Corporate Human Trafficking

Carliss Chatman*

The utilization of the internet for human trafficking and sexual exploitation is not an issue that can be tackled one corporation, one country, or one market sector at a time. It is an international problem that requires broader solutions that can protect and provide remedy to victims without chilling the freedom of speech and freedom of contract of consensual parties engaged in sex work. Recent changes to laws related to human trafficking have strengthened the power of litigation, authorizing civil lawsuits against perpetrators of human trafficking that may include third parties who knowingly benefit from trafficking conduct—such as internet providers, business partners, and even banks and credit card companies. These laws have enabled the victims of Jeffrey Epstein to successfully pursue Deutsche Bank and JPMorgan Chase, receiving multimillion dollar settlements. Pressure from credit card companies who were named in lawsuits

* Associate Professor, Southern Methodist University Dedman School of Law; Faculty Affiliate, Samuel DuBois Cook Center on Social Equity at Duke University. B.A., Duke University, J.D., University of Texas at Austin School of Law. The author would like to thank Afra Afsharipour, Kish Parella, Karen Woody, Joan Hemminway, Verity Winship, Elizabeth Pollman, Sergio Alberto Gramitto Ricci, Chris Brunner, Giovanni Strampelli and Gaia Balp for thoughtful comments on drafts. The author would also like to thank Franklin Runge, Max Blumenthal, and Francis Morency for research support.

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combined with other litigation efforts changed the practices of Pornhub and its parent company MindGeek, resulting in the eventual acquisition of MindGeek by Ethical Capital Partners (ECP), a private equity firm intent on giving the company an environmental-, social-, and governance-focused (ESG) makeover. While there is a next chapter for the parent corporation, many of the independent sex workers who depend on platforms for their primary income continue to suffer irreparable harm. Also, to date, MindGeek and Pornhub have not paid settlements on cases arising under the new legislation. Most cases against internet providers have not survived a motion to dismiss. These civil actions also fail to address harm to victims outside the jurisdiction of countries with similar measures. If the goal is to bring an end to exploitation-for-profit on the internet, not merely to legislate morality and end sex-work in general, a more comprehensive and targeted solution is needed.

This Essay contemplates a corporate-governance solution that could aid advances in technology by placing a limit on the reliance by company management on corporate structure and contractual relationships to disclaim responsibility and justify inaction. In a prior work, Corporate Family Matters, I propose a definition and governance regime for a particular type of corporate group—the corporate family. A corporate family is an enterprise formed by weaving corporations, partnerships, and LLCs together in a mix of public and private entities acting for the benefit of a parent corporation or for the personal gain of one or more leaders of the enterprise. Using MindGeek as an example, this Essay applies this definition to the enterprise and explains how

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acknowledging the influence of MindGeek and treating the enterprise as a family can provide relief to victims while minimizing collateral harms.

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Introduction

Recent advancements in the law governing the internet and human trafficking were expected to provide a much-needed remedy for victims[1] but have to date fallen short. In 2018, the Fight Online Sex Trafficking Act (FOSTA),[2] in conjunction with its Senate counterpart, the Stop Enabling Sex Traffickers Act (SESTA)[3] (collectively FOSTA-SESTA), received bipartisan support in amending § 230 of the Communications Decency Act[4]

1. *See* Allow States and Victims to Fight Online Sex Trafficking Act of 2017 (FOSTA), Pub. L. No. 115-164, § 2, 132 Stat. 1253, 1253 (2018) (noting Congress's intent to remove statutory protection that had been inadvertently provided to websites that "unlawfully promote and facilitate prostitution" and "facilitate . . . the sale of unlawful sex acts with sex trafficking victims").

2. *Id.*

3. Stop Enabling Sex Traffickers Act of 2017, S. 1693, 115th Cong. (2017).

4. 47 U.S.C. § 230. Before FOSTA-SESTA, § 230's liability protections blocked most attempts to hold service providers liable. *See, e.g.*, M.A. *ex rel.* P.K. v. Vill. Voice Media Holdings, LLC, 809 F. Supp. 2d 1041, 1058 (E.D. Mo. 2011) (finding that § 230 protects Backpage from liability for third-party conduct); Doe v. Bates, No. 5:05-CV-91-DF-CMC, 2006 WL 3813758, at *4 (E.D. Tex. Dec. 27, 2006) (holding that Yahoo!, in acting as an intermediary rather than publisher or speaker, was shielded from liability stemming from the conduct of a third party); Hassell v. Bird,

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so that websites and internet providers can be prosecuted and sued if they knowingly assist, facilitate, or support sex trafficking.[5] FOSTA-SESTA is part of a global movement to address human trafficking by expanding definitions and holding third parties accountable for hosting content that promotes such conduct.[6] Survivors of Jeffrey Epstein's sex-trafficking schemes, for example, have successfully leveraged FOSTA-SESTA's third-party-liability provisions to recover more than $400 million from Deutsche

420 P.3d 776, 778–79 (Cal. 2018) (finding Yelp protected by § 230 from requirements to remove defamatory third-party content).

5. *See supra* note 1and accompanying text. Although § 230 had been interpreted to shield such providers from liability, *see, e.g.*, Jane Doe No. 1 v. Backpage.com, LLC, 817 F.3d 12, 20–21, 23 (1st Cir. 2016) (holding that websites with "traditional publishing or editorial functions" are protected by § 230(c)(1)), FOSTA-SESTA was intended to "clarif[y]" that § 230 "was never intended to provide [that] protection." § 2, 132 Stat. at 1253.

6. *See, e.g.*, G.A. Res. 55/25, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Nov. 15, 2000) (providing an international definition of human trafficking that focuses on the act, the means, and the purpose of conduct); Council Directive 2011/36, 2011 O.J. (L 101) 1, 1 (EU) (focusing on preventing and combatting trafficking of human beings and protecting victims); Commission Regulation 2022/2065 of Oct. 19, 2022 on a Single Market For Digital Services and Amending Directive 2000/31/EC (Digital Services Act), 2022 O.J. (L 277) 1, 18 (EU) (addressing harmful and illegal goods, services, and content online); *see also* Michael Deturbide, *Liability of Internet Service Providers for Defamation in the US and Britain: Same Competing Interests, Different Responses*, J. INFO. L. & TECH., Oct. 2000, at 13–14 (comparing the American and British approaches to internet service provider (ISP) liability).

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Bank and JPMorgan Chase because the latter entities had profited from his trafficking operation.[7] Activists, along with victims of Pornhub and its parent company MindGeek, have sued both Pornhub and credit card companies, which has resulted in changes to the way the companies monitor content on their websites.[8]

While we can and should celebrate any recovery for victims of such horrible crimes, these new statutes are better suited for a scenario like Jeffrey

7. *See* Individual and Class Action Complaint at 2, Doe 1 v. Deutsche Bank Aktiengesellschaft, No. 1:22-cv-10018, 2022 WL 19101069 (S.D.N.Y. Nov. 24, 2022) (alleging that Deutsche Bank profited from helping Epstein and his cohorts "to successfully rape, sexually assault, and coercively sex traffic Plaintiff Jane Doe 1" and other victims); Doe 1 v. Deutsche Bank Aktiengesellschaft, No. 22-cv-10018, 2023 WL 3167633, at *1–4, *18–19 (S.D.N.Y. May 1, 2023) (reviewing claims that allege the bank facilitated Jeffrey Epstein's sex-trafficking operation); Mayra Rodriguez Valladares, *JPMorgan's $365 Million Epstein Victims Settlement Won't Teach Banks a Lesson*, FORBES (Sept. 26, 2023), https://www.forbes.com/sites/mayrarodriguezvalladares/2023/09/26/jpmorgans-365-million-epstein-victims-settlement-wont-teach-banks-a-lesson/?sh=1a13c6d168c1 [https://perma.cc/W7C2-AYFB] (reporting that JPMorgan and Deutsche Bank settled claims for $365 million and $75 million respectively).

8. *See* Complaint at 3, 5, Fleites v. MindGeek S.A.R.L., 617 F.Supp.3d 1146 (C.D. Cal. 2022) (No. 2:21-cv-04920), 2021 WL 2492964, at *2–3 (alleging that MindGeek knowingly and intentionally profited from the thirteen-year-old plaintiff's non-consensual pornography and that Visa engaged in a criminal conspiracy with MindGeek to monetize such content); Complaint at 3, Doe v. MindGeek USA Inc., 574 F. Supp. 3d 760 (C.D. Cal. 2021) (alleging that MindGeek violated federal sex-trafficking and child-pornography laws), *abrogated in part by* Does 1–6 v. Reddit, Inc., 51 F.4th 1137 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 2560 (2023).

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Epstein than for an international conglomerate like MindGeek. Victims have had difficulty meeting the burden of proof and establishing *mens rea* even following the changes made by FOSTA-SESTA.[9] The lack of success may be based, in part, on who the defendants are. Epstein was a single human being engaged in human trafficking, using his personal businesses and banking relationships to facilitate the scheme.[10] It is easy to trace the connection between third parties and Epstein, which helps to establish their

9. *See, e.g.*, *Does 1–6*, 51 F.4th at 1145 (holding that FOSTA requires actual knowledge to establish criminal liability for websites); A.M. v. Omegle.com, LLC, 614 F. Supp. 3d 814, 822 (D. Or. 2022) (holding that the standard for criminal actions under 18 U.S.C. § 1591, a criminal sex-trafficking statute, is actual knowledge); G.G. v. Salesforce.com, Inc., 604 F. Supp. 3d 626, 642–43 (N.D. Ill. 2022) (holding that exemption to immunity did not apply to a contracted software provider because the provider did not have actual knowledge or assist in the primary trafficking violation), *rev'd and remanded*, 76 F.4th 544 (7th Cir. 2023); Doe v. Twitter, Inc., 555 F. Supp. 3d 889, 916, 918–20, 922 (N.D. Cal. 2021) (stating that the plaintiffs had successfully plead the knowledge requirement for the claim based on beneficiary liability even though most claims requiring constructive knowledge failed (citing Wyndham Hotels & Resorts, Inc., 425 F. Supp. 3d 959, 969 (S.D. Ohio 2019))), *abrogated by Does 1–6*, 51 F.4th 1137; Doe v. Kik Interactive, Inc., 482 F. Supp. 3d 1242, 1251 (S.D. Fla. 2020) (recognizing that FOSTA permits civil liability for websites only if the conduct underlying the claim constitutes a violation of § 1591, which "requires knowing and active participation in sex trafficking by the defendants"). *But cf.* Woodhull Freedom Found. v. United States, 72 F.4th 1286, 1296 (D.C. Cir. 2023) (identifying that sex workers had standing to challenge FOSTA on First Amendment grounds).

10. *See supra* note 7 and accompanying text.

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liability. But the typical structure of a multinational conglomerate like MindGeek includes a mix of public and private entities, sometimes including corporations, partnerships, limited liability companies (LLCs) or their functional equivalents, making it difficult to pinpoint where within the enterprise the harm has occurred and who is liable.[11] Although human trafficking victims pursued legal action against Visa by alleging that the credit card company profited from MindGeek's human trafficking activity, they were not nearly as successful as the Epstein victims.[12] This is in part because the claims are too attenuated, even under statutes that redefine third-party liability.[13] Epstein had a personal relationship with Jess Staley, an executive at JPMorgan.[14] There is direct evidence of the bank's awareness of

11. *See* Carliss N. Chatman, *Corporate Family Matters*, 12 U.C. IRVINE L. REV. 1, 50 (2021) (discussing companies' use of complex structures to evade liability).

12. *See Fleites*, 617 F. Supp. 3d at 1165, 1168 (granting motion to dismiss in part); Complaint at 1, 109, *Fleites*, 2021 WL 2492964 (discussing allegations against Visa).

13. Prior efforts to hold credit card companies liable for internet activity have had limited success. *See* Ronald J. Mann & Seth R. Belzley, *The Promise of Internet Intermediary Liability*, 47 WM. & MARY L. REV. 239, 280 (2005) (noting the difficulty of holding intermediaries responsible for internet fraud); Carolyn Carter, Elizabeth Renuart, Margot Saunders & Chi Chi Wu, *The Credit Card Market and Regulation: In Need of Repair*, 10 N.C. BANKING INST. 23, 24, 32–33 (2006) (discussing the lack of regulation of credit cards).

14. *See* Doe 1 v. Deutsche Bank Aktiengesellschaft, No. 22-cv-10018, 2023 WL 3167633, at *3 (S.D.N.Y. May 1, 2023) (discussing that relationship) ; *see also* Doe 1 v. JPMorgan Chase Bank,

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the nefarious nature of Epstein's business dealings.[15] As with all merchant accounts, MasterCard and Visa were simply a means for parties to pay MindGeek; they had no direct relationship to the parties making the payments and only a contractual relationship with MindGeek.[16] Many believe the recent changes in MindGeek and Pornhub policies were motivated by Visa's and Mastercard's refusal to do business with MindGeek rather than the pressure of the new laws and the potential for litigation.[17] Simply put, the

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N.A., 22-CV-10019, 2023 WL 5317453, at *2 (S.D.N.Y. Aug. 18, 2023) ("In its third-party complaint, JPMorgan claims that Staley is liable to JPMorgan to the extent that JPMorgan is liable to plaintiffs. Specifically, JPMorgan asserts four claims against Staley for, (1) indemnification, (2) contribution, (3) breach of fiduciary duty and (4) violation of the faithless servant doctrine.").

15. *See Deutsche Bank Aktiengesellschaft*, 2023 WL 3167633, at *9 (reiterating plaintiffs' allegation of those facts).

16. *See* Patricia Nilsson, *Visa and Mastercard Cut Ties with Ad Arm of Pornhub Owner MindGeek*, FIN. TIMES (Aug. 4, 2022, 2:23 PM), https://www.ft.com/content/212a88e6-8fae-4f0e-9caf-e122e8e8c7e4 [https://perma.cc/8KBD-U53U] (reporting Visa's and Mastercard's decisions to stop working with the advertising arm of MindGeek after a court found that Visa could be held liable for Pornhub's illegal content); Martin Patriquin, *Visa Potentially Liable for Child Sexual Abuse Material on MindGeek-Owned Pornhub, Court Says*, LOGIC (Aug. 2, 2022, 8:02 PM), https://thelogic.co/briefing/visa-potentially-liable-for-child-sexual-abuse-material-on-mindgeek-owned-pornhub-court-says/ [https://perma.cc/7F3P-56W9] (noting U.S. District Court Judge Cormac J. Carney's statement that it wasn't "fatally speculative" to say Visa "bears direct responsibility" for the monetization of images of child sexual abuse).

17. *E.g.*, John Naughton, *It's a Sign of a Broken System When Only Credit Card Firms Can Force Pornhub to Change*, GUARDIAN (Dec. 19, 2020, 11:00 AM),

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new statutes are still better at addressing the actions of individual bad actors, not systemic problems.

Unfortunately, the use of the internet for sexual exploitation is a systemic problem involving many individuals and companies globally. And while § 230 exacerbated the harm, amending the law without further action will not eradicate the harm.[18] The internet is ubiquitous. Changing the

https://www.theguardian.com/commentisfree/2020/dec/19/pornhub-abuse-videos-new-york-times-mastercard-visa [https://perma.cc/2Q5V-VZDZ].

