially true on a platform that, according to the National Center on Sexual Exploitation, has been accused of hosting forums containing surreptitious recordings of individuals in private places and permitting indulgence in the fantasies of faux incest and underage sexual encounters.⁵⁶ Finally, the question must also be asked: How far will these protections go? Will the moderators of *individual* subreddits and other internet forums be held responsible for the conduct in their individual groups?

If permitting big internet corporations to turn a blind eye to the evident depravity on their platforms does not seem to be reducing the number of children being heinously marketed and commodified online, it may be time for a shift in the law. The current state of 47 U.S.C. § 230 does not appear to be fulfilling its intended purpose at this time.

II. THE NUMBERS ARE ON THE RISE: THE STEADY INCREASE OF COMMERCIAL SEXUAL EXPLOITATION

But every man is tempted by his own concupiscence, being drawn away and allured. Then when concupiscence hath conceived, it bringeth forth sin. But sin, when it is completed, begetteth death.⁵⁷

When Congress passed the Communications Decency Act of 1996, it could never have anticipated the vast and swift technological developments that would occur in less than thirty years. After all, it took nearly 400 years after Johannes Gutenberg's invention for printing to become industrialized, and over 500 years for the development of the standard inkjet process we know, love, and use today.⁵⁸ Accordingly, the “World Wide Web,” as Representative Wyden and his congressional counterparts understood it in 1996, is now vastly different. The internet has become extraordinarily

54. *Id.*

55. *Id.*; see also 18 U.S.C. § 1591.

56. See Kelly, *supra* note 31.

57. James 1:14–15 (Douay-Rheims).

58. Abby Bainbridge, George Barnum, et al., *History of Printing Timeline*, AM. PRINTING ASS'N, <https://printinghistory.org/timeline/> (on file with the Ave Maria Law Review) (last visited Sep. 11, 2025).

advanced and complex, and above all else, is in the pocket of every citizen. While these rapid developments are certainly impressive, never-before-seen scientific achievements, a failure to properly regulate and mitigate any adverse effects would be akin to a “Dr. Victor Frankenstein-like” overambition tending toward corruption and moral depravity.⁵⁹ While Section 230 was certainly drafted with such a benevolent intention, it no longer serves its intended purpose and likely causes more harm than good, as it was drafted with an entirely different “monster” in mind.⁶⁰

A. *The Unfortunate Statistics*

Despite the Trump administration’s bona fide attempt to work toward eradicating the evil of human trafficking and child pornography through the ratification of FOSTA, the numbers are on the rise.⁶¹ In 2022, the International Labor Organization reported that both labor and commercial sex trafficking have dramatically increased in recent years.⁶² According to the International Labor Organization, global estimates indicate that on any given day, more than six-million individuals are subject to forced commercial sexual exploitation, and nearly one quarter of these are children.⁶³ This was a drastic increase, as just six years prior, in 2016, the suspected number of those subject to forced commercial sexual exploitation was 4.8 million.⁶⁴ While this figure represents the global estimations of human trafficking, the statistics are not any more favorable when focused directly on the United States.⁶⁵ Although the Department of Justice has not yet released official statistics regarding the prevalence of human trafficking in the United States, it has released some prosecutorial statistics that suggest that the U.S. is, unfortunately, following

59. MARY SHELLEY, *FRANKENSTEIN* 41 (J. Paul Hunter ed., W.W. Norton & Co. 2d ed. 2012) (“You seek for knowledge and wisdom, as I once did; and I ardently hope that the gratification of your wishes may not be a serpent to sting you, as mine has been.”).

60. See generally *id.*

61. INT’L LABOR ORG., WALK FREE, & IOM UN MIGRATION, *GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOR AND FORCED MARRIAGE* 45 (2022).

62. *Id.* at 2.

63. *Id.* at 45.

64. Emma Ecker, *Breaking Down Global Estimates of Human Trafficking: Human Trafficking Awareness Month 2022*, HUM. TRAFFICKING INST. (Jan. 12, 2022), <https://traffickinginstitute.org/breaking-down-global-estimates-of-human-trafficking-human-trafficking-awareness-month-2022/#:~:text=20.1%20million%20labor%20trafficking%20victims,threats%20of%20penalty%20or%20harm> (on file with the Ave Maria Law Review).

65. See INT’L LABOR ORG. ET AL., *supra* note 61, at 3.

the global trend.⁶⁶ In 2012, 805 individuals were prosecuted for human trafficking in some form, but in just ten years, that number more than doubled to 1,656, in 2022.⁶⁷ While this disparity could have been caused, in part, by a number of factors, including heightened awareness and vigilance, the overwhelming global increase in human trafficking, along with the *doubling* of prosecutions, suggests that the epidemic of modern slavery is growing within our borders.⁶⁸

