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## Tinder Love and Care: Proposing an Industry Self-Regulation Policy Implementing Safety Procedures for Dating App Companies

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# **Tinder Love and Care: Proposing an Industry Self-Regulation Policy Implementing Safety Procedures for Dating App Companies**

MARISSA C. MEREDITH\*

*Online dating companies have monetized and capitalized on the idea of finding love, creating a billion-dollar industry matching individuals with their “soul mates.” With its perks and benefits, the online love industry is not without risk. Despite some dating companies limiting user eligibility in their terms and conditions to those without felony and sexual offense convictions, there is no actual screening process established by these companies. Furthermore, there are no uniform safety protocols among dating app companies. This lack of uniformity coupled with access to all, including violent offenders, allows repeat offenders to engage in “delightful” conversations with unsuspecting strangers across the globe.*

*Since the rise in popularity of online dating, there have been several instances of violent offenses, ranging from rape to murder, stemming from multiple dating apps. With the steady increase in violent crimes on the web, online dating companies promising a fairy-tale ending have not upheld their end of the deal with their customers. Now that using online dating apps has become more prevalent in today’s society and with the changing landscape of section 230 of the Communications Decency Act—which precludes software providers from liability for information placed on their sites or activities occurring through the use of their sites as long as they are acting as passive conduits—companies should utilize a uniform safety protocol to make their dating sites safer for users.*

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## INTRODUCTION

Taylor,<sup>1</sup> a thirty-year-old, single woman who has spent the better part of her twenties building a successful career, has now decided to search for love. Due to the time constraints of her professional life, she feels the best way to find true love is through using dating apps.<sup>2</sup> Excited by the prospect of finding her soul mate from the comforts of her couch, Taylor begins to explore the idea further. Taylor is far from a naive online user. She's cautious since she spends most of her days (and nights) binge-watching true crime TV, and those stories do not instill a sense of safety in her when it comes to meeting strangers online. Armed with equal parts fear and skepticism, she decides to research the safety measures provided to users by different online dating apps and is shocked by what she learns.

Even though the online dating industry generates approximately three billion dollars in revenue a year<sup>3</sup> and is used by individuals throughout multiple states, there

1. Taylor is a fictional composite of women who have been skeptical about using dating apps due to safety concerns and solely the author's work.

2. There are several dating app companies. These companies range in price and at times can be tailored to individuals' hobbies and interests. One of the biggest companies in the dating app world is Match Group, Inc., which owns approximately forty-five dating companies, including Tinder, Match.com, Meetic, OkCupid, Hinge, Plenty of Fish, Ship, and OurTime. See *Our Company*, MATCH GROUP, <https://mtch.com/ourcompany> [<https://perma.cc/3XDG-N3ZK>]. In addition to the dating apps owned by Match Group, there is Bumble (seen as the feminist option for dating), The League (an exclusive app designed for the professional man or woman), and a slew of other smaller apps. See Rebecca Fleenor, *Best Dating Sites for 2022*, CNET (Oct. 15, 2022, 12:00 AM), <https://www.cnet.com/tech/services-and-software/best-dating-sites/> [<https://perma.cc/H86D-UABT>].

3. David Curry, *Dating App Revenue and Usage Statistics*, BUSINESS OF APPS <https://www.businessofapps.com/data/dating-app-market> [<https://perma.cc/QNW3-W39Y>] (Aug. 31, 2022) (demonstrating that dating app revenue has significantly increased over the last five years, increasing from \$1.69 billion in 2015 to \$3.08 billion in 2020).

are no federal statutes enacted to regulate the sector. However, there are federal laws that regulate the similar market of international marriage brokerage.<sup>4</sup> The only form of federal regulation that could impact the industry is the Communication Decency Act (CDA). The CDA currently exempts online dating sites from any obligation to protect users from potentially violent individuals. Specifically, the statute provides that such sites shall not, for liability purposes, “be treated as the publisher or speaker of any information” posted by their users.<sup>5</sup> This provision effectively immunizes the sites from potential liability flowing from the postings of users who meet others through the sites and then harm them.

The CDA precludes states from enacting regulations that contradict it;<sup>6</sup> therefore, there are very few state regulations governing online dating policies and procedures. Most states that have enacted statutes have modeled their regulation after New Jersey’s Internet Dating Safety Act.<sup>7</sup> This statute merely requires the platforms to inform users of the possible dangers stemming from meeting an individual online by “increas[ing] the users’ awareness [of] possible criminal attack[s] stemming from online dating.”<sup>8</sup> Furthermore, an online dating company has to inform the users on

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4. The International Marriage Broker Regulation Act (IMBRA) of 2005 defines an international marriage broker (IMB) as a “legal entity . . . that charges fees for providing dating, matrimonial, matchmaking services, or social referrals between United States citizens . . . and foreign national clients by providing personal contact information or otherwise facilitating communication between individuals.” International Marriage Broker Regulation Act of 2005, 8 U.S.C. § 1375a(e)(4)(A). However, it excludes dating app companies since their principal business is not international matchmaking. *Id.* § 1375a(e)(4)(B)(ii). “Congress enacted the [IMBRA] of 2005 . . . in response to findings of domestic violence among relationships created by IMBs.” Carin M. Bowes, “Male” Order Brides and International Marriage Brokers: The Costly Industry that Facilitates Sex Trafficking, Prostitution, and Involuntary Servitude, 18 CARDOZO J.L. & GENDER 1, 5 (2011). Specifically, Congress relied on a 1999 report prepared by the Immigration and Naturalization Service called “International Matchmaking Organizations,” which demonstrated that IMBs were “contribut[ing] to the growing problem of domestic violence against particularly vulnerable foreign women.” *Id.* It noted that the operations of IMBs—specifically, requiring men to pay exuberant fees to become members while the women paid nothing—led to the women being seen as commodity. *Id.* Comparing IMBs to traditional matchmaking companies, Congress noted that the fee arrangement created a power imbalance, with the majority of the power being left in the “consumer-husband[s]” hands. *Id.* Additionally, the findings showed “[a] 2003 survey of programs providing legal services to battered immigrant women across the country found that more than 50 percent of these programs had served female immigrant clients battered by men in the United States they met through international marriage brokers.” S. 1618, 109th Cong. § 2(4) (2005). To rectify the issues caused by IMBs that would be expounded due to their rapid growth, the IMBRA was created.

5. 47 U.S.C. § 230(c)(1).

6. *Id.* § 230(e)(3).

7. Maureen Horcher, *World Wide Web of Love, Lies, and Legislation: Why Online Dating Websites Should Screen Members*, 29 J. MARSHALL J. COMPUT. & INFO. L. 251, 256 (2011).