18. *See, e.g.*, Katy Noeth, Note, *The Never-Ending Limits of § 230: Extending ISP Immunity to the Sexual Exploitation of Children*, 61 FED. COMMC'NS. L.J. 765, 766–67 (2009) (asserting that the law has rendered ISPs judgment proof); Danielle Keats Citron & Benjamin Wittes, *The Internet Will Not Break: Denying Bad Samaritans § 230 Immunity*, 86 FORDHAM L. REV. 401, 404 (2017) [hereinafter *The Internet Will Not Break*] (advocating for changes to § 230 that would provide for "a robust culture of free speech online without shielding from liability platforms designed to host illegality or that deliberately host illegal content"); Danielle Keats Citron & Benjamin Wittes, *The Problem Isn't Just Backpage: Revising Section 230 Immunity*, 2 GEO. L. TECH. REV. 453, 454–55 (2018) (explaining that § 230 immunity is too sweeping by contrasting the ramifications of facilitating sex trafficking offline); Mary Graw Leary, *The Indecency and Injustice of Section 230 of the Communications Decency Act*, 41 HARV. J.L. & PUB. POL'Y 553, 557 (2018) ("[A]lthough § 230 was never intended to create a regime of absolute immunity for defendant websites, a perverse interpretation of the non-sex-trafficking jurisprudence for § 230 has created a regime of de facto absolute immunity from civil liability or enforcement of state sex-trafficking laws."); Stanley M. Besen & Philip L. Verveer, *Section 230 and the Problem of Social Cost*, 30 J.L. & POL'Y 68, 72 (2021) (applying Coase's approach and arguing that some additional regulation is necessary to minimize externalities).

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behavior of a single corporation in one or two countries does not stop the proliferation of child pornography or child sexual abuse materials (CSAM),[19] revenge pornography,[20] or footage obtained by human trafficking online. The

19. The term "child pornography" is used historically; however, scholars and advocates have noted it does not reflect the full range of harms caused to children forced to engage in sexual activity. *See, e.g.*, Mary Graw Leary, *The Language of Child Sexual Abuse and Exploitation*, *in* REFINING CHILD PORNOGRAPHY LAW: CRIME, LANGUAGE, AND SOCIAL CONSEQUENCES 109 (Carissa Byrne Hessick ed., 2016) ("For child abuse and exploitation, precise language can help convey the particular gravity of harms against children and the seriousness with which society addresses such crimes."); SUSANNA GREIJER & JAAP E. DOEK, INTERAGENCY WORKING GROUP ON SEXUAL EXPLOITATION OF CHILDREN, TERMINOLOGY GUIDELINES FOR THE PROTECTION OF CHILDREN FROM SEXUAL EXPLOITATION AND SEXUAL ABUSE, at v (2016), https://www.ohchr.org/sites/default/files/TerminologyGuidelines_en.pdf [https://perma.cc/SUS8-53TX] ("[T]erms like child prostitution and child pornography have been more and more criticized . . . and increasingly replaced by alternative terms, considered less harmful or stigmatizing to the child."); Carissa Byrne Hessick, *The Limits of Child Pornography*, 89 IND. L.J. 1437, 1440 (2014) (explaining that there is no clear definition of "child pornography"). Accordingly, this Essay uses "child sexual abuse materials" or "CSAM" unless tracking language found in legislation and case law.

20. "Revenge pornography" has been defined as "sexually graphic images . . . originally obtained with consent, usually within the context of a private or confidential relationship . . . [that are] later distribute[d] without consent . . . ." Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345, 346 (2014); *see also* Andrew Koppelman, *Revenge Pornography and First Amendment Exceptions*, 65 EMORY L.J. 661, 667 (2016) (asserting that harm of revenge pornography occurs when the material is made available

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pursuit of litigation against Pornhub and MindGeek may have facilitated both changes to the way the platforms accept and monitor content and a change in ownership for those firms.[21] But, these changes at Pornhub and MindGeek do not change the behavior of equally large and influential platforms like Google and Meta (formerly known as Facebook), nor do they change the practices of the next company on the horizon. Currently there is no duty to take down materials, and takedown requests are plagued by First Amendment challenges.[22] As a result, victims have problems removing material from MindGeek and Pornhub, but have also had problems with Meta/Facebook, Instagram, Snapchat, X/Twitter, and Google.[23] While this Essay focuses primarily on human trafficking and other forms of sexual exploitation involving real images, there is also concern over artificial intelligence and

to viewers); Danielle Keats Citron, *Sexual Privacy*, 128 YALE L.J. 1870, 1945, 1945 n.497 (2019) (detailing the work of activists and scholars who have drawn attention to revenge porn).

21. *See infra* subpart I(A).

22. Michael L. Rustad & Thomas H. Koenig, *The Case for a CDA Section 230 Notice-and-Takedown Duty*, 23 NEV. L.J. 533, 536, 557 (2023)

23. But some academics have proposed solutions to these problems. *See id.* at 586 ("Congress should impose a nondelegable duty on online intermediaries to remove content constituting ongoing cybertorts or crimes once the ISP or other intermediary acquires actual notice of illegal content devoid of any First Amendment interest.").

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"deepfakes."[24] Altered images can be equally harmful and tend to replicate inequality in the real world.[25] To properly address the vast harms posed by the internet, it is time to consider how business structure contributes to those harms.

What is specifically missing from these debates is a discussion of how business structure contributes to the difficulties survivors face when attempting to remove their content from all platforms. This Essay proposes a solution that can empower victims internationally while protecting the free speech and other rights of consensual producers of pornography. In a prior work, *Corporate Family Matters*, I proposed a definition and governance regime for a particular type of corporate group—the corporate family.[26] A corporate family is "an enterprise formed by weaving corporations, partnerships, and limited liability companies (LLCs) together into a mix of public and private entities acting together for the benefit of a parent

24. *See* Sara H. Jodka, *Manipulating Reality: The Intersection of Deepfakes and the Law*, REUTERS (Feb. 1, 2024, 11:01 AM) (defining "deepfakes" as "incredibly realistic" "synthetic media in which a person in an existing image or video is replaced with someone else's likeness using AI techniques" and noting that the practice "can and has led to impersonation, fraud, blackmail and the spread of misinformation and propaganda").

25. *See, e.g.*, Mary Anne Franks, *The Desert of the Unreal: Inequality in Virtual and Augmented Reality*, 51 U.C. DAVIS L. REV. 499, 503 (2017) ("When existing inequalities are unacknowledged and unaddressed in the 'real' world, they tend to be replicated and augmented in virtual realities.").

26. Chatman, *supra* note 11, at 7.

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corporation or for the personal gain of one or more leaders of the enterprise."[27] If MindGeek were treated as a corporate family, victims could use its American subsidiaries—and in particular, its most popular subsidiary, Pornhub—to get information about the whole enterprise and force the removal of content across the entire organization.[28] It would thus succeed by providing victims with a non-litigation remedy sooner than they otherwise would have (if they would be provided that remedy at all). All victims deserve a legal avenue to end their exploitation, and the companies that profit from it should not be allowed to use structure as a shield.

The corporate family also buttresses the recent changes to international human trafficking law discussed above.[29] In recent litigation, many victims have alleged more difficult claims, such as racketeering,[30] that require pleading at a higher level and establishing intent.[31] If a network of businesses

27. *Id.*

28. MindGeek is by far the leader in online pornography with over 100 subsidiaries internationally. David Auerbach, *Vampire Porn*, SLATE (Oct. 23, 2014, 4:36 PM), https://slate.com/technology/2014/10/mindgeek-porn-monopoly-its-dominance-is-a-cautionary-tale-for-other-industries.html [https://perma.cc/H2DY-TVNV].

29. *See supra* note 6.

30. *E.g.*, Complaint at 61, 109, Fleites v. MindGeek S.A.R.L., No. 2:21-cv-04920, 2021 WL 2492964 (C.D. Cal. June 17, 2021) (alleging facts related to racketeering and a criminal enterprise).

31. Naomi Jiyoung Bang, *Justice for Victims of Human Trafficking and Forced Labor: Why Current Theories of Corporate Liability Do Not Work*, 43 U. MEM. L. REV. 1047, 1074–75 (2013)

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like those owned by MindGeek were given family treatment, a failure to acknowledge the influence of a parent corporation or a powerful manager or shareholder could tend towards proof of intent to deceive.[32] The real problem is not that MindGeek has the most unique visitors globally across all platforms.[33] It is how those platforms are managed and what the ownership structure has allowed to happen to victims of non-consensual actions.

This Essay first explains the historical and present legal structure of MindGeek and its most visible subsidiary, Pornhub.[34] Although MindGeek was recently acquired by Ethical Capital Partners (ECP), a private equity firm intent on giving the company an ESG makeover, the change in primary ownership does not address the structure that enables MindGeek to evade

("Perhaps the most popularly used theory of corporate liability [for human-trafficking violations] is conspiracy . . . [which] is subject to the heightened pleading requirements of Federal Rule of Civil Procedure 9 for fraud-related predicate acts."); FED. R. CIV. P. 9(b) ("In alleging fraud . . . , a party must state with particularity the circumstances constituting fraud . . . .").

32. *Cf.* Chatman, *supra* note 11, at 36–37 (discussing Enron's use of complex corporate structures to manipulate markets and deceive the public).

33. *See* Auerbach, *supra* note 28 ("MindGeek . . . has over 100 million daily visitors and is one of the top 10 consumers of bandwith; some reports have them in the top three.").

34. *See infra* Part I.

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responsibility for the content of its platforms.[35] This Essay then discusses the shortcomings of litigation and the recent changes to legislation.[36] FOSTA-SESTA has taken major steps towards breaking the barrier to litigation posed by § 230 and helps to prevent third parties with knowledge from benefitting from human trafficking, but those measures are better suited for addressing harms caused by smaller bad actors within the United States and its territories, not multinational corporate conglomerates.[37] Next, this Essay explains my proposed solution of applying the corporate-family structure—and its attendant requirements—to MindGeek.[38] The family structure can address issues internationally before litigation by making enforcement attempts by victims and penalties from law enforcement have force across all entities that fall within the corporate family. Following successful litigation, a U.S. decision or settlement would have international impact—as would one in the European Union, the United Kingdom, Canada, or any other venue seeking to combat human trafficking. In other words, MindGeek's new ownership would not be able to promote an ESG-inspired message in the

35. Christopher Reynolds, *Pornhub Owner MindGeek Purchased by Private Equity Firm*, BNN BLOOMBERG (Mar. 16, 2023), https://www.bnnbloomberg.ca/pornhub-owner-mindgeek-purchased-by-private-equity-firm-1.1896605 [https://perma.cc/DB93-NL3P].

36. *See infra* Part II.

37. *See infra* subpart II(B).

38. *See infra* Part III.

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developed world without also addressing the harm caused by its platforms in the developing world.

I. Hiding in Plain Sight: The MindGeek Takeover of Pornography

MindGeek may be the most influential company you have never heard of—its websites have over 100 million daily visitors globally, making it, at least by some accounts, the third most visited platform in the world.[39] In recent years, activists and journalists have brought MindGeek into the spotlight through investigation of and litigation against the company and its largest subsidiary Pornhub—marketed as a kinder, gentler face of the company's network of "tube" sites.[40] To gain its status as the most visited network of websites on the internet, MindGeek embarked on a takeover of

39. Auerbach, *supra* note 28; *see also* Kal Raustiala & Christopher Jon Sprigman, *The Second Digital Disruption: Streaming and the Dawn of Data-Driven Creativity*, 94 N.Y.U. L. REV. 1555, 1561, 1563 (2019) (discussing the company's business model, its myriad subsidiaries, and its growth strategies).

40. *See* Auerbach, *supra* note 28 ("MindGeek owns a large number of porn aggregator 'tube sites' (so named because they mimic YouTube's format) such as Pornhub, YouPorn, and Redtube."); Alfred Maskeroni, *Pornhub Erects Huge Billboard in Times Square After Long Search for a Great Non-Pornographic Ad*, ADWEEK (Oct. 8, 2014), https://www.adweek.com/creativity/pornhub-erects-huge-billboard-times-square-after-long-search-great-non-pornographic-ad-160632/ [https://perma.cc/F9XH-FT44] (discussing Pornhub's efforts to market itself with non-pornographic ads).

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the entire pornography market sector, fully integrating vertically and horizontally through the acquisition of both traditional production studios and numerous websites.[41] To do so, the company engaged in legal structuring practices commonly used by above-the-board companies: a mix of various entity types internationally, operated separately, in a way that minimizes civil liability and tax burdens.[42] MindGeek also engaged in some uncommon

41. Auerbach, *supra* note 28 ; *see also* Rhett Pardon, *Brazzers, Mofos, Tube Sites Acquired by Manwin*, XBIZ (Jul. 15, 2010, 5:00 PM), https://www.xbiz.com/news/122932/brazzers-mofos-tube-sites-ac-quired-by-manwin [https://perma.cc/6T9S-A2ZM] (discussing the acquisition of a collection of tube sites by MindGeek, formerly known as Manwin); John Sanford, *Manwin Acquires Reality Kings*, XBIZ (Sept. 10, 2014, 12:15 PM), https://www.xbiz.com/news/153764/manwin-acquires-reality-kings [https://perma.cc/KA6S-282U] ("In keeping with its vision for growth and diversification, Manwin has acquired, among other assets, RealtyKings.com network of sites, Reality Kings TV (RKTV), DVD production and sales, and NastyDollars affiliate program.").

42. For a discussion on how companies use complex structures, including spinoffs, to minimize liabilities, see Mark J. Roe, *Corporate Strategic Reaction to Mass Tort*, 72 VA. L. REV. 1, 49 (1986). *See also* Dan K. Webb, Steven F. Molo & James F. Hurst, *Understanding and Avoiding Corporate and Executive Criminal Liability*, 49 BUS. LAW. 617, 625 (1994) ("Given the often complex and decentralized nature of many corporations, it is sometimes difficult, if not impossible, to prove that any single corporate agent acted with the necessary intent and knowledge to commit an offense."); Carliss N. Chatman, *Myth of the Attorney Whistleblower*, 72 SMU L. REV. 669, 689 (2019) (discussing the role of complex business structure in the Enron scandal). These methods have been the point of study for many, including the Egmont Group's Financial Action Task Force. FIN. ACTION TASK FORCE, EGMONT GRP. OF FIN. INTEL. UNITS, CONCEALMENT OF BENEFICIAL OWNERSHIP 26 (2018). The task force notes:

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practices—willful violations of the intellectual property rights of talent for the sake of maximizing advertising revenue on its streaming sites, tax avoidance that authorities have argued crossed the line to tax evasion, website monitoring practices that many deem to be substandard, and relying on structure to avoid responding to requests to remove content.[43] These practices have been exposed in litigation—first by government authorities for the company's tax practices, then in civil litigation by victims.[44] The recent acquisition of the company by a private equity firm signals the potential for change, but this acquisition does not address the corporate structure. This Part first explains the MindGeek structure and then analyzes the impact of civil litigation and the recent change in company control.

> A key method used to disguise beneficial ownership involves the use of legal persons and arrangements to distance the beneficial owner from an asset through complex chains of ownership. Adding numerous layers of ownership between an asset and the beneficial owner in different jurisdictions, and using different types of legal structures, can prevent detection and frustrate investigations.

Id.

43. *See infra* text accompanying notes 64–65.

44. *See infra* text accompanying notes 64–65.

