

THE PRICE OF INACTION: AMENDING VAWA TO ALLOW INTERACTIVE COMPUTER SERVICE LIABILITY FOR FAILURE TO REMOVE IMAGE-BASED SEXUAL ABUSE

*Nazenin Eghbal**

“The price of inaction is far greater than the cost of making a mistake.”
– Meister Eckhart¹

I. INTRODUCTION

“You will spend the rest of your life trying and failing to wipe yourself off the internet.”² An individual known as D.L. reads these words over and over as their heart drops into the ever-growing pit in their stomach. A person they once loved and trusted has destroyed any sense of privacy or sanctuary that they once had, and now vows to continue this torment for the rest of their life. D.L. fears this torment will follow them to every school, every job, and every relationship they have. D.L.’s former romantic partner, Marques Jamal Jackson (“Jackson”), posted intimate images of them without their consent along with personally identifiable information on multiple social media platforms and websites.³ To increase the damage of the attack on D.L., Jackson posted the images on a pornographic website and in a publicly accessible Dropbox folder in order to quickly share them with D.L.’s family, friends, and co-workers through fake social media pages and email accounts.⁴

* J.D., Southwestern Law School, 2024. I am honored to be able to give voice to a legal issue that has fallen through the cracks of well-intentioned policymaking. I am forever grateful to my partner Shaheen for the neverending love and support throughout this process. Thank you to Professor Emily Rehm for the valuable guidance, and to the Law Review Board and Staffers for your hard work. Thank you to my family for encouraging me along the way.

1. Meister Eckhart, GOODREADS, <https://www.goodreads.com/quotes/644792-the-price-of-inaction-is-far-greater-than-the-cost> (last visited Dec. 29, 2023).

2. Amanda Holpuch, *Woman is Awarded \$1.2 Billion in ‘Revenge Porn’ Lawsuit*, N.Y. TIMES (Aug. 15, 2023), <https://www.nytimes.com/2023/08/15/us/houston-texas-revenge-porn.html>.

3. *See id.*

4. *See id.*

Jackson even tagged social media accounts for D.L.'s employer and personal gym.⁵ There was nowhere D.L. could escape Jackson's abuse.

In 2022, D.L. sued Jackson for Image-based Sexual Abuse under Texas's unlawful intimate image disclosure law.⁶ In a landmark verdict, a jury awarded D.L. \$1.2 billion dollars: \$200 million for past and future mental anguish and \$1 billion in punitive damages.⁷ This verdict, one of the largest in Texas history,⁸ was covered by many major news outlets⁹ and sent a strong message to would-be abusers everywhere as stated by D.L.'s attorney: "You make it your mission to ruin someone emotionally for the rest of your life, then you are going to be facing a judgment that's going to ruin you financially for the rest of your life."¹⁰

Unfortunately, not every state has laws surrounding Image-based Sexual Abuse.¹¹ Fortunately, as of 2022, victims of Image-based Sexual Abuse, like D.L., now have a federal civil remedy for monetary and equitable relief available to them under the Violence Against Women Act ("VAWA"), which established the first federal law concerning Image-based Sexual Abuse.¹²

5. *See id.*

6. *See id.*

7. *See id.*

8. *See Houston Woman Awarded \$1.2 Billion in "Revenge Porn" Case Against Former Boyfriend*, FOX 26 HOUS. (Aug. 15, 2023, 9:42 AM), <https://www.fox26houston.com/news/houston-woman-awarded-1-2-billion-in-revenge-porn-case-against-former-boyfriend>.

9. *See* Julianne McShane, *Texas Woman Awarded \$1.2 Billion After Ex-Boyfriend Put Intimate Photos in Public Dropbox*, NBC NEWS (Aug. 16, 2023, 12:49 PM), <https://www.nbcnews.com/news/crime-courts/texas-woman-awarded-12-billion-revenge-porn-lawsuit-rcna100159>; Khristopher J. Brooks, *Jury Awards Texas Woman \$1.2 Billion in Revenge Porn Case*, CBS NEWS (Aug. 15, 2023, 12:41 PM), <https://www.cbsnews.com/news/revenge-porn-texas-marques-jamal-jackson/>; Lauren Aratani, *Texas Jury Orders Man to Pay Ex-Girlfriend \$1.2bn in Revenge Porn Case*, THE GUARDIAN (Aug. 15, 2023, 9:36 AM), <https://www.theguardian.com/us-news/2023/aug/15/texas-jury-revenge-porn-case>; Joshua Nelken-Zitser, *Woman Awarded \$1.2 Billion in Revenge-Porn Case After Her Ex Created a Fake Pornhub Profile to Share Explicit Photos with Friends, Family, and Colleagues*, BUS. INSIDER (Aug. 14, 2023, 4:23 AM), <https://www.insider.com/woman-wins-12bn-revenge-porn-case-ex-fake-pornhub-page-2023-8>.

10. Holpuch, *supra* note 2.

11. *See States with Revenge Porn Laws*, C.A. GOLDBERG, PLLC, <https://www.cagoldberglaw.com/resources/states-with-revenge-porn-laws/> (last visited Dec. 26, 2023); *Nonconsensual Distribution of Intimate Images*, CYBER CIV. RTS. INITIATIVE, <https://cybercivilrights.org/nonconsensual-distribution-of-intimate-images/> (last visited Dec. 28, 2023); Sarah Kolick, *Can I Sue for Revenge Porn? Your Guide to Filing Suit*, MINC LAW (Dec. 2, 2024), <https://www.minclaw.com/revenge-porn-lawsuit/>.

12. Civil Action Relating to Disclosure of Intimate Images, 15 U.S.C. § 6851; *see also Sharing of Intimate Images Without Consent: Know Your Rights*, U.S. DEP'T OF JUST.: OFF. FOR ACCESS TO JUST. <https://www.justice.gov/atj/sharing-intimate-images-without-consent-know-your-rights> (last updated Sept. 20, 2024).

Now imagine that a victim of Image-based Sexual Abuse, like D.L., reports the abuse to the social media companies where the content was posted. Once the companies had knowledge that an offender was misusing their platform for Image-based Sexual Abuse, imagine that the companies did nothing to remove the abusive content. Because of their inaction, the images are distributed to countless more individuals than they could have been otherwise, and the victim's harm is significantly aggravated. Due to the Communications Decency Act Section 230 ("CDA 230"), this is a common reality, and these companies face zero repercussions for their inaction.