Closely related to the increase in human trafficking in the United States is the regrettable increase in child pornography, or “child sexual abuse material” (“CSAM”).⁶⁹ Unfortunately, new research conducted by the Internet Watch Foundation shows that the United States is one of the leading nations in regard to hosting CSAM URLs online.⁷⁰ In 2021, the U.S. accounted for 21% of the global total of CSAM URLs, and just a few months later, in 2022, that number dramatically increased to 30%.⁷¹ For perspective, the United States’ population makes up *only* around 4.3% of the world’s population. One of the purported reasons for this injustice is that the scale of CSAM in the United States is so vast that bad actors can, more often than not, get away with the crime due to the limited resources available to combat it.⁷² Professor of computer science at the University of California, Berkeley, Hany Farid went as far as to claim that the chances of being caught are “vanishingly small.”⁷³ Furthermore, under the current “exceptions” to Section 230 and the precedent laid out by courts like the Ninth Circuit, the chances of being caught are even smaller, as service providers have no affirmative duty to seek out and regulate such conduct and are permitted to turn a “blind eye” to the corruption on their platforms.⁷⁴

66. AMY D. LAUGER, U.S. DEP’T OF JUST., HUM. TRAFFICKING DATA COLLECTION ACTIVITIES, 2024, NCJ 309244 1–3 (Kathryn A. Sweeney ed., 2024).

67. *Id.* at 3.

68. *Id.*

69. See Rhiannon Williams, *The US Now Hosts More Child Sexual Abuse Material Online than Any Other Country*, MIT TECH. REV. (Apr. 26, 2022), <https://www.technologyreview.com/2022/04/26/1051282/the-us-now-hosts-more-child-sexual-abuse-material-online-than-any-other-country/> (on file with the Ave Maria Law Review).

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. See *Does v. Reddit*, 51 F.4th 1137, 1145 (9th Cir. 2022); see also 47 U.S.C. § 230(e).

B. The Netherlands, Artificial Intelligence, and Deepfakes

Shockingly, and indeed embarrassingly, the United States' current treatment of online commercial sexual exploitation has found favor with the peddlers of CSAM and sex trafficking. In late 2021, the Netherlands was the leading host of CSAM with a shocking 41% of the global total.⁷⁵ After the Netherlands cracked down on CSAM and other related conduct, however, a significant portion of these felonious operations migrated to the United States, and this is a large reason for the drastic jump of nine whole percentage points in the few months between 2021 and 2022.⁷⁶ The grand exodus of CSAM from the Netherlands into the United States reveals two important points: first, that a federal crackdown on CSAM does indeed work; and second, that our current laws are viewed as favorable to these offenders.⁷⁷ Notably, in 2020, the Netherlands was responsible for 77% of all CSAM in the world, but that figure has since dropped to less than 30%—change is possible.⁷⁸

Not only is it possible, but it is necessary to protect the most vulnerable in our society. The technological capacities of the internet are only growing, and with this rapid growth comes a heightened ability for the perpetrators of human trafficking and CSAM to more efficiently effectuate their operations while going undetected by law enforcement.⁷⁹ Specifically, the artificial intelligence (“AI”) boom that took place in 2023 introduced the world to unimaginable, newfound capabilities.⁸⁰ Generative AI forms like large language models, such as ChatGPT and other various imaging AI agents, have given the ordinary citizen the extraordinary power of instantaneous creation.⁸¹ Unfortunately, like the 1993 kidnapping of the Maryland boy just one month after the release of the World Wide Web, this new creative power was almost immediately taken

75. Williams, *supra* note 69.

76. *Id.*

77. *How the Dark Web Hides Child Sexual Abuse Material*, HUM. TRAFFICKING FRONT (Dec. 26, 2023), <https://humantraffickingfront.org/dark-web-hides-csam/> (on file with the Ave Maria Law Review).

78. See Williams, *supra* note 69; see also *Europe Remains ‘Global Hub’ for Hosting of Online Child Sexual Abuse Material*, INTERNET WATCH FOUND. (Apr. 26, 2022), <https://www.iwf.org.uk/news-media/news/europe-remains-global-hub-for-hosting-of-online-child-sexual-abuse-material> (on file with the Ave Maria Law Review).

79. Heather Barnhart, *A Brighter Future in the Fight Against Child Sexual Abuse Material*, POLICE CHIEF ONLINE (Dec. 11, 2024), <https://www.policechiefmagazine.org/brighter-future-fight-against-csam/> (on file with the Ave Maria Law Review).

80. See Theara Coleman, *2023: The Year of the AI Boom*, THE WEEK (Dec. 20, 2023), <https://theweek.com/tech/2023-ai-boom> (on file with the Ave Maria Law Review).

