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The Not-So-Risky Business of High-End Escorts and the Internet in the 21st Century

Robert R. Rigg

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AND THE INTERNET IN THE 21ST CENTURY

Robert R. Rigg

ABSTRACT

The advent of the Internet has changed the advertising and marketing of prostitution. This advertising and marketing has expanded greatly since the days of advertisements in newspaper classifieds, as seen in the movie, Risky Business. Today, Internet websites allow escorts much greater exposure.

This Article focuses on “high-end” escorts—escorts charging more than $500 per act or session. These service providers use the Internet in ways different than their low-end or mid-range counterparts. These high-end escorts have sophisticated websites, geared toward discretion—for both the provider and client.

Criminal law has begun focusing on escorts who use the Internet for advertising and the websites that provide them a forum. Prosecution can be difficult, though. This Article addresses online prostitution and suggests enforcement measures for the current state of the law in regards to the use of the Internet by escorts.

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I. INTRODUCTION

Prostitution has been referred to as the “‘world’s oldest profession.’”¹ As a “service” industry it fills specific human needs, but most states have nevertheless condemned it by criminalizing both the act and those who solicit the provider.² The cost of the service varies widely for various “acts.” For the purpose of this Article the “service providers” are divided into

¹ See United States v. Brouillette, 478 F.2d 1171, 1173 (5th Cir. 1973). Prostitution is defined as “[t]he act or practice of engaging in sexual activity for money or its equivalent.” BLACK’S LAW DICTIONARY 1259 (8th ed. 2004).

² See e.g., FLA. STAT. ANN. §§ 796.07(2)(e), (i) (West 2007); N.Y. PENAL LAW §§ 230.00, 230.04 (McKinney 2008); TEX. PENAL CODE ANN. §§ 43.02(a), (c) (Vernon 2003 & Supp. 2009).
three categories: low-end, mid-range, and high-end providers for Chicago, Illinois, and its suburbs. Chicago was also selected because it was the setting of the movie Risky Business and because of litigation by the Cook County Sheriff against Craigslist, an Internet website frequently used by service providers.

As this Article illustrates, the division of providers using the Internet also fits within the price categories listed above. Since the advent of the Internet, “street” prostitutes and brothels have engaged in more sophisticated advertising and marketing. As the title suggests, this Article focuses on “high-end” escorts and their use of the Internet.

A. Risky Business

The story line for the 1983 movie Risky Business is straightforward. Tom Cruise’s character, Joel, is trying to get accepted into Princeton. Besides lusting after admission to Princeton, Joel is seeking a sexual encounter. When Joel’s parents leave for a vacation—leaving him home alone in the Chicago suburbs—he decides to solicit a prostitute. He responds to an ad he finds in the newspaper and ultimately gets the fateful number of Lana, played by Rebecca De Mornay. A night of passion ensues with Lana; unfortunately for Joel, though, so does a final bill. When he cannot pay the bill his parents’ house is burglarized by Guido the “killer pimp.” Nevertheless, Joel and Lana continue to spend time together. Events take a turn for the worse, though, when while the two are out one evening, Joel’s father’s Porsche ends up in Lake Michigan. All ends well, though, when Lana and Joel organize a successful brothel operation in his parents’ home, making lots of money and entertaining an admissions officer from Princeton. After a long night working, Lana takes Joel on a train ride that culminates in

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3 Providers charging up to $250 per act or session.

4 Providers charging between $250–$500 per act or session.

5 Providers charging $500 or more per act or session.


7 RISKY BUSINESS (The Geffen Company 1983).

8 Id.

9 Id.

10 Id.

11 Id.

12 Id.

13 Id.

14 Id.

15 Id.
steamy romantic scene.\textsuperscript{16} The movie culminates with Joel’s admission to Princeton and establishment as an “enterpriser.”\textsuperscript{17}

B. State Laws and Prostitution

In regards to Joel and Lana, the characters in \textit{Risky Business}, what state laws were violated in their initial meeting? Since the move takes place in a suburb of Chicago, the Illinois statutes would apply. Illinois defines prostitution as:

Any person who performs, offers or agrees to perform any act of sexual penetration . . . for any money, property, token, object, or article or anything of value, or any touching or fondling of the sex organs of one person by another person, for any money, property, token, object, or article or anything of value, for the purpose of sexual arousal or gratification commits an act of prostitution.\textsuperscript{18}

The fictitious character, Lana, clearly violated the Illinois statute and would be subject to prosecution.\textsuperscript{19} Joel and Lana could also be prosecuted for solicitation under Illinois law; Joel for the original solicitation of Lana and the subsequent recruitment of Lana’s friends. The statute provides:

Any person who offers a person not his or her spouse any money, property, token, object, or article or anything of value to perform any act of sexual penetration . . ., or any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification, commits the offense of solicitation of a sexual act.\textsuperscript{20}

However, this does not include the conspiracy count that could be added to the prosecution regarding Joel and Lana’s scheme to make some quick cash:

A person commits conspiracy when, with intent that an offense be committed, he agrees with another to the commission of that offense. No person may be

\textsuperscript{16} Id.
\textsuperscript{17} Id.
\textsuperscript{18} 720 ILL. COMP. STAT. ANN. 5/11-14(a) (West 2002). Sexual penetration is defined as:

[a]ny contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person, or any intrusion, however slight, or any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

\textsuperscript{19} See \textit{RISKY BUSINESS}, supra note 14.
\textsuperscript{20} § 5/11-14.1(a).
convicted of conspiracy to commit an offense unless an act in furtherance of such agreement is alleged and proved to have been committed by him or by a co-conspirator.\textsuperscript{21}

Additionally, multiple counts of pandering could be tacked onto the characters’ charges. Pandering is defined as:

Any person who performs any of the following acts for any money, property, token, object, or article or anything of value commits pandering:

. . . .