Although designed to be a powerful federal remedy for Image-based Sexual Abuse, as VAWA currently stands, Interactive Computer Services ("ICSs") like Meta and Yahoo, which knowingly harbor Image-based Sexual Abuse on their platforms, cannot be held liable due to CDA 230.¹³ CDA 230 acts as a shield for ICSs that abstain from reasonable content moderation, while simultaneously acting as a sword that expressly grants power to ICSs to remove harassing content in good faith.¹⁴ CDA 230 severely limits VAWA's reach, rendering it ineffective to a level that is in direct opposition to both VAWA and CDA 230's policy goals. VAWA must be amended to expressly supersede CDA 230's immunity for Image-based Sexual Abuse claims against ICSs, because knowledge of Image-based Sexual Abuse and subsequent failure to remove it should be considered an act of further distribution for which an ICS can be found liable under VAWA.

Part II of this note will first offer a definition of Image-based Sexual Abuse and illustrate its prevalence, followed by an overview of the current Image-based Sexual Abuse legal landscape, and then a brief history of VAWA and CDA 230, along with their jurisprudence. Part III will analyze VAWA and CDA 230's policy goals. Finally, Part IV concludes with a proposed amendment to VAWA in compliance with existing precedent that would supersede and nullify the CDA 230 defense as applied to Image-based Sexual Abuse claims against ICSs, such that harmful ICS inaction is disincentivized in accordance with VAWA and CDA 230's policy goals.

13. See *Herrick v. Grindr, LLC*, 306 F. Supp. 3d 579 (S.D.N.Y. 2018); *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009).

14. See Communications Decency Act (CDA), 47 U.S.C. § 230.

II. IMAGE-BASED SEXUAL ABUSE, ITS PREVALENCE, AND LEGAL LANDSCAPE

A. *Defining Image-based Sexual Abuse*

Image-based Sexual Abuse¹⁵ “involves the distribution of sexually graphic images of individuals without their consent.”¹⁶ The intimate images could be acquired originally with consent, such as in the context of a romantic relationship, or without consent, such as through coercion, hidden recordings, or during an assault.¹⁷ Without the victim’s consent, offenders then distribute the images on social media, pornographic websites, and to other individuals directly via text message, email, or mail.¹⁸ Websites like IsAnyoneUp.com have been created for the sole purpose of aggregating Image-based Sexual Abuse along with personally identifiable information, in order to harass, humiliate, and endanger victims.¹⁹ One study reported that in 86% of Image-based Sexual Abuse cases, the offender “had a personal relationship with the victim, such as an ex-boyfriend.”²⁰ However, “offenders might be motivated by a range of factors beyond revenge: financial gain, the desire for power or control over the victim, the desire to coerce or harass the victim, or the desire for fame, social status or notoriety.”²¹ For these reasons, although the monikers “revenge porn” and “nonconsensual pornography” have often been used interchangeably in these contexts, the term “Image-based Sexual Abuse” is used here as it more accurately reflects the varied nature and impacts of such abuse.²²

B. *Prevalence of Image-based Sexual Abuse*

As of 2016, approximately one in twenty-five Americans, or around ten million Americans, were threatened by or were victims of Image-based

15. See generally *Image-Based Sexual Abuse: An Introduction*, END CYBER ABUSE, <https://endcyberabuse.org/law-intro/> (last visited Dec. 28, 2023).

16. Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345, 346 (2014).

17. *Id.*

18. *Image-Based Sexual Abuse: An Introduction*, *supra* note 15.

19. See *Operator of ‘Revenge Porn’ Website Sentenced to 2½ Years in Fed. Prison in Email Hacking Scheme to Obtain Nude Photos*, U.S. DEP’T OF JUST.: U.S. ATT’Y’S OFF., CENT. DIST. OF CAL. (Dec. 3, 2015), <https://www.justice.gov/usao-cdca/pr/operator-revenge-porn-website-sentenced-2-years-federal-prison-email-hacking-scheme>.

20. Ana Murça et al., *Prevalence and Impact of Revenge Pornography on a Sample of Portuguese Women*, 28 SEXUALITY & CULTURE 96, 97-98, (2023).

21. *Image-Based Sexual Abuse: An Introduction*, *supra* note 15.

22. See *id.*

Sexual Abuse.²³ The impact of Image-based Sexual Abuse is substantial, as “[m]ore than 90 percent of victims reported suffering significant emotional distress. Almost as many—82 percent—described experiencing ‘significant impairment’ in their work or social lives. More than a third of victims said their relationships with friends and family had been jeopardized.”²⁴

However, rather than empathizing with the victims of the deeply violating act of Image-based Sexual Abuse and condemning the abuser, our society tends to blame the victims.²⁵ A study by Tahlee Mckinlay and Tiffany Lavis measuring attitudes toward victims of Image-based Sexual Abuse revealed that “blame was also placed onto those victims who had had their image leaked without permission. Conceivably, this blame was placed onto victims for initially capturing the image, despite not giving permission for the image to be viewed by a wider audience.”²⁶ Mckinlay and Lavis’s study also provides an overview of the media’s treatment of victims of Image-based Sexual Abuse, finding that the overarching attitude is generally reflected in the victim-blaming question of, “why did she take that image in the first place?”²⁷ Image-based Sexual Abuse victims are often unilaterally saddled with the “responsibility to avoid falling victim to ‘revenge porn’”²⁸ in a similar way that victims of sexual assault are blamed for their assault²⁹ and told not to wear certain clothing³⁰ or not to drink alcohol³¹ in order to somehow prevent an abuser from harming them, when in reality a victim’s behavior has no bearing whatsoever on whether or not they will be abused.³²

23. Murça et al., *supra* note 20, at 97.

24. CARRIE GOLDBERG, *NOBODY’S VICTIM* 124 (2019).

25. See Tahlee Mckinlay & Tiffany Lavis, *Why Did She Send It in the First Place? Victim Blame in the Context of ‘Revenge Porn’*, 27 *PSYCHIATRY, PSYCH. & L.* 386 (2020).