8. Nazgole Hashemi & Tannaz H. Hashemi, *Don’t Let Them Fool Ya: An Examination of Regulation Crowdfunding as a Framework for Federal Protection Against Online Dating Risks*, 53 U.S.F. L. REV. 421, 422 (2019) (quoting Ryan D. O’Day, Comment, *Rapists, Sexual Offenders, and Child Molesters: Who Is Your Romantic “Match”? Why Dating Websites*

its website “whether it performs criminal background checks, identify whether it allows users with criminal backgrounds to use the site, and also . . . warn users that criminal background checks [sometimes] fail to flag . . . dangerous individuals.”<sup>9</sup> Although the dating companies comply with these laws, many of them include their safety section inconspicuously at the bottom of their site/app hidden within the terms and conditions sections, which go unreviewed by users, thus rendering the section ineffective.

With the lack of state and federal regulations governing the online dating industry coupled with increased access to the internet, online dating users are left vulnerable to those who prey on the innocent. Despite some dating apps limiting user eligibility in their terms and conditions and reserving the right to conduct screenings of users at any time,<sup>10</sup> a 2019 exposé revealed that registered sex offenders and violent crime offenders utilize free dating apps to meet unsuspecting strangers.<sup>11</sup> Although many sexual and violent offenses stemming from the use of online dating apps are never reported, some countries have begun to track the available data to measure the relationship between dating apps and reported sexual offenses.<sup>12</sup> For example, the United Kingdom saw an increase in the number of attacks stemming from online dating over the same period of time that adults’ use of dating services tripled.<sup>13</sup>

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*Should Perform Criminal Background Checks*, 48 VAL. U. L. REV. 329, 353 (2013)); Internet Dating Safety Act, N.J. STAT. ANN. § 56:8-171 (West 2008).

9. Hashemi & Hashemi, *supra* note 8, at 422 (quoting O’Day, *supra* note 8, at 337).

10. See, e.g., *Terms of Use*, TINDER, <https://policies.tinder.com/terms/us/en> [<https://perma.cc/E8VQ-33AC>] (Feb. 28, 2022). Within Tinder’s terms and conditions, it limits eligibility to its app to those eighteen years or older who have not been convicted of or pled no contest to a felony, a sex crime, or any crime involving violence and are not required to register as a sex offender with any state, federal, or local sex offender registry. *Id.* Hinge has the same policy as Tinder. See HINGE (Feb. 28, 2022), <https://hinge.co/terms> [<https://perma.cc/3VHS-FDGE>]; *Terms*, BUMBLE, <https://bumble.com/en/terms> [<https://perma.cc/8Y7N-2PC7>] (Nov. 19, 2021).

11. Hillary Flynn, Keith Cousins & Elizabeth Naismith Picciani, *Tinder Lets Known Sex Offenders Use the App. It’s Not the Only One*, PROPUBLICA (Dec. 2, 2019, 5:00 AM) <https://www.propublica.org/article/tinder-lets-known-sex-offenders-use-the-app-its-not-the-only-one> [<https://perma.cc/64RV-885K>].

12. See Cassie Werber, *Nobody Knows How Dangerous Online Dating Really Is—and Dating Sites Won’t Talk About It*, QUARTZ (Mar. 31, 2017, 3:30 AM), <https://qz.com/890320/nobody-know-how-dangerous-online-dating-really-is-and-dating-sites-wont-talk-about-it/> [<https://perma.cc/VU97-N5SY>]; see also SERIOUS CRIME ANALYSIS SECTION, SEXUAL OFFENCES INITIATED VIA ONLINE DATING SUBMITTED TO SCAS 2003 TO 2021 3 (2002), <https://nationalcrimeagency.gov.uk/who-we-are/publications/583-online-dating-scas-statistics-2021/file> [<https://perma.cc/W6MX-FQ5L>] (discussing and elaborating on a trend highlighted in 2016 regarding “an increase in the number of serious sexual offences linked to online dating websites and apps” and noting that although the offenses are not increasing at the frequency they were in 2016, serious offenses tied to online dating still remain an issue); KAMARAH POOLEY & HAYLEY BOXALL, MOBILE DATING APPLICATIONS AND SEXUAL AND VIOLENT OFFENDING (Rick Brown ed., 2020), [https://www.aic.gov.au/sites/default/files/2020-11/ti612\\_mobile\\_dating\\_applications\\_and\\_sexual\\_and\\_violent\\_offending.pdf](https://www.aic.gov.au/sites/default/files/2020-11/ti612_mobile_dating_applications_and_sexual_and_violent_offending.pdf) [<https://perma.cc/2U4G-V5LT>].

13. Werber, *supra* note 12.

In response to the 2019 exposé, some dating companies have attempted to promote themselves as safer options for online dating by providing additional security enhancements for their users. For example, in January of 2020, Match Group, owner of many of the major dating apps, announced that it partnered with Noonlight to provide users with backup as they meet new individuals through the dating app.<sup>14</sup> Noonlight is an app designed to assist with connecting users with emergency services when they are found in an unsafe environment.<sup>15</sup> The tool is designed to connect directly to users' profile and allow them to upload information to the app regarding where, when, and with whom they are meeting via the app.<sup>16</sup> To utilize the tool when feeling unsafe or uneasy about a situation, the user must open the Noonlight app and hold down a "button."<sup>17</sup> If the button is released without inputting a PIN, Noonlight will notify emergency services for the user.<sup>18</sup> Although a valuable tool, this security enhancement is limited in its effectiveness because it requires the user to be or feel in danger to utilize it and assumes the user will have access to their mobile device. In practice, this will not always be the case since a savvy predator will likely confiscate or destroy the mobile device of their victim.

The information that Taylor found highlights areas of needed security improvements within dating apps. While media reports indicate that violence among people who have met on dating apps is a serious and growing problem, federal and state laws currently fail to incentivize online dating companies to take proactive steps to protect users against this danger. Although congressional action may eventually be required, in the meantime, these companies owe an ethical duty to work together to establish an industry self-regulation policy when it comes to the safety of their users.

