

HUMAN TRAFFICKING AND ONLINE PLATFORM LIABILITY

*Maddison M. Moser**

INTRODUCTION

I. HUMAN TRAFFICKING OVERVIEW

Human trafficking is the largest manifestation of slavery today, encompassing at least 700,000 individuals internationally per year.¹ Most trafficked individuals are either coerced, forced, or fraudulently convinced into this modern form of slavery.² Although many falsely believe that trafficking only happens overseas, it is rampant in the United States. According to the National Human Trafficking Hotline, trafficking cases have been reported in every state in the United States.³ In 2016, the National Center for Missing and Exploited Children reported over eight million tips regarding human trafficking in the United States.⁴ This data includes instances of both the online encouragement of trafficking and child sex trafficking.⁵

Traffickers are master manipulators. They usually target individuals impacted by “poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunity in [their respective] countries of origin.”⁶ They also target runaways and homeless youth⁷ who experience higher susceptibility to trafficking because of the absence of a strong support system.⁸ Similarly, trafficked individuals are lured by false promises of careers and other opportunities, which are enticing to those that lack a secure family dynamic.

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1. 22 U.S.C. § 7101(b)(1).

2. *Id.*

3. *Statistics on Trafficking and Exploitation*, ECPAT-USA, <https://www.ecpatusa.org/statistics> (last visited Oct. 27, 2021).

4. *Id.*

5. *Id.*

6. § 7101(b)(4).

7. *The Victims*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking/human-trafficking/victims> (last visited Oct. 27, 2021).

8. *Id.*

Individuals are also more susceptible to trafficking if they have experienced trauma or mental illness.⁹

Human trafficking is one of the fastest growing organized criminal enterprises worldwide.¹⁰ The law surrounding human trafficking is evolving, but not quickly enough to combat the crime. Considering the prevalence of trafficking, recent legislation has failed to achieve its intended result: to prevent trafficking and its facilitation. Moreover, recent legislation implemented to combat human trafficking has instead created countless negative repercussions for survivors and has left the source of the crime unaddressed and unpunished. Two examples of this include the Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA), commonly known as SESTA-FOSTA.¹¹ These bills were written to combat shortcomings in Section 230 of the Communications Decency Act (CDA), which essentially provided internet service providers (ISPs) blanket immunity for the content of the posts of third parties on their platforms.¹² Thus, ISPs had minimal responsibility in addressing and regulating the content on their platforms that contributed to human trafficking. Section 230 states that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”¹³ While SESTA-FOSTA attempted to combat this issue with Section 230 of the CDA by establishing liability for ISPs that fail to combat human trafficking on their platforms, it was largely criticized for being over- or underinclusive in addressing the liability of internet platforms.¹⁴

The Allow States and Victims to Fight Online Sex Trafficking Act of 2017 (ASVFOSTA, more commonly known as SESTA-FOSTA), merged the senate and house bills mentioned above and was signed into law by President Donald Trump in 2018.¹⁵ SESTA-FOSTA stated that Section 230 of the CDA was never intended to provide immunity to ISPs who contribute to crimes such as human trafficking.¹⁶ However, the Act is continually criticized because it implemented vague standards and rigorous regulations to hold internet platforms liable for their crimes including establishing liability for websites that “promote and facilitate prostitution[,]”¹⁷ and “have done nothing to prevent the trafficking of children and victims of force,

9. Rosemary Killian & Loretta M. Young., *Human Trafficking: A Primer*, 34 DEL. L. 8, 9 (2016).

10. § 7101(b)(8).

11. Aja Romano, *A New Law Intended to Curb Sex Trafficking Threatens the Future of the Internet as We Know it*, VOX (Jul. 2, 2018, 1:08 PM), <https://www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom>.

12. *Id.*

13. 47 U.S.C. § 230(c)(1)

14. *Id.*

15. H.R.1865 - Allow States and Victims to Fight Online Sex Trafficking Act of 2017, CONGRESS.GOV, <https://www.congress.gov/bill/115th-congress/house-bill/1865/actions> (last visited Oct. 28, 2021).

16. Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, 123 Stat. 1253 (2018).

17. *Id.*

fraud, and coercion.”¹⁸ Regulation on platforms and the costs of liability have become so burdensome that many platforms have shut down sections of their websites altogether because they cannot comply.¹⁹

Because SESTA-FOSTA placed unobtainable restrictions on websites and social media platforms, ISPs who could not afford to comply with the restrictions received the brunt of the negative repercussions and consequences.²⁰ Similarly, legislation that provides liability for third party speech on platforms threatens the existence of some of the most popular sites on the web.²¹ As a solution to the burdensome ISP regulations proposed in these bills, the American Civil Liberties Union (ACLU) advocates for the use of an analysis called the “Santa Clara Principles.”²² The first principle requires platforms to self-police their websites by publishing both the number of posts removed and accounts permanently or temporarily suspended due to violations of their content guidelines.²³ The second principle dictates that a website must provide notice to each user about their account or post being suspended, along with the reason for the suspension.²⁴ The last principle states that a website should “provide a meaningful opportunity for timely appeal of any content removal or account suspension.”²⁵ While this may help police human trafficking on platforms, self-policing requires more structure and implemented procedure.

While many authors discuss the impacts of human trafficking, this piece contributes uniquely to the existing literature because it offers an effective and feasible solution to detecting and addressing human trafficking that takes place on the internet. The best possible compromise for law enforcement and ISPs to combat human trafficking on the internet is compliance programs implemented by the platforms themselves. Compliance programs would benefit ISPs as they could demonstrate to the public a “commitment to the values and ethics of [an] organization as well as compliance with applicable laws and regulations,”²⁶ while also allowing ISPs to detect criminal and unethical behavior within their respective platform to reduce the likelihood of criminal and civil liability within their own organization.²⁷ ISP-implemented compliance programs with attributes similar to those envisioned in Chapter 8 of the Federal Sentencing Commission Guidelines

18. *Id.*

19. *With FOSTA Already Leading to Censorship, Plaintiffs Are Seeking Reinstatement of Their Lawsuit Challenging the Law’s Constitutionality*, ELECT. FRONTIER FOUND., <https://www EFF.org/deeplinks/2019/02/fosta-already-leading-censorship-plaintiffs-are-seeking-reinstatement-lawsuit> (last visited Nov. 5, 2021).