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A. MindGeek's Business Structure

Most would agree that a corporate group is defined by ownership and control.[45] However, group status does not necessarily correspond with an increase in responsibility and liability. The absence of formal group status in the United States—specifically in Delaware, the primary jurisdiction responsible for corporate governance—is the motivation behind my proposal to create a new category of group, the corporate family, with a corresponding elevation of legal duty.[46] MindGeek's operations would fit within most

45. Chatman, *supra* note 11, at 16 ("Common ownership and control are pivotal in considering whether an enterprise is a corporate group. This is not the case with families."); *see* Virginia Harper Ho, *Theories of Corporate Groups: Corporate Identity Reconceived*, 42 SETON HALL L. REV. 879, 881 (2012) ("[C]orporate law in the United States does not recognize the corporate group as a separate legal entity form . . . ."); Phillip I. Blumberg, *The Transformation of Modern Corporation Law: The Law of Corporate Groups*, 37 CONN. L. REV. 605, 607–08 (2005) (discussing the rise of the enterprise model and recognizing that "the corporate law of older times formulated for the far simpler economy when corporate groups were unknown became largely anachronistic and dysfunctional"); Christian Witting, *The Corporate Group: System, Design And Responsibility*, 80 CAMBRIDGE L.J. 581, 582 (2021) (portraying the corporate group in systems-managerial terms and noting that "the parent company cannot be saved from liability to third parties by hiding behind the 'pure omissions' rule in negligence").

46. Chatman, *supra* note 11, at 9, 11. More than one million business entities are based in Delaware, including more than 66% of the Fortune 500 companies; therefore, a change to the Delaware Code will have the greatest impact. *About the Division of Corporations*, DEL. DIV. OF CORPS., https://corp.delaware.gov/aboutagency/ [https://perma.cc/66A3-R4GF].

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definitions of corporate group and fits my definition of a corporate family discussed in further detail in Part III.

Founded around 2007 as Manwin, MindGeek's exact origins and sources of funding are difficult to confirm.[47] Feras Antoon, who served as Chief Executive Officer (CEO) until his resignation in 2022, was one of those founders.[48] MindGeek is registered in Luxembourg, with a Canadian subsidiary in Montreal handling the day-to-day operations as the principle place of business.[49] This enables it to be exempt from taxes paid to the

47. Patricia Nilsson, *MindGeek: The Secretive Owner of Pornhub and RedTube*, FIN. TIMES (Dec. 16, 2020), https://www.ft.com/content/b50dc0a4-54a3-4ef6-88e0-3187511a67a2 [https://perma.cc/7R7R-BG3B]. For a biography of Fabian Thylmann, one of Manwin's founders, see Kriti Mehrotra, *Who is Fabian Thylmann? Where is He Now?*, CINEMAHOLIC, https://thecinemaholic.com/who-is-fabian-thylmann-where-is-he-now/ [https://perma.cc/UWY3-5ZKV]. Many journalists have attempted to reconstruct the company's origins. *See, e.g.*, Auerbach, *supra* note 28 ("[Stephane] Manos and [Ouissam] Youssef were founders of Mansef. The assets of Mansef were sold to Fabian Thylmann who made them part of a company he owned called Manwin; Manwin would later become Mindgeek.").

48. Nilsson, supra note 47; Lateshia Beachum, *Top Executives Quit Pornhub's Parent Company Amid More Controversy*, WASH. POST (June 21, 2022, 8:36 PM), https://www.washingtonpost.com/business/2022/06/21/pornhub-mindgeek-leaders-resign/ [https://perma.cc/A4BL-P6BA].

49. Nilsson, *supra* note 47.

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Luxembourg parent.[50] Beyond the parent and primary Canadian subsidiary, the company also operates multiple subsidiaries in countries including the British Virgin Islands, Cyprus, Germany, Ireland, and the United States.[51] Management is in Canada, the billing companies are in Ireland, various subsidiaries are in Curaçao, and there are holding companies in Cyprus and Luxembourg.[52] Before a recent acquisition, it was unclear who owned MindGeek.[53] Antoon and Chief Operations Officer (COO) David Tassillo led the company until they resigned in 2022, claiming long-term plans to

50. Convention Between the Government of Canada and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, Can.-Lux., 2000 Can. T. S. No. 22

51. Nilsson, supra note 47; Maxime Bergeron, *L'énigme Mindgeek, du Luxembourg à Montréal*, LA PRESSE (Oct. 10, 2016), https://plus.lapresse.ca/screens/5af271ce-5112-411d-8502-319e5d5fa7e7__7C__2tXW0KGJgOr7.html [https://perma.cc/Z6H2-69V8].

52. *See supra* note 51 and accompanying text.

53. *See supra* note 47 and accompanying text.

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transition leadership.[54] They remained as shareholders and possibly board members following their resignation.[55]

From 2009 to around 2015, MindGeek purchased every pornography website it could find.[56] MindGeek's holdings constitute a near monopoly of the pornography industry.[57] Notably, MindGeek has managed to evade antitrust scrutiny, but some scholars believe the recent exposure could draw the attention of regulators.[58] A *New York Times* exposé credited with helping to initiate public scrutiny of MindGeek and Pornhub noted that a Google search returns 920 million videos on a search for "young porn," with results

54. Tekato Longkumer, *Pornhub Parent Company MindGeek Loses Its CEO and COO, Here Is Why*, E. MIRROR (June 22, 2022, 10:16 PM), https://easternmirrornagaland.com/pornhub-parent-company-mindgeek-loses-its-ceo-and-coo-here-is-why/ [https://perma.cc/ZX5G-Y7QY]; Omar Abdel-Baqui, *Pornhub Parent Company's CEO, COO Are Departing as Scrutiny Builds over Alleged Nonconsensual Content*, WALL ST. J. (June 21, 2022, 7:04 PM), https://www.wsj.com/articles/Pornhub-parent-companys-ceo-coo-are-departing-as-scrutiny-builds-over-alleged-nonconsensual-content-11655852686 [https://perma.cc/QZ8K-WGAR].

55. Longkumer, *supra* note 54; Abdel-Baqui, *supra* note 54.

56. *See* Nilsson, *supra* note 47 (explaining that MindGeek has quietly become the dominant porn company, purchasing several of the sector's most visited sites, including Pornhub, RedTube, and YouPorn)).

57. Phil Lord, *Pornhub: Opening the Floodgates?*, 11 HOUS. L. REV.: OFF REC. 54, 57–58 (2021).

58. *E.g.*, *id.*

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appearing on websites within the MindGeek family.[59] MindGeek's influence is so great that many have blamed the company for the exploitation of sex workers and the downfall of the traditional pornography industry.[60] I perceive four categories of businesses at MindGeek: (1) the Pornhub network, which then has sites under its umbrella; (2) movie studios, including Playboy; (3) reality sites; and (4) managed sites. Within those categories, some of the companies are completely independent, some are affiliated with each other, and others have a symbiotic relationship.

All parts of the business work for the benefit of MindGeek.[61] For this reason, the victims of human trafficking and CSAM are not the only victims of MindGeek's business practices.[62] Because MindGeek owns both movie

59. Nicholas Kristof, *The Children of Pornhub*, N.Y. TIMES (Dec. 4, 2020), https://www.nytimes.com/2020/12/04/opinion/sunday/pornhub-rape-trafficking.html [https://perma.cc/D9V8-X8FX]. Its sites include Redtube, Youporn, XTube, SpankWire, ExtremeTube, Men.com, My Dirty Hobby, Thumbzilla, PornMD, Brazzers, and GayTube. *Id.*

60. *See* Auerbach, *supra* note 28 (explaining MindGeek's contribution to the significant decline in production of porn films and DVD sales around 2008).

61. *See* Nilsson, supra note 47 (explaining how MindGeek benefits from its under-the-radar business practice and its free content).

62. One author, in discussing other victims of MindGeek's business practices, has noted:

> We discover that the key to Pornhub's success is that its business model was initially eerily similar to the main social media platforms: like them, it relied on algorithms, influencers and SEO to grow its traffic, and rather than producing its own porn or

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studios and aggregator sites like Pornhub, they earn revenue even when productions are pirated and uploaded illegally.[63] Although a site like Pornhub can cut the talent out of being paid for their work or earning royalties from licensing and distribution when content is pirated, the advertising revenue and subscription fees continue to make money for MindGeek. MindGeek's incentive is to produce new content to bring eyes to the aggregator sites, but the company has no financial incentive to defend its intellectual property and protect that content.[64] They own every aspect of the pornography business.[65] And because of its market share, when the talent complains, they are simply excluded from the business.[66]

> working with studios, they simply provided a platform where people could share their own pornographic content.

Laura Vickers-Green, *Moneyshot: The Pornhub Story Review: The Problem Isn't Sex, It's Social Media*, DEN OF GEEK (Mar. 16, 2023), https://www.denofgeek.com/tv/moneyshot-the-pornhub-story-review-the-problem-isnt-sex-its-social-media/ [https://perma.cc/WZ9P-2XDW].

63. *See* Raustiala & Sprigman, *supra* note 39, at 1572–73 (discussing how MindGeek can and does use piracy to its benefit).

64. *See id.* at 1563–65 (discussing MindGeek's primary interest in large quantities of data to tailor content rather than copyrights for creative material); Rustad & Koenig, *supra* note 23, at 536 (noting that the lack of tort liability for internet intermediaries provides incentives to host as much content as possible).

65. Lord, *supra* note 57, at 57–58.

66. *See* Auerbach, *supra* note 28 (explaining that people in the porn industry do not speak out against MindGeek for fear of blacklisting) .

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The *New York Times* piece discussed above illustrates just how dangerous MindGeek's corporate structure—allegedly an innocent attempt to avoid tax and other liabilities—can be for victims.[67] The story focuses on the biggest and best-known entity Pornhub, which at the time "attract[ed] 3.5 billion visits a month" and 3 billion ad impressions a day.[68] It revealed that the website "monetizes child rapes, revenge pornography, spy cam videos of women showering, [and] racist and misogynist content.[69] Pornhub also allows users to download videos.[70] This creates additional problems for victims of illegal activity and for talent.[71] Even after Pornhub removes a video for a violation of the law or at the request of a person appearing in the video, it can be uploaded again or loaded to another website in the network of MindGeek companies.[72] For victims, a Google image search is helpful, but not conclusive. Slight tweaks to the files, such as making them just a few seconds shorter or changing the title, can make it difficult to find and force the removal of the images. One victim noted that a search to find images and

67. *See* Kristof, *supra* note 59 ("Mindgeek's moderators are charged with filtering out videos of children, but its business model profits from sex videos starring young people.").

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

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videos in the categories she is most likely to appear in returns 26,000 results; yet another victim discovered one naked video of her at age fourteen had 400,000 views.[73]

In March 2023, MindGeek was acquired by a private equity firm, Ethical Capital Partners (ECP), which is based in Ottawa, Canada.[74] Investors in the partnership include criminal lawyers Solomon Friedman and Fady Mansour (managing partner), a cannabis entrepreneur Rocco Meliambro (chair), and a retired chief superintendent with the Royal Canadian Mounted Police, Derek Ogden.[75] In a press release, Mansour stated:

> At ECP, we seek out innovative and ethically-driven companies that operate at the frontier of new, evolving industries. In MindGeek, we have identified a dynamic tech brand that is built upon a foundation of trust, safety and compliance, and with ECP's resources and broad expertise spanning regulatory, law enforcement, public engagement and finance, we have a unique opportunity to strengthen what already exists.[76]

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73. *Id.*

74. Reynolds, *supra* note 35.

75. For each of these investors' backgrounds, see *Our Team*, ETHICAL CAP. PARTNERS, https://www.ethicalcapitalpartners.com/team [https://perma.cc/HED7-DFPR].

76. *ECP Announces Acquisition of MindGeek, Parent Company of Pornhub* (Mar. 16, 2023) [hereinafter *ECP Press Release*], https://www.ethicalcapitalpartners.com/news/ecp-announces-

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It is not clear whether this new mission includes making information about the company's holdings available to victims or increasing monitoring protocols on the less visible entities globally.[77]

B. Litigating MindGeek

Litigation is not new to MindGeek, its predecessors, or its subsidiaries. "In October 2009, the U.S. Secret Service's Organized Fraud Task Force in Atlanta seized about $6.4 million in funds from two Fidelity bank accounts controlled by Mansef,"[78] a holding company that would eventually become MindGeek.[79] The Secret Service alleged that "more than $9 million had been wired into the two accounts over a three-month period from banks in Israel and other countries on financial-fraud watch lists."[80] German tech investor

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acquisition-of-mindgeek%2C-parent-company-of-pornhub [https://perma.cc/95F3-NHHT]. On August 17, 2023, MindGeek rebranded as Aylo. *MindGeek Becomes Aylo*, AYLO (Aug. 17, 2023), https://www.aylo.com/newsroom/mindgeek-rebrands/ [https://perma.cc/SKL6-3B2C].

77. *See ECP Press Release*, *supra* note 76 (discussing MindGeek's trust and safety program without mentioning victim compensation or changing monitoring protocols).

78. Benjamin Wallace, *The Geek-Kings of Smut*, N.Y. MAG. (Jan. 28, 2011) https://nymag.com/news/features/70985/index4.html#print [https://perma.cc/AZB8-J8UU].

79. Joe Castaldo, *Lifting the Veil of Secrecy on MindGeek's Online Pornography Empire*, GLOBE & MAIL (Feb. 4, 2021), https://www.theglobeandmail.com/business/article-mindgeeks-business-practices-under-srutiny-as-political-pressure/ [https://perma.cc/US7K-3TJN].

80. Wallace, *supra* note 79.

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Fabian Thylmann then purchased Mansef before later making it part of another holding company, Manwin, which then became MindGeek in 2013.[81] Tax troubles continued to plague MindGeek's predecessors.[82] Thylmann was extradited from Belgium to Germany in 2012 for tax evasion on Manwin's profits.[83] In late 2013, Thylmann was bought out by former CEO Ferras Antoon and COO David Tassillo.[84]

In 2019, twenty-two Jane Doe Plaintiffs were awarded $13 million in damages from Pornhub channel GirlsDoPorn in California Superior Court.[85] The claims against GirlsDoPorn included fraud, concealment, false promise, and misappropriation of likeness.[86] The women had filmed pornographic

81. *Id.*; Castaldo, *supra* note 79; Auerbach, *supra* note 28.

82. *See* Castaldo, *supra* note 79 (noting that Mr. Thylmann was charged with tax evasion in 2012).

83. ASSOCIATED PRESS, *Porn Site Owner Extradited to Germany in Tax Case*, SAN DIEGO UNION-TRIB. (Dec. 14, 2012, 7:19 AM), https://www.sandiegouniontribune.com/sdut-porn-site-owner-extradited-to-germany-in-tax-case-2012dec14-story.html [https://perma.cc/K4G6-N4WT]; Auerbach, *supra* note 28.

84. Auerbach, *supra* note 28.

85. Jane Doe Nos. 1-22 v. Girlsdoporn.com, No. 37-2016-00019027-CU-FR-CTL, slip op. at 1, 186 (Cal. Super. Ct., San Diego Cnty. Jan. 2, 2020); *see also* Samantha Cole, *Girls Do Porn Was a Crime Ring, Not a Porn Site, Industry Experts Say*, VICE: MOTHERBOARD (Oct. 16, 2019, 11:31 AM), https://www.vice.com/en/article/3kx483/girls-do-porn-sex-trafficking-fbi-indictment [https://perma.cc/G978-P3WD] (discussing the case and an associated criminal prosecution).

86. *Jane Doe Nos. 1-22*, slip op. at 2.

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videos for GirlsDoPorn, and they claimed they were told that the videos would be sold only on DVD to private buyers or would be made available to overseas clients and would never be posted online.[87] In some cases, personal information, including real names and social media profiles, was leaked online.[88] The lawsuit revealed a series of deceptive practices and coercive tactics used by the company, including pressuring the women to sign contracts without adequate time to read or understand them and employing aggressive tactics to convince reluctant participants to shoot the videos.[89] The U.S. Attorney for the Southern District of California also charged GirlsDoPorn employees with criminal sex trafficking charges.[90]

Nicholas Kristof's *New York Times* piece drew attention to Pornhub, leading to activism and several lawsuits, including a proposed class action filed by Susman Godfrey LLP in California in 2021.[91] Jane Doe plaintiffs

87. *Id.* at 3, 16.