26. *Id.* at 391.

27. *Id.*; see also Claire Foges, *The Real Revenge Porn Scandal: Why on Earth Do So Many Young Women Send Intimate Photos to Their Partners?*, *DAILY MAIL* (Sept. 7, 2016, 8:11 PM), <http://www.dailymail.co.uk/femail/article-3778546/Why-earth-young-womensend-intimate-photos-partners.html>.

28. Mckinlay & Lavis, *supra* note 25, at 391.

29. *Id.* at 392; *Victim Blaming Fact Sheet*, MD. COAL. AGAINST SEXUAL ASSAULT, https://mcasa.org/assets/files/Victim_Blaming_Fact_Sheet_2022.pdf (last updated May 2022).

30. See *What Were You Wearing Exhibit*, DOVE CENTER, <https://dovecenter.org/what-were-you-wearing-exhibit/> (last visited Dec. 29, 2023).

31. See Tyler Kingkade, *Brock Turner Repeatedly Used Alcohol as an Excuse for the Sexual Assault He Committed*, *HUFFPOST* (June 8, 2016, 12:12 PM), https://www.huffpost.com/entry/brock-turner-drinking-party-culture_n_5758259be4b0e39a28ac015c.

32. See *Sexual Violence Myths & Facts*, RESILIENCE, <https://www.ourresilience.org/what-you-need-to-know/myths-and-facts/> (last visited Mar. 13, 2025).

Education officials have suspended victims from school,³³ and employers have suspended or terminated victims' employment,³⁴ thereby punishing and blaming victims for their abuser's wrongful actions.

Public figures and celebrities alike have been victims of Image-based Sexual Abuse and have felt the deep violation and the resulting unjust consequences that victims can face. Katie Hill, former U.S. representative for California's 25th congressional district, resigned less than a year into her term after she was a victim of Image-based Sexual Abuse and was accused of an inappropriate sexual relationship with one of her congressional staffers, which she denied.³⁵ Hill alleged that her estranged then-husband distributed intimate images taken of her without her consent on the internet, which *The Daily Mail* and conservative website *Redstate* subsequently published.³⁶ Hill sued her ex-husband, *The Daily Mail*, and *Redstate* for emotional distress and violation of state law for the distribution of intimate personal material without her consent.³⁷ Ultimately, the judge dismissed her claims on Anti-SLAPP (Strategic Lawsuits Against Public Participation) First Amendment grounds and ordered her to pay around \$220,000.00 for the defendants' legal fees.³⁸ Hill subsequently filed for bankruptcy because of "the ruling's financial toll."³⁹ Carrie Goldberg, Hill's attorney, stated, "[i]t's a broken system where a plaintiff's sensible use of our legal system to adjudicate fundamental breaches to their sexual privacy results in such financially

33. Emma Kelly, *Zara McDermott Was Suspended from School Aged 14 After Becoming Victim of Revenge Porn*, METRO (Feb. 13, 2021, 7:09 PM), <https://metro.co.uk/2021/02/13/zara-mcdermott-revenge-porn-love-island-star-was-victim-aged-14-14076528/>.

34. See *Christian Elementary School Teacher Victim of 'Revenge Porn,' Suspended for Nude Photo Surfacing Online*, HNGN (Dec. 6, 2013, 5:25 PM), <https://www.hngn.com/articles/18989/20131206/christian-elementary-school-teacher-victim-of-revenge-porn-suspended-for-nude-photo-surfacing-online-video.htm>; Gordon Hurd, *Former School Principal Says She's a Victim of Revenge Porn and Slut-Shaming*, YAHOO! LIFE (Dec. 17, 2017, 12:27 PM), <https://sports.yahoo.com/former-school-principal-claims-shes-victim-revenge-porn-slut-shaming-202733284.html>.

35. Jessica Bennett, *The Nudes Aren't Going Away. Katie Hill's OK With That.*, N.Y. TIMES (Aug. 8, 2020), <https://www.nytimes.com/2020/08/08/style/katie-hill-she-will-rise-revenge-porn.html>.

36. *Katie Hill Ordered to Pay \$220,000 in Costs after Failed Intimate Photos Suit*, THE GUARDIAN (June 4, 2021, 5:49 PM), <https://www.theguardian.com/us-news/2021/jun/04/katie-hill-ordered-to-pay-220000-costs-intimate-photos-suit>.

37. Andrew Blankstein, *Former Rep. Katie Hill Sues Ex-Husband, Daily Mail, Redstate.com over 'Nonconsensual Porn'*, NBC NEWS (Dec. 22, 2020, 12:30 PM), <https://www.nbcnews.com/politics/congress/former-rep-katie-hill-sues-ex-husband-daily-mail-redstate-n1252098>.

38. THE GUARDIAN, *supra* note 36.

39. Seema Mehta, *Former Rep. Katie Hill, Who Lost Revenge Porn Lawsuit, Files for Bankruptcy*, L.A. TIMES (July 12, 2022, 6:46 PM), <https://www.latimes.com/politics/story/2022-07-12/california-former-rep-katie-hill-who-lost-revenge-porn-lawsuit-files-for-bankruptcy>.

punishing consequences for daring to file a legal case that bankruptcy is the last resort.”⁴⁰

In 2014, many celebrities and other individuals who were not in the public eye were victims of Image-based Sexual Abuse when a group of men hacked into their Apple iCloud accounts and stole intimate images, which were then disseminated widely online.⁴¹ The hackers’ sentences ranged in severity from thirty-four months to only eight months in jail for hacking into hundreds of iCloud accounts.⁴² One of the victims, actress Jennifer Lawrence, courageously stated, “[j]ust because I’m a public figure, just because I’m an actress, does not mean that I asked for this.”⁴³ Technology and the internet have emboldened offenders to anonymously share intimate images on a massive scale, instantaneously and relentlessly from behind a screen, making it increasingly difficult to control the spread of the images and the profound impact such a violation has on a victim’s life.