20. Romano, *supra* note 11.

21. *See Experts Oppose SESTA/FOSTA*, ELECT. FRONTIER FOUND., <https://stopsesta.org/#facts> (last visited Oct. 27, 2021).

22. *See The Santa Clara Principles on Transparency and Accountability in Content Moderation*, <https://santaclaraprinciples.org> (last visited Oct. 27, 2021).

23. *Id.*

24. *Id.*

25. *Id.*

26. Ketanji B. Jackson & Kathleen C. Grilli, *What is a Compliance Program?*, COSMOS, <https://compliancecosmos.org/1-what-compliance-program> (last visited Oct. 27, 2021) [hereinafter *What is a Compliance Program?*].

27. *Id.*

would allow for a flexible consideration of mitigating factors that are cost effective and can be tailored to each individual ISP. Each ISP would be required to implement a compliance program that is specifically tailored to their platform to allow for flexibility as technology and legislation evolves. These programs would avoid the blanket immunity approach implemented in Section 230 of the CDA and would be less rigorous than the standard set forth in SESTA-FOSTA that resulted in many ISPs closing their doors due to vague legislation.

Part II of this Note will briefly discuss the harms of trafficking online, including how the expansion of technology has made trafficking easier for traffickers and more difficult for law enforcement to detect on the internet. It will also discuss the relevant legislation regarding platform liability and how the Federal Sentencing Guidelines are a more useful model for establishing platform liability. Part III will discuss compliance programs, their effectiveness, and a solution which includes a detailed process for determining culpability and calculating the fines of the platforms based on their culpability. Part IV will discuss possible infringements on constitutional rights including freedom of speech, the dangers of vague legislation, the adaptability of compliance programs, and whether public policy should allow immunity for platforms who contribute to trafficking. Lastly, Part V will review the benefits of implementing compliance programs and how it will combat human trafficking online by providing better alternatives for platforms to police trafficking, rather than the legislation in SESTA-FOSTA and Section 230 of the CDA.

II. BACKGROUND

A. *Harms of Trafficking Online*

As technology advances and traffickers become more deceptive, the Trafficking Victims Protection Act is continually altered to account for the findings of new research.²⁸ There are countless ways that the internet and the expansion of technology make trafficking easier for traffickers. Contrary to popular belief that only men are traffickers, this misconception is not the case.²⁹ In the past, trafficking was traced in more obvious ways, such as red-light districts and individuals standing on street corners where the facilitation of trafficking and prostitution existed in plain view.³⁰ One of the main reasons for the recent increase in trafficking is because of the confidentiality associated with the internet. Recruiting online is “cheap, anonymous, fast, leaves only digital traces, can be hard to locate, and the perpetrator does not have to leave home.”³¹ In fact, “[t]he

28. See generally 22 U.S.C. 78 § 7101.

29. Dr. Jade Keller, *The Case of Female Traffickers*, FREEDOM STORY (June 7, 2018), <https://thefreedomstory.org/the-case-of-female-traffickers/>.

30. Abby R. Perer, Note, *Policing the Virtual Red Light District: A Legislative Solution to the Problems of Internet Prostitution and Sex Trafficking*, 77 BROOK. L. REV. 823, 827 (2012).

31. Victoria Vanderschaaf, *Spotlight on: How the Internet Facilitates Underage Victimization in Human Trafficking*, 34 CHILD. LEGAL RTS. J. 135, 136 (2013).

number one place predators find their victims is on social media sites.”³² With advances in technology and the penchant many have to share their personal lives on the internet, traffickers have access to even the most private moments. Posts on social media similar to, “my parents are the worst,” or “I wish I had somebody to talk to,” can alert a trafficker that an individual needs an emotional connection with someone, which provides the opportunity for the trafficker to take advantage of an individual’s emotional vulnerability.³³

It remains a common misconception that trafficking only happens outside of the United States.³⁴ This could be in part because trafficking is not as detectable as it used to be due to advances in technology and the increased deceptiveness of traffickers. Another cause of Americans’ warped perception may be attributable to movies like *Taken*, where the trafficked individual was a wealthy, white woman who was snatched at the airport.³⁵ This is not actually representative of trafficked populations today.³⁶ In reality, the individuals most likely to be trafficked are those with substance abuse issues, those that have recently migrated or relocated, and those that are runaway or homeless youth.³⁷ In fact, one in six runaway children will likely become trafficked.³⁸

While it is difficult to gather data on human trafficking because of the secrecy and strenuous investigative work involved,³⁹ a study conducted by Dr. Vanessa Bouché at Texas Christian University that found 75% of trafficked individuals in the study reported being sold online.⁴⁰ The study also found that in 2015, the majority of recruitment and grooming took place entirely online because the internet has increased the ability to advertise trafficking on a larger scale at a faster rate, so much so that “only 45% . . . reported meeting their trafficker face to face.”⁴¹ The remaining 55% reported use of text, website, or app.⁴² Before 2004, 38% of trafficked individuals were trafficked through an online advertisement, whereas after 2004 with the expansion of technology, the percent increased to 75%.⁴³ The study recommended educating about trafficking online so that individuals can

32. *Id.*

33. *Id.*

34. *Human Trafficking in the US: Misconceptions vs. Reality*, OHIO STATE UNIV. COLL. OF ARTS AND SCI.: GLOB. HUM. TRAFFICKING (Mar. 6, 2018), <https://u.osu.edu/osuhtblog/2018/03/06/human-trafficking-in-the-us-misconceptions-vs-reality/>.

35. Johathan Todres, *Movies and Myths About Human Trafficking*, CONVERSATION (Jan. 20, 2016, 5:51 AM), <https://theconversation.com/movies-and-myths-about-human-trafficking-51300>.

36. *Id.*

37. *Myths, Facts, and Statistics*, POLARIS, <https://polarisproject.org/myths-facts-and-statistics/> (last visited Oct. 27, 2021).

38. *Sex Trafficking Statistics*, GUARDIAN GROUP, <https://guardiangroup.org/sex-trafficking-statistics/> (last visited Oct. 27, 2021).

39. *Human Trafficking*, MIGRATION DATA PORTAL, <https://migrationdataportal.org/themes/human-trafficking> (last updated May 6, 2021).

40. Dr. Vanessa Bouché, *Survivor Insights: The Role of Technology in Domestic Minor Sex Trafficking*, THORN 5 (Jan. 2018), https://www.thorn.org/wp-content/uploads/2018/06/Thorn_Survivor_Insights_061118.pdf.

