

IN GOOD COMPANY: HOW CORPORATE SOCIAL  
RESPONSIBILITY CAN PROTECT RIGHTS AND  
AID EFFORTS TO END CHILD SEX  
TRAFFICKING AND MODERN SLAVERY

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*It is easier to build strong children than to repair broken [adults].*

—Frederick Douglass, Former Slave and Abolitionist

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#### INTRODUCTION

Worldwide, thousands of children are forcibly trafficked into the sex trade. Children around the world are trafficked across the world. America is unfortunately no exception. By law, the United States eradicated slavery over a century ago. In practice, however, enslavement currently exists in America in the form of the domestic child sex trade. As a form of modern day slavery, much like its transatlantic predecessor, trafficking denies human dignity and can leave a deep and lasting legacy of harm that diminishes human capabilities.

Much like a legitimate market, the child sex trade operates according to the economic laws of supply and demand.<sup>1</sup> Unlike a legitimate market, however, the product sold is a person. Traffickers supply children to meet marketplace demands. Buyers of child sex drive the demand, and vulnerable children are supplied to satisfy preferences. This means that children are bought, sold, and enslaved because a market exists for the sexual services of minors. Moreover, low costs and huge profits have made child sex trafficking one of the most

1. SIDDHARTH KARA, *SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY* 5 (2009).

lucrative business opportunities possible. Generating over a billion dollars around the world annually, the sex trade far exceeds the profit margins of many other global enterprises.<sup>2</sup> Profits are exceedingly high because the children sold in the sex trade come at little or no cost. Unfortunately, the most vulnerable members of society, young children, ultimately pay the highest prices in this lucrative market when they bear the unimaginable and unjust costs of the abuses associated with the trade. Today, the modern sex slave enters the trade at an average age of only thirteen.<sup>3</sup>

Most nongovernmental organizations, policy makers, and human rights organizations focus almost exclusively on the “supply-side” of child sex trafficking because these organizations appropriately strive to protect the rights of vulnerable people from being violated.<sup>4</sup> Such efforts targeting the supply side of the sex trade equation are imperative for the protection of exploited children. However, to move towards eradication of child sex trafficking, both supply and demand must be addressed. More can be done to decrease demand by making access to the “product” difficult for would-be buyers and by limiting opportunities for buyers and sellers to transact business in particular places.<sup>5</sup>

By understanding the nature of the market and the features that give fuel to the sex trafficking industry, the best possible interventions designed to decrease sex trafficking may be revealed.<sup>6</sup> Child sex trafficking is transient by nature. While business transactions are made over the Internet, the sex acts and sexual abuse often occur in commercial establishments. Children are transported between different private commercial establishments ranging from hotels and motels to truck stops. Moreover, different types of tourism, such as large con-

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2. *Id.* at 16.

3. See LINDA A. SMITH ET AL., SHARED HOPE INT’L, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA’S PROSTITUTED CHILDREN 30 (2009) (stating that the average age of entry into prostitution in the United States is twelve to fourteen years old).

4. Siddharth Kara, *Attacking the Demand for Child Sex Trafficking*, CNN FREEDOM PROJECT BLOG (Apr. 14, 2011, 9:54 AM), <http://thecnnfreedomproject.blogs.cnn.com/2011/04/14/attacking-the-demand-for-child-sex-trafficking/>.

5. *Id.*

6. KARA, *supra* note 1, at 23.

ventions or sporting events, are correlated with an increased volume of trafficking. Accordingly, the private sector is well situated to contribute towards ending the suffering of children trafficked into sexual slavery. Arguably, the business community occupies an especially advantageous position in its ability to put pressure on the bottom line of an illicit business that has benefited from being overlooked and misunderstood. Encouraging hotels, hospitality workers, and other tourism businesses to implement a zero tolerance policy against sex trafficking and educating the business community on identifying child trafficking may significantly contribute to disrupting the demand side of the trade.

The private sector can move the market in two ways: first, by cooperating with law enforcement to increase the likelihood that buyers and traffickers will not evade detection; and second, by cooperating with one another to decrease the opportunities for illegal transactions to take place and for abuses to occur in commercial accommodation establishments. Moreover, there is potential for the more proactive members of the private sector to be rewarded in the marketplace. In cooperation with law enforcement, the private sector can create policies and commit to practices that could serve to decrease the profits generated by the child sex trafficking market. As consumers and investors grow increasingly sensitive to social issues they increasingly regard the reputation of a business as an important element when making decisions. Accordingly, corporate social responsibility is becoming a competitive imperative as it informs the consumers' decision to patronize an establishment and the investors' decision to purchase shares in a particular corporation. Therefore, conduct consistent with emerging global norms on the responsibility of business to respect human rights is advisable.

The principal contribution of this Article is to show that, in many cases, the private sector, in cooperation with law enforcement, can initiate and implement policies that help increase the likelihood that buyers and traffickers are caught—ultimately making access to child sex workers more difficult. Most commentary regarding child sex trafficking focuses on the failures of local law enforcement to find a solution. However, this Article argues that the private business sector can effectively supplement the efforts of law enforcement, non-governmental organizations, and international human rights

initiatives to protect exploited children. In Part I, this Article first introduces the supply-side of the child sex industry by offering an overview of the child victims and the traffickers that coerce and control them. Next, the demand-side of the child sex business is introduced by providing an overview of the profits and the buyers that drive the demand in the child sex trafficking industry. Finally, Part I examines how trafficking transactions implicate the tourism sector. Part II of the Article reviews federal laws enacted to protect children from being exploited in the sex trafficking industry and discusses the failures of law enforcement to properly protect trafficked children. In Part III, the Article surveys international human rights initiatives and policies that are designed to strengthen the potential of the private sector to protect children through assuming the responsibility consistent with newly articulated international norms that regulate the role of business enterprises with respect to human rights. In conclusion, the Article argues that the private sector is well situated to supplement existing laws and the efforts of law enforcement with socially responsible policies and specific practices designed to make the business of abusing children a more costly proposition for buyers and sellers. By taking a proactive stance to implement codes of conduct that are consistent with the responsibility of business to respect the rights of children, the hospitality industry can avoid legal risks and achieve financial rewards. Most significantly, it is argued that through collective efforts, the hotel and tourism industries can help protect children's human rights and end abuse.

#### I. THE CHILD SEX TRAFFICKING INDUSTRY

The problem of modern slavery is international. According to 2012 International Labor Organization (ILO) estimates that define human trafficking by exploitation, not just by transportation across jurisdictions, up to 20.9 million people today are trafficked into modern slavery.<sup>7</sup> While the majority of trafficked persons are exploited for labor, an estimated 4.5 million people worldwide are exploited for sex.<sup>8</sup> Women and girls make up the overwhelming majority of sex trafficking victims

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7. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* 45 (2012).

8. Press Release, International Labour Organization, *21 Million People are Now Victims of Forced Labour* (June 1, 2012), *available at* <http://www>

as ninety-eight percent of those trafficked for sexual exploitation are women or girls.<sup>9</sup>

The international community has set standards to guide governments in efforts to combat modern slavery in the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons (the Palermo Protocol). The United States Office to Monitor and Combat Trafficking in Persons' International Programs currently manages over 168 multi-year projects in seventy different countries. United States foreign policy priorities for anti-trafficking projects are implemented through a "3P" framework: (1) prevention; (2) protection; and (3) prosecution.<sup>10</sup> Because trafficking is such a complicated challenge, the government's ability to fully implement policy priorities to meet the challenge will require cooperation in partnership with the private sector and the general public. With a view towards demonstrating the potential for the private sector to contribute to the prevention of abuse and the protection of children, the complexities of the domestic child sex trade as well as the challenges it presents for law enforcement are discussed below.

#### A. *Supply*

Globally, children are being trafficked in the sex industry.<sup>11</sup> The problem is present and persistent virtually everywhere with over "one million children enter[ing] the multi-billion dollar sex trade every year."<sup>12</sup> Provided the market for sex with children stays profitable, traffickers will continue to exploit and enslave children in the sex trafficking industry. Too often, trafficking and the children enslaved in the sex trade are overlooked in the United States, since Americans assume that such crimes simply cannot occur in the United

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.ilo.org/global/about-the-ilo/newsroom/news/WCMS\_181961/lang-en/index.htm.

9. *Id.*

10. OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. DEP'T OF STATE, INTERNATIONAL PROGRAMS TO COMBAT TRAFFICKING IN PERSONS (2012).

11. SMITH ET AL., *supra* note 3, at 17.

12. ECPAT INT'L ET AL., CODE OF CONDUCT FOR THE PROTECTION OF CHILDREN FROM SEXUAL EXPLOITATION IN TRAVEL AND TOURISM: BACKGROUND AND IMPLEMENTATION EXAMPLES 4 (2006), *available at* [http://resources.ecpat.net/EI/Publications/CST/Code\\_of\\_Conduct\\_ENG.pdf](http://resources.ecpat.net/EI/Publications/CST/Code_of_Conduct_ENG.pdf) [hereinafter THE CODE].

States. Slavery, after all, has been abolished. However, when Shared Hope International (SHI), an international Christian non-profit organization dedicated to improving the response to sex trafficking, investigated buyers, facilitators, and traffickers in four countries including the United States, they discovered “the product for sale is most commonly local (domestic) children.”<sup>13</sup> An estimated 100,000 U.S. children are trafficked into the sex trade domestically each year.<sup>14</sup>

1. *Characteristics that Contribute to Child Exploitation*

Children are the primary supply of the sex trafficking industry. Traffickers target children because children are still naïve with little life experience and usually have small support systems to help them once they have been compromised. As a result, children can be more easily manipulated than adult victims, and traffickers are able to exert control over them more easily.<sup>15</sup>

Generally, “any child can become a trafficking victim, and domestically trafficked minors are diverse in terms of ethnicity, age, socio-economic status, sexual orientation, and gender.”<sup>16</sup> However, traffickers are particularly able to take advantage of children with certain characteristics that add to their vulnerability, such as a dysfunctional home environment where abuse or neglect already exists, a young age, a prior ex-

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13. SMITH ET AL., *supra* note 3, at iv.

14. *Id.*

15. There are a number of additional studies on factors that contribute to children’s vulnerability. See, for example, WILLIAM ADAMS ET AL., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP’T. OF JUSTICE, EFFECTS OF FEDERAL LEGISLATION ON THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (2010) (reviewing the leading factors to a child becoming involved in commercial sexual exploitation); RICHARD J. ESTES & NEIL ALAN WEINER, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO: FULL REPORT (OF THE U.S. NATIONAL STUDY) (2001) (explaining the factors that make children more vulnerable to the sex trade); VIRGINIA M. KENDALL & T. MARKUS FUNK, CHILD EXPLOITATION AND TRAFFICKING: EXAMINING THE GLOBAL CHALLENGES AND U.S. RESPONSES (2011) (discussing the characteristics that make children vulnerable to abuse); Joan A. Reid, *Exploratory Review of Route-Specific, Gendered, and Age-Graded Dynamics of Exploitation: Applying Life Course Theory to Victimization in Sex Trafficking in North America*, 17 *AGGRESSION AND VIOLENT BEHAVIOR* 257 (2012) (exploring victim vulnerabilities in the context of sex trafficking).

16. SMITH ET AL., *supra* note 3, at 31.

perience with abuse, a parent who abuses or is addicted to drugs, or homelessness.<sup>17</sup>

The most critical factors of vulnerability are the child's age and gender. Although child sex trafficking is not limited to girls, being a *young* girl significantly increases the likelihood of being trafficked.<sup>18</sup> Younger girls are desired and in demand. Younger girls are also more susceptible to the emotional manipulation tactics used by traffickers. Consequently, the average age of entry into prostitution is thirteen-years old; however, children as young as eight have been arrested for solicitation.<sup>19</sup>

In addition to gender and age, other important factors that contribute to a child's vulnerability to the tactics used by traffickers are homelessness and poverty.<sup>20</sup> The insecurity of poverty and the instability of homelessness drive some children to trade sex in exchange for basic subsistence. For instance, according to SHI, "one form of domestic minor trafficking that is frequently overlooked is referred to as survival sex."<sup>21</sup> Survival sex is the exchange of sex for something the child needs such as food, shelter, or clothing. For example, a fourteen-year old girl enslaved at a Holiday Inn in Joplin, Missouri told the police that she had run away from her grandpar-

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17. *See id.* (stating that youth who come from dysfunctional families in which there was abuse or trauma are particularly vulnerable to a trafficker's/pimp's method of recruitment and control).

18. *See id.* at 46 (quoting an assessment from Baton Rouge/ New Orleans area in Louisiana where a clinical supervisor at a runaway youth shelter reviewed computer records and reported that fifty-seven percent of the 157 youth that came into the shelter in 2006 were domestic minor sex trafficking victims pursuant to the federal definition. Additionally, from April 2004 through April 2005, WestCare Nevada tracked 64 girls through both their substance abuse and probation diversions programs, though neither of these programs were designed specifically to treat domestic minor sex trafficking victims. WestCare Nevada found that seventy-two percent (forty-six of the sixty-four girls) had a history of prostitution. Of those girls, ninety-eight percent had a history of physical or sexual abuse. The majority of the girls identified with a history of prostitution were recruited between the ages of twelve and thirteen years old, however those girls were not identified as trafficking victims on average, until approximately fifteen years old. Each girl revealed that she had been exploited by a pimp.).

19. *Id.* at 30.

20. *See id.* at 18 (discussing the danger of sexual exploitation for homeless youth).

21. *Id.* (internal quotations marks omitted).



ents' house and that her trafficker had offered to give her transportation.<sup>22</sup> The police also discovered that the girl was from a different state and had run away several times before because she lacked a stable home life.<sup>23</sup> Homeless and runaway children are already vulnerable and depend on others to provide them with basic needs. Thus, their lack of support and homelessness make it much easier for traffickers to exploit them.<sup>24</sup> Consequently, traffickers target locations that they know runaway youth will be, such as malls, parks, shelter homes, and public transportation.

Furthermore, mental or behavioral disorders can also contribute to a child's chances of being trafficked.<sup>25</sup> The mental health of children trafficked in the sex industry is very complicated; many suffer from low self-esteem, physical and emotional abuse, and addiction. Traffickers choose children with mental and behavioral disorders or problems with addiction in order to manipulate the children with greater ease. They also encourage the use of drugs and alcohol to further impair children. For instance, a seventeen-year old child sex trafficking victim told authorities that her trafficker gave her free cocaine to prostitute herself.<sup>26</sup>

A child's youth, homelessness, or state of mental and emotional health influences her ability to access support systems. Absent sufficient support, a child is almost defenseless

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22. Jeff Lehr, *Case # 207—Online Prostitution Stings in Joplin Turning Up Runaways*, THE VILLAGE VOICE PIMPS (Jan. 9, 2013), <http://villagevoicepimp.com/case-207-online-prostitution-stings-joplin-turning-runaways>.