C. *The Legal Landscape of Image-based Sexual Abuse*

As Image-based Sexual Abuse becomes more pervasive, the legal landscape has evolved to provide various legal protections and rights for victims at the state level. As of April 2023, forty-eight states, Washington D.C., and two territories have passed criminal laws prohibiting Image-based Sexual Abuse.⁴⁴ In California, Image-based Sexual Abuse is punishable under multiple criminal laws: Unlawful Distribution of Private Images,⁴⁵ Harassment by Means of Electronic Device,⁴⁶ and Unauthorized Use of Electronic Device.⁴⁷ However, only twelve states, including California, provide for a civil cause of action for Image-based Sexual Abuse.⁴⁸ This gap in state legislation left many victims without civil redress until the federal government stepped in.

40. *Id.*

41. Suzannah Weiss & Ashley Chervinski, *Fifth Man Convicted in Hacking of Jennifer Lawrence & Other Celebrities’ Accounts*, REFINERY29 (Mar. 2, 2019, 7:00 AM), <https://www.refinery29.com/en-us/2016/10/127924/ryan-collins-leaked-celebrity-nude-photos>.

42. *Id.*; Laura M. Holson, *Hacker of Nude Photos of Jennifer Lawrence Gets 8 Months in Prison*, N.Y. TIMES (Aug. 30, 2018), <https://www.nytimes.com/2018/08/30/arts/hack-jennifer-lawrence-guilty.html>.

43. Holson, *supra* note 42.

44. CYBER CIV. RTS. INITIATIVE, *supra* note 11.

45. CAL. PENAL § 647(j)(4)(A)(i) (West 2023-24).

46. *Id.* § 653.2.

47. *Id.* § 502.

48. C.A. GOLDBERG, PLLC, *supra* note 11; *see also* MINC LAW, *supra* note 11.

D. Section 1309 of the Violence Against Women Act

In 2022, Congress passed the Violence Against Women Act Reauthorization Act of 2022 (“the VAWA Reauthorization”), as part of the Consolidated Appropriations Act.⁴⁹ Section 1309 of the VAWA Reauthorization created a federal civil cause of action for Image-based Sexual Abuse and is the first and only federal law regarding Image-based Sexual Abuse. It states, in relevant part, “[a]n individual whose intimate visual depiction is disclosed . . . by a person who knows that, or recklessly disregards whether, the individual has not consented to such disclosure, may bring a civil action against that person”⁵⁰ The VAWA Reauthorization provides for “actual damages sustained by the individual or liquidated damages in the amount of \$150,000, and the cost of the action, including reasonable attorney’s fees” as well as equitable relief such as restraining orders and injunctions.⁵¹ Thanks to the VAWA Reauthorization, victims of Image-based Sexual Abuse who were once left without redress for the trauma they experienced at the hands of their abusers are empowered for the first time to seek a federal civil remedy, regardless of their domicile. Unfortunately, this remedy is limited by another federal statute.

E. Section 230 of the Communications Decency Act

In 1996, Congress enacted the Communications Decency Act Section 230.⁵² CDA 230(c) is titled “Protection for ‘good samaritan’ blocking and screening of offensive material.”⁵³ Subsection (c)(1) states, in relevant part, “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”⁵⁴ An interactive computer service is “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server.”⁵⁵ In keeping up with the creation of smartphone apps and social media, “courts have recognized dating apps like Grindr, social media platforms like Facebook, and other big tech companies including Amazon and Google as falling under

49. 15 U.S.C. § 6851.

50. *Id.* § 6851(b)(1)(A).

51. *Id.* § 6851(b)(3)(A)(i)-(ii).

52. Communications Decency Act, 47 U.S.C. § 230.

53. *Id.* § 230(c).

54. *Id.* § 230(c)(1).

55. *Id.* § 230(f)(2).

this protection.”⁵⁶ CDA 230 Section (c)(2)(A) also provides that ICSs cannot be held liable for “restrict[ing] access to or availability of” certain content, including “harassing” content, as long as the ICS acted in “good faith.”⁵⁷ Despite CDA 230’s limited language, its reach is vast as “the majority of federal circuits have interpreted the CDA to establish broad federal immunity” for ICSs based on third-party content they host.⁵⁸ CDA 230 immunity is presumed for ICSs who “exercise . . . a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content.”⁵⁹ The *Fair Housing Council* case established that “any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230.”⁶⁰ Courts have fortified CDA 230 as a strong coat of armor for ICSs that is exceedingly difficult to breach, while also empowering them to remove harassing content without consequences.

F. CDA 230’s Jurisprudence

U.S. Supreme Court Justice Clarence Thomas has stated that “many courts have construed [CDA 230] broadly to confer sweeping immunity on some of the largest companies in the world.”⁶¹ CDA 230 has provided immunity to the following ICSs under various circumstances: Backpage, which “deliberately structured its website to facilitate illegal human trafficking”;⁶² Facebook, which “recommended content by terrorists”;⁶³ and Snapchat, which “defectively designed its product by creating a feature that encouraged reckless driving.”⁶⁴ Following these foundational holdings that established CDA 230’s bounds, or lack thereof, CDA 230 immunity for ICSs

56. *WTF IS THE CDA230?*, C.A. GOLDBERG, PLLC (Dec. 1, 2019), <https://www.cagoldberglaw.com/wtf-is-the-cda230/>; see also *Herrick v. Grindr, LLC*, 765 Fed. Appx. 586, 589-90 (2d Cir. 2019) (holding that Grindr is considered an interactive computer service such that it qualifies for CDA 230 immunity).

57. 47 U.S.C. § 230(c)(2)(A).

58. *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1118 (9th Cir. 2007) (quoting *Almeida v. Amazon, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006)).

59. *Jones v. Dirty World Ent. Recordings, LLC*, 755 F.3d 398, 416 (6th Cir. 2014) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)).

60. *Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1170-71 (9th Cir. 2008).

61. *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13 (2020) (Thomas, J., concurring in denial of certiorari).

62. *Id.* at 17 (Thomas, J., concurring) (citing *Doe v. Backpage.com, LLC*, 817 F. 3d 12, 16-22 (1st Cir. 2016)).

63. *Id.* at 17 (Thomas, J., concurring) (citing *Force v. Facebook, Inc.*, 934 F. 3d 53, 65 (2d Cir. 2019)).