This Article will highlight how companies should protect their users, enabling them to deliver on their promise of true love. Part I of this Article provides an overview of the evolution of dating and the history of online dating. Part II of this Article highlights the inadequacies in the safety precautions currently utilized by dating companies to aid in the prevention of dating violence and details the lack of accountability for these companies due to section 230 of the CDA, which is used in cases as an affirmative defense, and minimum state regulation. Lastly, Part III of this

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14. Sarah Perez, *Match Group Invests in Noonlight to Power New Safety Features in Tinder and Other Dating Apps*, TECHCRUNCH (Jan. 23, 2020, 10:10 AM), <https://techcrunch.com/2020/01/23/match-group-invests-in-noonlight-to-power-new-safety-features-in-tinder-and-other-dating-apps/> [<https://perma.cc/S9S2-YEYF>]; see also *Match Group Invests in Noonlight to Integrate First-of-Its-Kind Safety Technology Across Portfolio, Beginning with Tinder*, MATCH GROUP (Jan. 23, 2020), <https://ir.mtch.com/news-and-events/press-releases/press-release-details/2020/Match-Group-Invests-In-Noonlight-To-Integrate-First-of-its-Kind-Safety-Technology-Across-Portfolio-Beginning-With-Tinder/default.aspx#:~:text=Match%20Group%20plans%20to%20roll,themselves%20safer%20on%20and%20offline> [<https://perma.cc/K7FX-9QHS>].

15. Perez, *supra* note 14.

16. Dan Crowe, *How Does Noonlight Help Protect Tinder Users?*, NOONLIGHT, <http://help.noonlight.com/en/articles/3673586-how-does-noonlight-help-protect-tinder-users> [<https://perma.cc/3674-6QLL>].

17. See *How Does Noonlight Work?*, NOONLIGHT, <https://help.noonlight.com/en/articles/2060965-how-does-noonlight-work> [<https://perma.cc/8VBV-5SHB>].

18. *Id.*

Article discusses the concept of self-regulation, more specifically industry self-regulation. It proposes that, although government regulation is needed to an extent, companies should implement an industry self-regulation policy regarding safety procedures to better serve and protect consumers.

### I. THE EMERGENCE OF ONLINE DATING

While courtship has never been without risk, societal formalities minimized these risks during the nineteenth century in Western civilization and provided safeguards for couples. As a part of these formalities, there was some level of monitoring of the relationship by the couple's families and, at times, the community.<sup>19</sup> Since marriage was seen as a private matter,<sup>20</sup> marriages were loosely arranged during this time, and initial meetings occurred in the woman's home under the supervision of her parents.<sup>21</sup> Then, "[a] young man and young woman had to be formally introduced before they were allowed to speak to one another. After such an introduction, the young woman's mother would ask the young man to call upon her daughter; later on[,] the young lady could do the asking."<sup>22</sup> This formality allowed the mother to approve of the young man and ensure that the young man was of "similar social standing" and financially able to support a family.<sup>23</sup> It also provided a level of protection for the young man and woman—awareness. Each party was able to meet their potential partner's families and get to know them under the supervision of the family and community members. However, with the development of different technology mediums, those safeguards of the olden days vanished. This Part focuses on the evolution of dating, from newspaper ads to online dating, and the impact of losing safeguards as technological advancements were introduced to facilitate meeting potential soul mates.

#### A. *The Precursor to Online Dating*

As the formalities of conventional dating in the mid-nineteenth century became more stringent and societal norms changed, individuals began to utilize nontraditional, third-party intermediaries to find their significant others.<sup>24</sup> Although

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19. Monica Whitty, *Love Letters: The Development of Romantic Relationships Throughout the Ages*, in THE OXFORD HANDBOOK OF INTERNET PSYCHOLOGY 31, 33 (Adam N. Joinson et al. eds., 2009).

20. See Pamela Epstein, *Advertising for Love: Matrimonial Advertisements and Public Courtship*, in DOING EMOTIONS HISTORY 120, 121–22 (Susan J. Matt & Peter N. Stearns eds., 2013).

21. Whitty, *supra* note 19, at 32.

22. *Id.* (citations omitted) (quoting RODNEY M. CATE & SALLY A. LLOYD, COURTSHIP 20–21 (1992)).

23. *Id.*

24. See generally Eli J. Finkel, Paul W. Eastwick, Benjamin R. Karney, Harry T. Reis & Susan Sprecher, *Online Dating: A Critical Analysis From the Perspective of Psychological Science*, 13 PSYCH. SCI. PUB. INT. 3, 4 (2012) ("From the Jewish *shadchan* immortalized in the musical *Fiddler on the Roof*, to the *khastegari* customs of Iran, to the arranged marriages still prevalent in parts of Southeast Asia, there is a tradition—millennia old—of romantic

personal ads, also known as lonely hearts ads, were around since the advent of the newspaper in the late seventeenth century, their rise in popularity in the nineteenth century was spearheaded in America due to the migration of single men and women to the bigger cities and the isolation that came with this transition.<sup>25</sup> At the time, men and women had begun to migrate to bigger cities due to decreased agricultural opportunities in rural areas and increased corporate opportunities in the cities.<sup>26</sup> With this migration came a shift in priorities—men became focused on being “self-made.”<sup>27</sup>

With men now focused more on economic pursuits than engaging in social activities, the chance for impromptu meetings between the sexes lessened.<sup>28</sup> Migration to the city also removed the help of family and community to assist men and women in finding their soul mates.<sup>29</sup> These geographical changes redirected the time of men from pursuing love to now pursuing business opportunities, and along with the frustration of the restrictions of conventional dating,<sup>30</sup> men and women turned to an alternative means to find love—the newspaper.

Because of society’s feelings toward those who placed lonely hearts ads (society viewed them as social rejects and villains) those who placed ads did so anonymously.<sup>31</sup> They typically used pseudonyms or abbreviations to place the ads and the newspaper or newspaper post offices to receive the letters.<sup>32</sup> This level of anonymity protected the individual from being ridiculed by society but also removed the safeguard of awareness provided by traditional dating conventions. This anonymity allowed for scammers and other predators to exploit those seeking love.<sup>33</sup>

Since responders to the lonely hearts ads did not know much about their prospective suitors, other than what was disclosed in the ad or through letters, some

relationships arising not only from chance encounters between two individuals but also from the deliberate intervention of third parties.”)

25. Epstein, *supra* note 20, at 124.

26. *Id.* at 125.

27. *Id.* (discussing the transition that occurred in the nineteenth century of men pursuing economic opportunities where economic success increasingly defined men’s worth; thus, men spent less time in spontaneous social events and more time in the workplace).

28. See Whitty, *supra* note 19, at 32.

29. Epstein, *supra* note 20, at 121, 126.

30. *Id.* The article discusses an ad placed by a man named Bertram, which expressed that he was frustrated with the “‘narrow bigotries and conventionalities’ of social etiquette that forbid the ‘free intercourse of the sexes’ and which constrained marriage choices to one’s ‘circles’” *Id.* at 121. Societal conventions at the time required formal introductions, but formal “introductions could not be given without prior consent of a lady, and could not be suggested unless it was certain that the acquaintance would be mutually beneficial.” *Id.* at 126. Due to these constraints, which were hard to navigate as a transplant in a new city, men and women, alike, turned to the use of newspaper ads as a means to find their partner.