23. *Id.*

24. Of the 1.6 to 2.8 million children that run away from home each year, many are coerced and manipulated by adults who are not traffickers to secure sex. See SMITH ET AL., *supra* note 3, at 18, 31 (describing how these children are manipulated into thinking they are in loving relationships with their buyers, many of whom are adult perpetrators). "A survey of runaway and homeless youth in Salt Lake City in February 2008 found that of the 32% of youth who had been victimized . . . [most of those children] indicated that they had been sought out and solicited by [an] adult perpetrator." *Id.* at 18. For a discussion of how inequalities factor into vulnerability see generally, Catherine McKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.- C.L. L. REV. 271 (2011).

25. See SMITH ET AL., *supra* note 3, at 31 (discussing the mental vulnerabilities of children trafficked in the sex industry).

26. *Alleged Sex Trafficking at Amherst Inn*, THE VILLAGE VOICE PIMPS (Jan. 4, 2013), <http://villagevoicepimp.com/alleged-sex-trafficking-amherst-inn-0>.

against the trafficker's techniques of manipulation.<sup>27</sup> One common and effective manipulative tactic traffickers can use to attract a young child is to "secure a seemingly loving and caring relationship with the youth to establish trust and allegiance."<sup>28</sup> Traffickers will often invest a vast amount of effort to establish this foundational relationship so that the victim will be more psychologically bound to them and remain loyal when the relationship deteriorates to exploitation.<sup>29</sup> For example, a Florida man was able to persuade three girls ranging from twelve to fourteen years old to prostitute themselves and to give him all the proceeds they earned.<sup>30</sup> According to the trial evidence, the girls gave him the money they earned in exchange for promises of love and "protection."<sup>31</sup> Alternatively, a trafficker can use threats and humiliation to push children to prostitution. For instance, a twelve-year old girl testified that her trafficker required her to give him all of her earnings, and when she attempted to keep twenty dollars for herself, "he beat her and stripped off her clothes in front of a hotel room full of people."<sup>32</sup>

The fate of sexually exploited children is grim. Children are beaten and humiliated. Sexually exploited children often become ill due to sexually transmitted diseases and malnourishment. Trafficked children are treated as disposable products that are expected to produce a profit for the trafficker. According to SHI, "[c]hildren exploited through prostitution report [that] they are typically given a quota by their trafficker/pimp of 10 to 15 buyers per night, though some service providers report girls having been sold to as many as 45 buyers in a night at demand times, such as during a sport event or convention."<sup>33</sup> Consider the implications of such a rate of abuse: if a girl is sold for sex up to five times per night, five nights per week, for an average of five years, she may be vio-

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27. See SMITH ET AL., *supra* note 3, at 31 (discussing how children from dysfunctional families are especially vulnerable).

28. *Id.*

29. *Id.*

30. *Lauderhill Man Convicted of Pimping Young Girls*, THE VILLAGE VOICE PIMPS (Dec. 14, 2012), <http://villagevoicepimp.com/lauderhill-man-convicted-pimping-young-girls>.

31. *Id.*

32. *Id.*

33. Smith et al., *supra* note 3, at 20.

lated 6,000 times over the course of her enslavement. Traffickers pay little, if any, regard for the health or welfare of the children they prostitute because there is a ready supply of vulnerable youth for traffickers to turn to the sex trade.

Even for those children who are fortunate enough to escape the sex trade, the effects of the experience can remain with them indefinitely. Survivors will often suffer drug and alcohol addictions, mental illness, and health problems, such as AIDS.<sup>34</sup> Sometimes, their families shun them and they often have little prospects for regular employment or any form of self-sufficiency.<sup>35</sup> Moreover, victims often fail to seek help for their victimization, because they are afraid of being further abused, afraid of stigmatization, or simply afraid no one will believe them.

## 2. *Characteristics Shared by Traffickers and Tricks of the Trade*

According to SHI, traffickers or pimps have psychopathic behavioral indicators, which include superficial charm, pathological lying, grandiose sense of self-worth, callousness, lack of remorse or guilt, lack of long-term goals, promiscuous sexual behavior, and irresponsibility.<sup>36</sup> To the extent these characteristics of traffickers are accurate on average, it would be very difficult for a vulnerable child to identify potential risks or escape the coercive nature of their pimp or trafficker once ensnared.

There are several books written by traffickers and pimps as instructional guides to aspiring pimps that demonstrate the coercive nature and mindset of a trafficker during their course of business.<sup>37</sup> For example, one excerpt from *The Pimp Game*

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34. See KARA, *supra* note 1, at 15.

35. See *id.* (stating that most of the victims that the author met in the victim shelters “had been shunned by families, and had little prospects for employment or any form of self-sufficiency upon departure from the shelters, which invariably resulted in limiting their duration of residence due to resource shortages”).

36. SMITH ET AL., *supra* note 3, at 25.

37. See, e.g., ALFRED GHOLSON, *THE PIMP’S BIBLE OR THE SWEET SCIENCE OF SIN* (2001) (describing the world of pimps and prostitutes); PIMPIN’ KEN WITH KAREN HUNTER, *PIMPOLOGY: THE 48 LAWS OF THE GAME* (2007) (explaining the unwritten rules to follow in order to be a pimp); TARIQ NASHEED, *THE ART OF MACKIN* (2000) (teaching men how to be “players”).

demonstrates the manipulation that a trafficker uses to groom children for sex work:

You'll start to dress her, think for her, own her. . . If you and your victim are sexually active, then slow it down. . . After sex, take her shopping for one item. Hair and/or nails are fine. She will develop a feeling of accomplishment. The shopping after a month will be replaced with cash. The love making turns into raw sex. She'll start to crave the intimacy and be willing to get back into your good graces. After you have broken her spirit, she has no sense of self-value. Now pimp, put a price tag on the item you have manufactured.<sup>38</sup>

The language used by this author “recaptures the debilitating psychological and physical manipulation used by slave masters.”<sup>39</sup> Moreover, these manifestos demonstrate the trafficker’s view of child sex trafficking as just a business endeavor with no emotional regard for the children or victims—these children are simply a supply for their business or property. Accordingly, traffickers are not likely to refrain from trafficking vulnerable children simply to avoid violating and hurting them, especially without an increased risk of detection and prosecution.

Child sex trafficking is a low-risk business because traffickers have developed effective techniques for evading law enforcement. First, traffickers are transient and remain on the move to avoid detection. Traffickers will not stay in any one place for any sustained amount of time. Accordingly, traffickers and their child sex workers often stay in hotels and motels. According to a comprehensive report based on worldwide surveys on child sex tourism by the Campaign to End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes (ECPAT) International, a global network of organizations committed to end child prostitution, pornography, and trafficking, hotels are the primary scene of commercial sexual exploitation of children, “accounting for 93.3%

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38. MICKEY ROYAL, *THE PIMP GAME: AN INSTRUCTIONAL GUIDE* 64–65 (1998).

39. SMITH ET AL., *supra* note 3, at 23.

of incidences.”<sup>40</sup> As a result, “[t]he transient nature of the trafficking markets keeps traffickers/pimps below the radar of most law enforcement as they move their victims from city to city evading detection and preventing the girls from becoming identified minors to law enforcement or service providers.”<sup>41</sup>

While traffickers will not remain in any one place for long, traffickers will frequent places with a revolving tourist population and cities with large sporting events and conventions. Annual festivals and sporting championships are particularly attractive markets for merchants trading in trafficked children.<sup>42</sup> These large events allow traffickers to conveniently and easily get their products to market and make a profit in a short period of time before moving on to the next event. Furthermore, the large influx of tourists that attend these events, allows traffickers to hide among the crowds. Traffickers not only anticipate an increased demand, but also can expect less risk of being caught by law enforcement because there is a larger population to oversee. For these reasons, the Super Bowl—the largest sporting event in the U.S.—is considered “one of the biggest sex trafficking events in the United States.”<sup>43</sup> The traffickers go to local hotels, sell the girls through online ads, and never leave the hotel properties for days.<sup>44</sup> Then, along with thousands of other tourists leaving for home following the event, they move on to the next city inconspicuously.<sup>45</sup>

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40. MARK ERIK HECHT, *THE ROLE AND INVOLVEMENT OF THE PRIVATE SECTOR IN THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN* 13 (2001). *See, e.g.,* *Lauderhill Man Convicted of Pimping Young Girls*, *supra* note 30 (noting that the pimp would make his victims engage in sexual activities with customers at hotels).

41. SMITH ET AL., *supra* note 3, at 22.

42. *Id.* at 16.

43. Mickey Goodman, *Super Bowl a Magnet for Under-age Sex Trade*, REUTERS (Feb. 2, 2011, 2:55 PM), <http://www.reuters.com/article/2011/02/02/us-nfl-superbowl-sex-idUSTRE71183220110202>.

44. ECPAT USA, INDIANAPOLIS SUPERBOWL XLVI HOTEL OUTREACH CASE STUDY 2 (2011), *available at* [http://ecpatusa.org/wp/wp-content/uploads/2013/08/ecpat\\_superbowl\\_documented\\_press\\_1.pdf](http://ecpatusa.org/wp/wp-content/uploads/2013/08/ecpat_superbowl_documented_press_1.pdf).

45. *See* U.S. DEP’T OF JUSTICE, *A REPORT TO CONGRESS: THE NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION* 33 (2010), *available at* <http://www.justice.gov/psc/docs/natstrategyreport.pdf> [hereinafter *REPORT TO CONGRESS*] (describing the transitory nature of sex trafficking revolving around major events).

In addition to its transient nature, the business of trafficking is an environment of sophisticated rules and organization that facilitates effective communication that enables the trade to evade law enforcement. These rules are established and used among those in the business to effectively “communicate with one another and warn each other of places to avoid due to high police presence.”<sup>46</sup> Furthermore, traffickers and others in the child sex industry have developed their own language and vocabulary that can be used to facilitate transactions.<sup>47</sup> For example, an area known for prostitution is a “circuit” or “track,” and the “kiddie stroll” is an area of the track featuring kids under sixteen.<sup>48</sup>

Because traffickers and pimps usually evade detection and arrest, they also avoid prosecution and punishment.<sup>49</sup> Even if traffickers are arrested, “they often serve a minimum amount of time in prison or have their cases reduced to misdemeanors.”<sup>50</sup> The transient nature of trafficking makes it difficult for law enforcement to build a solid case against them.<sup>51</sup> It is difficult for law enforcement to effectively anticipate where the trafficker will take the child next and equally difficult to determine where the trafficker has been to collect evidence. Furthermore, when police arrest children for prostitution, they rarely identify their trafficker or testify against them “because [they have] become dependent on the trafficker or [they are] fearful of retaliation.”<sup>52</sup> Consequently, while the victim’s testimony or cooperation is not necessary to convict a trafficker, the case against them is much weaker without it.<sup>53</sup> Moreover, even if the trafficker is arrested, the business continues to function and children continue to be exploited because other pimps or traffickers will often maintain the arrestee’s operations.<sup>54</sup>

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46. SMITH ET AL., *supra* note 3, at 26.

47. *Id.* at 23.

48. *Id.* at 23–24.

49. *See* REPORT TO CONGRESS, *supra* note 45, at 34 (discussing how pimps avoid prosecution).

50. *Id.*

51. *Id.*

52. *Id.* at 34–35.

53. *Id.* at 35.

54. *Id.* at 34.

By hiding behind legitimate businesses, minor sex trafficking becomes more complex and less visible, which makes it more difficult for law enforcement to protect against child sex trafficking. Unfortunately, facilitators or accomplices to traffickers also avoid direct responsibility for sex trafficking crimes.<sup>55</sup> While taxi drivers, hotel workers, airline employees and owners of adult entertainment venues create a distance from the immediate criminal activity, they often still profit from and make possible child sex trafficking.<sup>56</sup> For example, “[t]axi drivers in Las Vegas receive commissions for bringing buyers to illegal suburban house brothels.”<sup>57</sup> “Additionally, there are institutional facilitators”, such as motels, that enable the operations of traffickers to receive a profit.<sup>58</sup> Regrettably, there is no indication that these facilitators are held accountable for their parts in trafficking minors.

### B. Demand

Where the vulnerability of children and the sophistication of traffickers continue to contribute to the supply of children for sexual exploitation, the demand for child sex is facilitated in part by access and opportunity.<sup>59</sup> Clearly, there could be no sex trafficking industry without the buyer and the buyer’s demand for child sex. Whether the buyer purchases sex from a child for entertainment, violence, sexual desires, or other purposes, they ultimately increase the sale of children for sex by simply demanding it. “In a sexually charged society that both encourages promiscuity and covets the innocence of youth, it follows that the demand for young victims will rise to meet the cultural glorification of underage sexuality.”<sup>60</sup> This means that while it is estimated that less than only one percent of males over eighteen years old purchases commercial sex on

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55. SMITH ET AL., *supra* note 3, at 27.

56. *Id.*

57. *Id.*; see also SHARED HOPE INT’L, DEMAND: A COMPARATIVE EXAMINATION OF SEX TOURISM AND TRAFFICKING IN JAMAICA, JAPAN, THE NETHERLANDS, AND THE UNITED STATES 93 (2008), available at <http://www.sharedhope.org/Portals/0/Documents/DEMAND.pdf> (describing facilitators of commercial sex markets).

58. SMITH ET AL., *supra* note 3, at 27.

59. See KARA, *supra* note 1, at 33 (discussing the demand for sex slaves).

60. SMITH ET AL., *supra* note 3, at 16.

any given day, their purchase still promotes the sex trafficking industry.<sup>61</sup>

Buyers of child sex are very diverse: they can be anyone, including teachers, fathers, students, military, or even a family member.<sup>62</sup> The diversity of buyers is what allows them to blend in and makes them difficult to identify.<sup>63</sup> Particularly, buyers can often be merely situational buyers, thrill seekers, or they can be systematic abusers. Situational buyers only purchase child sex because they were presented with the opportunity. These buyers may simply not care or ask whether the prostitute is a child. For example, tourists visiting an area where a large event is taking place, such as the Super Bowl, may simply be presented with the option to purchase sex from a child. This exploitation can go relatively unnoticed by those around them. Another type of buyer is a systematic abuser of children or an opportunistic thrill seeker, such as a pedophile.<sup>64</sup> Part of the appeal in purchasing sex for the buyer is the fact that the victim is a child. For instance, at a homeless youth shelter in Salt Lake City, girls report receiving regular solicitations by men at least twenty years their senior simply because they were underage.<sup>65</sup> Similar to tactics used by traffickers, these men actively seek the company of young children by searching for vulnerable children.