88. *Id.* at 35–38

89. *Id.* at 3, 12–14.

90. *GirlsDoPorn Operator Pleads Guilty in Sex Trafficking Conspiracy*, U.S. ATT'Y'S OFF., S. DIST. OF CAL. (July 26, 2022), https://www.justice.gov/usao-sdca/pr/girlsdoporn-operator-pleads-guilty-sex-trafficking-conspiracy [https://perma.cc/N2M5-254D].

91. Complaint at 2–3, 16, Doe v. MindGeek USA Inc., 574 F. Supp. 3d 760 (C.D. Cal. 2021) (No. 8:21-cv-00338); *Susman Godfrey Files Proposed Class Action Against PornHub, MindGeek Alleging Underage Sex Trafficking, Child Pornography*, PR NEWSWIRE (Feb. 22, 2021, 4:14 PM), https://www.prnewswire.com/news-releases/susman-godfrey-files-proposed-class-action-against-

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also filed parallel litigation in Canada.[92] In advance of the litigation in 2021, and prompted by Mastercard's halting payments on the site in December of 2020, Pornhub removed approximately 80% of its videos that were uploaded by unauthorized users.[93] Before the threat posed by Mastercard and Visa, who were motivated by their own liability concerns, Pornhub and MindGeek lacked the motivation to reform.[94] It is unclear whether the efforts made at Pornhub were replicated at the hundreds of other MindGeek platforms globally.

The 2021 class action alleges that hundreds of websites owned by MindGeek are co-conspirators in CSAM, human trafficking, and revenge porn.[95] The original complaint notes that Pornhub did not implement simple

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pornhub-mindgeek-alleging-underage-sex-trafficking-child-pornography-301232784.html [https://perma.cc/77TW-N9NP].

92. Kieran Leavitt, *Pornhub Owner Facing Proposed $600 Million Class-Action Lawsuit from Ontario Woman*, TORONTO STAR (Jan. 8, 2021), https://www.thestar.com/politics/federal/pornhub-owner-facing-proposed-600-million-class-action-lawsuit-from-ontario-woman/article_69a70b92-ef74-59f2-a47f-1d5ae8813f84.html [https://perma.cc/3YCR-NSHJ].

93. Otillia Steadman, *Pornhub Purged Almost 80% of Its Content—More Than 10 Million Videos—From Its Site*, BUZZFEED NEWS (Dec. 14, 2020, 5:55 PM), https://www.buzzfeednews.com/article/otilliasteadman/pornhub-removes-videos [https://perma.cc/AQ6S-7622].

94. Naughton, *supra* note 17.

95. Complaint at 26, 31–34, *MindGeek*, 574 F. Supp. 3d 760 (C.D. Cal. 2021) (No. 8:21-cv-00338).

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measures such as age verification because doing so would hurt profits.[96] This allegation was also based in part on MindGeek's failure to "take down child pornography that generates significant [revenue] streams."[97] Before the litigation ensues, when a victim would sue one site or obtain a court order to have images and videos removed, the structure of the companies creates a twisted game of whack a mole—victims are required to figure out whom to serve and where to sue while MindGeek alleges that its structure prohibits it from enforcing the actions across all websites and platforms.[98] Because each of the businesses is a separate legal entity and MindGeek is just a parent, each entity is a separate legal person with individual legal rights.[99] The class action is still pending following the denial of MindGeek's motions to dismiss.[100]

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96. *Id.* at 2.

97. *Id.* at 32.

98. *See* INVESTIGATION INTO AYLO (FORMERLY MINDGEEK)'S COMPLIANCE WITH PIPEDA, OFF. OF THE PRIV. COMM'R OF CAN. ¶ 141 (Feb. 29, 2024) (concluding that, even today, "MindGeek still lacks a mechanism that can remove and delete all instances in which an individual's personal information appears across MindGeek's websites (i.e., different videos depicting the same individual)").

99. *See infra* subpart III(A).

100. *See MindGeek*, 574 F. Supp. 3d at 763, 777 (noting that "Plaintiffs claims still stand" following denial of motion to dismiss).

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In October 2021, MindGeek settled a lawsuit with fifty women in the United States and Canada in connection with its relationship with GirlsDoPorn.[101] That lawsuit alleged that MindGeek was a co-conspirator with GirlsDoPorn and did not end its business relationship with the company until October 2019 when GirlsDoPorn faced criminal charges.[102] On December 21, 2023, Aylo, the company formerly known as MindGeek and parent of Pornhub, entered into a deferred prosecution agreement to resolve a money laundering charge.[103] In that agreement, Aylo admitted to engaging in unlawful monetary transactions involving sex trafficking proceeds, consented to the appointment of a monitor for three years, and agreed to make payments to individuals adversely affected by the underlying sex trafficking.[104] In the agreement, Aylo admits to hosting GirlsDoPorn on its

101. *Pornhub Owner Settles with Girls Do Porn Victims over Videos*, BBC (Oct. 19, 2021), https://www.bbc.com/news/technology-58917993 [https://perma.cc/U3RC-CZWF].

102. *Id.*

103. Deferred Prosecution Agreement at 1–2, United States v. Aylo Holdings S.À.R.L., No. 23-CR-463 (BMC) (E.D.N.Y. Dec. 21, 2023).

104. *Pornhub Parent Company Admits to Receiving Proceeds of Sex Trafficking and Agrees to Three-Year Monitor*, U.S. ATT'Y'S OFF., E. DIST. OF N.Y. (Dec. 21, 2023), https://www.justice.gov/usao-edny/pr/pornhub-parent-company-admits-receiving-proceeds-sex-trafficking-and-agrees-three-year [https://perma.cc/B5LN-6BJN].

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platforms and to knowingly receiving payments of approximately $106,370.05 through United States financial institutions, its operators.[105]

The companies did change their practices in response to the loss of business relationships with MasterCard and Visa, continuing the trend of being motivated by the bottom line and not addressing harm to victims.[106] Recent legislation appears to increase the potential for liability, but the viability of the reforms is uncertain given the split decisions from courts interpreting FOSTA-SESTA.[107] Public attention to the businesses appears to have the greatest impact on MindGeek and Pornhub policies, and we are unable to know what the companies' practices are in places that have less

105. *Id.*; Information at 4, United States v. Aylo Holdings S.À.R.L., No. 23-CR-463 (E.D.N.Y. Dec. 21, 2023).

106. *See supra* notes 12, 16–17 and accompanying text.

107. *Compare* Doe v. Kik Interactive, Inc., 482 F. Supp. 3d 1242, 1252 (S.D. Fla. 2020) (dismissing suit against owners of Kik Messenger, a social media service, for trafficking images posted by users online), *and* J.B. v. G6 Hosp., LLC, No. 19-CV-07848, 2020 WL 4901196, at *7 (N.D. Cal. Aug. 20, 2020) (dismissing suit against Craigslist for trafficking images posted by users on its site), *with* Doe v. Twitter, Inc., 555 F. Supp. 3d 889, 925, 932 (N.D. Cal. 2021) (denying Twitter's motion to dismiss as to Plaintiff's TVPRA claim based on beneficiary liability where Twitter had allowed videos of underaged Plaintiff to remain on their website), *rev'd in part*, Doe #1 v. Twitter, Inc., No. 22-15103, 2023 WL 3220912, at *2 (9th Cir. May 3, 2023) (holding that denial of the motion to dismiss was erroneous).

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visible victims and less concern with combatting human trafficking and sexual exploitation.[108]

II. The Shortcomings of Litigation

The current litigation against Pornhub, MindGeek, and the third parties that benefit financially from the distribution of CSAM or images produced from human trafficking is possible due in part to FOSTA-SESTA.[109] This recent legislation adds fuel to the recurring war on pornography, which saw its peak in the 1970s and 1980s, and triggers concerns about free speech, the rights of consensual sex workers, and even the ability to maintain platforms that aim to support victims of sexual exploitation.[110] The historic porn wars—

108. *See supra* notes 12, 16–17 and accompanying text.

109. *See supra* notes 1–5 and accompanying text.

110. *See* Julie Dahlstrom, *The New Pornography Wars*, 75 FLA. L. REV. 117, 117, 124–25 (2023) (explaining the "pornography wars" that took place in the 1970s and 1980s); BRENDA COSSMAN, THE NEW SEX WARS 15 (2021) (exploring how deep feminist divides continue to animate debates about sexual harm in today's "Sex Wars 2.0"); 1 THE WOMEN'S MOVEMENT TODAY: AN ENCYCLOPEDIA OF THIRD-WAVE FEMINISM 260 (Leslie L. Heywood ed., 2006) (describing how third-wave feminism "defends pornography, sex work, sadomasochism, and butch/femme roles . . . but . . . also recuperates heterosexuality, intercourse, marriage, and sex toys from separatist feminist dismissals"); Matthew Lasar, *The Triumph of the Visual: Stages and Cycles in the Pornography Controversy from the McCarthy Era to the Present*, 7 J. POL'Y HIST. 181, 203 (1995) (suggesting that "pornography has had not one, but many, political moments" highlighted by both "antipornography feminism" and "feminist exploration of pornography"); Marianne

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and many of the current activists who have exposed the practices of MindGeek and Pornhub—seek to end pornography and sex work in general on the premise that it is always violent, exploitative, and demeaning for women, even when consensual.[111] But on the other side of the debate are parties who believe that women have the right to engage in sex work and that the potential over-inclusiveness of the legislation does not hurt the big

Wesson, *Girls Should Bring Lawsuits Everywhere . . . Nothing Will Be Corrupted: Pornography as Speech and Product*, 60 U. CHI. L. REV. 845, 849–50 (1993) (describing efforts to pass legislation like the Pornography Victims Compensation Act to carve out new legal claims for purported victims of sex crimes).

111. For an example of this perspective, see Catharine A. MacKinnon, *Pornography, Civil Rights, and Speech*, 20 HARV. C.R.-C.L. L. REV. 1, 17 (1985) ("Pornography sexualizes rape, battery, sexual harassment, prostitution, and child sexual abuse; it thereby celebrates, promotes, authorizes, and legitimizes them."). *See also, e.g.*, Catharine A. MacKinnon, *Pornography as Trafficking*, 26 MICH. J. INT'L L. 993, 993 (2005) (exploring the conceptual connections between pornography and trafficking); R. Claire Snyder-Hall, *Third-Wave Feminism and the Defense of "Choice,"* 8 PERSPS. ON POL. 255, 256 (2010) (examining "choice feminism" as "entail[ing] a commitment to three important principles essential to feminism—pluralism, self-determination, and nonjudgmentalness"); Allison J. Luzwick, *Human Trafficking and Pornography: Using the Trafficking Victims Protection Act to Prosecute Trafficking for the Production of Internet Pornography*, 112 NW. U. L. REV. 355, 359 (2017) (arguing that prosecutors should use federal trafficking law to target pornography producers and distributors).

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corporate players but instead may continue the trend of driving performers to escort and other more dangerous forms of sex work.[112]

There are several problems with relying on FOSTA-SESTA and civil litigation generally to eradicate human trafficking, CSAM, and revenge porn.

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112. Prof. Janie Chuang contrasts the two positions:

> The reductive trafficking narrative oversimplifies the problem of trafficking from a complex human rights problem rooted in the failure of migration and labor frameworks to respond to globalizing trends, to a moral problem and crime of sexual violence against women and girls best addressed through an aggressive criminal justice response. In so doing, the narrative circumscribes the range and content of anti-trafficking interventions proffered, feeding states' preference for aggressive criminal justice responses. It overlooks, if not discounts, the need for better migration and labor frameworks or socioeconomic policies to counter the negative effects of globalizing trends that drive people to undertake risky migration projects in the first instance.

Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1694 (2010); *see also* Ellen Willis, *Feminism, Moralism, and Pornography*, 38 N.Y.L. SCH. L. REV. 351, 357 (1993) ("The basic purpose of obscenity laws is and always has been to reinforce cultural taboos on sexuality and suppress feminism, homosexuality, and other forms of sexual dissidence."); Anders Kaye, *Why Pornography Is Not Prostitution: Folk Theories of Sexuality in the Law of Vice*, 60 ST. LOUIS U. L.J. 243, 281–82 (2016) (analyzing the cultural beliefs that lead to criminalization of one form of sex work and acceptance of another); I. India Thusi, *Radical Feminist Harms on Sex Workers*, 22 LEWIS & CLARK L. REV. 185, 225 (2018) (advocating for decriminalization of sex work "in most contexts in its recognition of the sex worker's autonomy and liberty"); I. India Thusi, *Reality Porn*, 96 N.Y.U. L. REV. 738, 790–91 (2021) (discussing the misuse of concerns regarding sex trafficking that purportedly justify the criminalization of sex work).

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First, the viability of FOSTA-SESTA is in question.[113] Ironically, the best use of third-party liability for sexual exploitation may be in the case of those doing business with individuals (as demonstrated by the recent court victory of the Epstein Jane Doe plaintiffs)[114] not internet providers. Litigation against one company or person at a time cannot keep up with the force of the internet, even if hosts and providers in the United States are targeted.[115] This approach blocks those without standing in the jurisdiction from pursuing litigation.[116] Further, not all victims have sufficient resources, nor are all victims the type of plaintiffs that are the subject of activist concerns.[117] Litigation also occurs after the harm has occurred. Expecting victims to wait for the mitigating effects of litigation to correct the behavior of companies is not worthwhile given the nature of the actions. What is needed is regulation that motivates behavioral change so that it is less profitable in the first place to engage in human trafficking and sexual exploitation on the internet.[118] This Part first

113. *See supra* note 107 and accompanying text.

114. *See supra* note 7 and accompanying text.

115. *See supra* note 18 and accompanying text.

116. *See infra* notes 174–76 and accompanying text.

117. *See infra* text accompanying notes 165–84.

118. *See* Jennifer Gordon, *Regulating the Human Supply Chain*, 102 IOWA L. REV. 445, 453 (2017) (arguing for "an effective means of changing the economic incentives of the entities and individuals in the human supply chain's vast middle."); Citron & Wittes, *The Internet Will Not Break*, *supra* note 18, at 416 (advocating for changes to § 230 that would remove immunity for

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discusses how human trafficking has been redefined by recent legislation and then discusses the shortcomings of civil litigation.

A. Human Trafficking Re-Defined and Relitigated

Before FOSTA-SESTA, § 230 of the Communications Decency Act (CDA) provided websites with immunity from liability for content posted by third parties.[119] FOSTA-SESTA amended § 230, making it so that websites can be prosecuted and sued if they knowingly assist, facilitate, or support sex trafficking.[120] The primary objective of FOSTA-SESTA is to reduce sex trafficking, especially the kinds facilitated online.[121] Immediately after the legislation passed, Craigslist shut down their personals section.[122] In addition,

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"Bad-Samaritan" website operators and incentivize better behavior online); Besen & Verveer, *supra* note 18, at 72 (using economics to reason toward "some expansion of platform liability").

119. *See supra* notes 4, 18 and accompanying text.

120. *See supra* notes 1–7 and accompanying text.

121. *See Online Sex Trafficking and the Communications Decency Act: Hearing Before the Subcomm. on Crime, Terrorism, Homeland Security and Investigations of the H. Comm. on the Judiciary*, 115th Cong. 2–3 (2017) (statements of Reps. Steve Chabot and Sheila Jackson Lee) (identifying goals of "hold[ing] accountable . . . websites that have allowed with impunity young people to be sold online" and "address[ing] the pervasive physical and psychological damage of sex trafficking more broadly").