64. *Id.* at 17 (Thomas, J., concurring) (citing *Lemmon v. Snap, Inc.*, 440 F. Supp. 3d 1103, 1107, 1113 (C.D. Cal. 2020)).

has also been granted when the ICS had knowledge of Image-based Sexual Abuse and other harassing content on their platform but failed to remove it.

Cecilia Barnes was a victim of Image-based Sexual Abuse who sued an ICS for its failure to remove the harassing content from its platform once on notice.⁶⁵ In 2004, Cecilia's former boyfriend created fake profiles of her on Yahoo where he posted intimate images of her taken without her knowledge or consent.⁶⁶ The profiles solicited contact for sexual intercourse and included personally identifiable information such as Cecilia's address, phone number, and place of employment, where strangers began calling, emailing, and showing up in person with the expectation of sexual contact.⁶⁷ Cecilia reported the abuse multiple times in accordance with Yahoo's policy,⁶⁸ but after two months, Yahoo had failed to respond or to remove the profiles, and strangers continued to harass Cecilia.⁶⁹ Only once a local news station was about to report on Yahoo's inaction did Yahoo finally contact Cecilia and assure her that the profiles would be removed.⁷⁰ Unfortunately, Yahoo did not remove the profiles or contact Cecilia for two more months, and only once Cecilia filed suit against it did Yahoo finally remove the profiles.⁷¹

The district court dismissed Cecilia's claim of negligent undertaking, holding that Yahoo was immune from civil liability under CDA 230 because it could not be treated as the publisher of the unauthorized profiles, which were created by a third party.⁷² On appeal, Cecilia argued that CDA 230 is meant "to encourage websites affirmatively to police themselves, not to provide an excuse for doing nothing."⁷³ The Ninth Circuit agreed that "[i]t would indeed be strange for a provision so captioned [Protection for 'good samaritan' blocking and screening of offensive material] to provide equal protection as between internet service providers who do nothing and those who attempt to block and screen offensive material."⁷⁴ The Ninth Circuit reiterated an observation from the Seventh Circuit that "if section (c) did provide equal protection, then '[internet service providers] may be expected to take the do-nothing option and enjoy immunity' because 'precautions are costly.'"⁷⁵ The Ninth Circuit attempted to reconcile this "apparent

65. *See Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1098-99 (9th Cir. 2009).

66. *Id.* at 1098.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* at 1098-99.

71. *Id.* at 1099.

72. *See id.*

73. *Id.* at 1105.

74. *Id.*

75. *Id.* (quoting *Doe v. GTE Corp.*, 347 F.3d 655, 660 (7th Cir. 2003)).

contradiction” by finding that “even those who cannot take advantage of subsection (c)(1), perhaps because they developed, even in part, the content at issue . . . can take advantage of subsection (c)(2) if they act to restrict access to the content”⁷⁶ The Ninth Circuit ultimately affirmed the dismissal,⁷⁷ holding that “removing content is something publishers do, and to impose liability on the basis of such conduct necessarily involves treating the liable party as a publisher of the content it failed to remove.”⁷⁸ Yahoo’s known inaction undoubtedly further victimized and harmed Cecilia, and yet CDA 230’s protections are so great that her claim was dismissed.⁷⁹

In *Herrick v. Grindr*, CDA 230 shielded another ICS from liability for failure to remove harassing content from its platform.⁸⁰ Matthew Herrick’s ex-boyfriend created multiple fake profiles on the dating app Grindr, including images of Matthew and personally identifiable information.⁸¹ Matthew’s ex-boyfriend would send strangers to his home and work to harass him for sexual intercourse, where “some days Matthew had as many as 23 visitors,”⁸² ultimately resulting in over 1,400 unwanted visitors.⁸³ Matthew reported the fake profiles and harassment to Grindr over fifty times, to which Grindr only responded with boilerplate “thank you for your report” automatic responses, and the harassment continued.⁸⁴ Matthew sued Grindr alleging, among other things, that Grindr negligently failed to remove the impersonating profiles.⁸⁵ Grindr argued that CDA 230 barred “any claim based on its failure to more effectively search for and to remove the impersonating profiles, or to block the former boyfriend from creating new ones, because these claims treat Grindr as responsible for the false content itself.”⁸⁶ The Second Circuit agreed with Grindr, finding that “the lack of safety features reflected ‘choices about what content can appear on the

76. *Id.*

77. *Id.* at 1105-06.

78. *Id.* at 1103.

79. *Id.* at 1105-06.

80. *See Herrick v. Grindr LLC*, 306 F. Supp. 3d 579, 588-92 (S.D.N.Y. 2018).

81. *See id.* at 584-85.

82. Carrie Goldberg, *Winning Through Losing*, AM. BAR ASS’N. (Dec. 18, 2020), <https://www.americanbar.org/groups/diversity/women/publications/perspectives/2021/december/winning-through-losing/> (Carrie Goldberg served as one of Matthew Herrick’s attorneys in this case).

83. Kira M. Geary, *Section 230 of the Communications Decency Act, Product Liability, and a Proposal for Preventing Dating-App Harassment*, 125 PENN. ST. L. REV. 501, 503 (2021).

84. Carrie Goldberg, *Herrick v. Grindr: Why Section 230 of the Communications Decency Act Must Be Fixed*, LAWFARE (Aug. 14, 2019, 8:00 AM), <https://www.lawfaremedia.org/article/herrick-v-grindr-why-section-230-communications-decency-act-must-be-fixed>.

85. *See Herrick*, 306 F. Supp. 3d at 588.

86. *Id.* at 587.

website and in what form’ and therefore were the sort of ‘editorial choices that fall within the purview of traditional publisher functions,’”⁸⁷ meaning Matthew’s claims could not survive as they sought to impermissibly treat Grindr as a publisher who failed to search and remove content posted to the app.⁸⁸ *Herrick* produced a startling holding that ICSs cannot be held liable for a lack of reasonable safety features on their platforms or for their failure to remove harassing content once on notice, further excusing reckless ICS inaction towards known harms on their platforms.