Arranges or offers to arrange a situation in which a person may practice prostitution.\textsuperscript{22}

With multiple counts and incidents, our characters would be facing significant prison time, not an ongoing business venture or matriculation at Princeton.\textsuperscript{23} Since the making of the movie in 1983, the Internet has come into play as a marketing tool for the sex industry, complicating the enforcement of existing state statutes.

C. The Internet

For those of us who grew up in the Sixties watching episodes of Star Trek, few probably imagined that developments in technology would result in a revolution in communication and information. The Internet, in large part, is responsible for that revolution.

The Internet is “a network connecting many computer networks and based on a common addressing system and communications protocol called TCP/IP (Transmission Control Protocol/Internet Protocol).”\textsuperscript{24} The Internet has grown beyond its academic origin and today connects millions of computers worldwide.\textsuperscript{25} The World Wide Web is the Internet’s most important component and enables simple navigation of Internet sites.\textsuperscript{26}

The Internet originated in the 1960s in a United States Department of Defense program designed to provide a secure communications network for defense-related research.\textsuperscript{27} Researchers in other fields began to use the network and eventually the National Science

\textsuperscript{21} Id. § 5/8-2(a).
\textsuperscript{22} Id. § 5/11-16(a)(2).
\textsuperscript{23} See RISKY BUSINESS, supra note 20.
\textsuperscript{24} THE NEW ENCYCLOPEDIA BRITANNICA 354 (15th ed. 2002).
\textsuperscript{25} Id.
\textsuperscript{26} Id. These sites provide services such as electronic mail, file transfer, bulletin board and newsgroup access, and remote computer access. Id.
\textsuperscript{27} Id. at 354–55.
Foundation took over a large part of the government’s TCP/IP technology and established a network of networks that was capable of handling much greater traffic.\footnote{See id. at 355.}

The United States Supreme Court described the Internet in 1997:

> The Internet is an international network of interconnected computers. It is the outgrowth of what began in 1969 as a military program called “ARPANET,” which was designed to enable computers operated by the military, defense contractors, and universities conducting defense-related research to communicate with one another by redundant channels even if some portions of the network were damaged in a war. While the ARPANET no longer exists, it provided an example for the development of a number of civilian networks that, eventually linking with each other, now enable tens of millions of people to communicate with one another and to access vast amounts of information from around the world. The Internet is “a unique and wholly new medium of worldwide human communication.”

> The Internet has experienced “extraordinary growth.” The number of “host” computers—those that store information and relay communications—increased from about 300 in 1981 to approximately 9,400,000 by the time of the trial in 1996. Roughly 60% of these hosts are located in the United States. About 40 million people used the Internet at the time of trial, a number that is expected to mushroom to 200 million by 1999.

> Individuals can obtain access to the Internet from many different sources, generally hosts themselves or entities with a host affiliation. Most colleges and universities provide access for their students and faculty; many corporations provide their employees with access through an office network; many communities and local libraries provide free access; and an increasing number of storefront “computer coffee shops” provide access for a small hourly fee. Several major national “online services” such as America Online, CompuServe, the Microsoft Network, and Prodigy offer access to their own extensive proprietary networks as well as a link to the much larger resources of the Internet. These commercial online services had almost 12 million individual subscribers at the time of trial.

> Anyone with access to the Internet may take advantage of a wide variety of communication and information retrieval methods. These methods are constantly evolving and difficult to categorize precisely. But, as presently constituted, those most relevant to this case are electronic mail (e-mail), automatic mailing list services (“mail exploders,” sometimes referred to as “listservs”), “newsgroups,” “chat rooms,” and the “World Wide Web.” All of these methods can be used to transmit text; most can transmit sound, pictures, and moving video images. Taken together, these tools constitute a unique medium—known to its
users as “cyberspace”—located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet.

E-mail enables an individual to send an electronic message—generally akin to a note or letter—to another individual or to a group of addressees. The message is generally stored electronically, sometimes waiting for the recipient to check her “mailbox” and sometimes making its receipt known through some type of prompt. A mail exploder is a sort of e-mail group. Subscribers can send messages to a common e-mail address, which then forwards the message to the group’s other subscribers. Newsgroups also serve groups of regular participants, but these postings may be read by others as well. There are thousands of such groups, each serving to foster an exchange of information or opinion on a particular topic running the gamut from, say, the music of Wagner to Balkan politics to AIDS prevention to the Chicago Bulls. About 100,000 new messages are posted every day. In most newsgroups, postings are automatically purged at regular intervals. In addition to posting a message that can be read later, two or more individuals wishing to communicate more immediately can enter a chat room to engage in real-time dialogue—in other words, by typing messages to one another that appear almost immediately on the others’ computer screens. The District Court found that at any given time “tens of thousands of users are engaging in conversations on a huge range of subjects.” It is “no exaggeration to conclude that the content on the Internet is as diverse as human thought.”