Buyers will try to justify their purchase by arguing that the exchange helps the victim by providing income.<sup>66</sup> Some buyers even argue that children sell sex because they choose to do so.<sup>67</sup> However, similar to traffickers, the risk of a buyer being caught and prosecuted is low. Even if they are arrested, buyers of child sex usually receive inconsequential penalties, if they

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61. KARA, *supra* note 1, at 33.

62. SMITH ET AL., *supra* note 3, at 17.

63. *Id.*

64. *Id.* at 17–18.

65. SMITH ET AL., *supra* note 3, at 18; *see also* MELISSA SNOW, SHARED HOPE INT'L, DOMESTIC MINOR SEX TRAFFICKING: SALT LAKE CITY, UTAH 56 (2008) (discussing reports of statutory rape by significantly older men).

66. *See* RACHEL DURCHSLAG & SAMIR GOSWAMI, CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION, DECONSTRUCTING THE DEMAND FOR PROSTITUTION: PRELIMINARY INSIGHTS FROM INTERVIEWS WITH CHICAGO MEN WHO PURCHASE SEX 15 (2008) (showing a majority of Chicago men who purchased sex consider prostitution equivalent to any other job).

67. *Id.*



are penalized at all.<sup>68</sup> In fact, the child victim is much more likely to be arrested and prosecuted than the buyer.<sup>69</sup> For instance, “a 2005 study for Congress showed that in Boston, 11 female prostitutes (adult and child) were arrested for each male client arrest.”<sup>70</sup> While some buyers are more conspicuous when they actively seek out sex with minors, overall buyers are still often difficult to identify.

### C. *Taking Stock in the Business of Child Sex Trafficking*

Child sex trafficking has a simple cyclical formula: increased demand for child sex increases profits for traffickers, which in turn incentivizes traffickers to supply the increasing demand with more child sex workers. Moreover, if there are more child sex workers, the trafficker can charge less for each child. Consequently, when the costs for children are cheaper, buyers are better able to purchase child sex because the “product” is cheaper.<sup>71</sup>

Similar to any legitimate business, the quickest and most efficient way to increase net profits in the child sex industry is to maintain low costs.<sup>72</sup> Thus, traffickers are incentivized to coerce more children into the business and keep costs to a minimum.<sup>73</sup> As a result, traffickers incur very little cost for maintaining the children that they traffic because they rarely pay for anything more than the child’s most basic needs, such as food and clothes, which are often poor quality at best. One large reason trafficking children for sex is so profitable is that there are very little operational costs.<sup>74</sup> For instance, traffickers avoid paying the costs of labor, such as minimum wages, incurred by legitimate businesses. In fact, traffickers pay the children very little, if anything at all.<sup>75</sup> Essentially the only sig-

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68. SMITH ET AL., *supra* note 3, at 20.

69. REPORT TO CONGRESS, *supra* note 45, at 34.

70. *Id.*

71. KARA, *supra* note 1, at 34.

72. *See* KARA, *supra* note 4 (discussing the large return on investment for traffickers).

73. *See* KARA, *supra* note 1, at 214 (outlining the profit margins for traffickers).

74. *See* KARA, *supra* note 1, at 25, 33–37 (discussing the minimal effort and costs associated with maintaining sex slaves).

75. *See, e.g., Alleged Sex Trafficking at Amherst Inn, supra* note 24 (describing a seventeen year old girl who was paid in cocaine); *Lauderhill Man Convicted*

nificant costs of exploitation are the cost of accommodation and travel.<sup>76</sup> However, the movement and accommodation of trafficked children is often inexpensive, easy, and undetected. The traffickers keep them in hotels or rented houses to make it more convenient for the children to complete numerous sex acts with several clients. Moreover, the traffickers often work in an insular network, in which they are capable of negotiating low accommodation rates and remaining inconspicuous to new people.

With such low costs, the return on investment for a trafficker is staggering, with just under a 70% net profit margin.<sup>77</sup> According to Siddharth Kara, an expert on sex trafficking and advisor to the United Nations on anti-trafficking research, in 2010 the average net profit per trafficking victim in North America was \$130,000, whereas the average cost of the sex worker was roughly only \$1,900.<sup>78</sup> More specifically, the average price per sex act was \$30, whereas the average operating expenses were roughly \$9.03 and the average cost of getting caught was only \$0.53.<sup>79</sup> Consequently, these traffickers can generate several thousand dollars a night, as each child can make over a thousand dollars on a weekend night.<sup>80</sup> The numbers alone demonstrate why there is an immense demand among traffickers to reproduce these high profits.

For their businesses to remain profitable, sex traffickers must move children to places where buyers are more likely to purchase them. This means, to efficiently sell children in the sex trafficking industry, traffickers also frequently encounter hospitality workers, hotel workers, and other employees on a regular basis. Without a strong stance against sex trafficking or the awareness to recognize the problem, these employees

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of *Pimping Young Girls*, *supra* note 28 (explaining how teenage girls ranging from twelve to fourteen years old were trafficked in exchange for protection and promises of love).

76. See generally KARA, *supra* note 1, at 202–03 (“The only associated cost of exploiting the product is to move it from its place of origin to the place of exploitation, where the consumer can consume it.”). See, e.g., *id.* at tbl.B19, tbl.B20.

77. Kara, *supra* note 4.

78. *Id.*

79. KARA, *supra* note 1, at 214 (Although Kara’s statistics include adult victims of sex trafficking, they still demonstrate the high profits associated with sex trafficking.).

80. REPORT TO CONGRESS, *supra* note 45, at 32.

often fail to report the problem when they see it. Arguably, an effective way to collectively cut the profits and the incentives of child trafficking is to create unified efforts, resources, and influence to make the costs of operating a sex trafficking operation increase.<sup>81</sup> Generally, if hospitality workers, hotel workers, and other employees are aware of the child sex trafficking problem and know how to report it, they may be able to effectively disrupt the business making it less profitable. Specifically, these workers may be able to simply refuse to accommodate the traffickers. They also may be able to identify the traffickers and report the problem to law enforcement, creating even more costs for the traffickers.

A review of the profits of sex trafficking and the lack of awareness regarding the risks and detrimental conditions of child sex work reveals that hotels and other tourism businesses in the private sector can effectively help decrease the demand for child sex by creating awareness. Increasing awareness shines a light on the problem of child sex trafficking, which increases the likelihood of detection and educates buyers to the abuse and maltreatment suffered by children exploited in the trafficking industry. Hotels can preemptively educate their guests—maybe potential buyers of child sex—about the poor quality of life child sex victims endure. The private sector can also educate their customers about the penalties that buyers of child sex could face. Moreover, if buyers were aware of the fact that the hotel they were staying at was on alert and looking for signs of child exploitation, they may be even less inclined to purchase child sex.

## II. THE PROBLEMS OF LAW ENFORCEMENT

The trafficking industry continues to thrive in the United States despite federal and state laws, policies, coalitions combating trafficking, law-enforcement, and media attention.<sup>82</sup> In an effort to protect the victims of human trafficking, in October 2000, Congress made human trafficking illegal in the United States when it passed the Trafficking Victims Protec-

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81. KARA, *supra* note 1, at 201.

82. *Id.* at 37.

tion Act (TVPA).<sup>83</sup> Generally, the definition of sex trafficking under TVPA includes “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act, in which traffickers induce the act by fraud or coercion, or in which the victim is under eighteen years of age.”<sup>84</sup> Moreover, because children under eighteen years old cannot give valid consent, “any recruitment, transportation, transfer, harboring, or receipt of children for the purpose of exploitation is a form of trafficking regardless of the means used.”<sup>85</sup> The TVPA carries heavy penalties for the trafficking of child victims, including life imprisonment if the trafficking is accompanied by kidnapping or aggravated sexual abuse.<sup>86</sup> The TVPA has eliminated “the element of transportation from the crime.”<sup>87</sup> Prosecutors need only demonstrate that the crime affects interstate commerce or foreign com-

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83. Trafficking Victims Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1464 (codified as amended 22 U.S.C. §§ 7101–7112 (2008)) [hereinafter TVPA].

84. SARAH C. PIERCE, *Turning a Blind Eye: U.S. Corporate Involvement in Modern Day Slavery*, 14 J. GENDER RACE & JUST. 577, 581 (2011) (internal quotation marks omitted); see also 22 U.S.C. § 7102(9) (providing the definition of severe forms of trafficking in persons); *Fact Sheet: Human Trafficking*, U.S. DEP’T OF HEALTH & HUMAN SERVS., [http://www.acf.hhs.gov/trafficking/about/fact\\_human.html](http://www.acf.hhs.gov/trafficking/about/fact_human.html) (last visited Dec. 13, 2012) (providing the definition of sex trafficking under the TVPA).

85. Camelia M. Tepelus, *Social Responsibility and Innovation on Trafficking and Child Sex Tourism: Morphing of Practice into Sustainable Tourism Policies?*, 8 TOURISM & HOSPITALITY RES. 98, 104 (2008); see also 22 U.S.C. § 7106(a)(2) (stating that where sex trafficking involves “a child is incapable of giving meaningful consent,” punishment should be “commensurate with that for grave crimes”); SMITH ET AL., *supra* note 3, at 5 (stating, “a child under 18 years of age is automatically considered a victim of ‘severe forms of trafficking’ due to age alone”).

86. See 18 U.S.C. § 1591 (2012) (providing the punishment for sex trafficking of children or by force, fraud, or coercion); *id.* § 2251 (providing the punishment for the offense of sexual exploitation of children); SMITH ET AL., *supra* note 3, at 14 tbl.2 (The penalties for the sex trafficking of children ranges from a minimum of 10 years to a sentence of death if the victim dies in the course of the crime.).

87. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 5(a), 177 Stat. 2875 [hereinafter TVPRA 2003] (“Section 1591 of title 18, United States Code, is amended—. . . (3) in subsection (b), by striking ‘the person transported’ each place it appears and inserting ‘the person recruited, enticed, harbored, transported, provided, or obtained.’”); U.S. DEP’T OF STATE, *supra* note 7, at 8; Pierce, *supra* note 84, at 581.

merce to convict traffickers under TVPA.<sup>88</sup> This means that under the federal anti-trafficking law, prosecutors can convict a trafficker without even physically moving a person from place to place. Thus, under the TVPA, an adult or child can be a victim of trafficking while remaining in one area.

Since 2000, the TVPA has been reauthorized three times to extend greater protections for U.S. citizen victims.<sup>89</sup> The reauthorization provides for new human trafficking crimes and enhances victim services provisions.<sup>90</sup> For instance, the 2003 reauthorization requires that the U.S. government terminate contracts with foreign contractors who are known to engage in commercial sex trafficking or forced labor.<sup>91</sup> Notably, the 2008 reauthorization expands criminal and civil liability to those that have benefited financially from human trafficking crimes, including obstruction or conspiracy.<sup>92</sup> More specifically, this includes the victims's right to sue their traffickers.<sup>93</sup>

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88. 18 U.S.C. § 1591(a) (explaining that anyone who knowingly affects interstate or foreign commerce by engaging a person under eighteen years in a commercial sex act shall be punished for the trafficking of a child); SMITH ET AL., *supra* note 3, at 5.

89. TVPRA 2003; Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006) [hereinafter TVPRA 2005]; Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 [hereinafter TVPRA 2008]; Trafficking Victims Protection Reauthorization Act of 2013, H.R. 898, 113th Cong. (2013); POLARIS PROJECT, TRAFFICKING VICTIMS' PROTECTION ACT (TVPA) – FACT SHEET (2008), <http://www.polarisproject.org/resources/resources-by-topic/anti-trafficking-efforts> (describing the enhancements for the protection for trafficking victims).

90. *See* TVPRA 2003 (describing the enhancements of the protection for trafficking victims); POLARIS PROJECT, *supra* note 89 (stating that the reauthorizations included greater protection for victims who are U.S. citizens, enacted new trafficking crimes and enhanced victims services provisions).

91. TVPRA 2003 (providing for the “termination of certain grants, contracts and cooperative agreements”); POLARIS PROJECT, *supra* note 89.

92. 18 U.S.C. § 1583(a) (2012) (Section 1583 protects against enticement into slavery and provides that whoever “obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned not more than 20 years, or both.”); POLARIS PROJECT, *supra* note 89.

93. 18 U.S.C. § 1595(a) (2012) (“An individual who is a victim of a violation may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter)”); TVPRA 2003.

### A. *Failures of Law Enforcement*

Unfortunately, despite Congress's efforts to combat child sex trafficking, inadequacies in law enforcement are considered one of the biggest barriers to eliminating child exploitation. Among the central shortcomings in law enforcement efforts is the failure to identify trafficking victims, the failure to coordinate interventions across enforcement authorities, and the failure to investigate traffickers.

#### 1. *Failure to Identify Child Sex Trafficking Victims*

Research conducted by SHI and the U.S. Department of Justice on the commercial exploitation of American children in the United States found a glaring lack of identification of child sex trafficking victims and highlighted the need for training.<sup>94</sup> The joint project conducted 297 interviews with professional groups that were likely to come into contact with victims of child sex trafficking including federal, state, and local law enforcement, prosecuting attorneys, juvenile court employees, public defenders, social services, and child protective services.<sup>95</sup> In an attempt to gain a comprehensive understanding of the local situation, SHI in cooperation with the U.S. Department of Justice human trafficking task forces conducted their research in ten U.S. locations, including Dallas, TX, San Antonio, TX, Fort Worth, TX, Las Vegas, NV, Salt Lake City, UT, Buffalo, N.Y., Baton Rouge, LA, New Orleans, LA, Independence, MO, and Clearwater, FL.<sup>96</sup> Each location produced information that was area-specific, including information on the scope of the problem, and how victims were being "assessed" or "labeled" by law enforcement.<sup>97</sup> The key findings strongly indicated a lack of awareness among the professional groups, including the first responder law enforcement agents, which led to misidentification of child sex trafficking victims and a lack of coordination that led to a failure to prosecute the crime.<sup>98</sup> This misidentification problem becomes even more compounded for those children suffering from mental

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94. SMITH ET AL., *supra* note 3, at v.