31. See *id.* at 123; Jacqueline Cutler, *From Single Ads to Swipes: The History of Looking for Love in the Personals*, DAILY NEWS (Oct. 2, 2020, 4:22 PM), <https://www.nydailynews.com/entertainment/ny-matrimony-inc-book-20201002-yl3jdysr7vhwllaaaj67zf5dhi-story.html> [<https://perma.cc/QR33-F7ZC>].

32. Epstein, *supra* note 20, at 123.

33. Cutler, *supra* note 31.



responders were in for a shock when they finally met.<sup>34</sup> Responders would travel hundreds of miles to find out that neither the physical appearance nor financial means of their potential suitors were anywhere near what was reflected in their suitors' letters.<sup>35</sup> Sometimes, this unawareness led to criminals preying on unsuspecting strangers. The crimes ranged anywhere from serious crimes, such as murder, to financial schemes.<sup>36</sup> In one story, a man named Johann Hoch placed an ad seeking a widow without children.<sup>37</sup> He would then court these women, steal their wealth, and poison them to death.<sup>38</sup> Hoch fled after his crimes had been discovered, but he was eventually caught and linked to the deaths of fifty women.<sup>39</sup> Women also found opportunities to engage in criminal activity by way of the lonely hearts ads.<sup>40</sup> A woman by the name of Belle Gunness would place ads in a Chicago newspaper to lure men to her Indiana farmhouse, where she would insure them, and then the men would mysteriously disappear.<sup>41</sup> Her actions were only discovered after her farmhouse burned down and the remains of approximately forty men were found on the property.<sup>42</sup>

Because of the pervasiveness of criminal activity via the lonely hearts ads and the use of personal ads being associated with sex work, the popularity of the ads dwindled over time; although less common, these ads are still featured in print and online platforms.<sup>43</sup>

### B. Online Dating

Although the reach of newspapers was broad, the production of newspapers was relatively slow. With the invention of the modern computer in 1943, those searching for love realized they now could have the same reach as newspaper ads but with a quicker means of communication.<sup>44</sup> Individuals quickly began to capitalize on this

34. *See id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*; Jason Lucky Morrow, *The Lady Killer, 50 Possible Victims, 1890-1905*, HIST. CRIME DETECTIVE (Apr. 30, 2014), <https://www.historicalcrimedetective.com/johann-hoch-the-lady-killer/> [<https://perma.cc/HEE4-GKMB>].

40. Cutler, *supra* note 31.

41. *Id.*; Domenica Bongiovanni, *From Norway to Indiana Yard of Corpses, Novel Explores Serial Killer Belle Gunness*, INDYSTAR (July 6, 2021, 5:00 AM), <https://www.indystar.com/story/entertainment/arts/2021/07/06/serial-killer-belle-gunness-explored-in-the-garden-of-spite/6840681002/> [<https://perma.cc/SM5C-ZWL2>].

42. Cutler, *supra* note 31.

43. Karen Lee, *This Is How Newspapers Helped Us Find Love—And Deception—Before Online Dating*, FISHWRAP: THE OFFICIAL BLOG OF NEWSPAPERS.COM (Feb. 7, 2019), <https://blog.newspapers.com/lonely-hearts/> [<https://perma.cc/737D-H7AP>].

44. *See Timeline of Computer History*, COMPUT. HIST. MUSEUM, <https://www.computerhistory.org/timeline/computers/#:~:text=Started%20in%201943%2C%20the%20ENIAC,of%20the%20University%20of%20Pennsylvania> [<https://perma.cc/6XSQ-M9HC>]; *see also* Timothy Williamson, *History of Computers: A Brief Timeline*, LIVE SCI. (Dec. 1, 2021), <https://www.livescience.com/20718-computer-history.html>

new mode of communication. Seizing on the newly invented computer's capabilities, two Stanford University students created the "Marriage Planning Service," a mathematical algorithm designed to pair forty-nine men and forty-nine women based on a thirty-question profile.<sup>45</sup> Although made for a final project in a math course, the Marriage Planning Service was deemed "The Dawn of Computer Love."<sup>46</sup> In 1965, despite the dwindling popularity of personal advertisements, undergraduate students at Harvard University sought to reinvent how people could find love by creating "Operation Match," the world's first computer dating service.<sup>47</sup> Even though the service cost each individual three dollars, by the end of 1969, more than one million people were using Operation Match.<sup>48</sup>

Years later, in August of 1991, the most revolutionizing dating tool was created—the consumer internet.<sup>49</sup> With the rapid expansion of the internet, the 1990s brought about the inception of the modern online dating platform.<sup>50</sup> In 1995, the industry leader, Match.com, launched its website and "helped pioneer the online dating industry."<sup>51</sup> The website gave users a new way to instantly communicate online

[<https://perma.cc/32T6-7PLT>].

45. Jeremy Norman, "Marriage Planning Service," *the First Computer Matching Dating Service*, JEREMY NORMAN'S HISTORYOFINFORMATION.COM, <https://www.historyofinformation.com/detail.php?id=3515> [<https://perma.cc/YNC3-BRDZ>] (Feb. 23, 2023).

46. *Id.*

47. Susie Lee, *The History of Online Dating from 1695 to Now*, HUFFPOST, [https://www.huffpost.com/entry/timeline-online-dating-fr\\_b\\_9228040](https://www.huffpost.com/entry/timeline-online-dating-fr_b_9228040) [<https://perma.cc/4ZF8-JHQQ>] (Dec. 6, 2017).

48. *See id.*; Michael Vitez, *Pioneers in the Computer Dating Game Still Together After Nearly 50 Years*, PHILA. INQUIRER (May 31, 2015), [https://www.inquirer.com/philly/news/20150531\\_Pioneers\\_in\\_the\\_computer\\_dating\\_game\\_still\\_together\\_after\\_nearly\\_50\\_years.html#loaded](https://www.inquirer.com/philly/news/20150531_Pioneers_in_the_computer_dating_game_still_together_after_nearly_50_years.html#loaded) [<https://perma.cc/39CP-9Z4D>]; Alicia M. Chen, *Operation Match*, HARV. CRIMSON (Feb. 16, 2018), <https://www.thecrimson.com/article/2018/2/16/operation-match/> [<https://perma.cc/J96A-PHEX>]; Nell Porter Brown, *The Originals: Matching Them Up*, HARV. MAGAZINE (Mar.–Apr. 2003), <https://www.harvardmagazine.com/2003/03/the-originals-html> [<https://perma.cc/TM52-BPL8>].