81. *Id.*

and used for evil through the creation of AI-generated CSAM.⁸² According to a study completed by the American Academy of Pediatrics, the use of AI for CSAM typically falls into one of the two following categories: AI-generated CSAM or AI-manipulated CSAM.⁸³ The former refers to “entirely new sexual images of fictional children,” and the latter refers to the alteration of “images and videos of real children into sexually explicit content.”⁸⁴ In either case, the content produced, though “fake,” has a significant impact on the efficient administration of justice as well as the safety and wellbeing of the depicted victims.⁸⁵ Unfortunately, these types of materials are not reserved for the “dark web” alone, but have made their way onto mainstream social media sites like TikTok, Instagram, and the like.⁸⁶

Again, although commercial sexual exploitation and the circulation of CSAM are global issues, it is evident that they are also fundamentally *American* issues. In the well-aged words of John Winthrop, the United States must remember that “the eyes of all people are upon us,” for “wee shall be as a citty upon a hill.”⁸⁷ This online American influence is evident, especially considering that almost every single major social media platform was created and is currently hosted on American soil.⁸⁸ This includes Reddit, Facebook, Snapchat, X, Instagram, YouTube, Tumblr, Pinterest, and more, with the one exception being TikTok. Accordingly, federal legislation must regulate these companies as much as is necessary to ensure that the most vulnerable among us are protected. Narrowly read, FOSTA is simply not enough, and Section 230 must be amended.

III. REPAIRING SECTION 230: PROPOSED AMENDMENTS AND A

82. See *Operation Innocent Images*, *supra* note 4; see also SHRUTHI KRISHNA, FIONA DUBROSA & RUTH MILANAIK, *Rising Threats of AI-Driven Child Sexual Abuse Material*, PEDIATRICS, Feb. 2024, at 1, 2.

83. KRISHNA, DUBROSA & MILANAIK, *supra* note 82, at 1.

84. *Id.*

85. *Id.* at 1–2.

86. BRACKET FOUND., *GENERATIVE AI: A NEW THREAT FOR ONLINE CHILD SEXUAL EXPLOITATION AND ABUSE* 11 (2024); see also *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 258 (2002) (holding the Child Pornography Prevention Act of 1996’s prohibition of pornographic content depicting children, where no children were involved in the production, to be unconstitutionally overbroad).

87. JOHN WINTHROP, *A Model of Christian Charity* (1630), reprinted in 1 *PURITAN POL. IDEAS 1558–1794*, 93 (Edmund S. Morgan ed., 1965).

88. See BRACKET FOUND., *supra* note 86, at 38.

RESPONSE TO COUNTERARGUMENTS

[T]he founder of a city and kingdom must first choose a suitable place which will preserve the inhabitants by its healthfulness . . . and render them safe from their enemies by its natural protection.⁸⁹

As stated above, the current version of Section 230 does very little to prevent the circulation of CSAM or protect potential victims of commercial sexual exploitation.⁹⁰ In fact, the current state of the law and similar statutes (or lack thereof) appear to be *attracting* that very conduct.⁹¹ Enacting FOSTA in 2018 was certainly a step in the right direction, as it acknowledged the need to hold interactive internet service providers accountable for their actions, but it failed to address the *inaction* of these same providers.⁹² By imposing a strict scienter requirement to the exceptions to Section 230, Congress merely reiterated that an interactive internet service provider is liable for its *own conduct* with respect to CSAM or human trafficking.⁹³ These “exceptions,” then, are not quite exceptions, as the liability would not necessarily come from the third party, but the provider itself, which knowingly engaged or benefitted from the conduct.⁹⁴ As a result, this raises the question: What can be done to uphold free speech, while also protecting the most vulnerable from being abused and commodified?

A. *FOSTA’s Narrow Interpretation*

As was seen in the case of *Does v. Reddit* above, the Ninth Circuit set the tone for the narrow interpretation of the Section 230 FOSTA exceptions.⁹⁵ Since that decision was handed down in 2022, more federal courts have, unfortunately, followed suit, adopting this somewhat inconsistent and untenable scheme.

Recently, in December 2024, the Eleventh Circuit followed in the Ninth Circuit’s footsteps in the case of *M.H. v. Omegle.Com, LLC*.⁹⁶ Notably, before

89. THOMAS AQUINAS, DE REGNO Bk. 1, Ch. 14 (Gerald B. Phelan trans., Pontifical Inst. of Medieval Stud. 1949).

90. See *Does v. Reddit*, 51 F.4th 1137, 1145 (9th Cir. 2022); see also 47 U.S.C. § 230(e).

91. See Williams, *supra* note 69.

92. 47 U.S.C. § 230(e).

93. *Id.*; see 18 U.S.C §§ 1591, 1595.

94. 47 U.S.C. § 230(e).

95. *Reddit*, 51 F.4th at 1145.

96. See *M.H. v. Omegle.com LLC*, 122 F.4th 1266, 1268 (11th Cir. 2024).

addressing the appeal, the court opened its opinion by recognizing the turbulent and transgressive nature of the internet, particularly in regard to minor children, stating, “[t]he facts of this appeal underscore that the internet in general and social media in particular pose grave risks to children.”⁹⁷ Beginning in this manner, the court impliedly acknowledged that there are currently grave issues with the way the internet is being regulated or monitored, but unfortunately, by rendering its unfavorable decision, the court determined that the solution to this issue lies elsewhere.