95. *Id.* at iv.

96. *Id.*

97. *Id.* at v.

98. *See id.* (finding that a system wide lack of training causes the misidentification, arrest, and mislabeling of victims).

illness, behavioral disorders or substance abuse. Children with mental and behavior disorders or substance abuse issues can seem less credible or less trustworthy to law enforcement, increasing the likelihood of being misidentified as a delinquent. Therefore, this mental and behavioral illness can often create a large hurdle for these children to get away from their trafficker and receive the protection they need.

Without the awareness or training regarding the nature of these problems surrounding child sex trafficking, law enforcement may not even know that the larger crime of human trafficking is being committed. Further complicating the situation, law enforcement and others, such as hospitality industry employees, that may be in a position to disrupt transactions or otherwise intervene to prevent crime are not receiving the needed training to identify a situation of sex trafficking as defined by the TVPA. Instead, cases of child sex trafficking are often mislabeled as prostitution of a minor in which the law enforcement officer applies traditional pimping laws to arrest the minor instead of the buyer or trafficker. For instance, in Las Vegas, NV, “an entire court docket is scheduled one day each week to hear the cases of juveniles charged with prostitution; in 20 months, 226 juveniles from across the country were adjudicated.”<sup>99</sup> With so little awareness of the problem, children as young as eleven years old are more likely to be prosecuted for prostitution by law enforcement than protected from their traffickers or buyers.<sup>100</sup>

Despite being too young to consent to the sex acts they are being paid for, many of the child victims are arrested because law enforcement cannot recognize them as victims of child sex trafficking. There are a number of reasons law en-

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For example, only three of 25 interviewees from 17 professions likely to come in contact with domestic minor sex trafficking victims or at-risk youth in the Baton Rouge/New Orleans area were familiar with the TVPA and its subsequent reauthorizations, and only two professionals of 25 interviewees were aware that an anti-trafficking law had been added to the Louisiana Criminal Code in 2005. In Atlanta, six roundtables organized for professionals, including superior court judges, revealed that not a single person knew that there was a human trafficking law that existed.

*Id.* at 62.

99. *Id.* at 6.

100. *See id.* at 20 (describing how police arrested a twelve year old girl for prostitution, but let the buyer go).

forcement officers cannot adequately identify child victims of sex trafficking, however, misunderstanding the law and mistaking children for adults are central reasons. Either law enforcement is entirely unaware of the TVPA or they mistakenly believe transportation is required to charge a person with child sex trafficking under the statute. Consequently, when a law officer catches the child in a sex act on the street or in a hotel room, they are not being “transported”, and their sex acts seem much more similar to solicitation. Then, based on the similarities, law enforcement officers apply solicitation laws and usually arrest the children for their “crime” instead of recognizing them as victims and applying trafficking laws designed to protect them. This misunderstanding regarding the definition of human trafficking is one of the main reasons law enforcement across the country fail to identify and arrest traffickers rather than the victims.

Another reason law enforcement fails to identify a victim of child sex trafficking is because the child does not hold herself out as a child, rather, a child may present herself as an adult. Trafficked children will often deny being a minor or a victim because they are afraid of the potential physical and psychological abuse inflicted by their trafficker. Many of these children have no identification to confirm their minor status. Some children are runaways and never obtained any identification, or traffickers often get rid of the identification of the children to better manipulate them. For instance, after local Joplin, Missouri authorities failed to locate a missing teenage girl, they asked the neighboring Springfield, Missouri police to help them locate the girl.<sup>101</sup> When she was ultimately found, the girl told authorities that her trafficker had told her to go by another name to avoid detection.<sup>102</sup> Moreover, verification of a minor’s age can be further complicated by the “widespread use of fraudulent identification provided to the girls by the traffickers to establish their age as an adult.”<sup>103</sup> Therefore, without proper identification, law enforcement and juvenile services fail to identify and prosecute traffickers because the

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101. Lehr, *supra* note 22.

102. See *Alleged Sex Trafficking at Amherst Inn*, *supra* note 24 (“The [victim] teen told authorities that at the residence, Willis and St. Denis both tried to convince her to prostitute herself and Willis told her to go by another name.”).

103. SMITH ET AL., *supra* note 3, at 22.



child victims often pose as adults and simply do not admit to being victimized.<sup>104</sup>

Finally, a large barrier to identifying child victims of the sex trafficking industry is the covert nature of sex trafficking. With the help of technology, such as the Internet, traffickers and buyers can easily conduct their business “off the streets” and in more discrete areas. For instance, traffickers often advertise and sell children through Internet ads using computers at coffee shops and public libraries. Additionally, traffickers will often keep children hidden for several days so as to not raise suspicion. With the business transactions conducted covertly on the Internet or behind closed doors in hotels, it is difficult for law enforcement to spot these child victims.

## 2. *Failure to Coordinate*

A lack of coordination among different law enforcement agencies also contributes to the failure to prosecute traffickers under the TVPA. In those cases where sex crimes against children spill across jurisdictional lines, cooperation between jurisdictions is crucial. Yet, efforts to coordinate are often frustrated by conflicts and confusion where there are perceived inconsistencies between state and federal standards. Even if law enforcement recognizes the signs of child sex trafficking, the combination of each state’s law and federal laws create a patchwork that can be confusing to law enforcement. Without proper coordination, local law enforcement may elect to apply more familiar state laws—many of which carry smaller penalties than TVPA. For example, in Salt Lake City, using state exploitation laws, the average sentence for traffickers convicted of child sex trafficking was just six months.<sup>105</sup> Whereas, the

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104. Victims of child sex trafficking are not likely to identify themselves as “victims.” These children are often afraid of being physically and psychologically abused by their trafficker for asking for help. As part of the trauma and manipulation inflicted by the trafficker, the victim suffers a loss of identity. Traffickers will create a false sense of choice for the child, validating the perception that they are “choosing” to prostitute themselves. To reinforce this view, traffickers usually give the children a new name or brand them with their own symbol. Additionally, traffickers often encourage cultural attitudes, which view prostituted children as delinquents. This serves to isolate them and make them believe that seeking help is “a waste of time because no one would believe them since they are ‘just prostitutes.’” *Id.* at 41–45.

105. SNOW, *supra* note 63, at 3; SMITH ET AL., *supra* note 3, at 13.

TVPA's penalty for child sex trafficking is at least ten years.<sup>106</sup> Many law enforcement agencies report that due to a lack of knowledge of the federal law and lack of communication between local and federal agencies, they have never pursued federal charges in child sex trafficking cases.<sup>107</sup> Consequently, the deterrence value of harsh penalties and the benefits that the TVPA provide are not fully deployed against traffickers because state law enforcement commonly applies less stringent state laws to sex trafficking crimes.

### 3. *Failure to Investigate*

The lack of innovative investigative methods and tools further complicates efforts to combat crime. A patchwork of conflict and confusion over legal standards has generated even greater protection gaps for children and ever more ways for traffickers to evade prosecution.<sup>108</sup> Traditional investigation methods used to capture traffickers involve the use of undercover law enforcement officers placed in known prostitution zones.<sup>109</sup> However, “[t]raffickers/pimps with small and large operations are now accessing larger, more complex networks.”<sup>110</sup> Thus, traffickers are more capable of evading law enforcement through cooperation with others in the network and avoiding the more obvious prostitution zones where law enforcement is likely located. Another challenge presented by traditional investigative methods and training is the “inability to legally place a minor as a decoy.”<sup>111</sup> Law enforcement often uses an undercover officer acting as a prostitute to catch buyers in the act of solicitation. However, law enforcement cannot legally or ethically use a minor as bait for buyer. Thus, law enforcement never actually catches the buyer soliciting sex from children with the traditional undercover method. “This per-

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106. 18 U.S.C. § 1591(b) (2012) (providing that the penalty for an offense involving a victim under fourteen years is not less than 15 years or for life, or an offense involving a victim who has attained the age of fourteen years but not yet eighteen years is a penalty of not less than ten years or for life).

107. SMITH ET AL., *supra* note 3, at 22.

108. *Id.* at 21.

109. *Id.*

110. *Id.* at 29.

111. *Id.* at 21.

mits an automatic legal defense by a buyer who can claim that he solicited an adult decoy.”<sup>112</sup>

Another hurdle to investigating traffickers, and subsequent prosecution, is the anonymity inherent in the nature of sex trafficking. Although traffickers reap the profits of child sex, they are often very distant and removed from the actual process. By selling children via the Internet and communicating with girls over the telephone, traffickers can effectively stay removed from the actual sex acts. Consequently, traffickers are not often nearby when arrests occur, making it especially difficult to connect them to the crime. Additionally, investigating the crime of child sex trafficking is further complicated by the anonymity of the buyers.<sup>113</sup> The selling of child sex occurs on a cash basis, which lacks a financial trail for law enforcement to trace the purchase to the victim or buyer. Buyers can often use a fake name that leaves even less evidence for law enforcement to use in identifying the crime. Moreover, due to the trauma of exploitation or the result of evasive manipulation techniques of the trafficker, victims rarely know or can remember the buyers’ real names.<sup>114</sup> Consequently, without the child’s testimony about the buyer’s exploitations or some other evidence that links the buyer or trafficker to the minor’s sex act, there is likely no case.

### III. THE POTENTIAL OF PRIVATE INDUSTRY

The underlying impetus for universal human rights protection is simple: all human beings deserve to be treated with dignity.<sup>115</sup> Each human, regardless of “race, color, sex, language, religion, political or other opinion, national or social origin, property birth or other status,” is equally entitled to enjoy these human rights.<sup>116</sup> The sexual exploitation of chil-

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112. *Id.*

113. *Id.* at 22.

114. *Id.*

115. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, UNITED NATIONS HUMAN RIGHTS, THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS: AN INTERPRETIVE GUIDE 9 (2012), available at [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf) [hereinafter INTERPRETIVE GUIDE].

116. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, Doc. A/RES/217(III), art. 2 (Dec. 10, 1948). See also INTERPRETIVE GUIDE, *supra* note 115, at 9 (discussing human rights).

dren associated with sex trafficking is not only criminal, but it is also a clear and unambiguous violation of the universal human rights guaranteed to all.<sup>117</sup> International legal instruments and general principles of guidance express a range of universal human rights, among them the right to bodily integrity to be free from violence.<sup>118</sup> Increasingly, international norms are emerging alongside existing legal instruments and outline the obligations of businesses to respect human rights and to refrain from adversely affecting human rights.<sup>119</sup>

#### A. *Promoting the Protection of Children's Human Rights*

The child sex trade implicates both the human rights of children and the responsibilities of the business community. To fully appreciate the opportunities for industry to intervene and aid efforts to end the abuses inherent in child sex trafficking, a basic understanding of both children's human rights and business obligations with respect to rights is essential. Both are discussed below. In this section, we argue that children who are trafficking victims have a range of their human rights violated. Children are victimized because they have not enjoyed the protections to which they are entitled and public officials are obligated to provide. Moreover, we argue that emerging norms concerning the responsibility of business enterprises to respect human rights, as expressed in the U.N. Framework and Guiding Principles on Business and Human Rights, could inform private sector initiatives to combat child sex trafficking and contribute to protecting children.

#### 1. *Children's Rights*

The Universal Declaration of Human Rights (Declaration)<sup>120</sup> drafted in the aftermath of World War II era atrocities provides that "every individual and every organ of society . . . shall strive by teaching and education to promote respect for these rights."<sup>121</sup> The scope of the Declaration can be understood to encompass individuals, business enterprises, and state

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117. See Tepelus, *supra* note 85, at 103 (discussing how sex tourism violates human rights).

118. See INTERPRETIVE GUIDE, *supra* note 115, at 9.

119. *Id.* at 10–11.

120. Universal Declaration of Human Rights, *supra* note 112.

121. *Id.*

actors. The Declaration's appeal to individuals and "organs of society" to strive to promote respect for rights suggests that the private sector has a role to play and a measure of responsibility to ensure that human rights are protected.<sup>122</sup>

With particular attention to the plight of children, in 1989 the United Nations adopted the Convention of the Rights of the Child (CRC).<sup>123</sup> The CRC provides comprehensive protection of children's rights. Ratified by 191 countries, the CRC is specifically directed towards protecting children in recognition of the fact that "the child, by reason of his physical and mental immaturity, needs special safeguards and care."<sup>124</sup>

To ensure that the child matures into a responsible and autonomous adult who can function in society, the CRC contains both development entitlements that children should enjoy access to, such as education, healthcare and play, as well as protections against abuses that children should be free from, such as sexual exploitation. Specifically, Articles 32 and 33, which pertain to economic and sexual exploitation, are violated when a child is trafficked.<sup>125</sup> Article 32 recognizes the right of the child to be "protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."<sup>126</sup> Work in the sex industry is inherently unsafe and is by definition exploitation. Trafficked children suffer significant physical and mental abuse that often severely impacts social development if untreated. Article 33 provides that children should be protected from "the illicit use of narcotic drugs and psychotropic substances,"<sup>127</sup> yet traffickers routinely use drugs to keep children enslaved by exploiting addictions.

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122. HECHT, *supra* note 40, at 7.

123. Convention of the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (Nov. 20, 1989). Although the UNCRC recognizes child sex trafficking as a crime, the United States is not a party to the UNCRC. As a result, UNCRC is not legally binding on the United States. U.N. Treaty Collection, Convention on the Rights of the Child (Sept. 11, 2013, 05:12 ET), [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en) (providing status of the ratification of the Convention on the Rights of the Child, where U.S. has signed the treaty but has yet to ratify it).

124. *Id.*; THE CODE, *supra* note 12, at 5.

125. Convention of the Rights of the Child, *supra* note 119, art. 31–37.

126. *Id.* art. 32.

127. *Id.* art. 33.

Article 34, the CRC provision most explicitly relevant to the obligations governments must assume to protect children from the sex trade provides:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.<sup>128</sup>

When children are not protected from the sex trade they cannot enjoy the basic entitlements enshrined as children's human rights that are essential to human development. Article 28 recognizes the right of the child to education. The aim of education as articulated in Article 29 is to enhance "development of the child's personality, talents and mental and physical abilities to their fullest potential." Traffickers keep children hidden and out of school. Children also learn that their humanity is not valued through the lived experience of the sex trade, a lesson likely to impede development. Article 24 recognizes the right of the child to "the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health." Children in the sex trade routinely risk exposure to sexually transmitted infection and the abusive conditions of sex work can contribute to illness and injury. Traffickers do not seek health care for children who become ill; rather, a replacement child will be sought. Article 31 recognizes the right of the child to rest, leisure, play, and recreational activities.<sup>129</sup> A trafficked child laboring in the sex industry does not enjoy play, recreation, or rest. Some girls see as many as ten to fifteen clients a day, but can see as many as forty-five clients in a night.<sup>130</sup> Like educa-

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128. *Id.* art. 34.