The best known category of communication over the Internet is the World Wide Web, which allows users to search for and retrieve information stored in remote computers, as well as, in some cases, to communicate back to designated sites. In concrete terms, the Web consists of a vast number of documents stored in different computers all over the world. Some of these documents are simply files containing information. However, more elaborate documents, commonly known as Web “pages,” are also prevalent. Each has its own address—“rather like a telephone number.” Web pages frequently contain information and sometimes allow the viewer to communicate with the page’s (or “site’s”) author. They generally also contain “links” to other documents created by that site’s author or to other (generally) related sites. Typically, the links are either blue or underlined text—sometimes images.

Navigating the Web is relatively straightforward. A user may either type the address of a known page or enter one or more keywords into a commercial “search engine” in an effort to locate sites on a subject of interest. A particular Web page may contain the information sought by the “surfer,” or, through its links, it may be an avenue to other documents located anywhere on the Internet. Users generally explore a given Web page, or move to another, by clicking a computer “mouse” on one of the page’s icons or links. Access to most Web pages is freely available, but some allow access only to those who have purchased the right from a commercial provider. The Web is thus comparable, from the readers’ viewpoint, to both a vast library including millions of readily available and indexed publications and a sprawling mall offering goods and services.
From the publishers’ point of view, it constitutes a vast platform from which to address and hear from a worldwide audience of millions of readers, viewers, researchers, and buyers. Any person or organization with a computer connected to the Internet can “publish” information. Publishers include government agencies, educational institutions, commercial entities, advocacy groups, and individuals. Publishers may either make their material available to the entire pool of Internet users, or confine access to a selected group, such as those willing to pay for the privilege. “No single organization controls any membership in the Web, nor is there any single centralized point from which individual Web sites or services can be blocked from the Web.”

One of the features of the Internet is its effect on marketing and advertising. This includes goods and services of a varied nature. The Internet democratizes marketing, allowing the unsophisticated to compete with the very savvy. It also allows for both legitimate and not-so-legitimate applications with very little—if any—regulation. The Internet has a myriad of uses; for example, academic institutions use the Internet for both marketing and application purposes. It should not be a surprise that such a powerful and readily-available tool would be used by the sex industry.

II. THE NOT-SO-RISKY BUSINESS IN THE 21ST CENTURY

Fast forward the clock to 2009 and the storyline in Risky Business becomes not only improbable, but laughable, because of technological advancements made with the Internet.

Today Cruise’s character, Joel, would simply get online and surf any number of websites featuring a list of escorts. Many of these websites provide a link for each escort, guiding the


30 For example, websites such as eBay and craigslist grant a seller almost complete control in the sale of his or her good or service.


user to the escort’s personal webpage. These personal webpages often include links to the escort’s own website.

An escort’s website may include a photo gallery, listing of rates, an interview or frequently asked questions, and, of course, scheduling. With a few computer strokes and

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33 See, e.g., id.


36 See, e.g., Sensual Cleo, Packages, http://web.archive.org/web/20080530095644/www.sensualcleo.com/packages.html (accessed by searching web address in the Internet Archive index). Rates for August 2009 included varied pricing based on three currencies—Canadian dollars, United States dollars, and Euros—and included instructions regarding payment. Id. The rates in the United States ranged from $500 for one hour to $5,000 for one weekend. Id.

37 See, e.g., Sensual Cleo, Interview, http://www.sensualcleo.com/interview.html (last visited Aug. 10, 2010). Questions include: “Do you provide incalls or outcalls?”; “How do I know you are discreet and that my privacy will be protected?”; “What gifts do you like?”; “What do you enjoy most about what you do?”; “Are the pictures on your site real?”; “Do you prefer I first contact you by phone or by email?”; and Are your packages negotiable? Id.

38 See, e.g., Sensual Cleo, Scheduling, http://www.sensualcleo.com/schedule.html (last visited Aug. 18, 2009). The following is a sample monthly schedule:

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mouse clicks, the rendezvous can be arranged. However, there is a reservation form that must be completed prior to the contact.\textsuperscript{39}

In order to avoid Guido the “killer pimp” and the fate of Elliot Spitzer,\textsuperscript{40} Joel would be wise to use an independent escort as opposed to an agency. Assuming Joel passes the screening employed by the escort, a twelve-hour encounter over an evening will cost three thousand dollars.\textsuperscript{41}

A. Internet Protection for Both Joel and the Service Provider

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\textit{Id.}

\textsuperscript{39} Sensual Cleo, Contact Me, http://www.sensualcleo.com/contact.html (last visited Aug. 18, 2009).