In *Omegle*, an eleven-year-old girl was using the popular platform “Omegle,” which anonymously connects two random individuals in a video and voice chatroom—consistent with its tagline: “Omegle: Talk to Strangers!”⁹⁸ Woefully, the minor connected with an unascertained individual, who displayed a black screen with text containing her “exact geolocation.”⁹⁹ Additionally, he threatened that he would hack her family’s electronics if she did not remove her clothing and follow his directives.¹⁰⁰ The minor complied with these threats while the perpetrator took screenshots and screen recordings of the encounter.¹⁰¹

Consistent with the conduct in the *Reddit* case, the court correctly observed that “this problem is not unique to Omegle.com . . . [because] child predators use many other online platforms to find and exploit their victims.”¹⁰² The Eleventh Circuit, however, does little by way of finding a solution to this grave evil. The parents of the minor child sued, alleging that Omegle violated the Trafficking Victims Protection Reauthorization Act by “knowingly benefitting from participation in a sex trafficking venture.”¹⁰³ The court, however, affirmed the district court’s dismissal on the grounds that Omegle is protected by Section 230 immunity.¹⁰⁴ Further, the court cited *Does v. Reddit*, holding that “[t]he FOSTA exception applies only to conduct that meets the standard for criminal liability for sex trafficking.”¹⁰⁵ Here, siding with the Ninth Circuit, the Eleventh Circuit expressly accepted the notion that Section 230 criminal liability under 18 U.S.C. § 1591 can *only* occur when the

97. *Id.* at 1268.

98. *Id.* at 1268–69.

99. *Id.* at 1269.

100. *Id.*

101. *Id.*

102. *Id.* at 1268 (citing *United States v. Woodson*, 30 F.4th 1295, 1307 (11th Cir. 2022)); *see generally* *Does v. Reddit*, 51 F.4th 1137 (9th Cir. 2022).

103. *Omegle.com*, 122 F.4th at 1268.

104. *Id.*

105. *Omegle.com*, 122 F.4th at 1268 (citing *Reddit*, 51 F.4th at 1137).

interactive internet service provider has *actual knowledge* of the benefits derived from commercial sexual exploitation; but constructive knowledge is insufficient.¹⁰⁶

These two holdings in the *Reddit* and *Omegele* cases raise several overarching, “big picture” considerations regarding current Section 230 immunity and its connection to human trafficking and CSAM. First, the current interpretation of the statute is generally bipartisan. Ideologically, the Ninth Circuit and the Eleventh Circuit could not be any more different; yet, both courts come to the same conclusion.¹⁰⁷ Second, unfortunately, this tends to suggest that the current interpretation is, at least, *one* accurate assessment of these “exceptions,” and thus, it must be altered by Congress or clarified by the Supreme Court. The Eleventh Circuit confirmed this suggestion when it quoted the Ninth Circuit in *Reddit*, stating: “If the FOSTA exception to [S]ection 230 is too narrow to accomplish its goal, ‘this is a flaw, or perhaps a feature, that Congress wrote into the statute, and is not one we can rewrite by judicial fiat.’”¹⁰⁸

B. Is there any room for a broad approach?

The current precedent as laid out does not appear to leave much room for a broad approach to the FOSTA exception to Section 230 as far as the federal courts are concerned. But is there any room for a state to police interactive internet service providers more broadly?

The great state of Texas seems to think that there is.¹⁰⁹ In *In re Facebook, Inc.*, Facebook sought three writs of mandamus dismissing the complaints by users who alleged that they became entangled with their abusers and commercial sex trafficking through Facebook.¹¹⁰ These three victims of sexual exploitation asserted, *inter alia*, that Facebook violated a Texas law that provided a civil right of action “against those who intentionally or knowingly benefit from participation in a sex-trafficking venture.”¹¹¹ This language, of course, is nearly identical to the language from 18 U.S.C. § 1591.¹¹² Facebook sought to have this Texas statutory claim dismissed, arguing that it was barred

106. *Omegele.com*, 122 F.4th at 1274.

107. *Id.* at 1276; *Reddit*, 51 F.4th at 1142.

108. *Omegele.com*, 122 F.4th at 1275 (quoting *Reddit*, 51 F.4th at 1145).

109. *In re Facebook, Inc.*, 625 S.W.3d 80, 82 (Tex. 2021).

110. *Id.* at 83, 85, 96.

111. *Id.*; see also Tex. Civ. Prac. & Rem. Code § 98.002(a).

112. See 18 U.S.C. § 1591 (“benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1)”).

as “inconsistent” with, or preempted by, Section 230(e)(3).¹¹³ The Supreme Court of Texas, however, rejected Facebook’s attempt to invalidate the Texas law, and the Court stated powerfully, “[w]e do not understand [S]ection 230 to ‘create a lawless no-man’s-land on the [i]nternet’ in which states are powerless to impose liability on websites that knowingly or intentionally participate in the evil of online human trafficking.”¹¹⁴

The Court continued, stating that Section 230 did not revoke a state’s “authority to protect their citizens from internet companies whose own actions—as opposed to those of their users—amount to knowing or intentional participation in human trafficking.”¹¹⁵ While this approach is not *necessarily* a mechanism for holding interactive internet providers accountable for the actions of third-party posters as a publisher, it does broaden the protection for the victims and expands law enforcement’s ability to hold perpetrators accountable for their actions that are, at least, tangential to third-party conduct.