41. *Id.*

42. *Id.*

43. *Id.* at 7.

identify human trafficking before the trafficker has a chance to recruit an individual.⁴⁴ Dr. Bouché argued that the prevalence of trafficking is due to the “quickly shifting landscape in any area involving technology[.]”⁴⁵

While social media may seem like a safe place to communicate with others, there is a large amount of information available to almost any user on the platform. An estimated thirteen million U.S. Facebook users either chose not to change their privacy settings or are unaware of their current privacy settings on Facebook.⁴⁶ This means that roughly 7.69% of Facebook users in the United States have their posts, photos, and location open to the public because of the lack of strict privacy settings on their profile.⁴⁷ Knowing this, a trafficker has extensive access to information regarding vacation plans, where a person went for lunch that day, or recent deaths in the family. While this might seem like meaningless information, it can be gathered by a trafficker to find a person’s recent whereabouts and use their emotional vulnerabilities to gain their trust. Trafficking is also hard to detect, especially online, because only 4% of law enforcement agencies in the United States have a dedicated human trafficking task force, which shows that platforms regulating their own content can be beneficial in preventing trafficking.⁴⁸

B. *Internet Liability*

The United States Code defines sex trafficking as “the recruitment, harboring, transporting, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.”⁴⁹ Force, fraud, or coercion are not necessary to prove when the trafficked individual is under eighteen years of age.⁵⁰ The sex trafficking provision of the federal criminal code, Section 1591,⁵¹ was amended by the Justice for Victims of Trafficking Act.⁵² This Act added the term “advertises” in the language of Section 1591 so that advertising sex trafficking is an included offense and violates federal criminal code.⁵³ Because of this, many internet platforms expressed concern about their potential liability and the possible floodgate of litigation they would face because of the trafficking taking place on their platforms. As a result, legislation was created and amended to protect websites and social media platforms.

One example of legislation that was created to protect internet platforms is Section 230 of the Communications Decency Act (CDA), which established a

44. *Id.* at 59.

45. *Id.* at 62.

46. Emil Protalinski, *13 Million US Facebook Users Don’t Change Privacy Settings*, ZDNET (May 2, 2012), <https://www.zdnet.com/article/13-million-us-facebook-users-dont-change-privacy-settings>.

47. *Id.*

48. *Sex Trafficking Statistics*, *supra* note 36.

49. 22 U.S.C. § 7102(12).

50. *See generally* 18 U.S.C. § 1591.

51. *Id.*

52. Justice for the Victims of Trafficking Act of 2015, Pub. L. No. 114-22, 129 Stat. 227.

53. *Id.*

three-prong elemental test for platform immunity.⁵⁴ This issue arose because a financial company, Prodigy, was held liable for a third party making false statements about a securities firm named Stratton Oakmont.⁵⁵ The court in *Stratton Oakmont, Inc.* held that Prodigy was liable for the false statements because Prodigy screened third party content while it was on their platform, so they exercised editorial control over the material on their website and ultimately decided to allow it on their site.⁵⁶ This case was superseded by Section 230 of the CDA, which determined three elements for platform immunity: (1) “the defendant must be a provider or user of an ‘interactive computer service’”;⁵⁷ (2) “the asserted claims must treat the defendant as a publisher or speaker of information;”⁵⁸ and (3) “the information must be provided by another ‘information content provider[.]’”⁵⁹ Section 230 generally renders platforms immune from liability under the CDA; platforms are rarely seen as publishers or speakers of information because they are considered mere distributors when the information is circulated on their platform.⁶⁰

As established in *Chubby, Inc. v. CompuServe, Inc.*, distributors have “no duty to monitor each issue of every periodical it distributes”⁶¹ because they are distributors, not publishers of the speech.⁶² Similarly, many other cases established that platforms were not responsible for taking down the offensive posts of others because of the possibility of litigation and liability that could follow if a platform failed to spot an offensive post or account.⁶³ Because Congress intended to preserve the “vibrant and competitive free market that presently exists on the Internet,” restrictions on or regulation of speech on the internet is generally treated with hostility.⁶⁴ Congress eventually passed SESTA-FOSTA,⁶⁵ or the Allow States and Victims to Fight Online Sex Trafficking Act of 2017, to regulate ISPs relating to the use of their platforms for sex trafficking.

SESTA-FOSTA states that whoever:

owns, manages, or operates an interactive computer service . . . or conspires or attempts to do so, with the intent to promote or facilitate the prostitution of another person and (1) promotes or facilitates the prostitution of 5 or more persons; or (2) acts

54. See generally 47 U.S.C. § 230.

55. *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 995 WL 323710, at *7 (N.Y. Sup. Ct. 1995).

56. *Id.* at *4.

57. *Schneider v. Amazon.com, Inc.*, 31 P.3d 37, 39 (Wash. Ct. App. Div. 1 2001).

58. *Id.*

59. *Id.*

60. Charles Matula, *Any Safe Harbor in a Storm: SESTA-FOSTA and the Future of Sec. 230 of the Communications Decency Act*, 18 DUKE L. & TECH. REV. 353, 353-54 (2020).

61. *Cubby, Inc. v. CompuServe, Inc.*, 776 F. Supp. 135, 140 (S.D.N.Y. 1991).

62. *Id.*

63. See generally *Bennett v. Google, LLC*, 882 F.3d 1163 (D.C. Cir. 2018).

64. *Klayman v. Zuckerberg*, 753 F.3d 1354, 1356 (D.C. Cir. 2014).