Additionally, limiting CDA 230’s overbroad reach is an important and timely issue, as Justice Thomas in a recent concurrence expressed concern that “extending § 230 immunity beyond the natural reading of the text can have serious consequences,” such that it “behooves” the Supreme Court to take up “an appropriate case” in the future in order to “decide . . . the correct interpretation of § 230.”⁸⁹

Overall, CDA 230’s jurisprudence has set a dangerous standard: ICSs need not take reasonable steps to combat the known harms on their platforms because they simply have no duty to do so. Such an overbroad application of CDA 230 has a range of unintended consequences for victims of Image-based Sexual Abuse that directly clashes with VAWA’s intended grant of civil redress, and CDA 230’s own policy goals.

III. ANALYSIS OF CDA 230 AND VAWA’S POLICY GOALS

A. CDA 230’s Policy Goals

The Ninth Circuit has noted that CDA 230 rather “unusual[ly]” lays out five policy goals in the text of the statute itself, likely to “guide interpretation of [CDA 230’s] broad language.”⁹⁰ The fifth goal is “to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.”⁹¹ Despite CDA 230’s named policy goals and explicit protections for good faith removal of harassing content, the statute has been broadly interpreted to insulate ICSs from liability for much of the harmful content posted on their platforms by third parties, even when the ICS has knowledge of the harmful content and

87. *Id.* at 591.

88. *Id.*

89. *Malwarebytes, Inc v. Enigma Software Grp. USA LLC*, 141 S. Ct. 13, 18 (2020) (Thomas, J., concurring).

90. *Enigma Software Grp. USA, LLC v. Malwarebytes, Inc.*, 946 F.3d 1040, 1047 (9th Cir. 2019).

91. Communications Decency Act, 47 U.S.C. § 230 (West 2018).

fails to remove it.⁹² Courts granting such broad immunity to ICSs have rendered CDA 230 a facilitator of harassment by means of computer, rather than a tool to aid in the deterrence and punishment of harassment by means of computer as its policy goals clearly intended.

B. VAWA's Policy Goals

The VAWA Reauthorization's policy goals are less explicit than those of CDA 230's, but they can be gleaned from congressional records in the lead-up to its passing. Senator Dianne Feinstein stated the following while introducing the VAWA Reauthorization in 2022: "[F]or nearly 30 years, the Violence Against Women Act has played a vital role in the Federal response to domestic violence, dating violence, sexual assault, and stalking. I hope that this bill will be an effective tool to build on those efforts."⁹³ Senator Feinstein further stated that the VAWA Reauthorization would "provide important updates to modernize the law that has been critical to protecting and supporting the survivors of domestic violence, dating violence, sexual assault, and stalking."⁹⁴ The VAWA Reauthorization's language also provides for recovery of monetary damages sustained by a victim of Image-based Sexual Abuse,⁹⁵ which demonstrates a policy intent to compensate victims adequately for the harms they suffer.⁹⁶ In addition to providing for monetary damages, the VAWA Reauthorization's grant of injunctive relief⁹⁷ allows a victim to obtain court orders that would prevent the offender from committing further abuse while mandating the removal of abusive content already posted.⁹⁸ This equitable remedy indicates the VAWA Reauthorization's policy intent to stop ongoing abuse and secure the removal of images previously posted. Overall, congressional intent to modernize VAWA to protect, empower, and compensate victims of cyber harassment like Image-based Sexual Abuse is clear, both from the text of the VAWA Reauthorization and statements made by lawmakers.

92. See *Herrick v. Grindr, LLC*, 765 Fed. Appx. 586 (2d Cir. 2019); see also *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009).

93. 168 CONG. REC. S1105 (2022).

94. *Id.* S613-03.

95. See Violence Against Women Act Reauthorization Act, 15 U.S.C. § 6851.

96. See *Actual damages*, LEGAL INFO. INST. (June 2022), https://www.law.cornell.edu/wex/actual_damages#:~:text=In%20tort%20law%2C%20actual%20damages,may%20instead%20grant%20nominal%20damages.

97. See 15 U.S.C. § 6851.

98. See Aaron Minc et al., *How to Secure a Court Order to Remove Content From the Internet*, MINC LAW (Oct. 10, 2023), <https://www.minclaw.com/how-to-secure-effective-court-ordered-removal-online-content/>.

IV. PROPOSED VAWA AMENDMENT TO ALLOW ICS LIABILITY FOR INACTION TOWARDS KNOWN IMAGE-BASED SEXUAL ABUSE

As the VAWA Reauthorization's language currently stands, ICSs cannot be held liable for knowingly failing to remove Image-based Sexual Abuse from their platforms under the CDA 230 defense.⁹⁹ To resolve CDA 230 and the VAWA Reauthorization's unique policy concerns and competing outcomes, the VAWA Reauthorization must be amended to affirmatively preempt CDA 230 as applied to Image-based Sexual Abuse claims by allowing for (1) monetary damages to be recoverable from ICSs knowingly hosting the images and (2) for injunctive relief in the form of ICSs court-ordered removal of the harassing content.

A. Proposed VAWA Amendment

The VAWA Reauthorization should be amended to include the language, "notwithstanding any other provision of law," to ensure that the VAWA Reauthorization preempts CDA 230's defense of ICSs that knowingly host Image-based Sexual Abuse. The phrase "notwithstanding any other provision of law" is a common statutory clause found in both federal and state legislation.¹⁰⁰ In 1993, the Supreme Court held as follows regarding "notwithstanding" clauses:

As we have noted previously in construing statutes, the use of such a "notwithstanding" clause clearly signals the drafter's intention that the provisions of the "notwithstanding" section override conflicting provisions of any other section *Likewise, the Courts of Appeals generally have interpreted similar "notwithstanding" language . . . to supersede all other laws, stating that "[a] clearer statement is difficult to imagine."*¹⁰¹

Subsequently, the Ninth Circuit interpreted the above *Cisneros* holding to find that "statutory 'notwithstanding' clauses broadly sweep aside potentially conflicting laws"¹⁰² and "demonstrate that Congress intended to supersede any previously enacted conflicting provisions."¹⁰³ With the proposed amendment, the VAWA Reauthorization would explicitly supersede CDA 230 as applied to claims of Image-based Sexual Abuse

99. See *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009).

100. See Chris Micheli, *What Are 'Notwithstanding Clauses' in California Legislation?*, CAL. GLOBE (Dec. 3, 2021, 4:29 PM), <https://californiaglobe.com/fr/what-are-notwithstanding-clauses-in-california-legislation/>.