Surprisingly, the Supreme Court of Texas also noted that there is likely room for a broader interpretation of the Section 230 exception in the federal courts as well.¹¹⁶ It mentioned that in October 2020, the case of *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, another standard Section 230 case, made its way to the Supreme Court, but certiorari was not granted.¹¹⁷ What was given, however, was a thorough concurring opinion from Justice Thomas, articulating his argument for a new interpretation of Section 230.¹¹⁸ In his concurring opinion, Justice Thomas drew an *essential* distinction that, if adopted and recognized, would permit the government and states to police human trafficking and CSAM, while at the same time protecting free speech and the marketplace of ideas on popular social media sites.¹¹⁹ He stated:

113. In re Facebook, Inc., 625 S.W.3d at 83; see 47 U.S.C. § 230(e)(3) (“No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.”).

114. In re Facebook, Inc., 625 S.W.3d at 83 (“[H]olding internet platforms accountable for the words or actions of their users is one thing, and the federal precedent uniformly dictates that section 230 does not allow it. Holding internet platforms accountable for their own misdeeds is quite another thing. This is particularly the case for human trafficking. Congress recently amended section 230 to indicate that civil liability may be imposed on websites that violate state and federal human-trafficking laws.”).

115. *Id.*

116. *Id.* at 90–91 (“But if the more limited view is only one reasonable reading of the text—and if the broader view is also reasonable—we are hard pressed to cast aside altogether the universal approach of every court to examine the matter over the twenty-five years of section 230’s existence.”).

117. *Id.* at 90; see *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13 (2020) (Mem.).

118. *Malwarebytes*, 141 S. Ct. at 18 (2020) (Mem.).

119. *Id.*

A common thread through all these cases is that the plaintiffs were not necessarily trying to hold the defendants liable “as the publisher or speaker” of third-party content. Nor did their claims seek to hold defendants liable for removing content in good faith. *Their claims rested instead on alleged product design flaws*—that is, the defendant’s own misconduct.¹²⁰

Practically speaking, when a plaintiff alleges that an interactive internet service provider is liable for the post of a third-party user, he is not trying to impute the speech onto the provider, but is, instead, arguing that the provider has situated its platform in such a way as to enable the user to post such content.¹²¹ Afterall, a handyman pricked by a faulty nail would not sue the nail company for battery, but products liability. Similarly, the provider has created a product, and being the custodian of that product, it has a duty to regulate and police the platform as much as is necessary to prevent the atrocities of human trafficking and CSAM.

Unsurprisingly, a district court in the Ninth Circuit disagreed with this Texas holding, mentioning it by name in the case, *Doe v. Reddit*.¹²² While the Texas holding has not been overturned or held to be preempted by federal law, the Ninth and Eleventh Circuit’s interpretations appear to carry greater weight in the federal courts.¹²³ Under this approach, online human trafficking is incredibly hard to prevent, and as technology advances even further, it will only become more difficult.

C. *Potential Solutions*

Based on the foregoing analysis, there are two primary potential solutions to the Section 230 dilemma. The first, and likely the most effective, solution would be a direct amendment to Section 230 and FOSTA as they currently stand. Second, the Supreme Court could clear up the ambiguity and draw unity among the federal circuits and among the several states via judicial opinion,

120. *Id.* (citation omitted) (emphasis added).

121. *Id.*

122. *See Doe v. Reddit, Inc.*, NO. SACV 21-768 JVS(KESX), U.S. Dist. LEXIS 129876, at *14 (C.D. Cal. July 12, 2021) (“The Court firmly disagrees with the Supreme Court of Texas’s reading of § 230(e)(5). In *In re Facebook*, the Texas Supreme Court ruled that 47 U.S.C. § 230(e)(5) did not create exceptions to § 230 but rather created ‘a rule of construction’ that puts into effect a ‘Sense of Congress’ that § 230 was ‘never intended to provide legal protection to . . . websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims.’”) (emphasis added).

123. *See Kendra Albert et al., FOSTA in Legal Context*, 52 COLUM. HUM. RTS. L. REV. 1084, 1157 (2021) (“[T]he textual scope of the 230 changes are, at this time, restricted almost entirely to claims under 1595 that can be brought by individual litigants or state AGs using the *parens patriae* provisions.”).

adopting Justice Thomas's concurrence in *Malwarebytes* as its majority opinion.¹²⁴ Either way, change is necessary in order to mitigate the United States' involvement in the global total of CSAM and commercial sexual exploitation.¹²⁵

I. The Legislative Route

As stated, the FOSTA exception can hardly be called an exception, as it is only concerned with the *actual* conduct of the interactive internet provider, rather than the third-party user.¹²⁶ Under the current statutory scheme, a provider only violates the statutes when it *knowingly* participates or benefits from human trafficking or related conduct.¹²⁷ In place of a strict scienter requirement, Congress should adopt the lower *mens rea* of, at a minimum, recklessness. With the exception of the infamous *Backpages.com* cases,¹²⁸ very seldom does an interactive internet provider willingly participate in the actual conduct of human trafficking or CSAM. Therefore, while FOSTA does lead to an increase in prosecutions, this increase is likely minimal, as the type of conduct it seeks to limit is generally uncommon.¹²⁹ Lowering the *mens rea* to reckless disregard of the posted content, but not any lower, would be the mean between two extremes. On the other hand, lowering the threshold too far would be untenable, as it would open the floodgates to litigation, and on the other hand, keeping the law as it currently stands fails to protect the victims of human trafficking and CSAM.