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

in reckless disregard of the fact that such conduct contributed to sex trafficking... shall be fined under this title, imprisoned for not more than 10 years, or both.⁶⁶

In short, if an internet service provider conspires or attempts to promote or facilitate the prostitution of another, they can be held liable.⁶⁷ While this legislation attempted to accomplish lofty goals, many argued that the Act had many shortcomings, mostly due to its vague language, overinclusiveness, and harsh repercussions for internet platforms.⁶⁸

Because of the strict requirements of the Act, many platforms were forced to shut down altogether. Platforms could not afford to stay open for fear of liability and large fines. For example, the Craigslist Personals section, where individuals searching for romantic relationships, friendships, and other interpersonal connections could post publicly on Craigslist, shut down shortly after the Act was signed into law because it often hosted advertisements for sex.⁶⁹ Further, the Senate Permanent Subcommittee on Investigations launched an investigation into Backpage, an advertisement hosting platform, and found that Backpage manipulated advertisements on its website regarding the facilitation of prostitution and child sex trafficking.⁷⁰ Because of this, the Federal Bureau of Investigations shut down Backpage shortly after SESTA-FOSTA was signed into law.⁷¹ Now, instead of people using Craigslist or Backpage for sex work or other trafficking purposes, they search for alternatives to the platforms because of the shutdowns caused by SESTA-FOSTA.⁷² Many also argue that SESTA-FOSTA does not fix the problem of trafficking or fight it at the source, rather it spreads trafficking to other places on the internet that are similar to Craigslist and Backpage, or push it further into the dark web making the content harder to detect.⁷³ For example, when Craigslist shut down its Personals section, it did not eliminate the trafficking taking place on the platform, but rather moved it to other sections of Craigslist, such as the Activities section or to other websites making the trafficking more difficult for law enforcement to find.⁷⁴ Because of SESTA-FOSTA's vague terms and the impossibility of those monitoring the platforms to catch every instance of trafficking, platforms are either forced to comply or shut down.⁷⁵ While this seems like a step in the right direction, it is argued that the operation of platforms which

66. *Id.*

67. *Id.*

68. *Supra* note 19.

69. *See generally* Merrit Kennedy, *Craigslist Shuts Down Personal Section After Congress Passes Bill on Trafficking*, NPR, <https://www.npr.org/sections/thetwo-way/2018/03/23/596460672/craigslist-shuts-down-personals-section-after-congress-passes-bill-on-traffickin> (last visited Nov. 13, 2021).

70. *See generally* H. Rept. 115-572 – Allow States and Victims to Fight Online Sex Trafficking Act of 2017 (2017-2018).

71. *Id.*

72. Kennedy, *supra* note 69,

73. *Id.*

74. Romano, *supra* note 11.

75. Heidi Tripp, *All Sex Workers Deserve Protection: How FOSTA/SESTA Overlooks Consensual Sex Workers in an Attempt to Protect Sex Trafficking Victims*, 124 PENN ST. L. REV. 219, 223 (2019).

are large hosts of trafficking is crucial to monitoring and prosecuting trafficking in itself.⁷⁶

C. *Federal Sentencing Guidelines Under Chapter 8*

The purpose behind the Chapter 8 Federal Sentencing Guidelines is for organizations to self-police and notice trends in their organization to detect future criminal behavior within their own company.⁷⁷ The principles behind Chapter 8 are: “(1) Organizations should remedy harm caused by [the] offense (§§8B1.1-8B1.4); (2) Organizations with criminal purpose should be divested (§8C1.1); (3) ‘Carrot and Stick Approach’ – Fine ranges determined by seriousness of offense and culpability (§§8C2.1-8C2.10); [and] (4) Probation to implement sanctions and reduce recidivism (§§8D1.1-8D1.4).”⁷⁸

Compliance programs are often successful in detecting misconduct in corporations because people are incentivized to put programs in place that can help limit their liability and damages owed in court. In order to reduce possible fines against an organization, Chapter 8 considers numerous factors to reduce restitution owed to victims of the corporations’ crimes rather than implementing a flat fee with no way to mitigate possible damages. These factors include: the presence of high-level personnel to oversee the compliance program in place, promoting the compliance program through incentivizing compliance, establishing standards to prevent criminal conduct, and responding to criminal conduct in order to deter it in the future.⁷⁹ Because a whole organization cannot be imprisoned, the best way to ensure compliance is by fining the corporation.⁸⁰ The Federal Sentencing Guidelines are implemented to highlight punishment and deterrence of both corporate crime and crimes committed by individuals in order to protect consumers from the organization’s corrupt activity.

When the United States Sentencing Commission implemented the Chapter 8 Federal Sentencing Guidelines of Organizations, they wanted to incentivize corporations to create effective compliance programs by creating the ability to mitigate corporate fines by up to ninety-five percent.⁸¹ This approach to compliance programs implemented in the Chapter 8 Guidelines is based on the

76. *Id.* at 238-39.

77. Ketanji B. Jackson & Kathleen C. Grilli, *The History of the Organizational Sentencing Guidelines and the Emergence of Effective Compliance and Ethics Programs*, COSMOS, <https://compliancecosmos.org/history-organizational-sentencing-guidelines-and-emergence-effective-compliance-and-ethics-programs> (last visited Oct. 27, 2021).

78. Kathleen Cooper Grilli & James T. Strawley, *A Basic Introduction to the Organizational Guidelines* (2018), https://www.uscc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2018/Organizational_GLs.pdf.

79. Paul Fiorelli & Ann Marie Tracey, *Why Comply? Organizational Guidelines Offer a Safer Harbor in the Storm*, 32 J. CORP. L. 467, 468-69 (2007).

80. Paula Desio, *An Overview of the Organizational Guidelines*, <https://www.uscc.gov/sites/default/files/pdf/training/organizational-guidelines/ORGOVERVIEW.pdf> (last visited Oct. 27, 2021).

81. *Id.*

idea that programs can “be incentivized to self-police.”⁸² Chapter 8 is an example of a “carrot and stick” approach to compliance where the carrot symbolizes incentive for good behavior, and the stick symbolizes being punished for bad behavior. As explained in § 8C2.1, this approach is used in Chapter 8 of the Federal Sentencing Guidelines because it offers an incentive for organizations and corporations to act ethically when conducting business, to avoid facing fines.⁸³ The severity of the fine depends on factors such as the amount of self-reporting and the involvement of high level personnel.⁸⁴ Compliance programs allow for flexibility and modification based on each corporation’s needs, so compliance programs are popular and cost-effective solutions when regulating large corporations and other organizations.⁸⁵

When sentencing a corporation under Chapter 8, the court will consider the involvement in or tolerance of criminal activity, the prior history of the organization, the violation of an order, and the obstruction of justice caused by the corporation.⁸⁶ Some factors that mitigate the potential fine include: the existence of an effective compliance and ethics program, the frequency of self-reporting, cooperation with law enforcement, or acceptance of responsibility for the act.⁸⁷ Under §8B2.1, the program must be generally, but not always, effective.⁸⁸ To require complete effectiveness would be an ambitious threshold to reach because companies are unlikely to catch every incident that should be reported. Self-reporting also gives flexibility to platforms because the governing authority must have knowledge of the content to be monitored and reasonable oversight with respect to implementation of the compliance program.⁸⁹ These factors are utilized to determine fines and disciplinary action.