49. Tony Long, *Aug. 7, 1991: Ladies and Gentlemen, the World Wide Web*, WIRED (Aug. 7, 2012, 6:30 AM), <https://www.wired.com/2012/08/aug-7-1991-ladies-and-gentlemen-the-world-wide-web/> [<https://perma.cc/D5P9-6FHK>]; *see also* J. D. Biersdorfer, *In the Beginning: The Origins of the Internet*, N.Y. TIMES (Jan. 27, 2000), <https://www.nytimes.com/2000/01/27/technology/in-the-beginning-the-origins-of-the-internet.html?smid=url-share> [<https://perma.cc/3Twx-RKPV>]; Katrina Brooker, "I was Devastated": *Tim Berners-Lee, The Man Who Created The World Wide Web, Has Some Regrets*, VANITY FAIR (July 1, 2018), <https://www.vanityfair.com/news/2018/07/the-man-who-created-the-world-wide-web-has-some-regrets> [<https://perma.cc/A9JE-E9S8>]; Josie Fischels, *A Look Back at the Very First Website Ever Launched, 30 Years Later*, NPR (Aug. 6, 2021, 6:08 PM), <https://www.npr.org/2021/08/06/1025554426/a-look-back-at-the-very-first-website-ever-launched-30-years-later> [<https://perma.cc/82EC-GY3D>].

50. *See* Alex Shashkevich, *Meeting Online Has Become the Most Popular Way U.S. Couples Connect, Stanford Sociologist Finds*, STAN. NEWS (Aug. 21, 2019), <https://news.stanford.edu/2019/08/21/online-dating-popular-way-u-s-couples-meet/> [<https://perma.cc/GF67-JT4E>].

51. *About Match.com*, MATCH, <https://www.match.com/help/aboutus.aspx?lid=4> [<https://perma.cc/Y3PZ-YBZ7>]. Match.com serves "24 countries and territories and hosts

through profiles depicting themselves and their interests, hobbies, and any information they wished to share.<sup>52</sup> Capitalizing on the success of Match.com and launching its psychological-based approach to user matching, eHarmony was created in 2000.<sup>53</sup> Similar to Match.com, eHarmony allows its users to peruse the sites of other users and review the information posted on their user profiles.<sup>54</sup> However, due to a compatibility quiz that each user takes, it provides users with the additional score to see how compatible they would be with their potential match.<sup>55</sup>

Despite the widespread popularity and proliferation of dating websites, few of them were free to use.<sup>56</sup> In 2004, four Harvard University students took advantage of this gap in the market and created OkCupid.<sup>57</sup> This free dating site allowed users to rate the importance of specific answers provided by users.<sup>58</sup> In addition to the launch of OkCupid, Plenty of Fish and ChristianMingle also launched in 2004, all providing a free dating service for users.<sup>59</sup>

In 2007, the technological industry received a new upgrade when the first smartphones were released, giving users the ability to date on the go—mobile dating.<sup>60</sup> Grindr, created in 2009, brought a revolutionary change to the dating industry as the first dating application to cater to the LGBTQ+ community and as one of the first dating applications to effectively use geolocation technology to find other users in the area.<sup>61</sup> As more and more applications and websites switched to location-based match searches, new users flocked to the online dating industry.<sup>62</sup> In 2012, one of the current dating giants, Tinder, was created.<sup>63</sup> The app famous for coining “swipe left or swipe right” to indicate liking or disliking someone was introduced to the market and quickly took over.<sup>64</sup> Following the success of Tinder, several other companies launched their own mobile dating applications, such as

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Web sites in 15 different languages.” *Id.* The key to its success is it allows members to have profiles which can “include up to 26 photos, as well as selected preferences regarding the person they’re searching for.” *Id.* Users can “see photos and read about potential matches in their [geographical] area . . . . All communication between users on Match.com happens through an ‘anonymous’ email network. The names and contact information of all [its] members are kept confidential” as well. *Id.*

52. See Lee, *supra* note 47.

53. Amber Brooks, *A Timeline of How Online Dating Has Changed Over the Last 20+ Years*, DATINGNEWS.COM, <https://www.datingnews.com/daters-pulse/timeline-of-how-online-dating-has-changed/> [https://perma.cc/3RUX-YV84] (Jan. 7, 2020).

54. *Id.*; see also *eHarmony’s Compatibility Scores Explained*, EHARMONY, <https://www.eharmony.com/tour/faq/explanation-of-compatibility-scores/> [https://perma.cc/652C-8G9Z].

55. *eHarmony’s Compatibility Scores Explained*, *supra* note 54.

56. See *Infographic: A History of Love & Technology*, PBS POV (July 15, 2013), <http://archive.pov.org/apps/xoxosms/infographic/index.html> [https://perma.cc/Z47Q-2K66].

57. *Id.*

58. *Id.*

59. *Id.*

60. See Brooks, *supra* note 53.

61. See *id.*

62. See *id.*

63. *Id.*

64. See *id.*

Hinge, marketed as the dating application for serious dating, and Bumble, the dating application with a feminist approach—allowing the woman to take the lead.<sup>65</sup>

Beginning in the 1990s, the modern online dating industry has blossomed beyond expectations. In 2015, the online dating industry's annual revenue totaled approximately \$1.6 billion and was comprised of 198.6 million users.<sup>66</sup> Currently, there exists in excess of 8000 different online dating platforms<sup>67</sup> accumulating over \$5.61 billion in annual revenue supported by over 300 million users.<sup>68</sup>

Despite years of popularity, success, and growth, critics continue to question the legitimacy of online dating and may have grounds for their skepticism. In 2010, the documentary *Catfish* aired on television, highlighting online dating problems and lies.<sup>69</sup> The term “catfish” was coined to refer to people who pretended to be someone else on a dating profile, thus giving off a false impression to meet people.<sup>70</sup> Similar to the lonely hearts ads, the level of anonymity provided through the use of online dating sites allows—and in ways facilitates—the creation of fictional profiles or personas.<sup>71</sup> At times, those who create these profiles merely seek to amuse themselves; however, some do so with more sinister motives.<sup>72</sup>

65. *Id.*; Jaimie Ding, *Gen Z Is Ready to Break Up with Tinder, and These New Dating Apps Are Here for the Rebound*, L.A. TIMES (Feb. 11, 2022, 5:00 AM), <https://www.latimes.com/business/story/2022-02-11/these-dating-apps-are-trying-to-capture-gen-zs-attention> [<https://perma.cc/AQ2C-L78U>]; Patrick Pamanian, *The Evolution of Online Dating*, DAILY SUNDIAL (Mar. 29, 2022), <https://sundial.csun.edu/168529/arts-entertainment/the-evolution-of-online-dating/> [<https://perma.cc/82PA-DFZZ>]; David Curry, *Dating App Revenue and Usage Statistics (2023)*, BUSINESS OF APPS, <https://www.businessofapps.com/data/dating-app-market/> [<https://perma.cc/8MSX-TRY4>] (Jan. 9, 2023).