124. *Malwarebytes*, 141. S. Ct. at 18.

125. See Williams, *supra* note 69.

126. 47 U.S.C. § 230(e); see 18 U.S.C. §§ 1591, 1595.

127. 47 U.S.C. § 230(e); see 18 U.S.C. §§ 1591, 1595.

128. See Att'y Gen. of Tex., *Backpage.com Pleads Guilty to Human Trafficking in Texas*, TEX. ATT'Y GEN. (Apr. 12, 2018), <https://www.texasattorneygeneral.gov/news/releases/backpagecom-pleads-guilty-human-trafficking-texas> (on file with the Ave Maria Law Review). Backpages.com was an advertising website, founded in 2004, that would frequently post advertisements for various "adult services." *Id.* Some of these services allegedly included prostitution and occasionally advertised commercial sexual exploitation. *Id.* In 2018, Backpages.com was shut down and investigated by the Department of Justice. *Id.* The CEO of the website, Carl Ferrer, later pleaded guilty to sex trafficking. *Id.* This scandal was one of the leading motivators for the passing of FOSTA. *Id.*

129. *M.H. v. Omegle.com LLC*, 122 F.4th 1266 (11th Cir. 2024) (citing *Does v. Reddit*, 51 F.4th 1137 (9th Cir. 2022)) These cases are just a few examples of how uncommon it is for interactive internet providers to fall within the FOSTA exceptions. *Id.* The courts are generally more inclined to find against the exception, rather than for it. This may be due, in part, to the free speech interest that is being protected by Section 230.

2. *The Judicial Route*

The holding in *In re Facebook, Inc.* demonstrates that there is, at least, *some* play in the joints when it comes to the “knowingly” requirement for 18 U.S.C. § 1591.¹³⁰ This is further affirmed by Justice Thomas’s concurring opinion in *Malwarebytes*.¹³¹ The issue with taking the judicial route, however, is that it appears the Supreme Court shares the sentiment expressed by the Ninth and Eleventh Circuits, namely, that Section 230 should not be altered by judicial fiat, but by an act of Congress.¹³² This sentiment is evidenced by the continual denial of certiorari, as seen in *Does v. Reddit* and the *Malwarebytes* case, which both concern Section 230, FOSTA, and sexual exploitation.¹³³

If the Supreme Court overcomes this trepidation, however, there is room for a reinterpretation of the scienter requirement.¹³⁴ In fact, one of the leading sponsors of FOSTA, Senator Richard Blumenthal, stated “[a]s a state prosecutor, I was told that I could not pursue actions against Craigslist or other sites nearly a decade ago because of [CDA § 230] and the interpretation. Clearly, the websites that facilitate this, knowingly encouraging and profiting from sex trafficking, must face repercussions in the courtroom.”¹³⁵ Prior to 2018, Craigslist offered a category called “personals,” which facilitated casual romantic meet ups via the internet, but removed the section following the ratification of FOSTA.¹³⁶ Here, there is not much of a difference between Craigslist and Reddit, which permits dating, “casual hook-ups,” and the like. The courts, however, have held that Reddit’s conduct, at best, amounts to constructive knowledge, rather than active participation.¹³⁷ Senator Blumenthal’s comment, then, offers insight into a potential interpretation of the statute, namely, that constructive knowledge does in fact satisfy the

130. *In re Facebook, Inc.*, 625 S.W.3d 80, 97 (Tex. 2021).

131. *See Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13 (2020) (Mem.).

132. *Omegele.com*, 122 F.4th at 1275 (quoting *Does v. Reddit*, 51 F.4th 1137, 1145 (9th Cir. 2022)) (“[I]f the FOSTA exception to [S]ection 230 is too narrow to accomplish its goal, ‘this is a flaw, or perhaps a feature, that Congress wrote into the statute, and is not one we can rewrite by judicial fiat.’”).

133. *Does v. Reddit, Inc.*, 2023 U.S. LEXIS 2249 (U.S. May 30, 2023); *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13 (2020) (Mem.).

134. *See Albert et. al.*, *supra* note 123, at 1104.

135. *Id.* (highlighting the potential congressional intent for a less stringent scienter requirement).

136. *See Craigslist Closes Personals Sections in US, Cites Measure*, ASSOCIATED PRESS (Mar. 23, 2018), <https://apnews.com/article/---8bb852b8b53c406fb82f94c47793b846> (on file at the Ave Maria Law Review).

137. *See Does v. Reddit*, 51 F.4th 1137, 1145 (9th Cir. 2022).

scienter requirement. This would certainly be a more complex solution to the Section 230 dilemma, but it could work nonetheless.