Factors that make a successful compliance program include the design and comprehensiveness of the program, the company work culture, the availability of resources dedicated to compliance, and the ease of access to self-reporting mechanisms.⁹⁰ First, the comprehensiveness of a program can be determined by whether it is implemented in the workplace and if employees understand it.⁹¹ Compliance programs can be difficult to implement if individuals do not understand how the compliance program works, what benefits it brings to the workplace, and the importance of self-reporting. If compliance programs are mere

82. Ketanji B. Jackson & Kathleen C. Grilli, *The History of the Organizational Sentencing Guidelines and the Emergence of Effective Compliance and Ethics Programs*, COSMOS, <https://compliancecosmos.org/history-organizational-sentencing-guidelines-and-emergence-effective-compliance-and-ethics-programs> (last visited Nov. 11, 2021).

83. *Id.*

84. Desio, *supra* note 80.

85. *Id.*

86. 1 PETER J. HENNING, *CORPORATE CRIMINAL LIABILITY* § 1:20 (3d ed. 2020).

87. *Supra* note 82.

88. U.S. SENT’G COMM’N GUIDELINES MANUAL § 8B2.1 (2018).

89. *Id.* at § 8B2.1(A).

90. U.S. Department of Justice Antitrust Division: *Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations*, U.S. DEP’T OF JUST., 3-4 (July 2019), <https://www.justice.gov/atr/page/file/1182001/download>.

91. *Id.*

“paper programs” rather than programs that are successfully implemented into the workplace, then the compliance program is said to be ineffective.⁹²

Second, if the company states it has implemented a compliance program but acts otherwise, this is likely to signal to others that the organization does not take the compliance program seriously or value its importance, which can deter other workers from self-reporting.⁹³ If senior management does not implement the compliance program in practice and assign appropriate value to it, the other employees will likely not take the initiative to self-report. Third, if there are no resources dedicated to compliance, there will be barriers to reporting non-compliance. If there is no supervisor dedicated to compliance program oversight, it is likely that individuals will not self-report or take the compliance program seriously because of the lack of repercussions and recognition of enforcement through a representative.⁹⁴

Lastly, if there are no supervisors dedicated to oversight of the program, the purpose of the compliance program is defeated – even if there is non-compliance taking place, there is no easy way to report it. The ease of access to the program makes it more likely that organizations will engage in self-reporting. If the self-reporting process becomes too difficult or there is a lack of anonymity, employees will not be as likely to report conduct they observe in the workplace and on their platforms.⁹⁵ Compliance programs have been successfully implemented in Federal Sentencing Guidelines along with other areas of the law that encourage individuals to make efforts to self-police in order to avoid fines and other legal issues as a result of noncompliance.

III. PROPOSAL

SESTA-FOSTA placed unobtainable restrictions on websites and social media platforms. ISPs who could not afford to comply with the restrictions received the brunt of negative repercussions and unintended consequences and were forced to shut down. An ISP compliance program will incentivize social media platforms to work with law enforcement to monitor and prevent sex and labor trafficking on the internet. While SESTA-FOSTA attempts to do this, the approach implemented in the law is strict and results in internet providers having to shut down due to the stringent standards set forth within the Act.⁹⁶ Ultimately, a compliance program that utilizes a “carrot and stick” approach is the best choice for ISPs and law enforcement to help diminish human trafficking on the internet.

SESTA-FOSTA states under Section 2421 (A)(a) that whoever “owns, manages, or operates an interactive computer service . . . or conspires or attempts to do so, with the intent to promote or facilitate the prostitution of another person shall be fined[.]”⁹⁷ Section 2421A(b) states that a person or internet service

92. *Id.*

93. U.S. SENT’G COMM’N GUIDELINES MANUAL, *supra* note 88.

94. *Id.*

95. U.S. Department of Justice Antitrust Division, *supra* note 90.

96. Kennedy, *supra* note 69.

97. 18 U.S.C.A. § 2421A(a).

provider may be held liable if they “(1) promote[] or facilitate[] the prostitution of 5 or more persons; or (2) act[] in reckless disregard of the fact that such conduct contributed to sex or labor trafficking... shall be fined under this title, imprisoned for not more than 25 years, or both.”⁹⁸ While Section 230 of the Communications Decency Act needed to be replaced with legislation that is more proactive and preventative towards human trafficking on the internet, the pendulum swung to another extreme: total liability and hyper regulation of speech on the internet. Human trafficking that takes place on the internet is pervasive and it must be deterred; however, there must be a serviceable compromise between efforts to curb it, ISPs, and the constitutional right to free speech.

Modeling new legislation after the Chapter 8 Federal Sentencing Guidelines is the most feasible and cost-effective way to regulate human trafficking on the internet. Chapter 8 Federal Sentencing Guidelines are for the sentencing of organizations when it is more difficult to pinpoint one individual culprit of the wrongful act.⁹⁹ In determining whether a platform should be held liable for contributing to trafficking on the internet, the court should consider (1) the involvement or tolerance of trafficking activity on the platform; (2) reasonableness of non-involvement in the regulation of their platform; (3) whether the platform has a history of non-involvement in regulating their platform; (4) whether the platform actively regulates their platform with programs or software to track the posts and accounts that facilitate trafficking; and (5) if they have a compliance program in place that regulates trafficking on the platform.¹⁰⁰ This set of five factors determines whether a platform reaches the threshold of liability, similarly to the Federal Sentencing Guidelines.¹⁰¹

After using the above factors to impose a fine, the court must calculate the amount. When determining initial fines of an organization, there are four main steps: (1) calculating the base fine; (2) determining the culpability score; (3) selecting the minimum and maximum fine; and (4) computing the guideline fine range.¹⁰² In step one, when calculating the base fine, the fine range fluctuates from \$8,500-\$150,000,000.¹⁰³ The court must determine the pecuniary gain the organization received from the violation along with the pecuniary loss and whether the loss or gain was caused intentionally.¹⁰⁴ Pecuniary gains¹⁰⁵ may include: whether the trafficker purchased an advertisement slot or “boosted” a post on the platform, the profits the trafficker gained from having the social media account or posting, and any other possible ways the trafficker benefitted financially from having a connection with the platform. Pecuniary loss¹⁰⁶ can include whether the

98. *Id.* at § 2421A(b).