66. Curry, *supra* note 3.

67. Ting Li & Rodrigo Belo, *To Make a Profit, Dating Apps Must Leverage Data Differently*, HARV. BUS. REV. (Jan. 14, 2022), <https://hbr.org/2022/01/to-make-a-profit-dating-apps-must-leverage-data-differently> [<https://perma.cc/G4K3-CKH8>].

68. *Id.*

69. CATFISH (Relativity Media & Rogue Pictures 2010); *see also Infographic: A History of Love & Technology*, *supra* note 56.

70. *See Infographic: A History of Love & Technology*, *supra* note 56.

71. The author is using the term profile to refer to the specific image/profile shown on the site, but persona refers to someone whose profile reflects them but has exaggerated some of their characteristics either in appearance or personality.

72. *See THE TINDER SWINDLER* (Raw TV 2022) (discussing the escapades of a young man, who swindled a group of women out of thousands of dollars through the use of a dating app); Crystal Bonvillian, *Dating App Serial Killer Caught with Help of Victim's Friends Is Sentenced to 160 Years Behind Bars*, KIRO 7 (Oct. 11, 2021, 5:14 PM), <https://www.kiro7.com/news/trending/dating-app-serial-killer-caught-with-help-victims-friends-is-sentenced-160-years-behind-bars/SFQK5EBUPBG3DB3ZYDDFFAACEM/> [<https://perma.cc/2U8L-AS53>]; Bryn Lovitt, *Suspects Charged in Tinder Murder: How Dangerous Is App Dating?*, ROLLING STONE (June 14, 2018, 7:57 PM), <https://www.rollingstone.com/culture/culture-news/suspects-charged-in-tinder-murder-how-dangerous-is-app-dating-628429/> [<https://perma.cc/6UBB-SRF3>]; Nancy Grace, *Crime Stories with Nancy Grace: Dating App Serial Killer Strikes Again*, CRIME STORIES WITH NANCY GRACE (Oct. 25, 2021, 1:00 PM), <https://podcasts.apple.com/us/podcast/dating-app-serial-killer-strikes-again/id1193068130?i=1000539665226> [<https://perma.cc/KLF9-HQK9>];

Similar to the criminals who took advantage of users of the lonely hearts ads, these crimes range from financial schemes to murders.<sup>73</sup> In *State v. Larson*, a case from the 1990s, the defendant, Dennis Larson, “joined a dating website with the goal of ‘immediate marriage.’”<sup>74</sup> “Within two weeks of meeting” the victim, Kathy Frost, he proposed marriage.<sup>75</sup> After their marriage, they each purchased life insurance policies on one another, prepaying for two months.<sup>76</sup> Kathy would soon after die during a trip to the Acadia National Park with her husband, who stated she slipped during their hike.<sup>77</sup> At trial, it was revealed that the defendant had “a scheme of marrying a foreign woman, purchasing life insurance, arranging an accidental death, and collecting the proceeds of the insurance.”<sup>78</sup> These crimes are still occurring in recent years. In 2018, a young man named Danueal Drayton was arrested for the attempted murder, forcible rape, and sexual assault of a woman in Los Angeles.<sup>79</sup> He confessed to seven other murders, and the police stated that the common denominator between his victims was that he used dating apps to find them.<sup>80</sup> In 2021, the Virginia police force released a statement announcing they were investigating a man who allegedly met women online through the use of dating apps, lured them to an isolated location, and proceeded to murder them.<sup>81</sup> They believe he is responsible for four murders.<sup>82</sup>

Despite the egregious nature of these crimes, dating app companies have yet to be held accountable for being the proximate cause of harms. This stems from their use of section 230 of the CDA as an affirmative defense to all legal remedies, precluding any accountability on the part of the dating app companies.

## II. LACK OF ACCOUNTABILITY FOR DATING APP COMPANIES

When consumer internet was first developed, its potential usage could not be fathomed by the courts and legislature. At the time of earlier legislation regarding

Phyllis Coleman, *Online Dating: “Murderers, Rapists, and Con Artists, Oh My,”* 13 APPALACHIAN J.L. 147, 150 (2014).

73. See *supra* note 72.

74. Coleman, *supra* note 72, at 150 (quoting *State v. Larson*, 577 A.2d 767, 768 (Me. 1990)).

75. *Id.*

76. *Id.*

77. See *Larson*, 577 A.2d at 769; Coleman, *supra* note 72, at 150–51.

78. Coleman, *supra* note 72, at 151 (quoting *Larson*, 577 A.2d at 770).

79. Nicole Rojas, *Who Is Danueal Drayton? Dating App Murder Suspect Blames ‘Voices’ for Alleged Crimes*, NEWSWEEK (Aug. 1, 2018, 3:19 PM), <https://www.newsweek.com/who-danueal-drayton-dating-app-murder-nypd-voices-1053278> [<https://perma.cc/N93Y-E7PK>].

80. See Julia Jacobo, *Dating App Murder Suspect Seemed Like a ‘Dream Guy’ at First, Ex-Girlfriend Says*, ABC NEWS (Aug. 1, 2018, 7:07 AM), <https://abcnews.go.com/news/story/dating-app-murder-suspect-dream-guy-girlfriend-56950404> [<https://perma.cc/T2N4-R6BD>].

81. See Justin Jouvenal, Peter Hermann & Rachel Weiner, *Virginia Police Say They Are Investigating Man as Possible Serial Killer After Four Victims Found Dead*, WASH. POST (Dec. 17, 2021, 8:23 PM), <https://www.washingtonpost.com/dc-md-va/2021/12/17/cheyenne-brown-body-found/> [<https://perma.cc/2GY3-VRVD>].