101. *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993) (emphasis added).

102. *United States v. Novak*, 476 F.3d 1041, 1046 (9th Cir. 2007).

103. *Id.* (quoting *Student Loan Fund of Idaho, Inc. v. U.S. Dep't of Educ.*, 272 F.3d 1155, 1166 (9th Cir. 2001)).

because it would be the most recent and specific statute on the subject. In *RadLAX*, the Supreme Court found that a “well established canon of statutory interpretation”¹⁰⁴ holds that where there is a conflict between the general and specific terms of a statutory scheme, “the specific governs the general.”¹⁰⁵ Adding this amendment to the VAWA Reauthorization’s existing provisions would render the VAWA Reauthorization’s terms sufficiently specific so as to govern CDA 230’s more general provision, ensuring that the VAWA Reauthorization’s will prevail over CDA 230 in Image-based Sexual Abuse claims.

B. Proposed VAWA Amendment Aligns with VAWA’s Policy Goals

Such an amendment is needed to further the VAWA Reauthorization’s important policy goals, as they cannot be achieved while CDA 230 shields ICSs that knowingly host Image-based Sexual Abuse. Since the VAWA Reauthorization clearly seeks to provide monetary damages for victims, shielding large ICSs from liability prevents victims from being adequately compensated for the carnage left in the wake of their abuser, who violated them, and the ICS, which aggravated their injury by knowingly failing to remove the images. Juries have recently awarded large verdicts for victims of Image-based Sexual Abuse¹⁰⁶ in recognition of its deeply damaging nature. However, such damages are likely not entirely recoverable from an individual defendant who does not have the monetary means,¹⁰⁷ whereas ICSs who significantly contribute to the plaintiff’s harm are far less likely to be insolvent. Further, the VAWA Reauthorization’s allowance for injunctive relief is aimed at stopping the spread of images and curbing ongoing harm, which should apply to ICSs that are in the best position to remove the content and stop its spread. Allowing ICS liability through the proposed amendment would further the VAWA Reauthorization’s policy goals of providing an accessible route to recovery of monetary damages and injunctive relief for victims of Image-based Sexual Abuse, a deeply violating act designed to

104. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012).

105. *Id.* (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992)).

106. See Holpuch, *supra* note 2; Christine Hauser, *\$6.4 Million Judgment in Revenge Porn Case Is Among Largest Ever*, N.Y. TIMES (Apr. 11, 2018), <https://www.nytimes.com/2018/04/11/us/revenge-porn-california.html>; Adolfo Pesquera, *‘Living Nightmare’: \$250,000 Revenge-Porn Verdict Affirmed*, LAW.COM (June 22, 2022, 5:40 PM), <https://www.law.com/texaslawyer/2022/06/22/living-nightmare-250000-revenge-porn-verdict-affirmed/>.

107. See Shivani Nair, *The Legal Aspect of the Deep Pocket Theory*, iPLEADERS (July 16, 2020), <https://blog.iplayers.in/the-legal-aspect-of-the-deep-pocket-theory/>.

terrorize and cause long-lasting trauma for which a civil remedy is not provided for in the vast majority of states.¹⁰⁸

C. Proposed VAWA Amendment Aligns with CCD 230's Policy Goals

This proposed amendment would serve both CDA 230 and the VAWA Reauthorization's policy goals. CDA 230's fifth goal aims to ensure that federal criminal laws are enforced to deter and punish harassment and stalking by means of a computer.¹⁰⁹ Although Image-based Sexual Abuse is not a federal crime yet,¹¹⁰ cyberstalking is.¹¹¹ Cyberstalking can reasonably be interpreted to include Image-based Sexual Abuse cases where abusers threaten the victim's reputation by weaponizing intimate images on the internet with the goal of extorting them, otherwise called sextortion.¹¹² To further CDA 230's goal of deterring and punishing harassment and cyberstalking, ICSs should be held liable for failing to remove known Image-based Sexual Abuse from their platforms.

Further, CDA 230's explicit grant of civil immunity for an ICS's good faith removal of harassing content indicates legislative intent to encourage such removal rather than deter it. As previously discussed, CDA 230 explicitly states that ICSs cannot be held liable for good faith removal of harassing content.¹¹³ Courts have construed this language to protect "all publication decisions, whether to edit, to remove, or to post, with respect to content generated entirely by third parties."¹¹⁴ This language empowers ICSs to remove Image-based Sexual Abuse and refutes any argument that the policy behind CDA 230 would be better served by incentivizing ICS inaction towards the known harms on their platforms.

Additionally, this proposed amendment would not unduly burden internet service providers. Omegle.com, a website that randomly matched strangers for video chats without age verification, was recently sued for offering a defective product that matched the minor eleven-year-old plaintiff with an adult predator who sexually abused and exploited her egregiously for

108. See C.A. GOLDBERG, PLLC, *supra* note 11; see also MINC LAW, *supra* note 11.

109. See Communications Decency Act, 47 U.S.C. § 230.

110. See Stopping Harmful Image Exploitation and Limiting Distribution Act, H.R. 3686, 118th Cong. (2023).

111. See 18 U.S.C. § 875.

112. See Press Release, U.S. Att'y's Off., S.D. of Ind., FBI and Partners Issue National Public Safety Alert on Sextortion Schemes (Jan. 19, 2023), <https://www.justice.gov/usao-sdin/pr/fbi-and-partners-issue-national-public-safety-alert-sextortion-schemes>.