129. *Id.* art. 31.

130. SMITH ET AL., *supra* note 3, at 20.

tion or health care, rest and recreation plays an important role in child development.<sup>131</sup>

Several other CRC articles further specify the obligations of States to protect children from the abuses most commonly associated with commercial sexual exploitation.<sup>132</sup> Article 35 imposes an obligation upon States to “prevent the abduction, the sale of or traffic in children for any purpose or in any form.” Article 36 requires States to “protect the child against all forms of exploitation prejudicial to any aspects of the child’s welfare.”<sup>133</sup> Finally, Article 37(a) provides that States must ensure that: “[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”<sup>134</sup> Some commentary suggests that sex trafficking of children and the associated abuses should be understood to constitute a form of torture because trafficked children endure cruel, inhuman and degrading treatment from buyers and are punished by the people who sell them with regularity.<sup>135</sup> Some legal scholars argue that trafficking subject to certain specific conditions can constitute a crime against humanity that all nations are obligated to prevent and to punish.<sup>136</sup>

The CRC has been the inspiration and foundation for many subsequent human rights and socially responsible initiatives designed to protect child victims of sexual exploitation. Although the United States is not a party to the CRC, legislation to combat trafficking is consistent with the CRC’s call for

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131. See, e.g., Regina M. Milteer et al., *The Importance of Play in Promoting Healthy Child Development and Maintaining Strong Parent-Child Bond: Focus on Children in Poverty*, 129 PEDIATRICS 204, 205 (2012) (explaining the benefits of play to child development contributing to both physical health and cognitive abilities).

132. U.N. Convention on the Rights of the Child, *supra* note 119, art. 34–37.

133. *Id.* art. 36.

134. *Id.* art. 37(a).

135. See OFFICE OF THE SPECIAL REPRESENTATIVE AND CO-ORDINATOR FOR COMBATING TRAFFICKING IN HUMAN BEINGS, ORG. FOR SEC. AND CO-OPERATION IN EUR., TRAFFICKING IN HUMAN BEINGS AMOUNTING TO TORTURE AND OTHER FORMS OF ILL-TREATMENT 20–27 (2013) (describing how sex trafficking can be considered torture).

136. See Anne T. Gallagher, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING 214 (citing F. Pocar, *Human Trafficking: A Crime Against Humanity*, in *Measuring Human Trafficking: Complexities and Pitfalls* 5 (E.U. Savona & S. Stefanizzi eds., 2007)) (explaining the implications of sex trafficking being considered a crime against humanity).

the rights and welfare of children to be protected against exploitation. For the reasons outlined above, however, child sex trafficking continues to present significant challenges to law enforcement, and state and federal officials have failed to fully protect children from sexual slavery.

## 2. *Business Responsibilities with Respect to Children's Rights*

Although, the CRC does not explicitly hold corporations responsible for the rights of children, recent developments in international forums have given rise to a new normative regime that requires corporations to respect human rights. Sparked in large part by debates concerning the responsibilities of business in relation to poor working conditions in global supply chains and abuses associated with extractive industry environmental damage, there have been a series of international efforts to better appreciate the role of business in human rights abuses and to establish standards for the proper scope of private sector responsibility with respect to human rights.<sup>137</sup>

Early efforts in the 1990s sought to impose binding obligations on businesses under international human rights law, when the Sub-commission of the U.N. Commission on Human Rights produced the “Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.”<sup>138</sup> However, with strong opposition from businesses, the Commission failed to adopt the draft norms.

Subsequently, the then U.N. Secretary-General and Nobel Laureate Kofi Annan appointed Harvard Professor John Ruggie as the “Special Representative on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises”<sup>139</sup> and tasked him with clarifying the “roles and responsibilities of states, companies and other social actors in

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137. HECHT, *supra* note 40, at 7.

138. UN “PROTECT, RESPECT AND REMEDY” FRAMEWORK FOR BUSINESS AND HUMAN RIGHTS (2010), <http://www.reports-and-materials.org/Ruggie-protect-respect-remedy-framework.pdf> (providing a brief explanation of the Framework by Special Representative Ruggie).

139. JOHN GERARD RUGGIE, *JUST BUSINESS: MULTINATIONAL CORPORATIONS AND HUMAN RIGHTS*, at xviii (2013).



the business and human rights sphere.”<sup>140</sup> In June 2008, after extensive research and consultations with governments and businesses around the world, Special Representative Ruggie “concluded that one reason cumulative progress in the business and human rights area had been difficult to achieve was the lack of an authoritative focal point around which actors’ expectations could converge.”<sup>141</sup> To provide a focal point, the Special Representative presented a framework designed to clarify the relevant actors’ responsibilities. The Special Representative hoped to provide a foundation upon which to build over time.<sup>142</sup> The U.N. Human Rights Council unanimously approved the framework and it gained support from Norway, Argentina, India, Nigeria, and Russia—countries from each U.N. regional group. Moreover, “a number of individual governments have utilized it in conducting their own policy assessments.”<sup>143</sup>

In recent years, independent of the Special Representative’s process, there has been a proliferation of codes promulgated in the private sector across a range of industries to fill existing regulatory gaps and address rights issues. However, it has been argued that the U.N. Framework and Guidelines are “not just another set of voluntary standards vying for attention in an increasingly crowded space.”<sup>144</sup> Rather the Special Representative on Business and Human Rights has stressed that the Framework and Guidelines are to be the “authoritative UN standards around which the articulated expectations of many public and private institutions have already converged.”<sup>145</sup>

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140. UN “PROTECT, RESPECT AND REMEDY” FRAMEWORK FOR BUSINESS AND HUMAN RIGHTS, *supra* note 136.

141. *Id.*

142. *Id.*

143. *Id.*

144. Sarah A. Altschuller, *Business and Human Rights: A Convergence of Expectations*, CORPORATE SOCIAL RESPONSIBILITY AND THE LAW BLOG (Dec. 19, 2011), <http://www.csrandthelaw.com/2011/12/articles/human-rights/business-and-human-rights-a-convergence-of-expectations/> (quoting Professor John Ruggie). See also *UN Framework and the Global Compact: Guiding Principles on Business and Human Rights*, UNITED NATIONS GLOBAL COMPACT, [http://www.unglobalcompact.org/issues/human\\_rights/The\\_UN\\_SRSG\\_and\\_the\\_UN\\_Global\\_Compact.html](http://www.unglobalcompact.org/issues/human_rights/The_UN_SRSG_and_the_UN_Global_Compact.html) (last updated Apr. 24, 2012) (discussing the Guiding Principles).

145. Altschuller, *supra* note 140 (quoting Professor John Ruggie).

The U.N. Framework rests on three pillars: (1) the State's duty to, within its jurisdiction, fulfill human rights and fundamental freedoms and protect against human rights abuses by third parties, including business; (2) the corporate responsibility to respect human rights; and (3) greater access by victims to effective remedy, both judicial and non-judicial.<sup>146</sup> Under the Framework, the corporate responsibility to respect human rights includes the dual obligations to: (1) "avoid infringing on the human rights of others"; and (2) "address adverse human rights impacts with which they are involved."<sup>147</sup> The human rights that business enterprises must respect are defined to include, *at a minimum*, those rights expressed in the International Bill of Rights as well as the rights contained in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.<sup>148</sup>

The "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect, and Remedy' Framework" were adopted by the Human Rights Council as the way to put the Framework into operation.<sup>149</sup> The Guiding Principles set a benchmark for companies and States to assess business respect for human rights and provide a blueprint for companies and States to manage the risk of adversely affecting human rights.<sup>150</sup> To put the Guiding Principles into operation business enterprises must be in a position to "know and show that they respect human rights."<sup>151</sup> Accordingly, to meet their responsibility to respect human rights, business enterprises are encouraged to adopt and implement "policies and processes appropriate to their size and circumstance" to ensure that there is: (1) "a policy commitment to meet the responsibility to respect human rights"; (2) a human rights due diligence process to identify issues and account for

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146. UN "PROTECT, RESPECT AND REMEDY" FRAMEWORK FOR BUSINESS AND HUMAN RIGHTS, *supra* note 136.

147. OFFICE OF THE HIGH COMM'R, UNITED NATIONS HUMAN RIGHTS, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS "PROTECT, RESPECT AND REMEDY" FRAMEWORK 13 (2011).

148. *Id.*

149. *UN Guiding Principles on Business and Human Rights*, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, <http://www.business-humanrights.org/Documents/UNGuidingPrinciples> (last updated Mar. 1, 2013).

150. INTERPRETIVE GUIDE, *supra* note 115, at 2.

151. OFFICE OF THE HIGH COMM'R, *supra* note 143, at 16.

how the business can address adverse impacts; and (3) a process to remedy any adverse rights impacts the business may have contributed to or caused.<sup>152</sup>

Therefore, by adopting a policy commitment to combat human trafficking and modern slavery, the tourism sector could demonstrate progress towards showing responsibility to respect human rights. The private sector could aid the State in its duty to protect children's human rights by assuming responsibility to respect rights through putting policy commitments into practice. Furthermore, the implementation of policy commitments would entail conducting the necessary due diligence to determine the actual or potential impact corporate conduct has on children trafficked into the sex trade. Due diligence findings assessing the tourism sector's impact on trafficking could be integrated into developing more effective responses that could aid law enforcement efforts to rescue trafficked children and catch and convict traffickers.

Relatedly, the United Nations' "Global Compact," an initiative that is independent from but complementary to the Framework and Guiding Principles, also encourages that "businesses show good 'global citizenship' in the nations in which they operate."<sup>153</sup> Specifically, the Global Compact explains that businesses should respect the protection of human rights and "ensure they are not complicit in human rights abuses."<sup>154</sup> The Global Compact in cooperation with the United Nations Children's Fund (UNICEF) and Save the Children have prepared The Children's Rights and Business Principles to provide a comprehensive framework for understanding and addressing the impact of business on the rights and well-being of children. Like the Guiding Principles, the Children's Principles include the corporate responsibility to protect but also articulate a "corporate commitment to support." In addition to respecting human rights, the Children's Principles call upon businesses to advance children's rights through voluntary actions and "core business activities, strategic social investments

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152. *Id.* at 15–16.

153. HECHT, *supra* note 40, at 8. *See generally About Us: Overview of the UN Global Compact*, UNITED NATIONS GLOBAL COMPACT, <http://www.unglobalcompact.org/AboutTheGC/index.html/> (last visited Mar. 9, 2013) (providing an overview of the Global Compact).

154. HECHT, *supra* note 40, at 8. *See About Us: Overview of the UN Global Compact*, *supra* note 149 (explaining the Global Compact).

and philanthropy, advocacy and public policy” working in partnership with a range of relevant stakeholders.<sup>155</sup>

Despite the increasingly complex nature of hotels and tourism businesses and challenges to their ability to monitor their actions across the country and around the world, it is in a corporation’s best interest to comply with widely recognized international business norms. The Guiding Principles appreciate that the scale and complexity of the means through which enterprises will meet the responsibility to respect rights may vary according to size, sector, or operational context of a business, among other factors. It is in any corporation’s best interest to ensure that their business dealings are not contributing to the human rights violations caused by child sex trafficking. The private sector is converging around a set of norms and soon it will no longer be the norm for businesses to sit by idle while they contribute to the violation of children’s human rights.

Generally, none of the international human rights treaties explicitly imposes direct, legally binding obligations on businesses on the face of the text. However, there are opportunities for businesses to benefit a broad range of constituencies through complying with the responsibility to respect human rights set forth in the text of the U.N. Framework and Guiding Principles on Business and Human Rights. There are also risks associated with being perceived as a business that disregards the plight of trafficked children by doing nothing to protect against the parasitic use of tourist properties by child sex traffickers.

#### B. *Protecting Against Legal Liability and Reputational Risks*

Under federal and state laws, corporations can be held civilly and criminally liable for sex trafficking. The Trafficking Victims Protection Reauthorization Act (“TVPRA”) provides, in pertinent part, that “whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which [that person knew or should have known] has engaged in any act in violation of [TVPRA]” will face fines or

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<sup>155</sup> UNICEF ET AL., CHILDREN’S RIGHTS AND BUSINESS PRINCIPLES 5 (2012).

imprisonment.<sup>156</sup> Specifically, “under [TVPRA], even someone who does not act to further the trafficking but merely consciously benefits from its existence is liable.”<sup>157</sup> Those who knowingly benefit from trafficking can face fines or imprisonment. Since 2003, the TVPRA has afforded trafficking victims a private right of action. This means that if child sex trafficking occurs in a hotel and the hotel should have known the act occurred, the victim is entitled to bring a civil suit against the establishment.<sup>158</sup> However, due to the low number of trafficking cases filed in federal district courts under the TVPRA to date, it is difficult to assess how prevalent cases brought pursuant to the statute will become or whether theories of corporate liability will result in large damage awards.<sup>159</sup> Nevertheless, risks to commercial actors implicated in human trafficking remain.

In addition to the TVPRA, corporations may be held liable for human trafficking because plaintiffs may file suit against corporations alleged to be engaged or complicit in human trafficking either by action or omission using other state statutes and traditional tort claims; this presents a risk of liability.<sup>160</sup> There are also state initiatives to create incentives for corporate actors to cooperate in combatting the crime of

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156. 18 U.S.C. § 1593A (2012); *see also* TVPRA 2008, sec. 213 (ensuring assistance to victims of sex trafficking); H.R. Rep. No. 108-264, pt.1, at 2 (2003) (discussing the amendment to the TVPRA); Pierce, *supra* note 84, at 585 (describing the private rights of action in the TVPRA).

157. Pierce, *supra* note 84, at 586; *see* 18 U.S.C. § 1593A (stating, “[w]hoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in any act in violation of section 1581(a), 1592, or 1595(a), knowing or in reckless disregard of the venture has engaged in such violation, shall be fined under this title or imprisoned in the same manner as a completed violation of such section.”).

158. For a discussion of legal recourse for victims to seek remedy from those who knowingly benefit from trafficking, *see generally*, Kathleen Kim & Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN’S L.J. 1 (2004).