D. A Common Counterargument

An article published in the Florida International University School of Law advocating for an unreformed Section 230 stated:

By attaching Section 230 immunity to an internet platform's lack of knowledge of sex trafficking, FOSTA-SESTA revives the dilemma that led Congress to pass Section 230 in the first place. To shield themselves from liability, some online platforms have wavered between filtering everything even remotely related to sex or figuratively covering their eyes and ears by turning off all moderation so that they cannot be held responsible for "knowingly facilitating" sex trafficking. Others, like Craigslist, simply have exited or turned off that part of their operations.¹³⁸

Here, the author boils Section 230 reform down to two extremes, neither of which is particularly problematic or guaranteed to result following such reform. First, the author argues that, following FOSTA, interactive internet providers have opted to remove all sexually explicit content from their platforms.¹³⁹ Here, the author is attempting to weigh the right to view sexually explicit content against the good of protecting the innocent from becoming victims of CSAM and human trafficking. An obvious and natural fallout of reforming Section 230 is that certain types of sexual conduct will become more regulated and less available online. This, however, is precisely the goal of such a reform. FOSTA does not deny individuals the right to free speech, nor does it limit the speech of the provider; rather, it limits conduct that is fundamentally *unprotected* speech, such as CSAM.¹⁴⁰ Therefore, Craigslist pulling categories from its platform that were infested with CSAM and illegal sexual solicitation is of no concern to speech and is the whole point of the reform in the first place. The providers are responsible for determining what lawful content will be available on their platforms, and the government (state or federal) is responsible for determining what types of content are contrary to the common good of the polity, such as CSAM.

138. Christian Sarceño Robles, *Section 230 is Not Broken: Why Most Proposed Section 230 Reforms Will Do More Harm Than Good, and How the Ninth Circuit Got It Right*, 16 FIU L. REV. 213, 223 (2021).

139. *Id.*

140. See Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115–164, 132 Stat. 1253 (2018).

Second, the author states that providers may be inclined to cease all monitoring and regulation of sexual content on their platforms.¹⁴¹ As stated in Section I above, one of the initial goals of Section 230 was to permit interactive internet providers to handle deviant sexually explicit materials without the fear of being considered the publisher of that material.¹⁴² This “Good Samaritan” aspect of Section 230 was left untouched by FOSTA. FOSTA is only implicated when a provider’s *own* conduct rises to the level of an actionable offense under 18 U.S.C. § § 1591 or 1595.¹⁴³ Moreover, as seen in the *Reddit* and *Omegle* cases, this is an incredibly high bar of conduct to meet.¹⁴⁴ Under the current Ninth Circuit framework,¹⁴⁵ large internet corporations have nothing to fear and can simply turn a blind eye to the questionable sources of their revenue, and there is nothing to suggest that this indifference is due to a fear of prosecution. Indeed, a *total* abandonment of regulation would likely place a provider at greater risk of willful ignorance, or something similar, which may (or should) be used to supplement actual knowledge or participation in the conduct. After all, it does not take much to distinguish between an active participation in human trafficking and a failed bone fide attempt to regulate CSAM or any other unlawful conduct. Finally, if Congress were to lower the *mens rea* under FOSTA, such a gross and reckless indifference would certainly become actionable.

At this time, it does not appear that a reformed and amended Section 230 would do anything but encourage large internet corporations to finally get serious about cracking down on the exploitation of the most vulnerable among us.

IV. CONCLUSION: A GLIMPSE INTO THE FUTURE AND A RENEWED STEP FORWARD

Defeating human trafficking is a great moral calling of our time.¹⁴⁶

141. Robles, *supra* note 138, at 223.

142. See BRANNON & HOLMES, *supra* note 14.

143. 47 U.S.C. § 230(e); see 18 U.S.C. §§ 1591, 1595.

144. See *Does v. Reddit, Inc.*, 51 F.4th 1137, 1145 (9th Cir. 2022); see also *M.H. v. Omegle.com LLC*, 122 F.4th 1266 (11th Cir. 2024).

145. *Reddit*, 51 F.4th at 1139.

146. Condoleezza Rice, *Release of the Sixth Annual Trafficking in Persons Report*, U.S. DEP’T OF STATE: ARCHIVE (June 5, 2006), <https://2001-2009.state.gov/secretary/rm/2006/67551.htm> (on file with the Ave Maria Law Review).

While lowering the threshold for an interactive internet provider's liability under FOSTA would be a colossal step toward defeating human trafficking and the circulation of CSAM, there would still be plenty of work to do to ensure that the victims are taken care of, and that the United States has the resources and training it needs to sustain the battle. The TAKE IT DOWN Act, which became law in May 2025, and The Renewed Hope Act of 2024, which is led primarily by the Tim Tebow Foundation and awaits ratification, are two such provisions that achieve these goals—and if they *both* become law, the United States will be a much safer place.