99. U.S. SENT’G COMM’N GUIDELINES MANUAL, *supra* note 89, at ch. 8, introductory commentary.

100. *Id.*

101. *Id.*

102. HENNING, *supra* note 86.

103. *Id.*

104. *Id.*

105. 18 U.S.C. § 3571(d).

106. *Id.*

trafficker or platform participated in fraud, theft, or other deceptive actions that were made with scienter. This is especially important because traffickers often act fraudulently towards their victims when they “catfish” them to seem more approachable online.¹⁰⁷ Deceptiveness can be considered under pecuniary loss along with other fraudulent or deceitful conduct that traffickers exhibit.

In step two, the court will weigh factors to determine a culpability score such as: (1) the involvement in or tolerance of criminal activity; (2) prior history; (3) violation of an order; and (4) the obstruction of justice.¹⁰⁸ Because a compliance program must be generally, but not always, effective,¹⁰⁹ this gives internet service providers more room for error in case they miss some potentially harmful posts on their platform. Like the Chapter 8 Federal Sentencing Guidelines, each organization starts with five points.¹¹⁰ Upward and downward deviations are applicable based on the above factors. When analyzing the involvement in or tolerance of criminal activity to determine culpability, this factor is based on the hierarchal responsibility and involvement of officials at all hierarchal levels.¹¹¹ For example, if high level officials are intentionally involved with the trafficking that takes place on their platform or are willfully blind to trafficking on their platform, one to five points will be added to the initial score of five points.¹¹² The larger the organization and the more involved the organization is in the trafficking, the more points are added.¹¹³

When analyzing the prior history of the organization, the court will consider whether the platform was involved in similar conduct before, specifically related to trafficking.¹¹⁴ If similar conduct has occurred in the last five to ten years, one to two points will be added to their culpability score.¹¹⁵ This is weighed more heavily because it is necessary to disincentivize platforms that are repeat offenders. Additionally, if there was a violation of a court order, one to two points will be added to the culpability score.¹¹⁶ Lastly, when determining the overall culpability score of a platform, the court will consider whether there was any obstruction of justice, making a special note of “conduct that obstructs, impedes, encourages, or aids obstruction of justice during the investigation[.]”¹¹⁷ This can include whether the compliance program is generally effective or mostly effective, and if the compliance program is actually implemented into the work culture and taken seriously by the platform’s employees. From this, the court will be able to determine the culpability of a platform based on how high they scored on a

107. Homeland Security Today, *Traffickers Continue to Use Popular Online Platforms to Recruit Victims*, GOV’T TECH. & SERV. COAL. (Mar. 17, 2020), <https://www.hstoday.us/subject-matter-areas/cybersecurity/human-traffickers-continue-to-use-popular-online-platforms-to-recruit-victims/>.

108. HENNING, *supra* note 86.

109. U.S. SENT’G COMM’N GUIDELINES MANUAL, *supra* note 88.

110. HENNING, *supra* note 86.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* (explaining U.S. SENT’G COMM’N GUIDELINES MANUAL § 8C2.5(d)).

117. *Id.* (explaining U.S. SENT’G COMM’N GUIDELINES MANUAL § 8C2.5(e)).

culpability point system. After the court determines whether the platform is culpable, they will consider mitigating factors to determine whether the fine should be lessened.¹¹⁸

Mitigating factors that are considered in a culpability score include whether there is an effective compliance program, whether the platform self-reports, and the platform's overall willingness to cooperate with law enforcement.¹¹⁹ If the platform has an effective compliance and ethics program, three points are subtracted from the culpability score.¹²⁰ However, this subtraction of points is not applicable if the platform caused an unreasonable delay in reporting the trafficking or suspicious content to law enforcement.¹²¹ Because of the severity of trafficking and how quickly traffickers can conceal the individuals they traffic, reporting suspicious activity immediately is necessary to minimize the dangerous effects of trafficking on an internet platform. An effective compliance program is one that has direct and proficient reporting obligations to the platform's compliance program committee or representative.¹²² The trafficking offense must also be detected by the platform's committee before the violation worsens or becomes more prominent.¹²³ For example, if there is an account on a platform that is continually facilitating trafficking, the committee must intervene before the violation becomes more severe.¹²⁴ The platform's compliance committee will not receive mitigation points if they were directly involved in the offense.¹²⁵ An example of direct involvement includes whether an employee of a platform had a stake in the trafficking, and if the platform reviewed the account, post, or advertisement once it was flagged for inappropriate conduct and decided it was not platform trafficking, when it actually turned out to be a substantial contributor to trafficking on the ISP.

Although SESTA-FOSTA requires a showing of intent in deciding the liability of the platform, many platforms who argue they have not intentionally contributed to trafficking have closed because they are afraid of the threat imposed by the language of SESTA-FOSTA.¹²⁶ Compliance programs are flexible, and each platform can find avenues of self-reporting that pertain to what works best for them instead of being forced to comply with rigid standards, which SESTA-FOSTA proved do not fit every platform.¹²⁷ Compliance programs and a multi-factor analysis are necessary because the liability of corporations is not a "one-size-fits-all" system. Placing more freedom in the hands of the platform creates elasticity between law enforcement, the regulation of trafficking, and internet platforms. This also combats one of the most common criticisms against SESTA-FOSTA:

118. *Id.*

119. *Id.*

120. U.S. SENT'G COMM'N GUIDELINES MANUAL, *supra* note 88, at § 8C2.5(f)(1).

121. *Id.* at § 8C.2.5(f)(2).

122. *Id.* at (f)(3)(C).

123. *Id.*

124. *Id.*

125. *Id.*

126. 18 U.S.C. § 2421(a). *See also supra* note 69.

127. *Id.* § 8C2.6.

that platforms have no room for freedom to determine how the government regulations will operate and work within its website to allow for the website to function. Compliance programs are the optimal solution to police human trafficking on the internet because it allows for the government to regulate organizations without making it too onerous on internet platforms and forcing their closure.