122. Merrit Kennedy, *Craigslist Shuts Down Personals Section After Congress Passes Bill On Trafficking*, NPR (March 23, 2018, 3:52 PM), https://www.npr.org/sections/thetwo-

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Backpage.com, a classified-advertisement website frequently linked to sex work, was seized by the federal government.[123] Facing fear of legal action, other websites that hosted adult content began implementing stricter content regulations or shutting down certain services.[124]

FOSTA-SESTA's effectiveness in reducing online sex trafficking is still a topic of debate, and there are varying opinions on the legislation and its broader impact on the internet ecosystem.[125] Some argue that targeting

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way/2018/03/23/596460672/craigslist-shuts-down-personals-section-after-congress-passes-bill-on-trafficking [https://perma.cc/QX24-LZ57].

123. Elizabeth Nolan Brown, *The Senate Accused Them of Selling Kids for Sex. The FBI Raided Their Homes. Backpage.com's Founders Speak for the First Time.*, REASON (Aug. 21, 2018, 8:25 AM), https://reason.com/2018/08/21/backpage-founders-larkin-and-lacey-speak/ [https://perma.cc/X8CV-2LW7]; Sarah N. Lynch & Lisa Lambert, *Sex Ads Website Backpage Shut Down by U.S. Authorities*, REUTERS (Apr. 6, 2018, 2:55 PM), https://www.reuters.com/article/us-usa-backpage-justice/sex-ads-website-backpage-shut-down-by-u-sauthorities-idUSKCN1HD2QP [https://perma.cc/3NW3-Z58X]; *Justice Department Leads Effort to Seize Backpage.Com, the Internet's Leading Forum for Prostitution Ads, and Obtains 93-Count Federal Indictment*, U.S. DEPT. OF JUST. (Apr. 9, 2018), https://www.justice.gov/opa/pr/justice-department-leads-effort-seize-backpagecom-internet-s-leading-forum-prostitution-ads [https://perma.cc/5Z4Y-L85Z].

124. Liz Tung, *FOSTA-SESTA Was Supposed to Thwart Sex Trafficking. Instead, It's Sparked a Movement*, WHYY: THE PULSE (July 10, 2020), https://whyy.org/segments/fosta-sesta-was-supposed-to-thwart-sex-trafficking-instead-its-sparked-a-movement/ [https://perma.cc/Y6TC-JDCF].

125. *See* Danielle Citron & Quinta Jurecic, *FOSTA: The New Anti-Sex-Trafficking Legislation May Not End the Internet, But It's Not Good Law Either,* LAWFARE (Mar. 28, 2018, 2:41 PM),

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websites instead of perpetrators does not result in a change in behavior; the perpetrators will just use another website or find other avenues to abuse victims.[126] It does not help that federal district courts are split on how to apply the exception, creating confusion and forcing many web providers to make changes simply to avoid the possibility of liability.[127] Some courts have analogized the new standard to civil law claims holding hotel chains liable,

https://www.lawfaremedia.org/article/fosta-new-anti-sex-trafficking-legislation-may-not-end-internet-its-not-good-law-either [https://perma.cc/WBX5-UTHN] (reporting tech companies', anti-sex-trafficking advocates', and sex workers' opinions on the legislation); Aja Romano, *A New Law Intended to Curb Sex Trafficking Threatens the Future of the Internet As We Know It*, VOX (July 2, 2018, 1:08 PM), https://www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom [https://perma.cc/9HAZ-352Z] (noting that supporters of FOSTA-SESTA "fail[] to acknowledge the ways the internet makes it easier for sex workers to do their work *safely*, while also making it easier for law enforcement to document and gain evidence about illegal activity"); Ashley Gold, *Tech Groups: Not So Fast on FOSTA-SESTA*, POLITICO (Feb. 23, 2018, 10:00 AM), https://www.politico.com/newsletters/morning-tech/2018/02/23/tech-groups-not-so-fast-on-fosta-sesta-113560 [https://perma.cc/DXP3-XT4Z] (discussing tech-company coalition's opposition to the legislation).

126. *See* Romano, supra note 125 ("[I]t's also arguable that nonconsensual victims of sex trafficking will become less visible and more vulnerable by being shunted away from the visible parts of the web, into the deep web and dark corners of real life.").

127. *See supra* note 107 and accompanying text.

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while others have required plaintiffs to allege that the service provider had constructive knowledge, or knew or should have known, about the activity.[128]

One case highlights the difficulty of proof when the connection between the initial criminal act and its distribution are too attenuated. In *Doe v. Twitter*,[129] the minor plaintiffs alleged "they were solicited and recruited for sex trafficking and manipulated into providing . . . a third-party sex trafficker" with several pornographic videos of themselves through Snapchat.[130] The videos were later posted on Twitter where, over nine days, they accrued more than 167,000 views.[131] Although the plaintiffs informed law enforcement and immediately requested that Twitter remove the videos, they alleged that Twitter refused to do so until one of the plaintiffs' parents contacted an agent from the Department of Homeland Security.[132] The plaintiffs sued Twitter for their involvement in, enabling of, and/or benefitting from the sex trafficking venture.[133] The district court allowed a claim for civil liability under the TVPRA on the basis of beneficiary liability,

128. *See supra* note 107 and accompanying text.

129. 555 F. Supp. 3d 889 (N.D. Cal. 2021), *rev'd in part*, Doe #1 v. Twitter, Inc., No. 22-15103, 2023 WL 3220912, at *1 (9th Cir. May 3, 2023).

130. *Id.* at 893–94.

131. *Id.* at 894.

132. *Id.*

133. *Id.*

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finding that the claim fell within the exemption to § 230, but nevertheless dismissed of the remainder of the claims.[134] On appeal of this issue, the Ninth Circuit reversed and remanded,[135] and following the denial of the petition for certiorari in *Does 1–6 v. Reddit, Inc.*,[136] the district court dismissed the plaintiff's case with prejudice.[137]

FOSTA-SESTA is intended to address online human trafficking and sexual exploitation, but its best use to date involves holding third-party actors liable for a more typical form of human trafficking. For decades, it was alleged that Jeffrey Epstein sex trafficked minors.[138] Epstein died before he could be tried on charges filed in 2019; nevertheless, investigation into his activities and his associates continues.[139] In a series of *Doe* lawsuits, the survivors of Jeffrey Epstein's criminal enterprise, empowered by FOSTA-SESTA, pursued claims against the banks Jeffrey Epstein used.[140] The suits

134. *Id.* at 925–26, 932.

135. Doe #1 v. Twitter, Inc., No. 22-15103, 2023 WL 3220912, at *1–2 (9th Cir. May 3, 2023).

136. Does No. 1–6 v. Reddit, Inc., 143 S. Ct. 2560 (2023).

137. Doe v. Twitter, Inc., No. 21-cv-00485, 2023 WL 8568911, at *8 (N.D. Cal. Dec. 11, 2023).

138. *Who Was Jeffrey Epstein and What are the Court Documents About?*, GUARDIAN (Jan. 3, 2024, 6:55 PM), https://www.theguardian.com/us-news/2024/jan/03/who-is-jeffrey-epstein-list-court-documents-explained [https://perma.cc/296N-YX25].

139. *Id.*

140. *See supra* note 7 and accompanying text.

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allege that JPMorgan Chase and Deutsche Bank knew that Epstein maintained a network of underage girls for sexual abuse and actively enabled him to continue his crimes.[141] The plaintiffs argued that the banks should be held fiscally liable for the damage to victims.[142] After rounds of early pleadings, including motions to dismiss, the following claims survived against Deutsche Bank: (1) that they "knowingly benefited from participating in a sex-trafficking venture, in violation of 18 U.S.C. § 1591(a)(2);" (2) that they "obstructed enforcement of the Trafficking Victims Protection Act, in violation of 18 U.S.C. § 1591(d);" (3) that they "negligently failed to exercise reasonable care to prevent physical harm;" and (4) that they "negligently failed to exercise reasonable care as a banking institution providing non-routine banking."[143] The same claims survived against JPMorgan Chase.[144]

Following the New York district court's partial denial of a motion to dismiss, Deutsche Bank settled for $75 million around May 18 of 2023.[145]

141. Doe 1 v. Deutsche Bank Aktiengesellschaft, No. 22-cv-10018, 2023 WL 3167633, at *1–4, *18–19 (S.D.N.Y. May 1, 2023).

142. *Id.*

143. *Id.*

144. *Id.* at *19.

145. Chris Isidore, *Deutsche Bank to Pay $75 Million to Settle Lawsuit by Epstein Accusers*, CNN BUSINESS (May 18, 2023, 9:45 AM), https://www.cnn.com/2023/05/18/business/deutsche-bank-epstein-settlement/index.html [https://perma.cc/VMJ8-2EG6].

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And JPMorgan, after the depositions of Jamie Dimon, the current CEO, and Jes Staley, who had left the firm several years earlier, announced a $290 million settlement on June 12, 2023.[146] JPMorgan has sued Staley, arguing that he is a lone wolf who violated his fiduciary duty.[147] Staley reportedly exchanged roughly 1,200 emails with Epstein from his JPMorgan Chase account between 2008 and 2012.[148] JPMorgan disclosed that it processed more than $1 Billion for Epstein over a sixteen-year period.[149]

It is possible that the cases against JPMorgan and Deutsche Bank are more successful because of the heightened legal duties banks owe to customers and the state and federal laws regulating the banking system. The

146. Nupur Anand, Lananh Nguyen, Luc Cohen & Jonathan Stempel, *JPMorgan Settles with Jeffrey Epstein Victims for $290 Million*, REUTERS (June 12, 2023, 2:43 PM), https://www.reuters.com/legal/jpmorgan-agrees-settle-with-epstein-victim-class-action-suit-2023-06-12/ [https://perma.cc/L8NC-KJFD].

147. Doe 1 v. JPMorgan Chase Bank, N.A., 22-CV-10019, 2023 WL 5317453, at *1–2 (S.D.N.Y. August 18, 2023) (noting JPMorgan's third-party complaint) .

148. Kalyeena Makortoff, *Jes Staley Reportedly Exchanged 1,200 Emails with Jeffrey Epstein in Four Years*, GUARDIAN (Nov. 12, 2021, 2:26 PM), https://www.theguardian.com/business/2021/nov/12/jess-staley-ex-barclays-boss-emails-jeffrey-epstein-reports [https://perma.cc/PDA5-PACK].

149. Luc Cohen, *JPMorgan Processed More Than $1 Billion for Epstein, US Virgin Islands Says*, REUTERS (Aug. 31, 2023, 8:02 PM), https://www.reuters.com/legal/jpmorgan-processed-more-than-1-bln-epstein-us-virgin-islands-says-2023-09-01/ [https://perma.cc/V8Q4-TL7M].

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Does also alleged that if the companies had followed the banking regulations in place, it would have exposed the Epstein enterprise.[150] Thus, it may not be changes to human trafficking laws globally but the nature of international banking that has provided a measure of relief for the Epstein Does.

But in the internet context, there are no higher and superseding duties owed by internet providers to customers and the public, and there are certainly no additional duties owed by credit card companies beyond the duties to minimize fraud and verify identity.[151] Notably, Mastercard and Visa did not settle with Pornhub and MindGeek victims and instead made very public pronouncements about minimizing their relationship with the enterprise after lawsuits were filed.[152] A conspiracy claim against Visa survived a motion to dismiss not because they knowingly benefitted or participated in sex trafficking but because they performed their own diligence and were aware of the presence of unlawful sexual content on MindGeek websites and continued to accept payments even after the *New York Times* exposé.[153] Plaintiffs' claims would have been dismissed completely but for

150. Individual and Class Action Complaint at 59, *Doe 1*, 2023 WL 5317453.

151. *See, e.g.*, Fair Credit Billing Act, 15 U.S.C. § 1666 (providing mechanisms for consumers to dispute incorrect or fraudulent charges on their credit cards and limiting consumer liability for unauthorized use); Fair Credit Reporting Act, 15 U.S.C. § 1681.

152. *See supra* note 16 and accompanying text.

153. Fleites v. MindGeek S.A.R.L., 617 F. Supp. 3d 1146, 1161–63 (C.D. Cal. 2022).

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evidence of Visa's actual knowledge and continuing recognition of MindGeek as a merchant after obtaining such knowledge.[154] With JPMorgan, Deutsche, and Epstein, there is no evidence of contemporaneous due diligence or public awareness. The difference in outcomes could be because of the heightened duties imposed on banks to know their customers and guard against being used in criminal enterprises, which enables plaintiffs to allege a duty to investigate.[155]

The variant outcomes may also highlight a major flaw in FOSTA-SESTA. A third party must have some degree of knowledge, or a duty to

154. *Id.* at 1161, 1163, 1165–67. The court reasoned:

> Plaintiff adequately alleges that Visa knew that MindGeek's websites were teeming with monetized child porn from its own due diligence and discussions and negotiations with MindGeek, PayPal's decision to cease doing business with MindGeek, communications from advocates with which Visa interacted, and from the New York Times article. Despite this alleged knowledge, Plaintiff asserts that Visa "explicitly agreed with MindGeek to process the financial transactions from which the defendants profited from the [sex trafficking] venture." Through Plaintiff's entire ordeal and to this day, Visa processes advertisement payments on MindGeek's sites.

Id. at 1163 (alteration in original) (citation omitted).

155. *See, e.g.*, Bank Secrecy Act, 31 U.S.C. § 5311 (requiring financial institutions to help prevent money laundering); USA Patriot Act, Pub. L. No. 107-56, §§ 301–56, 115 Stat. 296–324 (2001) (requiring banks to document the identifying information of persons who open or change accounts, monitor and promptly alert authorities of suspicious activity, and apply enhanced due diligence to correspondent accounts for a foreign bank).

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obtain such knowledge, even under a statute that allows for elevated third-party liability.[156] For victims to successfully pursue claims against a credit card company, they must first establish the claim against the provider, then prove the requisite knowledge and intent.[157] Banking laws provide that duty, but similar duties do not exist for credit cards or internet providers. Given the challenges against FOSTA-SESTA, it is unlikely that plaintiffs will meet this burden in cases involving sexual exploitation on the internet.[158] The corporate family, however, could provide an elevated duty similar to that imposed by banking regulations.[159]

156. *See Fleites*, 617 F. Supp. 3d at 1163 (requiring that "to allege a conspiracy to violate section 1591(a)(2), Plaintiff must allege facts supporting a conclusion that MindGeek and Visa had a '"unity of purpose or a common design and understanding, or a meeting of the minds in an unlawful arrangement"'" (quoting Memorandum of Law in Support of Defendant Visa Inc.'s Motion to Dismiss at 24, *Fleites*, 617 F. Supp. 3d 1146 (2022) (No. 2:21-cv-04920-CJC-ADS), 2022 WL 19002377)); A.B. v. Hilton Worldwide Holdings Inc., 484 F. Supp. 3d 921, 937–41 (D. Or. 2020) (dismissing claims for failure to allege facts showing (1) indirect agency liability between the parent corporation and individual franchises where trafficking occurred, (2) Defendants participated in or had general knowledge of trafficking at U.S. hotels, and (3) parent hotel corporations or franchisers awareness of the alleged observations evidencing trafficking).

157. *Fleites*, 617 F. Supp. 3d at 1161–62.

158. *See supra* note 107 and accompanying text.

159. *See infra* subpart III(A).