159. *See* Naomi Jiyounng 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, 1048–50 (2013) (noting the small number of cases being brought under this section of the TVPRA).

160. *See* Pierce, *supra* note 84, at 579 (stating that many hoping to file suit against corporations use the strategies of tort claims or the Fair Labor Standards Act).

human trafficking.<sup>161</sup> For example, Minnesota adopted a corporate liability provision that explicitly holds corporations liable for human trafficking and lays out the penalties for corporations convicted of human trafficking.<sup>162</sup> Another example includes Tennessee's anti-trafficking corporate liability law, which explicitly describes the ways a court may find a corporation liable.<sup>163</sup> It provides that "[a] corporation may be prosecuted for a violation of [the sex trafficking statute] for an act or omission . . . [that] constituted a pattern of illegal activity that an agent of the company knew or should have know[n] was occurring."<sup>164</sup>

Beyond the risks of exposure to legal liability, businesses that are implicated in human trafficking run the risk of losing business from public agencies. Increasingly, public government contracting and procurement policies are sensitive to social issues.<sup>165</sup> The TVPRA includes a provision that permits a federal department or agency to terminate contracts with businesses that engage in human trafficking or use forced labor.<sup>166</sup>

Accordingly, these laws demonstrate that hotels and other travel businesses can no longer turn a blind eye to the problem of child sex trafficking, because they run the risk of being held liable for their part in the problem simply because they should have known it was occurring. Businesses may lose potentially lucrative contracts with public agencies. Therefore, it

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161. *Id.* at 592 ("A few states have adopted explicit provisions holding corporations liable for the crime of human trafficking.")

162. MINN. STAT. § 609.284, 609.322 (2005) (providing that victims of trafficking may bring a cause of action against a person or corporation that receives profit from knowingly or having reason to know that it is derived from prostitution or trafficking).

163. *See* TENN. CODE ANN. § 39-13-311 (2008) (providing that a corporation may be prosecuted if an agent of the corporation acting within his official scope authorized or performed sex trafficking or if the agent knew or should have known the act was occurring).

164. *Id.*

165. *Cf.* Erika George, *Influencing the Impact of Business on Human Rights, in* CORPORATE ACCOUNTABILITY FOR HUMAN RIGHTS IMPACTS: NEW EXPECTATIONS AND PARADIGM (Lara Blecher, et al., eds.) (forthcoming 2014) (on file with authors) (discussing public procurement policies linked to respect for human rights and living wages).

166. *See* Anna Williams Shavers, *Human Trafficking, the Rule of Law and Corporate Social Responsibility*, 9 S.C. J. INT'L L. & BUS. 39, 51 (2012) (arguing that the actions of any party that a corporation is responsible for can cost the corporation federal government contracts).

is beneficial for hotels and other travel businesses to adopt corporate social responsibility (CSR) policies against child sex trafficking because it helps them avoid the legal risks associated with child exploitation. By choosing to implement socially responsible policies, hotels and other tourism businesses can avoid the legal risks associated with child sex trafficking. Failure to assume a proactive position with respect to the issue of human trafficking is increasingly ill advised.

C. *Corporate Social Responsibility: Creating Opportunities for Change and Gaining Competitive Advantage*

Having detailed the implications for children's rights and the risks to business where responsibility is not assumed, we now turn to opportunities to create constructive change and contribute to protecting human rights through meeting obligations to respect human rights. Sex trafficking is illegal in almost every country in the world, but the absence of any real risk of detection and prosecution contributes to the expansion of the sex trafficking industry.<sup>167</sup> As discussed above, this low risk can often be attributed to a lack of awareness and lack of coordination among law enforcement and other individuals who frequently encounter child sex traffickers. Therefore, it stands that one way to overcome these challenges and fill in the gaps created by failures in traditional investigative techniques due to the nature of the sex trafficking industry is to involve the private sector.

Increasing accountability in the private sector through the adoption and implementation of corporate codes consistent with the responsibility to respect human rights outlined in the U.N. Framework and Guiding Principles could help law enforcement officials identify traffickers, buyers, and victims of child sex trafficking. By training hospitality workers, hoteliers, and other employees to identify signs of child sex trafficking, employees would be better equipped to report the problems to law enforcement when they encounter them. There are several features unique to the private sector that endow it with the capacity to disrupt buyer demand and facilitate the subsequent prosecution of traffickers and buyers. For instance, many tourism properties often have security cameras that can

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167. KARA, *supra* note 1, at 37–38.

capture the images of trafficking transactions in process such as those of the buyer and child together. If the trafficker or buyer rents the room in a hotel, they may be asked to show identification and pay with a credit card, creating a paper trail for law enforcement to follow.

The general obligations of a responsible business are to obey laws and regulations and to supply the demand of the market. However, another major expectation of responsible businesses entails responding to societal expectations.<sup>168</sup> Businesses require a “social license to operate.”<sup>169</sup> Businesses communicate their response to social and environmental issues by engaging in socially responsible activities and incorporating CSR initiatives.<sup>170</sup> These CSR initiatives are defined as an explicit and voluntary implementation of environmentally, ethically, and socially conscious standards of conduct by the business.<sup>171</sup> Notably, most CSR initiatives currently implemented in the private sector are a direct response to the demand for greater social responsibility from international trade unions, nongovernment organizations, human rights organizations, and environmental groups.<sup>172</sup> For example, UNICEF advocates for the protection for children’s rights by actively encouraging businesses in the travel industry to adopt the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (the Code).<sup>173</sup> Moreover, where

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168. OECD, *Overview of Selected Initiatives and Instruments Relevant to Corporate Social Responsibility*, in ANNUAL REPORT ON THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES 2008: EMPLOYMENT AND INDUSTRIAL RELATIONS 237 (2009).

169. See *infra*, Porter & Kramer CSR discussion at Part III.C.3 (discussing the “social license to operate”).

170. See OECD, *supra* note 164, at 237 (discussing private CSR initiatives).

171. Tepelus, *supra* note 85, at 100.

172. See *id.* (“In the recent years, [CSR] has been institutionalized politically in the international context both by the European Union and by the UN. . . . The [European] Commission . . . emphasizes four relevant aspects” of CSR amongst which the first one is that “CSR covers both social and environmental issues.” Furthermore, “[t]he United Nations is also playing an important role in promoting the CSR agenda through Global Compact, a framework for businesses to align their operations and strategies within ten universally accepted principles of human rights, labor, environment and anticorruption”).

173. See Press Release, United Nations Children’s Fund, Launch of “Code of Conduct” to Protect Children from Sex Tourism (Apr. 21, 2004), *available at* [http://www.unicef.org/media/media\\_20445.html](http://www.unicef.org/media/media_20445.html) (announcing the



some CSR initiatives address a wide range of concerns, including human rights and labor rights, other CSR initiatives take an in-depth focus on one issue specific to issues related to specific organizations or sectors.<sup>174</sup>

Generally, there are several ways of implementing socially responsible policies within a company, but each share at least two key elements. First, the general aim of social responsibility is to create awareness within the industry.<sup>175</sup> For instance, the Radisson hotel in Roseville, Minnesota, began training its employees to know “what to look for and what to do if [they] suspect that their guest rooms are being used for illicit sex.”<sup>176</sup> Second, these civil society prevention programs aim to guide businesses in developing their own policies and guidelines.<sup>177</sup> The United Nations World Tourism Organization (UNWTO), for example, developed a task force that meets bi-annually to educate stakeholders in tourism development.<sup>178</sup> In addition to developing directives the UNWTO created an international task force made up of representatives from governments, NGOs, and the tourism industry to engage in international awareness campaigns for the prevention and eradication of child exploitation.<sup>179</sup>

### 1. *Corporate Social Responsibility in the Hotel and Travel Industry*

There have been a number of initiatives that highlight the links between hotels and other travel businesses and the social

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launch of the Code); *id.* at 107 (discussing UNICEF’s role as a supporting agency of the Code).

174. OECD, *supra* note 164, at 238.

175. Tepelus, *supra* note 85, at 104.

176. Laura Yuen, *Law Enforcement, Hoteliers Join Against Sex Trafficking*, MPR NEWS (Aug. 24, 2012), <http://minnesota.publicradio.org/display/web/2012/08/24/crime/hotels-fight-sex-trafficking>. See *infra* Part III.C.1 for a discussion of how a leading hotel brand chain has taken proactive steps to confront the challenge of human trafficking.

177. *Indicators of Sustainable Development for Tourism Destinations*, UNITED NATIONS WORLD TOURISM ORG. (Oct. 9, 2003), available at <http://unwto.org/en>. See also Tepelus, *supra* note 85, at 107 (explaining the UNWTO’s involvement in promoting sustainable tourism).

178. *Indicators of Sustainable Development for Tourism Destinations*, *supra* note 173. See also Tepelus, *supra* note 85, at 107 (discussing the UNWTO’s task force).

179. THE CODE, *supra* note 12, at 5.

issue of child sex trafficking. In 1996, the Campaign to End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes (ECPAT), an international nongovernmental organization with representation in over fifty countries and founded by social workers in various countries in South-East Asia, called the first open international forum on child exploitation and the global economy in Stockholm.<sup>180</sup> Representatives from 122 countries participated in this first World Congress against Commercial Sexual Exploitation of Children.<sup>181</sup> In its Declaration and Agenda for Action, the Congress concluded the private tourism sector could contribute to eradicating child exploitation stating, “[p]rofessionals working *within the tourism industry* have unique possibilities to observe, increase awareness of and report on the commercial sexual exploitation of children.”<sup>182</sup>

Since the first World Congress in Stockholm, various voluntary measures have been taken to eliminate child sex trafficking in the tourism industry.<sup>183</sup> Many tourism organizations have since adopted tourism policy documents or codes of conduct against commercial child exploitation. These include, among others: The Code of Conduct against the Sexual Exploitation of Children of the International Federation of Tour Operators (IFTO); The Resolution against the sexual exploitation of children of the International Hotel and Restaurants Association (IH&RA); The Resolution against Sex Tourism of the International Federation of Women’s Travel Organizations (IFWTO).<sup>184</sup>

Several of these initiatives require members to initiate staff training, distribution of information, and establishment of codes of conduct within their organizations.<sup>185</sup> Education can influence outcomes for trafficked children. For example, hotel employees in Minnesota have received training on how to spot sex trafficking.<sup>186</sup> There were nineteen arrests for juve-

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180. *Id.* at 4.

181. *Id.*

182. *Id.* at 5 (quoting The Swedish Draft Plan of Action 1997).

183. *Id.* at 7.

184. *Id.*

185. *Id.*

186. Scott Carlson, *Stopping Sex Trafficking: A Roseville Hotel Showed How it Can be Done*, ROSEVILLE PATCH (Aug. 23, 2012), <http://roseville.patch.com/>

nile sex trafficking in the state in 2012.<sup>187</sup> At least one prosecution was the result of a hotel manager reporting suspicious behavior. The hotel industry can make a difference in combating trafficking. Hotel workers are taught to recognize suspicious conduct and to tip off law enforcement authorities. Guests who pay cash, come without luggage, or repeatedly refuse the hotel room to be cleaned are practices of sex traffickers.<sup>188</sup> Employees that staff the front desk are encouraged to look for visual cues, such as youth made to appear older or who look fearful.<sup>189</sup> In addition to hotels, some training programs target the transportation industry. For example, every licensed driver in New York City must watch a training video on sex trafficking awareness before they can proceed with their new or renewal license application.<sup>190</sup>

Particularly, the Code designed in 1998 by ECPAT, UNICEF, and the UNWTO to prevent sexual the exploitation of children at tourism destinations, such as hotels, airlines, and travel agencies, is unique in its explicit and early appeal to the rights contained in the CRC.<sup>191</sup> The Code has become the gold standard for CSR in the travel and tourism industry as it builds upon the previous initiatives. Through its clear and simple criteria, the Code creates transparency and accountability in the corporation's CSR initiative. To date, the Code has only been implemented by forty companies globally; however, those forty companies are estimated to reach 30 million tourists per year.<sup>192</sup> Still, too many corporations are missing the opportunity to contribute to the change. By adopting the

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groups/politics-and-elections/p/roseville-hotel-host-to-initiative-against-sex-trafficking.

187. Rochelle Olson, *Hotel Employees Get Training in Spotting Sex Trafficking*, STAR TRIBUNE (Jan. 8, 2013), <http://www.startribune.com/local/minneapolis/186103701.html>.

188. *Id.*

189. Tanya Mohn, *The Travel Industry Takes on Human Trafficking*, N.Y. TIMES (Nov. 8, 2012), [http://www.nytimes.com/2012/11/09/giving/the-travel-industry-takes-on-human-trafficking.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/11/09/giving/the-travel-industry-takes-on-human-trafficking.html?pagewanted=all&_r=0).

190. *See Sex Trafficking Awareness Training*, NYC TAXI AND LIMOUSINE COMM'N, [http://www.nyc.gov/html/tlc/html/industry/training\\_video\\_sex\\_trafficking.shtml](http://www.nyc.gov/html/tlc/html/industry/training_video_sex_trafficking.shtml) (last visited Oct. 11, 2013) (describing New York City Local Law 36).

191. THE Code, *supra* note 10, at 5.

192. *Id.* at 3.

Code, organizations voluntarily commit themselves to implement the following six measures:

- (1) to establish a corporate ethical policy against commercial sexual exploitation of children;
- (2) to train the personnel in the country of origin and travel destinations;
- (3) to introduce clauses in contracts with suppliers, stating a common repudiation of sexual exploitation of children;
- (4) to provide information to travellers through catalogues, brochures, in-flight films, ticket-slips, websites, etc.;
- (5) to provide information to local “key persons” at destinations [,including law enforcement]; and
- (6) to report annually.<sup>193</sup>

Generally, the six criteria of the Code require that tourism organizations set up a company policy against commercial sexual exploitation of children. Specifically, it requires that businesses train all personnel on the contents of the code of conduct to bring awareness to the staff as part of the service quality system. The Code specifies that businesses must require their suppliers to stipulate to the commitments against the sexual exploitation of children in relation to their activities. Additionally, the Code requires that organizations provide information to guests and employees by means such as catalogues and brochures, to inform them of any tips and hotlines to report suspicions of child sex trafficking to local key people. Finally, the Code encourages the business to report on an annual basis to their local ECPAT partner the ways they have implemented the Code of Conduct. The report is especially important for monitoring purposes but it also serves to share the challenges and achievements that businesses have encountered in their work to prevent child sex trafficking.