After a court finds a platform liable and examines mitigating factors, the third step it must take in setting a fine is to select the minimum and maximum multipliers.¹²⁸ The overall culpability score, including mitigating factors, is taken and analyzed with the maximum and minimum multipliers.¹²⁹

Culpability Score	Minimum Multiplier	Maximum Multiplier
10+	2.00	4.00
9	1.80	3.60
8	1.60	3.20
7	1.40	2.80
6	1.20	2.40
5	1.00	2.00
4	.80	1.60
3	.60	1.20
2	.40	.80
1	.20	.40
0 or less	.05	.20

Chart from the Federal Sentencing Guidelines Manual § 8C2.6 implemented to establish which multiplier is used when determining criminal fines for an organization.

Once this is calculated, the court must then compute the guideline fine range. To calculate the guideline range for the fine, the court will multiply the base fine, as determined at step one, by both the by the appropriate minimum multiplier and the appropriate maximum multiplier.¹³⁰ From there, the court will examine the range of fines, from minimum to maximum, that may be imposed. The offense fine table can be found under Section 8C2.4, ranging from a score of six or less starting at \$8,500, a median fine of \$2,000,000 with a score of twenty-two, and a maximum fine or \$150,000,000 with a score of thirty-eight.¹³¹

The process may be extensive, but a platform’s effectiveness in preventing trafficking should be analyzed under a highly fact-sensitive inquiry, instead of a blanket of immunity or liability. The benefits of analyzing compliance programs similarly to Chapter 8 Federal Sentencing Guidelines include increasing the protection and detection of human trafficking, improving the status quo when it

128. *Id.*

129. *Id.*

130. *Id.* at § 8C2.

131. *Id.* at § 8C2.4.

comes to regulating human trafficking on the internet, and allowing businesses to function while generating accountability for their contribution to trafficking that takes place on the internet. The application will also allow for modification as technology develops. For example, the Federal Sentencing Guidelines can be amended, so modification of the compliance program should not be an issue.

IV. ARGUMENTS AGAINST COMPLIANCE PROGRAMS

A. *Constitutional Impacts*

Many are upset with the regulation of speech on social media platforms because of the unclear process associated with the removal of posts. In 2018, Facebook removed roughly 866 million posts within the first few months of the year.¹³² Facebook also removed a small portion of those posts because they related to “nudity, graphic violence, hate speech, and terrorism.”¹³³ In its annual report, Facebook stated that the company “substantially increased its efforts . . . to flag and remove inappropriate content.”¹³⁴ However, Facebook did not offer many specifics as to what conduct the company considered to violate those guidelines. Section 230 of the Communications Decency Act (CDA) is appealing to platforms because it provides a safe harbor that allows the regulation of some speech on platforms so long as the platforms put forth a good faith effort; however, this was countered with heavy regulations imposed by SESTA-FOSTA.¹³⁵

The court in *Reno v. ACLU* discussed concerns with the CDA that are similar to the criticisms of a compliance program to fight against human trafficking.¹³⁶ The vagueness of the CDA was a primary concern of those who are proponents of the First Amendment due to the Act’s regulation of the content of posts on the internet.¹³⁷ People who observe barriers to speech are likely to be fearful of speaking their minds or feel that their speech will not be heard because of strict restrictions.¹³⁸ Consequently, proponents of the First Amendment might disagree with the restrictions being placed on internet speech when that platform engages in a compliance program because platforms will be more incentivized to regulate speech. When organizations are incentivized to regulate speech to protect against their own criminal liability, this creates a large suspicion among those concerned primarily with the First Amendment. To hold speech as an inalienable right, “social

132. Sheera Frenkel, *Facebook Says It Deleted 865 Million Posts, Mostly Spam*, N.Y. TIMES (May 15, 2018), <https://www.nytimes.com/2018/05/15/technology/facebook-removal-posts-fake-accounts.html>.

133. *Id.*

134. *Id.*

135. 47 U.S.C. § 230(c)(2).

136. *Reno v. ACLU*, 521 U.S. 844, 872-73 (1997).

137. *Id.* at 872-73.

138. *Id.* at 871-72.

media activity must also be considered within the framework of the First Amendment[.]”¹³⁹

Similarly, advocates of the First Amendment are also concerned with making platforms liable for the postings of third parties as opposed to mere distributors of the content. In *Doe II v. MySpace Inc.*, the court held that social media website MySpace was immune to liability under the CDA even though women were sexually assaulted by men they met through the website.¹⁴⁰ Advocates of free speech are apprehensive of making platforms liable for the speech of others because the liability causes platforms to regulate more posts out of fear, creating the likelihood of overregulation, rather than under-regulation. The use of social media in litigation in general is now more widely accepted and used by attorneys and is seen as less of a privacy invasion than ever before.¹⁴¹ Individuals on websites are sensing restrictions on free speech, making them less likely to post on internet platforms altogether.

Modeling a compliance program similarly to the Chapter 8 Federal Sentencing Guidelines may also create “[the] stigma of a criminal conviction[.]”¹⁴² An example of this is the threat imposed by the CDA: two years in prison for each platform violation.¹⁴³ Similarly, the vagueness of regulations and statutes that are overly broad also creates a “‘danger zone’ within which protected expression may be inhibited.”¹⁴⁴ This is dangerous because if platform users feel that their language is being silenced or that the silencing of their speech is constitutionally wrong, they may be restricted in their ability to speak out against the wrongness of the censorship on each platform. The main concern for platform regulation and compliance programs is their tendency for broadness, vagueness, and the platform’s increased incentive to report speech that may or may not need to be regulated.

B. *Rebuttal for Constitutional Issues*

While some are afraid that internet regulation has gone too far, the Supreme Court has repeatedly stated that “‘the basic principles of freedom of speech and the press, like the First Amendment’s command, do not vary’ when a new and different medium for communication appears.”¹⁴⁵ Although under *Reno v. ACLU* the Court held that “governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it[.]”¹⁴⁶ it is difficult to perceive a reasonable argument where the lack of content-based regulation of

139. Kathryn R. Taylor, “Anything You Post Online Can and Will Be Used Against You in A Court of Law”: *Criminal Liability and First Amendment Implications of Social Media Expression*, 71 NAT’L LAWS. GUILD REV. 78, 97 (2014).

140. *Doe II v. MySpace Inc.*, 175 Cal. App. 4th 561, 563 (2009).

141. Taylor, *supra* note 139, at 81.

142. *Reno v. ACLU*, 521 U.S. 844, 872 (1997).