113. See Communications Decency Act, 47 U.S.C. § 230(C)(2)(A).

114. *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1105 (9th Cir. 2009).

years.¹¹⁵ Omegle asserted the CDA 230 defense in seeking dismissal of the claim, but was denied as the court held that a products liability claim “does not rest on Defendant’s publication of third party content” such that CDA 230 immunity did not apply.¹¹⁶ Per the settlement terms, Omegle’s founder shut down the site¹¹⁷ and published a statement in its place decrying calls for CDA 230 reform and reasonable content moderation as “a constant barrage of attacks on communication services, Omegle included, based on the behavior of a malicious subset of users” that are “setting standards that are not humanly achievable.”¹¹⁸

Despite what critics of CDA 230 reform may claim, reasonable regulation is hardly a standard that is not humanly achievable. The VAWA Reauthorization’s proposed amendment would not find liability for Image-based Sexual Abuse that ICSs could not have reasonably had knowledge of nor require them to institute unreasonable or burdensome content moderation. The VAWA Reauthorization’s existing language contains a safeguard against overbroad enforcement by finding liability only where “disclosure was made by a person who knows that, or recklessly disregards whether, the individual has not consented to such disclosure.”¹¹⁹ Liability would then only attach once the ICS was put on notice that the images were distributed on its platform without the plaintiff’s consent, and yet subsequently failed to remove them from its platform after acquiring such knowledge. Further, as discussed below, many ICSs have already instituted an intake process for takedown requests for copyright-infringing content and can do the same for Image-based Sexual Abuse takedown requests without undue burden.¹²⁰ Thus, this proposed amendment is sufficiently narrow so as to avoid unduly burdening ICSs while furthering CDA 230’s policy goals.

115. See *A.M. v. Omegle.com, LLC*, 614 F. Supp. 3d 814, 817 (Or. Dist. Ct. 2022).

116. *Id.* at 821.

117. See Amanda Hoover, *Omegle Was Forced to Shut Down by a Lawsuit From a Sexual Abuse Survivor*, WIRED (Nov. 9, 2023), <https://www.wired.com/story/omegle-shutdown-lawsuit-child-sexual-abuse/>.

118. See Leif K-Brooks, *Statement by Leif K-Brooks, Founder, Omegle.com LLC*, OMEGLE, <https://www.omegle.com> (last visited Dec. 29, 2023).

119. Violence Against Women Act Reauthorization Act, 15 U.S.C. § 6851.

120. See *Report Content On Google*, GOOGLE, https://support.google.com/legal/troubleshooter/1114905?visit_id=0-636101813522729091-75739088&p=report&rd= (last visited Dec. 29, 2023); see also *Reporting Copyright Infringements*, FACEBOOK, <https://www.facebook.com/help/400287850027717> (last visited Dec. 29, 2023); see also *Copyright Report Form*, INSTAGRAM, <https://help.instagram.com/contact/552695131608132> (last visited Dec. 29, 2023).

D. Proposed VAWA Reauthorization Amendment Comports with Precedent for ICS Liability for Failure to Remove Third-party Content

This proposed VAWA Reauthorization amendment would not be the first time CDA 230's broad grant of immunity to ICSs has been displaced by ICS liability for failure to remove third-party content on their platform once put on notice of its existence. CDA 230's blanket defense for ICSs has been previously nullified to serve an important interest in protecting copyrighted works and should be similarly nullified in the interest of protecting victims of Image-based Sexual Abuse. In 1998, the Digital Millennium Copyright Act ("DMCA") was enacted to combat copyright infringement.¹²¹ Congress created a "Safe Harbor" provision under the DMCA, which protects ICSs from liability for copyright-infringing third-party content on their platforms.¹²² However, ICSs lose that Safe Harbor status and can be liable for hosting infringing third-party content once the ICS has actual knowledge of the infringing content and fails to remove it.¹²³ To obtain Safe Harbor status under the DMCA notice and takedown procedure, ICSs must designate an agent to receive DMCA takedown notices,¹²⁴ wherein copyright holders identify the infringing content and request the ICS to remove it from their platform.¹²⁵ As no similar takedown procedure exists when ICSs knowingly host Image-based Sexual Abuse, victims often must resort to sending DMCA takedown notices to ICSs for intimate images they took themselves and thus own the copyright to, because ICSs must remove the content on copyright infringement grounds.¹²⁶ However, the same takedown remedy is not available for images of victims that they themselves did not take, because they do not own the copyright.¹²⁷ Requiring ICSs to remove Image-based Sexual Abuse only when the victim owns the copyright to the images disempowers victims and sends the message that remedying copyright infringement is more important than protecting victims of Image-based Sexual Abuse. Copyright law's allowance for ICS liability where knowledge

121. See Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, 112 Stat. 2860 (1998).

122. See 17 U.S.C. § 512.

123. See *id.* § 512(c)(1)(A).

124. See *id.* § 512 (c)(3); see also Jordan Meggison-Decker, *What Is a Designated DMCA Agent, and Why You Need One*, BROWWINICK L. (Dec. 9, 2021), <https://www.brownwinick.com/insights/what-is-a-designated-dmca-agent-and-why-you-need-one>.

125. See 17 U.S.C. § 512 (c)(3); see also *What Is a DMCA Takedown?*, DMCA, <https://www.dmca.com/FAQ/What-is-a-DMCA-Takedown> (last visited Dec. 29, 2023).

126. *What Can I Do if I Am a Victim of Revenge Porn?*, DMCA, <https://www.dmca.com/FAQ/What-can-I-do-if-I-am-a-victim-of-revenge-porn> (last visited Dec. 29, 2023).

127. *What Photographers Should Know about Copyright*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/engage/photographers/> (last visited Dec. 29, 2023).

and inaction exist carved a new path to displacing CDA 230's broad grant of ICS immunity, and such immunity must be similarly displaced in Image-based Sexual Abuse claims against ICSs through the proposed VAWA Reauthorization amendment.

V. CONCLUSION

When Congress reauthorized VAWA, it recognized an important interest in protecting and empowering victims of Image-based Sexual Abuse. To further this interest, it is reasonable and necessary to require ICSs to mitigate the harm caused by Image-based Sexual Abuse on their platforms once put on notice of its existence. When faced with a leak, it is far more laborious and ineffective to run around with buckets than it is to patch the leak at the source. ICSs are the sources best equipped with the tools to patch the leak and control the spread of Image-based Sexual Abuse on their own platforms. But while ICSs currently have the means to do so, they lack the motive. This proposed VAWA Reauthorization amendment will ensure ICSs have the motive to reasonably respond to known Image-based Sexual Abuse on their platforms, rather than ignoring victims' pleas. This amendment would help mitigate the devastating effects of Image-based Sexual Abuse by providing a civil remedy for ICS inaction, furthering both VAWA and CDA 230's policy goals of empowering victims of harassment by means of computer, while comporting with existing precedent for ICS liability for failure to remove third-party content. It is time for ICSs to pay the price for their inaction.