This is the exciting part where I get to know about you. Please take a moment to completely fill out my form and I’ll answer within a few hours. For a date in the U.S.A. if we have not met I will need 2 references from other independent providers including their web sites and email address’ or a proof of your employment (via a company web site with your name on it or a phone call to your office via the receptionist). Also, if your name can be goggled please let me know. If you are a member of preferred 411 or Date Check also kindly let me know the appropriate information.

\textit{Id.}

To set an appointment, a client needed to provide the following information: full legal name; age; height; weight; email address; occupation; city of residence; mobile phone number; best time to call; determination of where client would like to meet—incall, outcall, or fly provider to client; appointment date; appointment city; appointment length; desired appointment time; The Erotic Review (TER) username; information on how client found provider; and any additional information the provider should know. \textit{Id.}

For a date in the United States, the provider needed a client’s screening information, which could be provided in one of three ways: 1) a reference from two independent providers, 2) employment information; or membership in an online screening service such as Date-Check, RS2K, or Preferred411. \textit{Id.}


\textsuperscript{41} See e.g., Sensual Cleo, Packages, http://www.sensualcleo.com/packages.html (last visited Aug. 18, 2009) (noting a twelve-hour escapade—day or night—costs $3000).
Looking from the service provider’s viewpoint, there are several advantages to using the Internet. First, the high price alone tends to exclude less desirable clients, thus reducing the risk to the providers.

Second, although the screening mechanism used does not necessarily exclude law enforcement, it significantly reduces the likelihood of intervention by law enforcement. The application process not only requires verifiable information such as a business address and general phone numbers, it also asks for reference information, employment information, and verification through other Internet sites to verify the potential client is not law enforcement personnel or a threat to the provider’s business. In the website selected for this Article, the screening services are Date-Check, Preferred411, and RoomService2000 (RS2K). All three allow individuals to register with the website for a fee. The sites verify information about potential clients and approve the clients based on a background check. The service provider checks the verification with the website and then can elect to approve an appointment. This collateral industry has grown out of the concerns providers have with both law enforcement and personal concerns about their safety and welfare.

B. A Rational Choice

At the rate of $600 per hour-long session, a provider who works ten hours each week for fifty weeks a year would gross $300,000 per year. It would seem reasonable to assume providers are not declaring the income and paying taxes on it, giving additional heft to the gross income. If a provider enters into the profession at the age of twenty-five and leaves in fifteen years at the age of forty, gross earnings would total $4.5 million. This may be the extreme case, but it points out the huge economic incentive for some to become a service provider. By comparison, the average first-year salary of a social worker with a master’s degree is approximately $30,000.

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42 See supra note 42 and accompanying text.


44 Preferred411, http://www.preferred411.com/ (last visited Aug. 10, 2010). “Preferred411 is a screening service for those who seek only the most discreet experiences in upscale adult companionship. Id.


47 See, e.g., id. (last visited Aug. 10, 2010) (noting personal and employment information is checked, and “[a]ll applicants must be verified to our satisfaction”).

48 See id. (last visited Aug. 10, 2010).

49 See id. (last visited Aug. 10, 2010).
increasing to approximately $50,000 after twenty-five years of experience. Assuming a provider commands a pay level that allows her to charge $25,000 per weekend, in fives weekends she would quadruple the salary she would receive as an entry-level social worker. Even in the modern Risky Business scenario posed above, at $3,000 per twelve-hour session, a provider would take in an extra $15,000 after working five such sessions. So why not do both—take the social work job and become a part-time service provider?

The Internet has opened markets for escorts and service providers at a level never before approached. This seems especially true for a group of women who made a conscious and rational choice to become involved in the world’s oldest profession.

Professor Elizabeth Bernstein chronicled the sex industry in the opening chapter of her book Temporarily Yours: Intimacy, Authenticity, and the Commerce of Sex. The opening chapter starts:

In the back room of a discreetly furnished apartment in a quiet San Francisco neighborhood, I am sitting on a brown leather sofa talking with Amanda, who has just said goodbye to the day’s first customer. We drink tea as the early afternoon sunshine streams into the room, illuminating many overstuffed bookcases, an exercise bicycle, and Amanda herself—a slender woman in her late thirties with dark hair and serious eyes. Amanda is a former copy editor and a graduate of a prestigious East Cost university who has been working in the sex industry for six years. . . . Amanda goes on to explain that today’s client was a marketing executive for a prominent Silicon Valley software company.

Professor Bernstein’s Amanda may be representative of a class of service providers few would like to admit exist. CNBC interviewed a number of these service providers—women described as high-end escorts that often charge thousands of dollars at an hourly rate. The women were well-educated—a graduate school alum in one case. At the very high end, women are on the Internet, but are guarded about disclosure of information and ask clients not to rate them at the various rating websites. At this level, the clients and providers agree the

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53 Id. at 1.