Through its implementation, the Code stands to benefit international and national tourism organizations that conduct business consistent with the requirements of the Code. Consistent with the call for business to respect human rights as set forth in the U.N. Framework and Guiding Principles on Busi-

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193. *Id.*

ness and Human Rights, adopting the Code provides businesses with a policy commitment to identify and prevent the violations of children's rights associated with trafficking. For instance, by adopting the Code, businesses are not associated with the child sex trade, but rather are actively engaged in preventing it. Adopting the Code provides clear guidelines for the company's employees and customers. It states the business's expectations with respect to children's rights and embeds practices that help prevent abuses throughout the business enterprise.

In order to adopt the Code, businesses must follow a three-phase procedure. First, the business must declare to the national ECPAT its interest in the Code of Conduct. Second, in preparation of adopting the Code, the business must establish a policy against commercial sexual exploitation of children, prepare a training program, prepare the information for the organization, and find a way to inform key persons. Finally, the business implements the six criteria of the Code

As the first global hotel and travel company based in the United States to sign the Code, Carlson has had an especially proactive approach to combating child sex trafficking in the travel and hospitality industry.<sup>194</sup> Initially, Carlson struggled with the decision to associate its name with the sensitive topic of child sex trafficking out of fear that it would create bad publicity towards the company.<sup>195</sup> However, the company decided it was more important to leverage its ability to impact the issue and the outcome was "just the opposite of what was feared."<sup>196</sup> Instead of criticism, Carlson has been applauded by stakeholders and in 2010, the former CEO and chairman was recognized by "End Human Trafficking Now" and U.N. Gift with the "Business Leader" award for her leadership.<sup>197</sup>

The Carlson company is comprised of such brands including Radisson, Country Inn & Suites By Carlson, Park Inn by

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194. END HUMAN TRAFFICKING NOW, CASE STUDY: CARLSON'S EFFORTS TO COMBAT TRAFFICKING AND EXPLOITATION OF CHILDREN 4 (2012), *available at* <http://www.endhumantraffickingnow.com/wp-content/uploads/2012/08/Carlson-Case-Study.pdf>.

195. HOSPITALITY-ON, HOSPITALITY AWARDS: BEST INITIATIVE IN SUSTAINABLE DEVELOPMENT 4 (2011), *available at* <http://hospitality-on.com/fileadmin/imported/pdf/WHA2011-Carlson-3.pdf>.

196. *Id.*

197. END HUMAN TRAFFICKING NOW, *supra* note 190, at 4.

Radisson, Park Plaza, T.G.I. Friday's and Carlson Wagonlit Travel.<sup>198</sup> This means that, as a global leader in the travel and hospitality industry, Carlson provides service to over 150 countries with nearly 170,000 employees around the world.<sup>199</sup> Notably, three people that are each dedicated to combating child sex trafficking lead Carlson.<sup>200</sup> Under the leadership of Marilyn Carlson Nelson, chairman and former CEO of Carlson, the company was the first U.S. based travel and hospitality company to sign the Code.<sup>201</sup> As Ms. Nelson has stated, "Simply put, we committed ourselves to be a global army of eyes and ears, which is one of the very best weapons that we have to combat this injustice forced upon children."<sup>202</sup> Next, in 2010, Hurbert Joly, Carlson President and CEO, signed the Global Compact on behalf of the company to further demonstrate Carlson's commitment to human rights.<sup>203</sup> Joly said, "[s]igning the Global Compact . . . builds on [Carlson's] rich legacy as an organization that seeks to conduct its business in a socially responsible and caring fashion."<sup>204</sup> Finally, as the president of the Curtis L. Carlson Family Foundation, Barbara Carlson Gage, oversees the foundation's involvement in the protection of children's rights.<sup>205</sup>

Through their leadership, the company works to protect human rights with a very hands-on approach. Specifically, Carlson trains employees to recognize the risks associated with child sex exploitation.<sup>206</sup> For instance, Carlson bans all movies that involve sexual exploitation of a minor and the use of any company equipment for the viewing, storage, or distribution of child exploitation.<sup>207</sup> Moreover, Carlson has adopted an express policy to immediately terminate any employee and refer

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198. *Id.* at 2.

199. *Id.*

200. *See generally id.* (discussing the three leaders' efforts to combat sex trafficking).

201. *Id.* at 4.

202. *Id.* (quoting Marilyn Carlson Nelson, Chairman).

203. *Id.* at 5.

204. *Id.* at 10 (quoting Hubert Joly, Carlson's President and CEO).

205. *Id.* at 5–6.

206. EVELYN ZEMKE, CASE STUDY: CARLSON'S EFFORTS TO COMBAT TRAFFICKING AND EXPLOITATION OF CHILDREN 4 (on file with authors).

207. END HUMAN TRAFFICKING NOW, *supra* note 194, at 7.

the incident to the police if they are involved in sexual exploitation of a child.<sup>208</sup>

The company's training program has evolved over the years to a comprehensive Responsible Business training program where employees around the world are provided with a better understanding of how they can positively impact the community.<sup>209</sup> The training involves two modules: a mandatory three and a half hour comprehensive training session for all employees and a companion training session for managers that is an additional one and half hours.<sup>210</sup> Specifically, the training includes a ten-minute film clip from a documentary by Robert Bilheimer about trafficking and exploitation that was partially funded by the Carlson Family Foundation, titled "Not My Life."<sup>211</sup> The training also includes a video featuring various scenarios that could help employees identify suspicious activity involving children and discussion about how to properly report suspicious activity.<sup>212</sup> Moreover, Carlson supplements the training program with posters that raise awareness and helps employees identify critical situations.<sup>213</sup> For example, posters that have pictures of vulnerable children on them provide information to employees as reminder of who they should report suspicious activity to. In 2009, Carlson's efforts paid off when a hotel manager in Belize reported suspicious activity in a hotel and the suspect was apprehended by local authorities, extradited to the United States, and imprisoned for child trafficking.<sup>214</sup> In an instance closer to home, a hotel manager in Minnesota who had the benefit of training to identify trafficking victims tipped off law enforcement and the trafficker is serving a twenty-one year sentence.<sup>215</sup>

Despite Carlson's successes, many companies are hesitant to publicly associate their name with such a topic as appalling as child sex trafficking.<sup>216</sup> Some companies are concerned

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208. *Id.*

209. *Id.* at 8.

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. Carlson, *supra* note 182.

216. END HUMAN TRAFFICKING NOW, *supra* note 194, at 15.

their association with the sexual exploitation of children may damage their reputation, while other companies have merely refused to acknowledge the problem.<sup>217</sup> Carlson's commitment to eradicate child sex trafficking stands as an example to other U.S. companies where companies tend to be less aware of the fact that child sex trafficking is not only happening in developing countries. Using Carlson's example, other companies should recognize the urgent need for action and find the persistence to participate in the fight against the commercial sexual exploitation of children by adopting and implementing the Code.<sup>218</sup>

## 2. *Contributing to Change through Codes of Conduct*

An estimated one out of every sixteen workers in the world works to house, feed, transport, or entertain consumers.<sup>219</sup> If business enterprises within the tourism sector put into practice sufficient CSR policies, millions of workers worldwide would be equipped to enable the travel industry to combat the exploitation of children. Measures developed by these organizations can be effective if people who work within their structure know about the program and believe in the objectives.

First, awareness among the tourism industry—the thousands of individuals employed by these businesses and their customers—may be used to deter buyers from purchasing child sex by creating a real risk of being caught. When employees in the tourism sector are able to identify the trafficking victims and are encouraged to report problems to law enforcement, a potential abuser reassesses the risk of detection. For instance, the Chicago Alliance Against Sexual Exploitation (CAASE) initiated a research project in Chicago, Illinois to investigate the cognitive and behavioral patterns of men who purchase sex.<sup>220</sup> Of 113 men, 87% of them said that being recognized as someone who purchases sex would effec-

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217. *Id.*

218. There are at least twelve North American based corporations signed on to the Code including Delta Airlines, Hilton Worldwide, Wyndham Worldwide, and Carlson Hotels. *What We Do*, ECPAT – USA: END PROSTITUTION AND TRAFFICKING, <http://ecpatusa.org/wp/what-we-do/tourism-child-protection-code-of-conduct/> (last visited Mar. 9, 2013).

219. HECHT, *supra* note 40, at 9.

220. DURCHSLAG & GOSWAMI, *supra* note 64, at 2.



tively deter them from buying sex.<sup>221</sup> If buyers were aware that their hotel was on the alert for and was able to identify instances of child exploitation and sex trafficking, buyers may be even less inclined to risk the transaction in the first place.

Trafficked children are frequently held in hotel rooms against their will for long periods of time and forced to perform sex acts.<sup>222</sup> In one reported incident, a sex slave was imprisoned in a hotel room for almost two weeks.<sup>223</sup> If hotel staff and hospitality workers are trained in and are aware of the problems associated with child exploitation, they could have a better chance at recognizing it when it occurs, resulting in better outcomes for exploited children. For instance, after a manager at a Days Inn Motel reported her suspicions that a guest was running an escort service, the man was arrested and is now serving 21 years in prison for prostituting a 17-year-old girl.<sup>224</sup>

In addition to alerting law enforcement about abuses, the tourism sector is well situated to educate potential purchasers about the dangers of buying sex and the rights abuses associated with buying sex from children. Of the men who had admitted to purchasing sex in the CAASE study, 87% believed that sex workers, including children, freely chose to enter prostitution.<sup>225</sup> Moreover, 62% of the men interviewed thought that the majority of girls working in prostitution were fully informed about the sex trade before they entered, including the dangers and risks associated with it.<sup>226</sup> By promoting awareness about the realities of trafficking, including the extent of violence and harm suffered, buyers may be further deterred from buying child sex.

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221. *See id.* at 24 (finding that 87% of men interviewed would be deterred from buying sex if the consequence was that their name or photo would appear in the local newspaper).

222. *See* Tresa Baladas, *Child Sex Trafficking Bust Rescues 10 Youths, Arrests 18 Pimps in Metro Detroit*, DETROIT FREE PRESS (July 30, 2013), <http://www.freep.com/article/20130729/NEWS05/307290075/> (reporting rescue of adolescents forced into the sex trade and held in hotels).

223. Laura Shin, *Florida Woman Forced into Prostitution by Brooklyn Man She Met on Instagram*, METRO-N.Y. (July 16, 2013), <http://www.metro.us/new-york/news/2013/07/16/florida-woman-lured-to-nyc-by-brooklyn-man-forced-into-prostitution/> (reporting on trafficking victim locked in a hotel room and forced to have sex with multiple men for nearly two weeks).

224. Yuen, *supra* note 172.

225. DURCHSLAG & GOSWAMI, *supra* note 64, at 16.

226. *Id.*

Collectively, hotels and other tourism businesses can leverage their available resources and cooperate with law enforcement to make it more difficult and expensive for traffickers to travel and find places for transactions to take place. Fewer accommodation options and higher costs can translate into decreased efficiency, operational losses, and lost profits for pimps. For instance, if the collective work of businesses in the travel industry were able to increase operational cost and drop the net profit by only 10%, a trafficker would need to increase his prices by 24% to maintain their profits.<sup>227</sup> Clearly, the lack of efficiency or operational losses may not significantly decrease the demand for child sex trafficking, but *any* meaningful decrease in profits will work against the primary incentive that drives child sex trafficking.

Global brands beyond the tourism sector have recently teamed up in the fight against human trafficking and modern slavery. The Global Business Coalition Against Human Trafficking (gBCAT) was launched in 2012 to “mobilize the power, resources and thought leadership of the business community to end human trafficking, including all forms of forced labor and sex trafficking.”<sup>228</sup> A particular point of emphasis for the organization is sex trafficking, raising awareness of company policies to combat sex trafficking most notably in travel and tourism. However, gBCAT’s membership is made up of more than businesses in the travel and tourism sector as the organization “seeks to end forced labor by leveraging resources and engaging large-scale collective action against slavery.”<sup>229</sup> For example, in addition to Carlson, gBCAT members include the Manpower Group, Microsoft, Coca Cola, Delta Airlines, Ford, and Exxon Mobil.<sup>230</sup> Beyond the promulgation of codes, collaborations through coalitions that are working to end trafficking through multi-stakeholder initiatives that foster connections between businesses, governments, international organizations, nongovernmental organizations, and civil society for sharing solutions can offer constructive operational guidance to industry actors that are committed to becoming a part of

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227. KARA, *supra* note 1, at 213.

228. *Mission, Approach, Focus*, gBCAT, [http://www.gbcat.org/?page\\_id=34](http://www.gbcat.org/?page_id=34) (last visited Mar. 9, 2013).

229. *Corporate Brochure*, gBCAT, <http://www.gbcat.org/res/gbcat.pdf>.

230. *See* gBCAT, <http://www.gbcat.org> (last visited Oct. 18, 2013) (identifying these companies as “Members”).

the solution. Business enterprises that elect to collaborate across sectors and regions to combat human trafficking will find themselves in good company. To the extent that industry engages in corporate social responsibility efforts that fulfill the responsibility to respect and support the human rights of children, it may reap rewards.

### 3. *Competitive Advantage*

According to scholars Michael E. Porter and Mark R. Kramer of Harvard Business School, there are generally four arguments offered to justify CSR initiatives: (1) moral obligation, (2) sustainability, (3) license to operate, and (4) reputation.<sup>231</sup> First, the moral argument states that companies should “do the right thing.”<sup>232</sup> This perspective “asks that its members ‘achieve commercial success in ways that honor ethical values and respect people, communities, and the natural environment.’”<sup>233</sup> Second, the sustainability argument emphasizes a community stewardship, defined as “[m]eeting the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>234</sup> Third, the argument for license to operate derives from the notion that every corporation needs permission from government and communities to do business.<sup>235</sup> Consequently, corporations must meet the needs and expectations of external stakeholders beyond shareholders simply to retain the privilege to remain in business. Finally, the reputation argument maintains that CSR initiatives are worthy endeavors on the grounds that they will serve to “improve a company’s image, strengthen its brand, enliven morale, and even raise the value of its stock.”<sup>236</sup> For instance, corporations such as Ben & Jerry’s, Patagonia, and the

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231. Michael E. Porter & Mark R. Kramer, *The Link Between Competitive Advantage and Corporate Social Responsibility*, HARV. BUS. REV. 78, 81 (2006) (citing the mission statement of Business for Social Responsibility as “the leading non-profit CSR business association in the United States”).