143. *Id.*

144. *Dombrowski v. Pfister*, 380 U.S. 479, 494 (1965).

145. *Brown v. Ent. Merch.’s Ass’n*, 564 U.S. 786, 790 (2011) (quoting *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503 (1952)).

146. *Reno*, 521 U.S. at 885.

human trafficking on the internet is a good thing that should not be prioritized over First Amendment concerns. While the Court intended to protect free speech on the internet, *Reno v. ACLU* was not intended to relax restrictions on content-based speech pertaining to crime.¹⁴⁷ A compliance program that prevents human trafficking on internet platforms is a content-based regulation that is minimally invasive on the First Amendment.

Although content-based regulations are often met with hostility, preventing individuals from being trafficked is something that even the most avid supporters of the First Amendment cannot contest. The proposal for a compliance program that weighs different factors in deciding an organization's liability will prevent vagueness because there are specific criteria the court will analyze.¹⁴⁸ Even though there are factors in each step of the analysis that are up for interpretation, this does not necessarily classify the process as vague; there are specifics in each factor to consider when determining whether a platform is liable for contributing to trafficking. When a court determines fines for an organization, this process is meticulous and detail oriented, further eliminating concerns about vagueness.

Additionally, even if the compliance program generates overinclusivity when platforms monitor their posts, this can be reversed if the speech is found to be constitutionally protected. While some posts not related to trafficking are inadvertently taken down by the screening program, if the post is analyzed and deemed admissible, oftentimes the post can be restored,¹⁴⁹ which eliminates overinclusivity issues. Overinclusiveness is one of the main criticisms of regulation of internet speech because it tends to regulate speech that is constitutionally protected, infringing on one of our most basic human rights.¹⁵⁰ If regulating slightly more speech on an internet platform could help eliminate the widespread trafficking that takes place online, the benefits of the possible – but reversible – infringements on speech are necessary to protect those being trafficked.

C. *Compliance Program Adaptability and the Morality of Reducing Fines*

One of the major criticisms regarding the compliance program is the adaptability and cost of implementing the program into a server. The second factor the court will consider when determining an organization's liability for trafficking taking place on their platform is the reasonableness of the non-involvement in regulating traffickers. Reasonableness is the specific standard to measure liability because what was considered "reasonable regulation on the internet" thirty years ago may not be reasonable now due to enhancements in technology. The

147. *Id.*

148. *See* Section III.

149. Jessica Guynn, *These are Facebook's Secret Rules for Removing Posts*, USA TODAY, <https://www.usatoday.com/story/tech/news/2018/04/24/facebook-discloses-secret-guidelines-policing-content-introduces-appeals/544046002/> (last updated April 24, 2018, 2:24 PM); *see also* Queenie Wong, *Facebook Pulled Down Your Post. Here's How to Challenge that Decision*, CNET (Oct. 22, 2020), <https://www.cnet.com/tech/mobile/facebook-pulled-down-your-post-heres-how-to-challenge-that-decision/>.

150. *Reno v. ACLU*, 521 U.S. at 874.

compliance program is flexible because the reasonableness of the noninvolvement of the platform is a standard that changes over time. If a platform is not involved in regulating the content of trafficking on their website, but the artificial intelligence is readily available for the platform's use to regulate such content, this would be considered unreasonable. But, if the programming software to filter out trafficking accounts or posts is expensive and not available to most platforms, this noninvolvement could be considered reasonable by the court.

Similarly, platforms like Facebook and Instagram change their terms of use as policy evolves overtime, which makes flexibility crucial when implementing a compliance program. For example, Facebook and Instagram remove posts on their platforms if the posts violate community standards, are unlawful or misleading, or infringe on or violate someone else's rights.¹⁵¹ Facebook also uses a program that tracks hate speech, violent and graphic content, adult nudity, sexual activity, and sexual socialization.¹⁵² Regarding sexual socialization, Facebook's policy states it will remove content which discusses non-consensual sexual touching, forced stripping, and sextortion,¹⁵³ which proved to be a major milestone in the monitoring of social media.¹⁵⁴ Terms and conditions of platforms change similarly to how the censorship and tracking of posts on Facebook changes with advances in technology. Fact checking on social media is now more prevalent than ever, which is another reason why flexibility with compliance program regulations is crucial for easy adaptability.¹⁵⁵

Another criticism of compliance programs is the ability for a platform to reduce their liability simply because they have a compliance program. Some argue that if a platform violates the law by allowing trafficking, their criminal penalty should not be reduced because it is immoral to allow trafficking on a platform. While this is an important consideration, platforms cannot catch every post or social media account that could possibly violate community guidelines. The ability to mitigate damages and criminal penalties is what makes compliance programs popular and blanket approaches such as Section 230 of the CDA and SESTA-FOSTA worthless and less likely to bring about effective change in the regulation of platforms that contribute to trafficking. Platforms need the ability to mitigate damages because the imposition of recurring fines creates an inability to comply, which in turn forces them to shut down for fear of total liability.

151. *Terms of Service: What You Can Share and Do on Facebook*, FACEBOOK, <https://www.facebook.com/terms.php> (last updated Oct. 22, 2020).

152. *Community Standards: Objectional Conduct*, FACEBOOK, https://www.facebook.com/communitystandards/objectionable_content (last visited Oct. 27, 2021).

153. Sextortion is "[T]he practice of extorting money or sexual favors from someone by threatening to reveal evidence of their sexual activity."

154. *Id.*

155. *See, e.g., How Facebook's Third-Party Fact-Checking Program Works*, FACEBOOK JOURNALISM PROJECT (June 1, 2021), <https://www.facebook.com/journalismproject/programs/third-party-fact-checking/how-it-works>.

V. CONCLUSION

Because previous legislation such as SESTSA-FOSTA and Section 230 of the Communications Decency Act have been both overinclusive and underinclusive in their efforts to regulate human trafficking on internet platforms, a compliance program creates an appropriate compromise between platforms and the federal government to help eliminate human trafficking on the internet without ultimately forcing platforms to shut down. Additionally, a compliance program that considers multiple factors when determining liability of a platform is the least constitutionally restrictive means of regulating human trafficking on the internet. While it may place minor restrictions on speech, protecting trafficked individuals should be prioritized over free speech on the internet. Compliance programs are cost effective, less burdensome than other legislation such as SESTA-FOSTA and Section 230 of the Communications Decency Act, and allow for modification as technology develops.