54 Dirty Money: The Business of High-End Prostitution (CNBC television broadcast July 9, 2009).

55 See id.

56 Id.
encounters are more about companionship than sex.\(^{57}\) One interviewee indicated you have reached the high end “when you move away from the idea of thinking that you are working by the hour.”\(^{58}\) However, money is still the catalyst for the encounter, with rates as high as $25,000 per weekend.\(^{59}\) One woman stated 90% of her business is comprised of repeat clients.\(^{60}\) A former escort, Veronica Monet, described one weekend encounter as twelve hours of contact of which two hours were sex, ultimately costing the client $25,000.\(^{61}\)

In 2009, Professor Scott Cunningham and Todd D. Kendall wrote a paper entitled *Prostitution, Technology, and the Law: New Data and Directions*.\(^{62}\) The research that was the basis of the paper appears to be the only recent survey of service providers. The data generated supports the anecdotal evidence provided by the CNBC documentary and parts of Professor Bernstein’s research.

Professor Cunningham and Kendall’s research allows a look into the world of escorts:

In order to learn more about the business and sexual practices of sex workers who solicit online, we implemented a survey of sex workers between August, 2008 and June, 2009, known as the Survey of Adult Service Providers (“SASP”). We believe SASP represents the most comprehensive sampling of online workers to date, and by correcting for the inverse probability of appearing in the survey, it is unique in the literature in its efforts to address selection bias.

*[Prostitution, Technology, and the Law: New Data and Directions]* describe[s] the survey procedure in more detail and give[s] the full text of the questionnaire, but to summarize briefly, SASP was implemented by sending requests to all valid email addresses among TER-reviewed workers, supplemented with all sex workers who advertise on a popular national site for escort ads, eros.com. In the email, respondents were asked to click on a link that led them to the survey, hosted on Baylor University servers. Each email sent was associated with a randomly-generated string of characters, which allowed us to prevent multiple responses from the same email, while at the same time maintaining the anonymity of the survey, which we found to be a key factor driving participation.

\(^{57}\) See id.

\(^{58}\) Id.

\(^{59}\) Id.

\(^{60}\) Id.

\(^{61}\) Id.

We received valid responses from 685 respondents. In order to facilitate extrapolations to the population of sex workers who solicit online, we adjusted SASP responses using probability weights constructed from the distribution of age and race characteristics of all TER-reviewed workers and SASP respondents. To the extent that TER represents the best available portrait of the population of sex workers who solicit online in North America, this procedure allows us to use SASP to make general statements about the population. As a check on the validity of this assumption, we examined comparable questions between SASP and other surveys of sex workers (e.g., Church, et al., 2001, Milrod 2008), and found a close correspondence in sample averages.

The SASP data is organized into two files—a worker-level file based on responses to questions about personal characteristics and general practices, and a transaction-level file with data on the respondent’s (up to) five most recent client-session transactions.

. . . [S]ex work is highly compensated, with the average worker receiving $1,711 in weekly compensation. Around 25% of online prostitutes saw no customers during the last week, whether by choice or not. However, the average prostitute saw 4.1 different clients during the last week, of which 2.2 were “regulars”, that is, repeat customers. New clients represent potential risks for prostitutes, and so are considered less desirable as customers.

Careers appear to be relatively long among workers who solicit online, with the average respondent indicating around 5.5 years since her first entry into sex work. Nevertheless, unlike the common stereotype regarding prostitutes, our sample indicates that this class of sex workers are [sic] relatively likely to hold private health insurance (53%), be college graduates (41%), be married (13%), and have children (38%). That many online prostitutes appear to be relatively normal members of society may be due to the fact that a significant share appear to be “moonlighters”, with 43% indicating they hold a second job outside of sex work. As noted above nearly 59% of online prostitutes demand references from other sex workers before seeing a potential customer, while 67% use other forms of screening, including Room Service 2000.

. . . SASP confirms both the general level and trend of unprotected oral sex in TER. In SASP, which reflects online prostitution in late 2008 and early 2009, 51% of transactions involved unprotected oral sex, in comparison with 44% for 2006-2008 in TER . . . . Unprotected vaginal and anal sex, however, appears to be relatively uncommon, taking place in just 5.2% and 1.1% of all transactions, respectively. 5.7% of transactions involved some form of group sex, either with multiple sex workers or multiple clients. . . . [T]he average client of workers who solicit online was around 43 years old, and around 80% of these clients are White.

Overall, data from TER and SASP indicate that prostitutes who solicit online are quite different from those who operate on the street and come into contact frequently with
law enforcement. They are younger, more likely to be white, and appear to break the mold of typical prostitute stereotypes.63

III. THE LAW AND THE INTERNET

Existing state laws are inadequate and outdated when dealing with high-end escorts as described above. To run a sting on just one high-end escort would be very difficult; getting through the screening process most high-end service providers use would be arduous, if not impossible. The cost, even in our modern-day Risky Business scenario, would be prohibitive for most law enforcement agencies that are already cash strapped.