82. See *id.*

internet service providers, internet was mainly used by universities and businesses and could be found in a select few homes.<sup>83</sup> In the early 1990s, less than ten percent of the U.S. population used the internet; however, within the last few years, this has increased to over eighty-five percent.<sup>84</sup> With greater access to the internet, there has grown greater problems with its usage. This Part discusses the impact of an earlier federal regulation—the Communication Decency Act—on the policing and regulating of dating app companies. It first reviews the rationale for the creation of the Act and the interpretation of the Act by the courts. Further, it discusses how the interpretation of the Act has limited states’ ability to regulate dating app companies and created a sort of lawless internet landscape for this industry.

#### *A. Lack of Accountability Due to Section 230 of the CDA*

Notwithstanding the fact that there have been violent crimes committed since the inception of using the internet to assist in casting a wider net to find love, there has been little to no accountability for dating companies due to section 230 of the CDA.

Section 230 of the CDA was created in the mid-1990s, at the time internet usage was growing rapidly but was only in limited households.<sup>85</sup> During this time many advocacy groups lobbied for additional regulations from Congress to stop lewd and obscene information, specifically pornographic material, from being disseminated to minors via the internet.<sup>86</sup> Additionally, during this time, two cases—*Cubby, Inc. v. CompuServe, Inc.* and *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*—were decided in New York but resulted in conflicting judgments.<sup>87</sup>

Both of these cases dealt with web service providers who allowed their subscribers to post information to forums and online bulletin boards hosted by the companies.<sup>88</sup> In *Cubby*, the plaintiffs, Cubby, Inc. and Robert Blanchard, launched a gossip website, Skuttlebut, designed to compete with a Journalism Forum, Rumorville, hosted by the defendant, CompuServe, Inc.<sup>89</sup> The plaintiffs alleged that

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83. See Mike Murphy, *From Dial-up to 5G: A Complete Guide to Logging on to the Internet*, QUARTZ (Oct. 29, 2019), <https://qz.com/1705375/a-complete-guide-to-the-evolution-of-the-internet/> [<https://perma.cc/JFJ5-FBSP>].

84. Max Roser, Hannah Ritchie & Esteban Ortiz-Ospina, *Share of the Population Using the Internet*, OUR WORLD IN DATA, <https://ourworldindata.org/internet> [<https://perma.cc/L4V8-SLVN>].

85. See *id.*

86. See *Section 230 of the Communications Decency Act of 1996*, BALLOTPEdia, [https://ballotpedia.org/Section\\_230\\_of\\_the\\_Communications\\_Decency\\_Act\\_of\\_1996](https://ballotpedia.org/Section_230_of_the_Communications_Decency_Act_of_1996) [<https://perma.cc/8H79-QPJA>].

87. *Id.*; *CDA 230: Legislative History*, ELEC. FRONTIER FOUND., <https://www EFF.org/issues/cda230/legislative-history> [<https://perma.cc/FW5E-7E7N>]; see also Yaffa A. Meeran, *As Justice So Requires: Making the Case for a Limited Reading of § 230 of the Communications Decency Act*, 86 GEO. WASH. L. REV. 257, 264–65 (2018); Patricia Spiccia, *The Best Things in Life Are Not Free: Why Immunity Under Section 230 of the Communications Decency Act Should Be Earned and Not Freely Given*, 48 VAL. U. L. REV. 369, 380–83 (2013).

88. See *Cubby, Inc. v. CompuServe, Inc.*, 776 F. Supp. 135 (S.D.N.Y. 1991); *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710, at \*5 (N.Y. Sup. Ct. May 24, 1995).

89. See *Cubby*, 776 F. Supp. at 138.

the defendant allowed defamatory statements to be posted on its site regarding the plaintiffs.<sup>90</sup> However, since Rumorville was run by a third party and the defendant only hosted the site,<sup>91</sup> the defendant argued that it was not liable for the defamatory statements as it was unaware of plaintiffs and should not be held liable as publisher of the content.<sup>92</sup> Analogizing CompuServe as a mere electronic library and reasoning that it lacked editorial control of the content posted in Rumorville, the court found that the defendants, like any distributor, could not be held liable for the defamatory statements since they were unaware of them nor had reason to know of them.<sup>93</sup> Contrarily in *Stratton Oakmont, Inc.*, the court found that the defendant, Prodigy Services Co., was the publisher of defamatory statements regarding the plaintiffs made on its bulletin board, Money Talk.<sup>94</sup> The court analogized the editorial control exercised by the defendant—screening for offensive content and removing content that violated its guidelines—to that of a newspaper.<sup>95</sup> Due to this editorial control, the court found the defendant liable.<sup>96</sup>

With the concerns of the advocacy groups in mind along with frustrations that a company was held liable solely because it exercised editorial control and screened lewd comments from its site, Representatives Ron Wyden and Christopher Cox created the Internet Freedom and Family Empowerment Act, which became section 230 of the CDA.<sup>97</sup>

Section 230 provides protections for interactive computer service providers (ICSP) to block and screen offensive materials posted on their sites.<sup>98</sup> An ICSP is defined as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server.”<sup>99</sup> In addition to protecting an ICSP, which exercises editorial control over lewd and obscene remarks, section 230 does not allow for an ICSP to be held civilly liable for matters that would treat it as the publisher or speaker of any information published on its site.<sup>100</sup>

When reviewing section 230, it appears its stated purpose is to encourage “the continued development of . . . interactive computer services,”<sup>101</sup> to increase “the availability of educational and informative resources” as well as allow the public to

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90. *Id.*

91. *Id.* at 137.

92. *Id.* at 138.

93. *See id.*

94. *See Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710, at \*1 (N.Y. Sup. Ct. May 24, 1995).

95. *Id.* at \*2.

96. *Id.* at \*5–7.

97. *Section 230 of the Communications Decency Act of 1996*, *supra* note 86.

98. 47 U.S.C. § 230(c).

99. *Id.* § 230(f)(2).

100. *Id.* § 230(c)(2)(A)–(B) (limiting ICSP’s civil liability for “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 . . . any action taken to enable or make available to information content providers or others the technical means to restrict access to material described”).

101. 47 U.S.C. § 230(b)(1).

engage in “political discourse,” develop culturally, and engage in other “intellectual activit[ies].”<sup>102</sup> From the legislative history coupled with the intent of the statute’s authors to right the wrongs of *Cubby, Inc.* and *Stratton Oakmont, Inc.*, the true purpose of section 230 was a focus on speech.<sup>103</sup> This means the liability for ICSP should have been limited to defamation claims<sup>104</sup> or, as some legal scholars state, First Amendment claims more generally. Regardless, court interpretation of section 230 has broadened the scope of the liability protections beyond mere speech.