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The recent attention and litigation have addressed human trafficking, but their success is minimal to date, and it is questionable whether the efforts are worthwhile when the collateral damage is considered.[160] Litigation

160. *See* Tina Horn, *How a New Senate Bill Will Screw Over Sex Workers*, ROLLING STONE (Mar. 23, 2018), https://www.rollingstone.com/politics/politics-features/how-a-new-senate-bill-will-screw-over-sex-workers-205311/ [https://perma.cc/QNV3-7V9Q] (explaining the devastating impact the bill will have on consensual workers by driving them into unregulated back alleys); Crystal A. Jackson & Jenny Heineman, *Repeal FOSTA and Decriminalize Sex Work*, 17 CONTEXTS, Summer 2018, at 74, 74–75 (discussing the bill's effect of increased risk for sex workers and referencing a pending case challenging the bill); Lucy Khan, *Against FOSTA/SESTA: One Canary's Cry from Inside the Coal Mine*, SLIXA (Feb. 4, 2019), https://www.slixa.com/blog/experience/against-fosta-sesta-one-canarys-cry-from-inside-the-coal-mine/ [https://perma.cc/8NRU-GZ7S] ("While currently the impact of FOSTA/SESTA is felt most acutely by those of us participating in the commercial sex trade, this bill affects everyone—escorts are just the canaries in the coal mine trying to make our warning call before it's too late."); Karol Markowicz, *Congress' Awful Anti-Sex Trafficking Law Has Only Put Sex Workers in Danger and Wasted Taxpayer Money*, INSIDER (July 14, 2019, 7:38 AM), https://www.businessinsider.com/fosta-sesta-anti-sex-trafficking-law-has-been-failure-opinion-2019-7 [https://perma.cc/R7NK-UZVE] ("The law . . . has been an abject failure. It hasn't done what it set out to do, fight sex trafficking, and instead has made the lives of sex workers, the very people the law hoped to protect, more dangerous."); Valentina Mia, *The Failures of SESTA/FOSTA: A Sex Worker Manifesto*, 7 TRANSGENDER STUD. Q. 237, 238–39 (2020), https://read.dukeupress.edu/tsq/article/7/2/237/164813/The-Failures-of-SESTA-FOSTAA-Sex-Worker-Manifesto [https://perma.cc/5AU7-CZYD] (giving a first-hand account from an individual whose livelihood was impacted by the passage of FOSTA-SESTA); Carolyn Bronstein, *Deplatforming Sexual Speech in the Age of FOSTA/SESTA*, 8 PORN STUD. 367, 368 (2021) (describing the negative impact on sex workers).

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against internet providers and web hosts presents a privity problem—one that is less prevalent in a case like the one involving the aftermath of Jeffrey Epstein's business practices.[161] The internet has many layers of third parties: after the people directly involved in the assault and exploitation, there are the providers, the financial institutions that facilitate payments, and any other contractors who service the providers.[162] While the hotel cases against parent companies and franchisors have survived motions to dismiss on agency grounds by pleading the existence of a relationship that may allow control over the individual hotels, the relationship between the internet providers, financial institutions, and other contractors is a pure contractual relationship. Pure contractual relationships do not create liability to those harmed by the

161. *See generally* Kishanthi Parella, *Protecting Third Parties in Contracts*, 58 AM. BUS. L.J. 327 (2021) (discussing obligations to third parties when contracting).

162. *See* Danielle Keats Citron & Neil M. Richards, *Four Principles for Digital Expression (You Won't Believe #3!)*, 95 WASH. U. L. REV. 1353, 1361 (2018) (explaining that the internet's infrastructure is comprised of different "layers" overseen by private companies); Lawrence B. Solum & Minn Chung, *The Layers Principle: Internet Architecture and the Law*, 79 NOTRE DAME L. REV. 815, 816 (2004) (same); Matthew Prince, *Why We Terminated Daily Stormer*, CLOUDFLARE: THE CLOUDFARE BLOG (Aug. 16, 2017), https://blog.cloudflare.com/why-we-terminated-daily-stormer/ [https://perma.cc/4MSX-UPG2] (detailing the many organizations that "work in concert to bring you the Internet," such as content creators, platforms, hosts, transit providers, registrars, ISPs, and others); Jack M. Balkin, *Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation*, 51 U.C. DAVIS L. REV. 1149, 1174 (2018) (explaining the nature of the internet, its layers, and its ownership structure).

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internet providers because one party to a contract does not control another, nor does one have the ability to act on behalf of another.[163] The same can be said for the relationship between those uploading content and the providers. And in a structure like MindGeek's, which intentionally places distance between the parent corporation and the final product through a network of entities performing individual aspects of the internet pornography business, it may be even more difficult to find the necessary connection. While FOSTA-SESTA seeks to create this privity and eliminate previous safe-harbors, the splits amongst the federal courts may be due to the long-standing principles on third-party liability and the attenuated nature of such claims. It appears that what works best is a clear relationship between the perpetrator of human trafficking and sexual violence and the third party alleged to have profited from the conduct with some elevated degree of awareness as was alleged by the Epstein Does against JPMorgan and Deutsche Bank.

163. *See* A.B. v. Hilton Worldwide Holdings Inc., 484 F. Supp. 3d 921, 940 (D. Or. 2020) (explaining that an agency relationship may be properly pled by alleging sufficient "control over the means and methods of daily hotel activities by hosting online bookings, making employment decisions, advertising for employment, controlling training and policies," and "specifying how to build," "maintain," and "regularly inspect[] hotel facilities"); S.Y. v. Wyndham Hotels & Resorts, Inc., 519 F. Supp. 3d 1069, 1084 (M.D. Fla. 2021) (finding that allegations including "profit sharing, standardized training, standardized rules of operation, regular inspection, and price fixing" were sufficient to support an inference of an agency relationship).

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B. The Shortcomings of Civil Litigation

FOSTA-SESTA also fails to address a persistent problem in human trafficking and sexual exploitation globally—not all victims are perceived as victims, and, therefore, remedies tend to address only the issues of white female victims who are citizens of the developed world.[164] Human trafficking discourse, and efforts to eradicate human trafficking, have long been plagued by the white slavery myth.[165] In the early 20th century international and domestic policies that were the precursors to modern legislation and international efforts were directly concerned with the forced prostitution of white women.[166] These measures were rooted in fears of the "other,"

164. *See, e.g.*, Martti Lehti & Kauko Aromaa, *Trafficking for Sexual Exploitation*, 34 CRIME & JUST. 133, 138 (2006) ("The current growth in migratory prostitution and related trafficking is also connected with rapidly increasing economic and social inequalities between industrialized and third-world countries."); Sarah Hupp Williamson, *Globalization as a Racial Project: Implications for Human Trafficking*, J. INT'L WOMEN'S STUD., Jan. 2017, at 74, 79 (2017) (discussing "how racism works as an ideology to justify the treatment and exploitation of trafficked individuals").

165. *See* Lehti & Aromaa, *supra note* 164, at 138 (discussing the relationship between migration and trafficking); Bonnie Shucha, *White Slavery in the Northwoods: Early U.S. Anti-Sex Trafficking and Its Continuing Relevance to Trafficking Reform*, 23 WM. & MARY J. WOMEN & L. 75, 76 (2016) (exploring the early anti-sex trafficking movement in the United States).

166. *See, e.g.*, White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–2424) (attempting to suppress "white-slave traffic" by imposing criminal liability for those engaging in human trafficking of women).

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distinguishing between allowable and unconscionable forced labor and exploitation.[167] For example, the 1904 International Agreement for the Suppression of the White Slave Traffic and the 1910 International Convention for the Suppression of the White Slave Traffic were primarily concerned with European women and girls being deceived or coerced into traveling abroad where they were then forced into prostitution.[168] Historically, some people were mere casualties of commerce or criminals

167. *See supra* note 164 and accompanying text.

168. *See* International Agreement for the Suppression of the "White Slave Traffic," Mar. 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83; International Convention for the Suppression of the "White Slave Traffic," May 4, 1910, 211 Consol. T.S. 45; Lehti & Aromaa, *supra* note 164 at 168 (explaining the historical human trafficking efforts).

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engaged in illegal sex work, while others were victims.[169] Race and ethnicity were the distinguishing factors.[170]

This is in part because of historical trends in addressing human trafficking but also due to the citizenship status of many victims. The criminalization of migration both helps to create human-trafficking victims and limits the willingness of those victims to seek redress for harms in the courts.[171] Immigration globally is gendered, and is, as a result, a major source

169. *See* Teela Sanders & Rosie Campbell, *Criminalization, Protection and Rights: Global Tensions in the Governance of Commercial Sex*, 14 CRIMINOLOGY & CRIM. JUST. 535, 539 (2014) (noting negative impact of attempts to criminalize sex work in an effort to eradicate trafficking); I. India Geronimo Thusi, *Policing Sex: The Colonial, Apartheid, and New Democracy Policing of Sex Work in South Africa*, 38 FORDHAM INT'L L.J. 205, 224 (2015) (discussing the historical categorization of trafficking and sex work along racial and ethnic lines in South Africa); Thusi, *Radical Feminist Harms on Sex Workers*, *supra* note 112, at 190–94 (discussing research on sex workers and sexual exploitation in South Africa); Hayli Millar & Tamara O'Doherty, *Racialized, Gendered, and Sensationalized: An Examination of Canadian Anti-Trafficking Laws, Their Enforcement, and Their (Re)Presentation*, 35 CANADIAN J.L. & SOC'Y 23, 35 (2020) (concluding that non-white groups are underprotected by Canadian anti-trafficking and anti-prostitution laws).

170. *See supra* note 169

171. *See* Ilse van Liempt & Stephanie Sersli, *State Responses and Migrant Experiences with Human Smuggling: A Reality Check*, 45 ANTIPODE 1029, 1043 (2013) (noting the impact that the criminalization of human smuggling and "illegal" immigration generally has on victims of trafficking and their ability to obtain aid); Natalie Delia Deckard, *Constructing Vulnerability: The Effect of State Migration Policy and Policing on the Commercial Sexual Exploitation of Children*,

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of human trafficking.[172] Many women and children seeking to leave a violent family situation or seeking asylum due to nationwide conditions fall prey to traffickers who bait migrants with promises of assistance before forcing them into sex trafficking to earn their freedom.[173] The images and videos can appear all over the world without their knowledge or consent. These victims, who may be transitioning from countries or stateless when forced to perform against their consent, lack the resources to pursue litigation in an American court.

Human trafficking presents a difficult procedural circumstance because the law requires standing for personal jurisdiction over a defendant but images may be posted on a platform without sufficient minimum contacts while the victim is outside of the United States.[174] Many victims exploited on

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7 J. HUM. TRAFFICKING 427, 430 (2021) (noting how in the U.S., the criminalization of immigration can lead to increased sex trafficking of migrant children, particularly those in Latinx communities).

172. *See supra* note 171 and accompanying text.

173. Rafael Bautista, *Reflecting on Culture in My Victimization and in My Healing Journey*, *in* UNITED STATES DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 45, 45 (June 2023), https://www.state.gov/reports/2023-trafficking-in-persons-report/.

174. *See, e.g.*, Lonny Hoffman, *Further Thinking about Vicarious Jurisdiction: Reflecting on* Goodyear v. Brown *and Looking Ahead to* Daimler AG v. Bauman, 34 U. PA. J. INT'L L. 765, 772 (2013) (explaining the development of the minimum contacts test); Hays C. Doan, Note, *A Call for Clarity Resulting from* Daimler AG v. Bauman*: Jurisdictional Veil Piercing in the Context of Parent and Subsidiary Corporations and the Irrelevance of Fraud or Injustice*, 38 U. ARK. LITTLE

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the internet are human trafficking victims in countries where sex trafficking and sex tourism are rampant.[175] They are not United States, European Union, or Canadian citizens and often are completely unaware that they have been recorded or that those videos or images are on the internet.[176] Disregarding these victims means that those countries are a safe harbor for all those who wish to exploit victims.[177]

When victims do not look the part or are not citizens of the right countries, their trafficking and exploitation is minimized or disregarded.[178] To eradicate human trafficking by way of the internet, this practice cannot continue. Combining simple technological workarounds with corporate structure and lax policies can result in a victim needing to search for images all over the world, even when the law in their home country is favorable. If it were possible to completely eradicate human trafficking and sexual exploitation in the developed world, doing so would not change what is

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ROCK L. REV. 245, 245, 253 (2016) (summarizing *Daimler AG v. Bauman*, 571 U.S. 117 (2014), and its effect on the minimum-contacts test insofar as corporations are related); Erwin Chemerinsky, *Continuing to Close the Courthouse Doors?*, JUDICATURE, Winter 2017, at 21, 21, 22 (discussing *Daimler*'s requirements and the minimum contacts required for a court to exercise jurisdiction).

175. *See supra* notes 59, 164, and 171 and accompanying text.

176. Kristof, *supra* note 59.

177. *Id.*

178. *See supra* notes 164, 169 and accompanying text.

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available on the internet in developed countries because victims do not need to be within a country's borders to be exploited on the internet by its citizens.[179] As explained by Vaishnavi Sundar, a feminist activist from India: "Wealthy countries are the main consumers of 'real' women pornography. Most of the Indian women used on Pornhub don't even know the videos of their rapes are being sold for profit worldwide."[180]

The *New York Times* story on Pornhub exposed the company's varied global policies.[181] For example, while Pornhub removed unauthorized content and certain search terms in the United States and European Union in response to the public outcry, at the time of the story's publication it was still possible to search to find videos titles using the word "rape" on platforms based in Asia.[182] Profiting from human trafficking merely requires doing business outside of the United States while using corporate structures to ensure that those foreign entities are outside of the jurisdictional reach of authorities and the courts. To eradicate human trafficking and corporate participation in sexual exploitation, efforts must be made internationally. A simple way to reach global markets is through use of the corporate family, as

179. *Lack of Action from Liberals on MindGeek/Pornhub Hurting Women Around The World*, STATES NEWS SERVICE (June 15, 2021).

180. *Id.*

181. Kristof, *supra* note 59.

182. *Id.*

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it prevents a company like MindGeek from complying in some countries while continuing to profit from exploitation in others.

Many scholars have also noted that when legal consensual sex work is criminalized, it does not end sex work but instead limits the legitimate and safe financial opportunities for those workers.[183] While a failure to acknowledge global markets for sexual exploitation makes it impossible to stop those who wish to profit using the internet, restrictions that are too broad can harm legitimate sex work and potentially drive professionals to more dangerous forms of sex work, including direct solicitation.[184] Adult film actors were driven from studio production to web platforms in part by MindGeek's monopoly and the proliferation of free pornography on the internet.[185] For example, Mia Khalifa, the most searched adult film star of all time, was only paid a total of $12,000 in shooting fees during her three-month career in the adult-film industry.[186] Her popularity and earnings are based on

183. *See supra* note 160.

184. Jennifer Musto, Anne E. Fehrenbacher, Heidi Hoefinger, Nicola Mai, P.G. Macioti, Calum Bennachie, Calogero Giametta & Kate D'Adamo, *Anti-Trafficking in the Time of FOSTA/SESTA: Networked Moral Gentrification and Sexual Humanitarian Creep*, SOC. SCIS., Feb. 2021, at 1, 2–3; Romano, *supra* note 125.

185. Raustiala & Sprigman, *supra* note 39 , at 1575, 1579, 1581.

186. Alex Horton, *Mia Khalifa is Among the World's Most-Watched Women. Yet the Porn Industry is Keeping the Profits*, WASH. POST (Aug. 16, 2019, 1:32 PM), https://www

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streaming.[187] Therefore FOSTA-SESTA, as enacted, has the potential to eliminate this revenue stream for performers.[188] This is why some sex workers continue to argue that it makes their work more dangerous.[189] By pushing the industry further underground, they lose the ability to vet clients online or share safety information with each other.[190]

III. The Corporate Family Solution

Circuit splits, and what many view as judicial overreach motivated by the heinous nature of the offenses, make FOSTA-SESTA ripe for a challenge.[191] But given the limited efficacy of the reforms, losing FOSTA-SESTA may not cause as much harm as some may fear.[192] Behavior cannot be changed globally by simply prosecuting and holding liable a single United

.washingtonpost.com/business/2019/08/16/mia-khalifa-is-among-worlds-most-watched-women-yet-porn-industry-is-keeping-profits/ [https://perma.cc/YBP3-BTZS].