What, then, is the Achilles heel of high-end escorts? The answer was provided by a client quoted on the CNBC documentary: “There is no way this works without the Internet.”64 So how do you regulate Internet content? First, state and local governments are woefully unprepared to deal with the Internet. That leaves the federal government. The first and primary target must be the websites of the service providers. This could be extremely difficult given the fact the target is content of the website. Congress has attempted to control Internet content in the area of child pornography.65 It also has attempted to enact legislation with content limits in regard to obscene materials to minors.66

A statute enacted by any government—state, local, or federal—must be able to pass the constitutional test articulated in Miller v. California.67 Miller involved a California statute that prohibited unsolicited sexually explicit material.68 The Court articulated a three-prong test to measure statutes against the First Amendment:

The basic guidelines for the trier of fact must be: (a) whether “the average person, applying contemporary community standards” would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a


64 Dirty Money, supra note 57.


After the Communications Decency Act, Congress enacted the Child Pornography Protection Act in 1996 (CPPA), Child Online Protection Act in 1998 (COPA), and Child Internet Protection Act in 2000 (CIPA). All three laws were challenged, and the CPPA and COPA were found to be in violation of the First Amendment by the U.S Supreme Court.

Id.

66 Id. at 943, 958.


68 See id. at 18.
patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.69

The analysis employed in Miller makes it all but impossible to draft a statute that would prohibit most escort websites, much less the high-end providers, without running afoul of the First Amendment protections afforded print and, now, Internet. This is especially true given the website design of high-end providers. Most websites are tastefully done using professional photographers.70 The language describing services is carefully crafted and complies with current statutes.71 Websites for lingerie are sometimes as provocative as those of the service providers.72

The federal government has attempted to limit Internet content over the past two decades. In Reno v. ACLU, the United States Supreme Court found provisions of the Communications Decency Act (CDA) prohibiting transmission of indecent or obscene materials to persons under eighteen were facially overbroad.73 The Court found:

In contrast to Miller and our other previous cases, the CDA thus presents a greater threat of censoring speech that, in fact, falls outside the statute’s scope. Given the vague contours of the coverage of the statute, it unquestionably silences some speakers whose messages would be entitled to constitutional protection. That danger provides further reason for insisting that the statute not be overly broad. The CDA’s burden on protected speech cannot be justified if it could be avoided by a more carefully drafted statute.

We are persuaded that the CDA lacks the precision that the First Amendment requires when a statute regulates the content of speech. In order to deny minors access to potentially harmful speech, the CDA effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another. That burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve.

In evaluating the free speech rights of adults, we have made it perfectly clear that “[s]exual expression which is indecent but not obscene is protected by the First Amendment.” Indeed, Pacifica itself admonished that “the fact that society may find speech offensive is not a sufficient reason for suppressing it.”74

69 Id. at 24 (citations omitted).


74 Id. at 874–75 (citations omitted).
In 2002 the Court addressed a new statute that was enacted by Congress—the Child Online Protection Act (COPA). In Ashcroft v. ACLU (Ashcroft I), Justice Thomas, in writing for the Supreme Court, held the community standards provision of the statute did not render the statute overly broad. Justice Thomas, in comparing COPA to the CDA, noted:

COPA, by contrast, does not appear to suffer from the same flaw because it applies to significantly less material than did the CDA and defines the harmful-to-minors material restricted by the statute in a manner parallel to the Miller definition of obscenity. To fall within the scope of COPA, works must not only “depic[t], describ[e], or represen[t], in a manner patently offensive with respect to minors,” particular sexual acts or parts of the anatomy, they must also be designed to appeal to the prurient interest of minors and, “taken as a whole, lac[k] serious literary, artistic, political, or scientific value for minors.”

These additional two restrictions substantially limit the amount of material covered by the statute. Material appeals to the prurient interest, for instance, only if it is in some sense erotic. Of even more significance, however, is COPA’s exclusion of material with serious value for minors. In Reno, we emphasized that the serious value “requirement is particularly important because, unlike the ‘patently offensive’ and ‘prurient interest’ criteria, it is not judged by contemporary community standards.” This is because “the value of [a] work [does not] vary from community to community based on the degree of local acceptance it has won.” Rather, the relevant question is “whether a reasonable person would find . . . value in the material, taken as a whole.” Thus, the serious value requirement “allows appellate courts to impose some limitations and regularity on the definition by setting, as a matter of law, a national floor for socially redeeming value.” . . . [A] safeguard nowhere present in the CDA.

The Court confined its holding to the community standards language and did not address further concerns regarding the statute. The Court remanded the matter for further proceedings. Upon remand, the district court found a preliminary injunction should issue,

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77 Id. (footnotes and citations omitted).

While the CDA allowed juries to find material to be patently offensive so long as it depicted or described “sexual or excretory activities or organs,” COPA specifically delineates the sexual activities and anatomical features, the depictions of which may be found to be patently offensive: “an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast.”

Id. at 578 n.8 (citing 47 U.S.C. § 231(e)(6)(B) (2000)).