A. The TAKE IT DOWN Act

The TAKE IT DOWN Act, which garnered great bipartisan support in its ratification, fights directly against online CSAM, both real and fake.¹⁴⁷ Under this Act, social media platforms are required to take down CSAM and non-consensual images within two days (48 hours) after notification.¹⁴⁸ In addition to mandating the removal of these images, any threat to post non-consensual images of an adult can result in imprisonment for up to eighteen months, and thirty months if an individual threatens to post CSAM of a particular minor.¹⁴⁹ Furthermore, the law would criminalize the non-consensual and CSAM “deepfakes” along with actual depictions of the individuals.¹⁵⁰

The passing of this law was an excellent step toward healing the nation of its contribution to worldwide CSAM, while also tending to the vulnerable children and the sexually exploited by upholding their dignity, regardless of whether the images or abuse are tangible or computer generated. The TAKE IT DOWN Act is a significant step toward regulating the misuse of artificial intelligence, which is growing so rapidly in the United States.¹⁵¹

B. The Renewed Hope Act of 2024

The Renewed Hope Act of 2024 represents an incredibly practical and sensible response to the growing influence of CSAM and commercial sexual exploitation online.¹⁵² According to the Tim Tebow Foundation, the Renewed Hope Act of 2024 would enhance the Department of Homeland Security's

147. Pub. L. No. 119-12, 139 Stat. 55 (May 19, 2025).

148. *Id.*

149. *Id.* at (a)(6)(B).

150. *Id.*

151. See BRACKET FOUND., *supra* note 86, at 11–12.

152. H.R. 9523, 118th Cong. (2024).

ability to investigate human trafficking.¹⁵³ First, the Act would require the hiring and training of 200 new “investigators,” “computer forensics,” and “criminal analysts” to the Exploitation Investigations Unit and HSI field offices and contract for temporary experts and consultants to assist in victim identification.¹⁵⁴ Second, it would require the Director of Homeland Security to “establish procedures for agencies within DHS to deconflict, coordinate, and synchronize child sexual exploitation investigations with [the Homeland Security Investigations Cyber Crimes Center].”¹⁵⁵ And finally, it would permit the victim identification training program to be used to train ICE personnel and “Federal, State, local, military, and foreign law enforcement.”¹⁵⁶

This Act would give the United States the practical tools necessary to fight and win the battle against human trafficking and CSAM. Through extensive training and forensics, the United States would be able to investigate potential threats to minors and the vulnerable and hopefully intervene before it is too late.

C. Conclusion

While the Netherlands may have found a way to lower its own personal CSAM footprint in the world, the migration *out* of the Netherlands suggests that the solution was more of a bandage than a real fix.¹⁵⁷ The minors depicted in the videos and images are just as harmed whether the URLs are hosted in the United States or in the Netherlands. The amendment to FOSTA and Section 230 proposed in this Note, as well as the two acts highlighted above, demonstrate real common good solutions to the battle against human trafficking and CSAM. Lowering the threshold for liability under FOSTA would encourage interactive internet providers to *truly* regulate their platforms in order to prevent the depiction of sexual exploitation and CSAM, and permit law enforcement to step in when they fall short. But the other half of every crime is the victim, and the law should not only proscribe evil, but promote

153. See *Tim Tebow Rallies Bipartisan Leaders To Champion The Renewed Hope Act of 2024*, TIM TEBOW FOUND. (Sep. 10, 2024), <https://timtebowfoundation.org/stories/tim-tebow-rallies-bipartisan-leaders-champion-renewed-hope-act-2024> (on file with the Ave Maria Law Review).

154. *Id.*

155. *Id.*

156. *Id.*

157. See Williams, *supra* note 69.

the good and care for the vulnerable.¹⁵⁸ The TAKE IT DOWN Act and the Renewed Hope Act of 2024 do just that. By focusing our efforts on victim identification and training our law enforcement to traverse this new, hyper-technological age, the United States would be assuming its role as the city on the hill¹⁵⁹ and hopefully lower the *global* total of CSAM and commercial sexual exploitation.

Before the United States can effectuate this change, however, every entity must play its part, and Section 230 should no longer permit large internet corporations to turn a blind eye to the grave evils being perpetrated on their platforms.

158. Thomas Aquinas, *Summa Theologica*, pt. I-II, Q. 94, Art. 2, <https://aquinas.cc> (“Consequently the first principle of practical reason is one founded on the notion of good, viz., that *good is that which all things seek after*.”).

159. See Ronald Reagan, *Farewell Address to the Nation*, RONALD REAGAN PRESIDENTIAL LIBRARY & MUSEUM NAT’L ARCHIVES (Jan. 11, 1989), <https://www.reaganlibrary.gov/archives/speech/farewell-address-nation> (on file with the Ave Maria Law Review) (“The past few days when I’ve been at that window upstairs, I’ve thought a bit of the ‘shining city upon a hill.’” “The phrase comes from John Winthrop, who wrote it to describe the America he imagined. What he imagined was important because he was an early Pilgrim, an early freedom man. He journeyed here on what today we’d call a little wooden boat; and like the other Pilgrims, he was looking for a home that would be *free*.” (emphasis added)).