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.* at 81–82.

236. *Id.* at 82.

Body Shop, have set themselves apart from their competitors through their commitments to social responsibility.<sup>237</sup>

Corporate social responsibility in the hotel and tourism industry is a strategic imperative.<sup>238</sup> Rankings and indices that measure CSR performance attract attention and influence consumer decision-making.<sup>239</sup> Consequently, CSR has become a priority for these businesses. The relative esteem the general consuming public has for a business or brand can impact profits and consumer choices to buy are influenced by perceptions.<sup>240</sup> Presumably, being associated with the child sex trade could adversely impact the reputation of a business and its returns.

The commitment to an anti-trafficking policy could ensure the safe operation of the company and the irreproachable conduct of its personnel at all levels, in turn demonstrating a high distinction of its business image.<sup>241</sup> Indeed, “it would build trust and develop good working relations, especially contacts between multinationals and local communities.”<sup>242</sup> Reputation as a trustworthy business and a good communicator facilitates more complex and long-term stakeholders and may enhance a corporation’s ability to outperform against its competitors by increasing revenue or reducing costs.<sup>243</sup> A good reputation can be enormously important to a company’s success. A 2009 study that analyzed 400 of America’s top corporations found that the company’s reputation generally ac-

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237. *See id.* at 83 (“A few corporations, such as Ben & Jerry’s, Newman’s Own, Patagonia, and the Body Shop, have distinguished themselves through an extraordinary long-term commitment to social responsibility.”).

238. Shuili Du et al., *Corporate Social Responsibility and Competitive Advantage: Overcoming the Trust Barrier*, 57 *MGMT. SCI.* 1528, 1528 (2011).

239. Porter & Kramer, *supra* note 231, at 78 (“Myriad organizations rank companies on the performance of their [CSR], and, despite sometimes questionable methodologies, these rankings attract considerable publicity.”).

240. For an analysis of how CSR affects financial outcomes of firms, see generally, Xueming Luo & C.B. Bhattacharya, *Corporate Social Responsibility, Consumer Satisfaction and Market Value*, 70 *J. MKTG.* 1, 1 (2006).

241. *Background Info on Human Trafficking*, BUSINESS LEADERS AWARD TO FIGHT HUMAN TRAFFICKING, <http://businessleaderaward.org/backinfo.htm> (last visited Nov. 8, 2013) (describing the gains corporations stand to acquire if they adopt an anti-trafficking policy).

242. *Id.*

243. Karen E. Schnietz & Marc J. Epstein, *Exploring the Financial Value of a Reputation for Corporate Social Responsibility During a Crisis*, 7 *CORP. REPUTATION REV.* 327, 329 (2005).

counted for 16% of its value.<sup>244</sup> Moreover, a good reputation is good for stock prices because it allows stakeholders to trust that the business is capable of delivering valued outcomes and competitors cannot imitate having a good reputation with stakeholders.<sup>245</sup> In short, “reputations have considerable hidden value as a form of insurance” by providing competitive advantage among competitors.<sup>246</sup> For instance, “[t]hirty hospitality and travel brands listed in the Fortune Corporate Reputation Index have reported a strong correlation between CSR and their bottom-line.”<sup>247</sup>

a. *Consumer Loyalty*

Based on focus groups and a quantitative field survey, companies with a CSR initiative that engages its employees or consumers result in a greater consumer trust—even in non-leading brands.<sup>248</sup> This indicates that consumers who trust a business are more likely to be loyal customers.<sup>249</sup> Consumers have a choice when it comes to travel and may choose to do their business with businesses that are dedicated to protecting children. This research also indicates that by developing a CSR policy, businesses get more favorable behavioral reactions among consumers.<sup>250</sup> Additionally, research demonstrates that “a brand’s CSR initiative offers a competitive advantage when it addresses a key concern of the brand’s consumers and necessitates their active participation rather than having them be passive beholders.”<sup>251</sup> The child sex trade in the United States is an emerging issue around which there is growing awareness. Taking action today could yield reputational returns to-

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244. GLOBAL CORPORATE REPUTATION INDEX, app. 2, available at <http://old.fas.org/Index/Summary.aspx> (last visited Nov. 15, 2013).

245. Schnietz & Epstein, *supra* note 243.

246. *Id.* (internal quotation marks omitted).

247. Chia-Chun Saprina Chiang, *How Corporate Social Responsibility Influences Employee Job Satisfaction in the Hotel Industry* (Apr. 1, 2010) (professional paper, University of Nevada, Las Vegas) 4, available at <http://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=1599&context=thesesdissertations>.

248. Du et al., *supra* note 238, at 4–5.

249. *Id.* at 4 (explaining that in social psychology research, “trustworthiness . . . has been shown to be the single most important characteristic” in interdependent relationships).

250. *Id.* at 13.

251. *Id.*

morrow. By adopting a code of conduct—such as the Code—and collaborating with stakeholders, businesses who set a tone that is committed to respecting and supporting the human rights of children will stand in good company in position to gain a competitive advantage over those businesses that lag behind.

b. *Employee Satisfaction*

Additionally, having a trustworthy and socially responsible brand can likely increase employee satisfaction and reduce employee turnover. Indeed, “[i]t is widely recognized that the hotel industry has a relatively higher employee turnover rate than other industries do.”<sup>252</sup> Moreover, researchers estimate that the cost of turnover in the hospitality industry is approximately \$5,000 in lost productivity and earnings.<sup>253</sup> Therefore, to avoid costs associated with employee turnover and decrease employee turnover rates, it should be essential for the hotel industry to prioritize CSR in its business.

People want to work for companies that care about their customers, employees, and the community because they want the sense that they are being valued and respected.<sup>254</sup> Moreover, when businesses fulfill their employees’ expectations as a socially responsible organization, it encourages employees to have better work attitudes, an increased sense of purpose, and a pride in the organization. CSR can also help generate a sense of belonging among employees and enhance their self-esteem by providing them an opportunity to help others in the community.<sup>255</sup> This increase in employee satisfaction creates a stronger commitment to the organization, which increases retention and productivity. Moreover, research demonstrates that a corporation’s commitment to CSR has become a beneficial factor in recruiting prospective employees.<sup>256</sup> Therefore, it is important to understand that by improving employee morale and organizational commitment, CSR can help create greater profit and growth.

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252. Chiang, *supra* note 247, at 10.

253. *Id.*

254. *Id.* at 4.

255. *Id.* at 19.

256. *Id.* at 4.

#### D. *Caveats and Concerns*

To the extent there are any drawbacks associated with the adoption and implementation of the Code, the primary challenges seem to include producing only minimal social impact and receiving skepticism from consumers rather than loyalty. In the literature, these drawbacks have been associated primarily with those corporations that have treated CSR as a cosmetic fixture or public relations stunt rather than those corporations demonstrating sustained commitment.<sup>257</sup> Similarly, the types of CSR initiatives that merely make consumers aware of the social issue, but do not offer any real information regarding the business's role in eliminating that issue yield minimal benefit.<sup>258</sup>

Indeed, as one commentator has stated, “[p]erceiving social responsibility as building shared value rather than as damage control or as a PR campaign will require dramatically different thinking in business. We are convinced, however, that CSR will become increasingly important to competitive success.”<sup>259</sup> Similar research suggests that many top hospitality companies including Marriott, Hilton, Starwood, and Choice Hotels often share their CSR information on their company websites.<sup>260</sup> Therefore, businesses can likely avoid these drawbacks by being clear about the hotel's role in eliminating child sex trafficking, engaging consumers in the process, and adopting a policy that creates accountability in the corporation, such as the Code.

For any business, the commitment to long-term economic well-being is imperative, and one major strategy to accomplish this is to have a competitive advantage over rival corporations. Thus, for many leading businesses, CSR is not merely an ethical response to society, but it is a strategy to achieve certain business objectives while at the same time bettering the world.<sup>261</sup> In line with this perspective, more and more corpora-

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257. Porter & Kramer, *supra* note 231, at 82.

258. *See id.* at 83 (“[F]or these companies, the social impact achieved, much less the business benefit, is hard to determine. Studies of the effect of a company's social reputation on consumer purchasing preferences or on stock market performance have been inconclusive at best.”).

259. *Id.* at 92.

260. Chiang, *supra* note 247, at 4.

261. Du et al., *supra* note 238, at 1.

tions are engaging in CSR initiatives that are connected to their business dealings. Businesses have begun to realize that a competitive advantage and growth in profitability are dependent upon their reaction to the social and environmental consequences of how business is conducted.<sup>262</sup> The business community can create an inhospitable environment for those engaged in the illicit business of child sex trafficking. While some in the tourism and travel industry have demonstrated strong leadership, there are still too many laggards that have not committed to the Code or joined in the efforts of gBCAT.

One reason businesses in the travel industry have not applied CSR initiatives consistently is their lack of appreciation of the myriad of issues associated with child sex trafficking. In a 2009 ‘Private Sector Survey on Human Trafficking’ conducted by the U.N. Global Compact and UNGIFT, “less than 20% of participants indicated that human trafficking posed a serious threat . . . and only 31% identified being motivated to address human trafficking in order to manage risk and maintain the company’s reputation.”<sup>263</sup> These statistics clearly demonstrate that there needs to be more education of industry actors to enable them to identify adverse human rights impacts consistent with business responsibility to respect human rights as set forth in the U.N. Guiding Principles. More companies must critically examine the relationship between child sex trafficking and business activities.<sup>264</sup>

#### CONCLUSION

No corporation can solve society’s problems alone, but each company can help to promote human rights protection by identifying those issues that intersect with its core business and work toward solving those problems. This means each corporation needs to account for the social issues that have the most potential impact and set clear goals. Indeed, “[t]he essential test that should guide CSR is not whether a cause is

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262. Chiang, *supra* note 247, at 4.

263. UNITED NATIONS GLOBAL COMPACT ET AL., HUMAN TRAFFICKING: EVERYBODY’S BUSINESS (2009), available at [http://www.unglobalcompact.org/docs/news\\_events/9.1\\_news\\_archives/2009\\_03\\_27/Story\\_Survey\\_Final.pdf](http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2009_03_27/Story_Survey_Final.pdf).

264. *See id.* (discussing how “the connection between human trafficking and business has yet to be sufficiently recognized by most companies” and the consequences that result from this).



worthy but whether it presents an opportunity to create shared value—that is, a meaningful benefit for society that is also valuable to the business.”<sup>265</sup> Accordingly, many leading companies, such as Carlson, are starting to recognize the value of intangible assets such as a good reputation or trust in the community. By developing a transparent CSR policy against child sex trafficking that engages consumers and develops good communication with the community, the hotel and tourism sector can gain a good business reputation. In turn, they may develop further trust and commitment from consumers, giving them a competitive advantage among competitors.

As long as individuals in the community are willing to purchase sex from children, these investigative challenges must be overcome. Law enforcement officers are rarely the first to detect or come in contact with child sex trafficking victims. Successful training initiatives are those that involve multiple disciplines and a variety of professionals.<sup>266</sup> Accordingly, it is imperative that all that encounter these children are educated. For example, in preparation of the 2011 Super Bowl in Indianapolis, human rights organizations and law enforcement together reached out to 220 hotels within a 50-mile radius of the football stadium.<sup>267</sup> During the game, two victims were rescued and reunited with their families, including one victim that had been trafficked for five years.<sup>268</sup> This demonstrates that with a clear and consistent plan, the private sector can successfully supplement law enforcement’s efforts through their CSR initiatives. If corporations were to analyze their prospects for socially responsible business practices using core business strategies, they would discover that CSR could be more than just a public relations tactic or charitable obligation. CSR can be a great opportunity for innovation and competitive advantage. By adopting a socially responsible policy against child sex trafficking, such as the Code, hotels and other travel businesses can (1) avoid the legal risks associated with child sex trafficking; (2) increase employee satisfaction; and (3) help gain a competitive advantage with a good business reputation.

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265. Porter & Kramer, *supra* note 231, at 84.

266. SMITH ET AL., *supra* note 3, at 64.

267. ECPAT USA, *supra* note 42.

268. *Id.*

Child sex trafficking is a business, and for *any* business to be successful, it requires a supply and demand.<sup>269</sup> In order to upset the business of sex trafficking, the supply *and* demand must be decreased.<sup>270</sup> Although the hotel and tourism industry cannot change the sexual desires of buyers, they can help decrease the demand by decreasing the number of buyers and increasing the risks of getting caught by police. There needs to be a more collective effort to investigate and punish child sex traffickers, particularly with severe economic penalties that negate the underlying purpose of the crime.<sup>271</sup> Moreover, there needs to be an aggregate effort to attack the demand created by the buyers to begin eliminating child sex trafficking.<sup>272</sup> Indeed, “if we don’t work to stem the demand for young women’s bodies in the sex trade industry, that demand will continue to be met by coercion, violence, and exploitation of vulnerable young girls.”<sup>273</sup> This means the travel and tourism industry has an especially advantageous position to help combat child sex trafficking because of the vast number of employees working in the hotel and tourism industry.

Accordingly, it follows that hotels and the travel industry should develop CSR initiatives against child sex trafficking, because whether by commission or omission, the travel industry is involved in the sexual exploitation of children.<sup>274</sup> Many travel businesses, especially hotels, can take active measures to condemn the exploitation of children while simultaneously ensuring their business complies with international human rights norms. Even with no clear link to sexual exploitation, the private tourism and travel sector could play an important role in its elimination because it can help strengthen its brand and improve employee satisfaction.

While globalization contributes to the increased supply of child sex slaves, it may also be utilized in the efforts to elimi-

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269. Kara, *supra* note 4.

270. *See id.* (discussing the need to decrease demand).

271. *Id.*

272. *Id.*

273. DURCHSLAG & GOSWAMI, *supra* note 216, at 5 (quoting Jody Raphael, former executive director of the Chicago-based Center for Impact Research).

274. *See* HECHT, *supra* note 40, at 4 (discussing the travel industry’s role in undermining the first World Congress against the Commercial Sexual Exploitation of Children).

nate child sex trafficking. Children at risk may be identified and better protected by developing procedures that create awareness and educate people.<sup>275</sup> Implementing awareness campaigns and codes of conduct within national and international corporations could create the united efforts necessary to educate and teach people to recognize the crime of child sex trafficking when it occurs. Accordingly, with policies in place, increased awareness, and the availability of more knowledgeable people, there could be increased reporting and prosecution of child sex trafficking.

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275. See SMITH ET AL., *supra* note 3, at 45 (noting the importance of developing identification procedures).