187. *See id.* (discussing how adult entertainment industry revenue is based heavily on streams).

188. Mia, *supra* note 160, at 238–39; Bronstein, *supra* note 160, at 368; *see also* Jackson & Heineman, *supra* note 160, at 75 ("Sociologically, FOSTA is a response to a moral panic around sex and technology.").

189. *See supra* note 160 and accompanying text.

190. *See supra* note 160 and accompanying text.

191. *See supra* text accompanying note 107.

192. *See supra* note 125 and accompanying text.

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States-based entity.[193] For example, the United Kingdom and European Union do not have the safe harbors found in § 230, yet the ability to pursue internet providers has not eradicated the internet's use for sexual exploitation in those nations.[194] Litigation alone is not enough of a motivation for a change in corporate behavior. As "[s]unlight is . . . the best of disinfectants,"[195] victims would be served by knowing which companies are allowing their assailants to upload their images internationally and by having the ability to serve takedown requests on a single entity.[196] Designating companies like MindGeek as corporate families can both add weight to FOSTA-SESTA and provide victims with a simpler route when requesting simple takedowns of

193. *See e.g.*, Mihailis E. Diamantis, *Functional Corporate Knowledge*, 61 WM. & MARY L. REV. 319, 327–28 (2019) (arguing that the use of *respondeat superior* enables corporations to diffuse knowledge across individuals so that no one has the requisite knowledge in its entirety and that today's corporate behemoths inherently spread information widely because of their size and complexity); Patricia S. Abril & Ann Morales Olazábal, *The Locus of Corporate Scienter*, 2006 COLUM. BUS. L. REV. 81, 113 ("[W]here the case against a single actor within an organization does not contain all of the requisite elements of the crime, respondeat superior liability would not attach to the corporation.").

194. *See* Deturbide, *supra* note 6, at 13–14 (discussing how the UK's Defamation Act "does not provide the *carte blanche* protection from liability" afforded by § 230) .

195. Louis D. Brandeis, *What Publicity Can Do*, HARPER'S WEEKLY, at 10, 10 (Dec. 20, 1913), https://www.sechistorical.org/collection/papers/1910/1913_12_20_What_Publicity_Ca.pdf [https://perma.cc/4RHS-8T7R].

196. *See id.* ("Publicity is justly commended as a remedy for social and industrial diseases.").

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materials.[197] This Part first explains the corporate family, then applies the structure to MindGeek.

A. Corporate Family Defined

Before the *New York Times* exposé and efforts by activists to reveal MindGeek's practices, MindGeek would allege that it was incapable of monitoring all platforms and did not have a duty to do so.[198] Victims were required to purse each website owned by MindGeek individually and internationally; because the tube sites permitted downloads and re-uploads, victims' efforts did not end with a single request.[199] MindGeek's corporate structure and policies thus required victims to be vigilant. When this structure was combined with § 230 safe harbors, MindGeek was able to benefit financially from the nefarious conduct of others, facing little to no responsibility.[200] It was only after measurable financial threats that MindGeek changed.[201] We should not wait for third-party pressure, litigation,

197. *See* Kristof, *supra* note 59 (noting that MindGeek, acting as a "porn titan," owns more than 100 different websites, production companies, and brands, all of which operate under different business names and brand identities); *see also supra* note 91 and accompanying text.

198. *See supra* notes 39–40 and accompanying text.

199. *See supra* notes 95–100 and accompanying text.

200. *See supra* notes 59 and accompanying text.

201. *See supra* text accompanying notes 16–17.

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or the threat of reputational harm to force the primary facilitators of human trafficking to change their behavior globally.[202] We should give victims a tool that can help them get what they want more than a settlement after trauma—to stop being traumatized.

In *Corporate Family Matters*, I proposed adding a subchapter for groups in the Delaware Code, reserving space for future laws governing groups.[203] Instead of proposing a definition of "groups," of which there are numerous workable definitions in other statutes and regulations, I propose a definition

202. When a business operates in the shadows like MindGeek has, the typical force of reputational harm does not have its usual impact. But once brought to light, risk to reputation can change behavior. Kishanthi Parella, *Contractual Stakeholderism*, 102 B.U. L. REV. 865, 887 (2022); *see also* Kishanthi Parella, *Reputational Regulation*, 67 DUKE L.J. 907, 940 (2018) (arguing that legal sanctions and reputational costs work together with the former influencing the magnitude and effectiveness of the latter); Peter H. Huang, *How Do Securities Laws Influence Affect, Happiness, & Trust?*, 3 J. BUS. & TECH. L. 257, 293 (2008) ("An individual's emotional reactions to any particular stimulus and regulatory policy are likely to be distributed non-uniformly over a population."); Claire A. Hill & Erin Ann O'Hara, *A Cognitive Theory of Trust*, 84 WASH. U. L. REV. 1717, 1785 (2006) ("[A]cquisition of reputational capital is an important benefit of board service; overlooking Enron-level misdeeds could not only limit the reputational capital acquired, but could even have reputational costs that would compromise future earnings possibilities."); Jonathan M. Karpoff, John R. Lott, Jr. & Eric W. Wehrly, *The Reputational Penalties for Environmental Violations: Empirical Evidence*, 48 J.L. & ECON. 653, 655–56 (2005) ("[R]eputation disciplines certain types of wrongdoing because market transactions internalize their costs.").

203. *See* Chatman, *supra* note 11, at 13–14.

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for "families."[204] Multinational corporations, like MindGeek, have the greatest societal and business influence and would fit into the definition of a corporate family:

> Chapter 1. General Corporate Law
>
> Subchapter __. Corporate Groups
>
> § __. Corporate Family Defined
>
> (a) A corporate family contains at least one entity organized under this Chapter, whose certificate of incorporation contains the provisions required by § 102 of this Title, and in addition
>
> (1) that entity shares ownership or management with another entity, wholly owns another entity, or is wholly owned by another entity, and
>
> (2) the entities operate for the promotion of the parent corporation's business purposes or the manager or owner's business interests.
>
> (b) When this definition is met, the corporation must look to the real party in interest and acknowledge the influence of a parent corporation, shareholder, director, or officer, instead of relying on control when determining
>
> (1) controlling shareholders,
>
> (2) the requirements of reporting and other regulatory standards that apply to corporate groups, and

204. *Id.*

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(3) conflicts of interest.

§ __. Limitations on continuation of family status.

A corporate family continues to be such and is subject to this Subchapter until any of the provisions required or permitted by § __(a) of this Subchapter ceases to be true.[205]

The family is defined as "an enterprise formed by weaving corporations, partnerships, and limited liability companies (LLCs) together into a mix of public and private entities acting together for the benefit of a parent corporation or for the personal gain of one or more leaders of the enterprise."[206] Not all corporate groups, as defined by current statutes and regulations, are families, and not all families are corporate groups.[207] "A corporation should be treated like a family when: (1) there is more than one

205. *Id.* at 13–15; *see also* Virginia Harper Ho, *Team Production & the Multinational Enterprise*, 38 SEATTLE U. L. REV. 499, 503 (2015) (stating that a corporation's "separate legal personality makes it a political, as well as an economic, actor, and one with internal and external power relations"); Peter T. Muchlinski, *Enron and Beyond: Multinational Corporate Groups and the Internationalization of Governance and Disclosure Regimes*, 37 CONN. L. REV. 725, 725 (2005) (analyzing how the modern corporate form's complex international structure, lack of oversight, and aggressive approach to accounting and disclosure "combine to undermine expectations of legality and legitimacy").

206. Chatman, *supra* note 11, at 7.

207. *See id*. at 12 (explaining the need for a statutory distinction between a group of individual businesses and a family).

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entity with shared ownership or management, or when an entity is wholly owned by another entity, and (2) that entity operates for the promotion of the parent's business purposes or the manager or owner's business interests."[208] "Without any mitigating factors, this definition has the potential to change tort and contract liability across business entities that are affiliated through joint ownership, management, or even just contract."[209] To avoid this outcome, this definition incorporates the real-party-in-interest standard, found in Federal Rule of Civil Procedure 17, which gives consideration to special relationships of trust and other equitable concepts when determining who has the capacity to sue or be sued.[210] With this special relationship of trust limitation, "businesses [that] meet the standard for corporate family treatment . . . are required to acknowledge influence and look to the real party in interest when determining what is material, what should be reported to

208. *Id.* at 7.

209. *Id.* at 59.

210. FED. R. CIV. P. 17(a); *see also* FED. R. CIV. P. 20 (laying out joinder rules); 6A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1543 (3d ed. 2023) (discussing the real-parties-in-interest standard and its relation to joinder rules); Robin J. Effron, *The Shadow Rules of Joinder*, 100 GEO. L.J. 759, 762 (2012) (explaining the "commonalities approach" to joinder, where judges use discretion to determine if a new party or claim is sufficiently related to an original action). This new standard would make Federal Rule 17 clearer. Applying the equitable parts of the interpretation of Rule 17 would take it from a common law principle to a clearly defined legal requirement.

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shareholders, and conflicts of interest."[211] The requirement to respond to takedown requests across all business entities could fit this exception because it is within the parameters of grounds upon which one might sue or be sued.[212] These are areas that invoke fiduciary duties and other equitable circumstances in which shareholders and other stakeholders entrust management to act in their best interest.[213]

FOSTA-SESTA seeks to increase the liability of third-party internet service providers, which would have the collateral effect of improving transparency in the market.[214] To allow this federal effort to increase liability of third-party internet providers and have a collateral impact on transparency, state systems must work symbiotically to aid victims by acknowledging the distinction between a corporation owned by individuals and a family that involves entities owned by other businesses or operating as an individual's empire.[215] As demonstrated by the changes in the pornography industry

211. Chatman, *supra* note 11, at 7.

212. Currently there is no duty to takedown materials, and takedown requests are plagued by First Amendment issues. *See* Rustad & Koenig, *supra* note 23, at 586 (proposing solutions to these issues).

213. *See supra* note 210 and accompanying text.

214. *See supra* notes 3–5 and accompanying text.

215. *See, e.g.*, Carliss Chatman & Tammi S. Etheridge, *Federalizing* Caremark, 70 UCLA L. REV. 908, 931–32, 936–37, 969, 976 (2023) (arguing that successful *Caremark* cases best reflect the symbiotic relationship between state breach of loyalty claims and federal regulations).

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following MindGeek's takeover of various aspects of the business, there is a measurable and operational difference between a family and a group of individual businesses operating purely for their individual interests.[216] All business in the MindGeek family work for MindGeek's benefit—to the point that the production companies are not even protecting their own copyright interests.[217] There is a need for state corporate laws to define and distinguish these entities so that regulations may have their intended impact.

State laws and the resulting personhood theories are founded on defining bounds of the entities and the limits of their personhood.[218] Corporations can, and do, operate as freely as human beings. There is no legal distinction or definition of entities beyond initial formation—leaving a gap in state law regulation.[219] In other words, entities founded in the United States need not choose a sub-category outside of special business industries like insurance or banking that include additional certifications for formation and parameters for operation. Once formed, states treat business entities like

216. *See supra* subpart I(A) and accompanying text.

217. *See supra* notes 61–65 and accompanying text.

218. Carliss N. Chatman, *The Corporate Personhood Two-Step*, 18 NEV. L.J. 811, 846 (2018).

219. *See, e.g.*, MODEL BUS. CORP. ACT § 2.04 (AM. BAR ASS'N 2016) (detailing liability for preincorporation transactions); DEL. CODE ANN. tit. 8, § 102 (West 2022) (outlining requirements for forming a corporation).

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natural persons who consent to the requirements imposed for formation and maintenance of that status.[220]

MindGeek's ability to use structure to evade liability is based in part on corporate personhood.[221] While scholars think of personhood in a variety of ways, all theories acknowledge that corporations and other entities are legally separate.[222] The theories vary on the degree of consideration given to state action and stakeholders,[223] but all agree that each business entity is a distinct legal person.[224] This legal separateness enables a business entity to enter into contracts, own property, sue and be sued, and otherwise avail itself of rights and responsibilities embodied in legal personhood.[225] It gives owners and managers of entities the liability limitations and control they bargained for at formation.

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220. *See supra* note 219 and accompanying text.

221. *See* Chatman, *supra* note 218, at 854 (noting that corporate personhood empowers corporations with constitutional rights while allowing them to maintain limited liability).

222. *See id.* at 818–25 (explaining Chief Justice Marshall's three theories of corporate personhood: artificial entity theory, aggregate theory, and real entity theory).

223. *Compare id.* at 820–22 (summarizing artificial entity theory, which limits corporations' rights to those only granted by state law), *with id.* at 822 (summarizing aggregate theory, which expands corporations' rights to those granted to individual stakeholders).

224. *Id.* at 818–19 (noting that it is the "natural conclusion of decades of corporate jurisprudence" that a corporation is "entitled to the same rights as a human being")

225. *Id.* at 823.

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MindGeek cannot accidentally form a corporate family or group, nor would a change to the classification of their existing businesses require them to maintain that structure.[226] MindGeek has freely and intentionally structured itself this way. It is possible for parties, including business entities, to form an accidental partnership, but all other entity forms require compliance with the parameters set by the state for formation.[227] When a business like MindGeek forms as a corporation, or merges and consolidates with other businesses, it does so intentionally and with a concession to state requirements for formation. Therefore, it is possible for the state to alter these definitions and impose requirements on these entities.[228] Applying the two-step approach to personhood requires states to first look to how a family chooses to define itself, then look to how it operates in the real world to determine whether it should be treated as a collection of separate entities or as an enterprise.[229] To properly gauge the intentionality of managers,

226. *See id.* at 829 ("While a corporation may rightly be viewed as an association of individuals, it is an association of individuals who affirmatively choose the corporation."); HENRY N. BUTLER & LARRY E. RIBSTEIN, THE CORPORATION AND THE CONSTITUTION 4 (1995) ("[N]o one is forced to use the corporate form of organization: there is freedom of choice in organizational form . . . . This fundamental choice constrains the ability of corporate managers to misbehave.").

227. *See* Chatman, *supra* note 218, at 848.

228. *Id.*

229. *Id.* at 813, 830.

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shareholders, parties to contracts, and other stakeholders requires an acknowledgment of more than legally defined control as is common under the definition of corporate groups.[230] Influence, as it is defined equitably and procedurally, is a better measure for determining the family structure.

The corporate-family structure enables states to mitigate market manipulation by reforming rules and statutes to treat a corporation like a family in limited circumstances.[231] These circumstances can occur by default, or, as with FOSTA-SESTA, when there is a blanket-enterprise treatment of corporate groups and families that would have unintended consequences as it may be overbroad.[232] This includes the risk of imposing enterprise liability in situations where causation and harm may be too attenuated to impose liability on a parent company, sibling company, or affiliate.[233] In the current

230. *See supra* notes 45, 193 and accompanying text.

231. Chatman, *supra* note 11, at 19–23.

232. *See supra* subpart II(A).