78 See id. at 566.

79 Id. at 586.
reasoning the ACLU would probably prevail on the merits.\textsuperscript{80} The Government appealed to the court of appeals, who affirmed the district court, and the Supreme Court again granted certiorari, leading to the decision in \textit{Ashcroft v. ACLU (Ashcroft II)}.\textsuperscript{81}

The Court enunciated the test to be used in evaluating the statute:

In considering this question, a court assumes that certain protected speech may be regulated, and then asks what is the least restrictive alternative that can be used to achieve that goal. The purpose of the test is not to consider whether the challenged restriction has some effect in achieving Congress’ goal, regardless of the restriction it imposes. The purpose of the test is to ensure that speech is restricted no further than necessary to achieve the goal, for it is important to ensure that legitimate speech is not chilled or punished. For that reason, the test does not begin with the status quo of existing regulations, then ask whether the challenged restriction has some additional ability to achieve Congress’ legitimate interest. Any restriction on speech could be justified under that analysis. Instead, the court should ask whether the challenged regulation is the least restrictive means among available, effective alternatives.\textsuperscript{82}

The Court concluded:

On a final point, it is important to note that this opinion does not hold that Congress is incapable of enacting any regulation of the Internet designed to prevent minors from gaining access to harmful materials. The parties, because of the conclusion of the Court of Appeals that the statute’s definitions rendered it unconstitutional, did not devote their attention to the question whether further evidence might be introduced on the relative restrictiveness and effectiveness of alternatives to the statute. On remand, however, the parties will be able to introduce further evidence on this point. This opinion does not foreclose the District Court from concluding, upon a proper showing by the Government that meets the Government’s constitutional burden as defined in this opinion, that COPA is the least restrictive alternative available to accomplish Congress’ goal.

On this record, the Government has not shown that the less restrictive alternatives proposed by respondents should be disregarded. Those alternatives, indeed, may be more effective than the provisions of COPA. The District Court did not abuse its discretion when it entered the preliminary injunction. The judgment of the Court of Appeals is affirmed, and the case is remanded for further proceedings consistent with this opinion.\textsuperscript{83}

\textsuperscript{80} ACLU v. Ashcroft, 322 F.3d 240, 271 (2003).

\textsuperscript{81} Ashcroft v. ACLU, 542 U.S. 656, 660 (2004).

\textsuperscript{82} \textit{Id.} at 666.

\textsuperscript{83} \textit{Id.} at 672–73.
With the Court making the above pronouncement on legislation enacted to protect minors, it is impossible to draft a statute that governs the content of websites operated by service providers resembling modeling or lingerie websites. So what about attacking the web locations such as Craigslist that allow service providers to advertise?

A. Craigslist Litigation

Although most high-end escorts do not use Craigslist as a platform for advertising, it is worth noting the litigation. The pervasive nature of Craigslist is documented in the Public Interest Law Reporter:

Craigslist is arguably the largest classified ad resource in the world. The company maintains individualized bulletin boards for 450 cities worldwide. Almost 50 million new classified ads are posted each month. Although Craigslist only employs approximately 30 people in its San Francisco offices, it enjoys the eighth-highest traffic ranking of any website in the United States and is the 29th most popular website in the world.

Users can find the controversial ads in Craigslist’s “Adult Services” section. The link is placed next to other service-for-money categories, such as legal, automotive, computer and real estate. All Craigslist users must agree to the site’s Terms of Use, which state in part: “You agree not to post, email, or otherwise make available Content . . . that advertises any illegal service . . .” To reach the “Adult Services” section, users must click through an additional disclaimer screen to verify that they are 18 or older.

Craigslist currently employs computerized word searches to automatically screen ads in the “Adult Services” section that are likely to violate the website’s Terms of Use. Law enforcement officials conducting searches of the site have found that this safeguard is not particularly effective; offending ads still abound.

Craigslist does not attempt to manually screen ads before they are posted; the company contends this would be a nearly impossible task, causing such long delays that their service would largely become unusable. Instead, the site depends heavily on user moderation to spot ads for illegal services.

Most ad pages have a button to flag the ad as inappropriate. Interestingly, ads in the “Adult Services” section do not have this option because they have been pre-screened by Craigslist’s computers. To flag an ad in this section, a user must email it separately to Craigslist.

According to Craigslist, the “Adult Services” category was originally created because users had complained about suggestive ads for sensual massage and escort services being interspersed with more benign content. Rather than attempt to screen them, the company decided to sequester the racy classifieds in their own section.
While many types of ads are free to post, Craigslist charges a $10 fee to post in “Adult Services” in order to reduce ad volume. All of the net revenue from these fees is donated to charity.\(^\text{84}\)

Craigslist litigation could be a possible model for regulating high-end escorts. As previously noted, the sheriff of Cook County filed a lawsuit against Craigslist for the ads located in the erotic service category.\(^\text{85}\) Most ads attached to the pleading filed in *Dart v. Craigslist, Inc.* leave little to the imagination and can be deciphered with little effort:

Sheriff Dart alleges that, notwithstanding Craigslist’s warnings, users routinely post advertisements in the erotic-services category “openly promis[ing] sex for money.” Based on the samples that he cites in his complaint most of the ads are veiled (sometimes very thinly) using code words. He alleges, for example, that “roses” mean dollars and “greek” refers to anal sex. One advertisement states: “15 Min $50 Roses . . . 1 hour $150 Roses”—so much for the code—and “How About A G-R-E-E-K Lesson I’m A Great Student!!” Other sample advertisements are more ambiguous. (“HELLO GENTLEMEN NOW YOU MEET JADE AND TIPHANY WE DO TWO GIRL SHOWS AND INDIVISUAL CALLS!! WE GARAUNTEE THE TIME OF YOUR LIFE!!” (spelling errors in the original.) Many of the ads include nude or nearly-nude pictures, ostensibly of the person posting the ad or offering his or her services. Sheriff Dart cites the advocacy group “The Polaris Project” for the proposition that “Craigslist is now the single largest source for prostitution, including child exploitation, in the country.” Law enforcement officials (including plaintiff) regularly conduct prostitution stings using information culled from advertisements in Craigslist’s erotic-services category. By his own count plaintiff has arrested over 200 people through Craigslist since January of 2007. Some of those arrested were charged with pimping minors. He estimates that between January and November 2008 his department devoted 3,120 man-hours and approximately $105,081.00 to make 156 arrests.\(^\text{86}\)

The district court granted Craigslist’s motion for judgment on the pleadings based on section 230 of the Communication Decency Act.\(^\text{87}\) Essentially, the Act protects platforms such as Craigslist from civil and criminal liability regarding content posted by third-party users.\(^\text{88}\)


\(^{85}\) *Dart v. Craigslist, Inc.*, 665 F.Supp.2d 961, 961 (N.D. Ill. 2009) (citations omitted). Craigslist has moved the ads to a category listed as “adult services.” *See id.; McDonald, supra* note 85, at 43.

\(^{86}\) *Dart*, 665 F.Supp.2d at 962–63 (citations omitted).

\(^{87}\) *See id.* at 965, 970.


Protection for “Good Samaritan” blocking and screening of offensive material

(1) Treatment of publisher or speaker
What the district court did allow was the targeting of individuals posting offensive or illegal materials.\(^\text{89}\)

Law enforcement and prosecutors must continue to review content of ads posted at various websites. Craigslist is the easiest to monitor by law enforcement with no screening. It also has been used by some to victimize escorts, and in some cases has lead to the escort’s death.\(^\text{90}\) Craigslist has also been criticized for keeping the Adult Services posting fees instead of donating them to charity as it had previously done.\(^\text{91}\) Legislation and attempts at litigation have proven ineffective.\(^\text{92}\) More sophisticated platforms will provide additional layers of security for service providers. The higher end the service provider, the more difficult the task for law enforcement.

B. Current Laws

Current law regarding prostitution and other related statutes are probably sufficient to curb street prostitution and allow for stings on individuals using unsophisticated web advertising on the Internet. The challenge for Congress is to develop legislation for high-end escorts utilizing websites for advertising that will pass constitutional challenges. This may be impossible. Recently, the Court ruled an animal cruelty statute was overbroad;\(^\text{93}\) thus, the possibility of

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<th>No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.</th>
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<td>(2) Civil liability</td>
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<td>No provider or user of an interactive computer service shall be held liable on account of—</td>
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<td>(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or</td>
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<tr>
<td>(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).</td>
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Id.

\(^\text{89}\) Dart, 665 F.Supp.2d. at 969 (citing Chicago Lawyers’ Comm. for Civil Rights Under the Law, Inc. v. Craigslist, Inc., 461 F.3d 666, 672 (N.D. Ill. 2006)) (“Sheriff Dart’s lengthy complaint relies heavily on a few conclusory allegations to support the contention that Craigslist induces users to post ads for illegal services. Even at this stage of the case we are not required to accept those allegations at face value, and they are not meaningfully different from the allegations that our Court of Appeals rejected just last year. The complaint’s remaining allegations plainly treat Craigslist as the publisher or speaker of information created by its users. Like the plaintiff in Chicago Lawyers, Sheriff Dart may continue to use Craiglist’s [sic] website to identify and pursue individuals who post allegedly unlawful content. But he cannot sue Craigslist for their conduct.”)


\(^\text{92}\) See, e.g., id.

legislating against Internet advertising for any type of escort services, high-end or otherwise, would be next to impossible.

Questions arise immediately about the utility of focusing on high-end escorts. It would appear high-end escorts are not forced into the sex industry but rather make a rationale decision based on the economic advantage obtained. This eliminates concerns regarding sex industry coercion. The safety concerns raised by street prostitution and Craigslist for both the escorts and their clients appear to be minimized. This is in part because of the price of the escort services and the screening process used by the escorts.

On the rare occasion when a high-end escort is investigated, usually the exposure of the clients and the escort’s identity provide the primary deterrence.94

Some enforcement suggestions for the current state of the law and in regards to the use of the Internet by escorts:

1. Focus on individuals under the age of eighteen involved in the sex industry and those who utilize by force or temptation minors into the sex industry. This would include more monitoring of websites.

2. Assign addition law enforcement to street prostitution. Collateral damage occurs through the use of drugs and other criminal activity. Implement programs for substance abuse treatment and other social services that would assist escorts who wish to abandon the trade but need help doing so.

3. Provide a safe harbor for escorts who are willing to cooperate with law enforcement investigations of individuals who recruit escorts into the sex industry.

4. As for high-end escorts, there is not much law enforcement can do at present unless it is willing to reallocate resources from street enforcement to focus on the high end of the escort spectrum. This is probably not the best use of limited resources and certainly not sustainable, however.