233. Veil piercing and enterprise liability are common subjects of debate in corporate law. Limited liability is a cornerstone of corporate law, but it is not limitless. Piercing the corporate veil is an equitable doctrine that allows creditors to hold an individual liable for the actions and debts of the corporation. When a parent company is a controlling shareholder of a subsidiary, there is legally no distinction between a corporation and an individual in treatment for veil piercing purposes. Robert B. Thompson, *Piercing the Veil Within Corporate Groups: Corporate Shareholders as Mere Investors*, 13 CONN. J. INT'L L. 379, 390 (1999); Chatman, *supra* note 42, at 697. The decision to pierce the veil or to impose enterprise liability, which holds a parent responsible for its subsidiaries,

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environment, which does not apply the family structure, the risk of overregulation is one of the arguments made for § 230 safe harbors and for placing limitations on the FOSTA-SESTA expansions.[234] By applying the existing real-party-in-interest standards to corporate governance and redefining to whom duties are owed, the siloing of information loses its force without creating the enterprise liability that has been a source of concern.[235] The corporate family holds off a defense against FOSTA-SESTA. The corporate family could also have been used to expand § 230 without FOSTA-SESTA, avoiding the risk of creating a cause of action too attenuated to survive scrutiny.

The corporate-family definition seeks to provide clarity to courts on when to consider a family as an enterprise and when to treat it as a collection of stand-alone entities. The parent creates subsidiaries because the parent cannot conduct business in the way that is most profitable in the corporate form or because it is otherwise advantageous to divide the enterprise. There

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is always left to a judge. Because it is subject to judicial discretion, clarity on the status of parents and subsidiaries could result in more consistent outcomes. *See* PHILIP I. BLUMBERG, THE LAW OF CORPORATE GROUPS 5 (1983) ("Doctrines that had developed to protect ultimate investors from involvement in the legal problems of the enterprise were blindly adopted to govern the legal relationships between the components of the enterprise itself.").

234. *See supra* notes 125, 184 and accompanying text.

235. *See supra* note 233 and accompanying text.

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are tax, contractual, tort-liability, and other advantages to organizing across entities as opposed to conducting all business through a single corporation.[236] When companies and individuals choose to take advantage of structure, the symbiotic relationship should be acknowledged under the law. A state definition of a corporate family will provide a tool for regulating all complex structures, not just those that appear before the right judge in a certain court or fall under the purview of a particular regulatory scheme as has been the case with victims of FOSTA-SESTA so far.[237]

This definition of family may also limit some of the regulatory arbitrage engaged in by national and multinational corporations, who seek the jurisdiction with the most favorable outcomes when forming. As I noted in *Corporate Family Matters*:

> The impact of placing toxic assets into LLCs or limited partnerships, or of concealing high-risk activity in numerous entities so that no single entity rises to the level of materiality that would require inclusion on a periodic report, will be minimized if management is

236. *See, e.g.*, Cathy Hwang, *The New Corporate Migration: Tax Diversion Through Inversion*, 80 BROOK. L. REV. 807, 812–16 (2015) ("Inverted companies can save tens of millions—if not hundreds of millions—of dollars in taxes through an inversion and the related restructurings that follow it."); *supra* note 193 and accompanying text.

237. *See supra* note 148–55 and accompanying text; *see also* Henry T.C. Hu, *Too Complex to Depict? Innovation, "Pure Information," and the SEC Disclosure Paradigm*, 90 TEXAS L. REV. 1601, 1608 (2012) (noting that not only is it difficult to communicate financial realities when they are fully understood, but it will often be the case that the realities are not fully understood).

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> required to reveal these relationships to investors and factor these entities into determinations of control and conflicts.[238]

And the same is true for corporations that form a tax shelter in a lax jurisdiction with lesser oversight.[239]

B. The MindGeek Family

Investigative journalism and mandatory disclosures in court proceedings have revealed that the mysterious foreign company MindGeek has an ownership stake in hundreds of companies.[240] The information MindGeek failed to disclose years ago is now in the public domain at a time that may be too late for some victims of CSAM and human trafficking. To define MindGeek as a corporate group as the term is used in jurisdictions with this designation, we do not look at the influence MindGeek may have on an entity that is nested within the Pornhub network or to how much influence MindGeek may have over a video production company's efforts to enforce its copyrights.[241] We purely look to percentages of ownership and the ability, under corporate law, to govern the entity.[242] In comparison, to

238. Chatman, *supra* note 11, at 15–16 (footnotes omitted).

239. *See* Hwang, *supra* note 236, at 812–16 (discussing the practice).

240. *See supra* subpart I(A).

241. *See supra* note 45 and accompanying text.

242. *See supra* note 45 and accompanying text.

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determine whether MindGeek is a family under my proposed definition, we would look instead to influence.[243] If all the entities, from the Playboy Channel to Pornhub, operate for the benefit of MindGeek and not in their own best interest, we would consider it a family—allowing victims to potentially submit a single take down request for nonconsensual content, and to reach the entire enterprise should they choose to move ahead and pursue civil action.

The family structure matters because, while I can easily find information about high-profile MindGeek entities like Pornhub and Playboy, I, or a victim of revenge porn, human trafficking, or other sexual exploitation, would have a difficult time finding content and having it removed on all hundred-plus websites.[244] Before they were placed in the public spotlight, Pornhub and MindGeek claimed they could not monitor and remove content across the entire enterprise.[245] Even with the recent publicity, because

243. *See supra* note 45 and accompanying text.

244. *See* Chatman, *supra* note 42, at 680 ("The business structure and management logistics determine whether the various entities are treated as truly separate under the law. Notably, this is often a legal decision made with the advice of counsel."); *see also* Veronica Root Martinez, *Complex Compliance Investigations*, 120 COLUM. L. REV. 249, 277–84 (2020) (analyzing recent corporate scandals and finding that silos enabled significant failures to occur despite corporate structures designed to prevent and detect misconduct and organizational awareness of the risk that inevitably led to each scandal).

245. *See supra* note 98 and accompanying text.

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MindGeek is a private entity that is not publicly traded with the required public disclosures, it is still virtually impossible to get a full picture of the enterprise. Many victims rely on periodic Google image searches to discover new uploads of their non-consensual content and must petition each website individually to have that content removed. MindGeek's legacy of tax evasion allegations and allegations that its predecessors did business in prohibited jurisdictions show that it is also difficult to determine the company's revenues, profits, and clear information about ownership.[246]

The information that the public has about MindGeek is what MindGeek chooses to share. It is a judgment call made by MindGeek. But what matters to investors, the victims of human trafficking and CSAM, the undercompensated talent, and regulators is whether these entities are ultimately operating in MindGeek's best interest such that movie studios and managed sites are harmed by the operation of the aggregator sites or such that once a victim has content removed from one aggregator, it can be removed from all aggregators. If these businesses all operate to increase the overall bottom line of MindGeek, as they appear to do not just because of ownership but purely due to influence, that is information the stakeholders and shareholders deserve to know and that the corporate-family structure

246. *See supra* subpart I(B).

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would provide. The family, with a focus on influence, enables us to see what is hidden in the silos.[247]

The difficult burden of proof in claims of criminal conspiracy, criminal and civil racketeering, and causes of action buttressed by the FOSTA-SESTA removal of § 230 safe harbors can be eased by a corporate-family designation, highlighting the collateral benefits of the structure.[248] The Jane Does in the litigation against JPMorgan and Deutsche Bank demonstrate how victims can obtain civil-court relief when the new laws providing for heightened third-party liability effectively lower the burden of proof.[249] But what differentiates a bank like JPMorgan or Deutsche Bank from a company like MindGeek is not just the public nature of the banks or the heightened duties that they owe to society. It is, in part, that we can draw a clear connection between JPMorgan, Deutsche Bank, and Epstein and that it is

247. *See* Chatman, *supra* note 42, at 681–82 (discussing the various incentives that push corporations towards creating these silos).

248. *See supra* note 31 and accompanying text.

249. Jane Does in this litigation, discussed above at notes 134–146, eventually obtained settlement relief against the various banks. Doe 1 v. JPMorgan Chase Bank, N.A., No. 1:22-CV-10019, 2023 WL 4373292, at *1 (S.D.N.Y. June 29, 2023) (amended order granting preliminary class approval and permitting class notice) ("[T]he Settlement will resolve the claims of all persons who were harmed, injured, exploited, or abused by Jeffrey Epstein, or by any person who is connected to or otherwise associated with Jeffrey Epstein or any Jeffrey Epstein sex trafficking venture, between January 1, 1998, and through August 10, 2019, inclusive.").

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clear when Epstein was doing business with an entity with a relationship with the banks.[250] FOSTA-SESTA does not eliminate the need for some connection between the harmful actions and internet service providers, nor does it eliminate the need to identify exactly which provider profited from the harm. Under current corporate-law standards, these victims cannot pursue MindGeek or Pornhub if there is not clear proof of grounds for enterprise liability.[251] Treating MindGeek as a family, particularly in these circumstances where there is clear evidence that all the businesses operate for the benefit of MindGeek, victims can use the American subsidiaries to get information about the whole and pursue litigation against the whole. Acknowledging the influence of a parent corporation like MindGeek could also tend towards proof of intent to deceive—especially if courts find that this new definition of family imposes a requirement to acknowledge that influence.

250. *See supra* text accompanying notes 12–16.

251. *See* 1 WILLIAM MEADE FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 43 (2023) ("There is a presumption of separateness that a plaintiff must overcome to establish liability by showing that a parent is employing a subsidiary to . . . commit wrongdoing and that this was the proximate cause of the plaintiff's injury. Merely showing control . . . is insufficient to overcome that presumption." (footnotes omitted)).

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Treating MindGeek as a family also enables investors and consumers to engage with the market in a way that they desire.[252] After the public attention highlighted Pornhub and MindGeek's business practices, many consumers and artists, and even businesses that contract with Pornhub and MindGeek, have attempted to avoid using and promoting MindGeek websites.[253] But

252. *See, e.g.*, Virginia Harper Ho, *Risk-Related Activism: The Business Case for Monitoring Nonfinancial Risk*, 41 J. CORP. L. 647, 653, 657–58 (2016) (discussing shareholder power to promote firm management, mitigation, and disclosure of risk, including nonfinancial ESG risks); Tamara C. Belinfanti, *Forget Roger Rabbit—Is Corporate Purpose Being Framed?*, 58 N.Y.L. SCH. L. REV. 675, 678 (2013–2014) ("[A]ny attempt to amend, rewrite, interrogate, or, at the extreme, debunk the shareholder primacy/private purpose view of the corporation must successfully counter the 'framing effect' and 'framing bias' that shareholder primacy enjoys."); Michael E. Porter & Mark R. Kramer, *Strategy & Society: The Link Between Competitive Advantage and Corporate Social Responsibility*, HARV. BUS. REV., Dec. 2006, at 78, 80 (introducing framework that companies can use to identify social consequences of their actions; discover opportunities to benefit society and themselves by strengthening the competitive context in which they operate; determine which Corporate Social Responsibility initiatives they should address; and find the most effective ways of doing so); Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 24 J. CORP. L. 751, 752 (1999) (exploring the team production approach to explain "both the distinctive legal doctrines that apply to public corporations and the unique role these business entities have come to play in American economic life").

253. *See, e.g.*, Amanda Silberling, *Instagram Permanently Disabled Pornhub's Account*, TECHCRUNCH (Sept. 28, 2022, 4:24 PM), https://techcrunch.com/2022/09/28/instagram-permanently-disabled-pornhubs-account/ [https://perma.cc/59UB-NSGK] (reporting on the permanent removal of Pornhub's Instagram account for "repeatedly violat[ing] community

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with over one hundred websites in the family, it is easier to figure out which sites are clearly not a MindGeek site than which ones are. The corporate family minimizes the ability to take advantage of confusion and the

guidelines"). The actions of activists contributed to these decisions. *See* Laila Mickelwait, *Shut Down Pornhub and Hold Its Executives Accountable for Aiding Trafficking*, CHANGE.ORG (Feb. 10, 2020), https://www.change.org/p/shut-down-pornhub-and-hold-its-executives-accountable-for-aiding-trafficking [https://perma.cc/K9WB-WM6L] ("#Traffickinghub is a decentralized global movement of individuals, survivors, organizations, and advocates . . . [petitioning for] shutting down Pornhub and holding its executives accountable for enabling . . . rape, child abuse, sex trafficking[,] and criminal image-based sexual abuse."); *Two Million People Sign Petition to Shut Down Pornhub for Sex Trafficking Videos*, PR NEWSWIRE (Sept. 1, 2020, 9:37 AM), https://www.prnewswire.com/news-releases/two-million-people-sign-petition-to-shut-down-pornhub-for-sex-trafficking-videos-301122030.html [https://perma.cc/A6T5-TNJ9] (reporting that the Traffickinghub petition surpassed two million signatures). Journalists and activists have criticized Mickelwait, the leader of the #Traffickinghub movement, drawing attention to her far-right Christian ties and arguing that she seeks to end the online pornography industry. *See* Tarpley Hitt, *Inside Exodus Cry: The Shady Evangelical Group with Trump Ties Waging War on Pornhub*, DAILY BEAST (Nov. 2, 2020, 10:00 PM), https://www.thedailybeast.com/inside-exodus-cry-the-shady-evangelical-group-with-trump-ties-waging-war-on-pornhub [https://perma.cc/96HJ-8UZE] (reporting that although "Traffickinghub presents itself as 'a non-religious, non-partisan effort,' the organizing force behind it is neither. . . . [T]he organization running the Traffickinghub campaign . . . is Exodus Cry, a fringe Evangelical group with far-right ties [and] . . . the goal of abolishing the commercial sex industry entirely.").

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manipulation of public opinion by hiding unfavorable business relationships with structure.[254]

Conclusion

When I originally wrote *Corporate Family Matters* and began focusing on the negative impacts of complex corporate structures, what I had in mind were financial harms such as capital-market manipulation.[255] But as MindGeek illustrates, there are also societal harms to structural complexity.

The sad and simple fact is that some people and countries care about human trafficking, and others do not.[256] But most of these bad actors operate in at least one of the jurisdictions that is taking aggressive steps to combat human trafficking.[257] While civil remedy provides financial compensation, it cannot combat the force of the internet, lax international standards, or the ability of bad actors to utilize a seemingly neutral force—corporate personhood and legal business structures—to continue to exploit victims.[258] When these victims do not have the ability to go after a deep pocket or are

254. *See supra* subpart III(A).

255. *See* Chatman, *supra* note 42, at 689 (discussing the role of complex business structure in the Enron scandal).

256. *See supra* notes 181–84 and accompanying text.

257. *See supra* subpart I(A).

258. *See supra* note 193 and accompanying text.

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not the face of a cause of action that motivates activists and think tanks, they are left to fight corporate international giants like MindGeek—or even Twitter, Facebook, Instagram, and YouTube—upload by upload.[259] Civil litigation in the United States that pursues one or two U.S.-based entities at a time does not address international corporate affiliates beyond jurisdictional reach. Settlements do not apply across groups or impact all affiliated entities globally, nor do they help those who are ineligible to pursue litigation in the United States either legally or due to their personal circumstances.[260] Popular press helped to highlight the impact of these polices, which were buttressed by the international pervasiveness of the internet and the policies of countries that had not signed on to the UN Protocol.[261]

The internet combines with corporate-governance norms to make some companies globally untouchable. Addressing human trafficking and sexual exploitation over the internet requires solutions beyond the traditional deterrents of litigation and reputational harm. This is because when companies can rely on the combined forces of corporate anonymity and cyber

259. *See supra* subpart II(B).

260. *See supra* subpart II(B)

261. *See supra* note 6 and accompanying text.

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anonymity, they may cause harm in the shadows.[262] MindGeek is an example of this phenomenon. They were able to grow large, changing the pornography industry without detection. It took an exposé, activists, and civil litigation to bring about change. But what about the next MindGeek and Pornhub? The corporate family can empower victims internationally while protecting the free speech and other rights of consensual producers of pornography by making it more difficult for companies to rely on the silos of business structure to profit from human trafficking and other forms of nonconsensual sexual exploitation.

262. *See supra* subpart I(A).

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