The United States Court of Appeals for the Fourth Circuit was the first court to interpret section 230 of the CDA in *Zeran v. Aol.com*.<sup>105</sup> In *Zeran*, the plaintiff, Kenneth Zeran, sued the defendant, America Online, Inc., for its failure to remove defamatory statements in a reasonable amount of time from its site as well as post a retraction.<sup>106</sup> The plaintiff had become the target of a prankster, who posted his number on the defendant’s bulletin board alleging to sell t-shirts with offensive slogans regarding the 1995 bombing in Oklahoma City.<sup>107</sup> Due to this posting, the plaintiff received numerous threatening phone calls.<sup>108</sup> The plaintiff informed the defendant of the posting and was assured that it would be removed; however, due to their delay and failure to screen for subsequent postings, the threatening calls persisted for a little over a month.<sup>109</sup> The plaintiff argued that interactive computer service providers like the defendant were “distributors” and thus not included in the CDA protections.<sup>110</sup> The court rejected this argument, holding that distributor liability is “merely a subset, or a species, of publisher liability . . . foreclosed by § 230.”<sup>111</sup> The court further noted that section 230 provided “immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.”<sup>112</sup> With this holding, the Fourth Circuit began enlarging the scope of section 230 by not limiting its use as an affirmative defense to causes of actions that arise specifically from the speech itself. Instead, it opened the door for any causes of action that stem from posted statements to be dismissed based on section 230.

Since the Fourth Circuit’s decision in *Zeran*, many courts have followed suit, holding that, regardless of the cause of action, if the plaintiff seeks to hold the defendant as the publisher of the speech, the claim is defeated because of section 230 of the CDA. For example, in *Carafano v. Metrosplash.com, Inc.*, an anonymous poster created a trial profile on Matchmaker.com that used photographs of the

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102. *Id.* § 230(a)(1), (3).

103. See DOJ, *Section 230 Workshop – Nurturing Innovation or Fostering Unaccountability?*, YOUTUBE (May 18, 2021), <https://www.youtube.com/watch?v=Jmz7xwcUPdo> [<https://perma.cc/Y8ZH-U7YE>].

104. See Spiccia, *supra* note 87; Sarah Meritt, *Sex, Lies, and Myspace*, 18 ALB. L.J. SCI. & TECH. 593 (2008).

105. 129 F.3d 327 (4th Cir. 1997).

106. *Id.* at 328.

107. *Id.* at 329.

108. *Id.*

109. *Id.*

110. *Id.* at 331.

111. *Id.* at 332.

112. *Id.* at 330.



plaintiff, a famous actress<sup>113</sup> The profile did not include the actor's real name but included two of her movies, her home address, phone number, and email address.<sup>114</sup> Additionally, the profile did provide lewd and suggestive answers to the site's dating questions as a means to entice responses.<sup>115</sup> "As a result of the profile, [the plaintiff] . . . received numerous" harassing calls, voicemail messages, letters, and emails.<sup>116</sup> The plaintiff brought suit against the defendant for "invasion of privacy, misappropriation of the right of publicity, defamation, and negligence."<sup>117</sup> The appellate court found that the defendant was immune from liability under the CDA<sup>118</sup> because "so long as a third party willingly provides the essential published content, the interactive service provider receives full immunity regardless of the specific editing or selection process."<sup>119</sup>

Even in more egregious matters, the court has refused to hold online companies liable for crimes stemming from the use of the site. For example, in *Doe v. MySpace, Inc.*, the plaintiff, a thirteen-year-old girl, lied about her age, representing that she was eighteen and circumventing some safety protocols in place by the defendant.<sup>120</sup> A nineteen-year-old was able to find the plaintiff on the site and initiated communication.<sup>121</sup> After talking on the phone several times, the two met in person, and the plaintiff was sexually assaulted.<sup>122</sup> The plaintiff sued the defendant for its failure to "implement basic safety measures to prevent sexual predators from communicating with minors"<sup>123</sup> and alleged that the CDA was not applicable as they were not arguing that the defendant was the publisher of the content.<sup>124</sup> The court, in rejecting this argument, noted that "[n]o matter how artfully [the p]laintiffs seek to plead their claims, the [c]ourt views [the p]laintiffs' claims as directed toward [the defendant] in its publishing, editorial, and/or screening capacities" because the complaint generally alleged that but for the defendant's publication of the personal information of the plaintiff and her assaulter, she would not have met him nor been sexually assaulted.<sup>125</sup> A more recent case, *Herrick v. Grindr, LLC*, also illustrates the blanket immunity established by section 230.<sup>126</sup> In *Herrick*, the plaintiff, Matthew Herrick, sued the defendant, Grindr, due to harassment he endured because of his ex-boyfriend's impersonation of him on the dating site.<sup>127</sup> The plaintiff sued the defendant alleging that the app was "defectively designed and manufactured because

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113. 339 F.3d 1119, 1121 (9th Cir. 2003).

114. *Id.*

115. *Id.*

116. *Id.* at 1122.

117. *Id.*

118. *Id.* at 1121.

119. *Id.* at 1124.

120. 528 F.3d 413, 416 (5th Cir. 2008).

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.* at 417.

125. *Id.* at 419–20 (quoting *Doe v. MySpace, Inc.*, 474 F. Supp. 2d 843, 849 (W.D. Tex. 2007)).

126. 765 F. App'x 586 (2d Cir. 2019).

127. *Id.* at 588.

it lack[ed] safety features to prevent impersonating profiles and other dangerous conduct, and that [the defendant] wrongfully failed to remove the impersonating profiles.”<sup>128</sup> Again, the court held that the plaintiff’s claims were barred by the CDA because the claims were “inextricably linked to [the defendant’s] alleged failure to edit, monitor, or remove the offensive content provided by [the plaintiff’s] ex-boyfriend.”<sup>129</sup>

Courts’ interpretations of section 230 have run contrary to its purpose.<sup>130</sup> Section 230 was designed to encourage the unfettered exchange of information (i.e., speech) online but also give the ability to ICSPs, similarly positioned to the defendant in *Stratton Oakmont, Inc.*, to remove harmful and lewd information without fear of repercussions.<sup>131</sup> However, because the courts’ interpretations have essentially removed the ability to hold ICSPs liable for any harm stemming from its site, ICSPs no longer have an incentive to screen information posted on their sites, undermining the intended purpose of the statute.<sup>132</sup>

### B. Lack of State-Level Accountability

Since section 230 of the CDA also precludes states from enacting regulations that may contradict it,<sup>133</sup> state regulation of the dating industry is limited. A few states have enacted internet dating safety acts to protect users from potential predators through safety education.<sup>134</sup> In 2008, New Jersey “became the first state to require dating [apps] to explicitly” inform their users whether or not “they perform background checks” through the enactment of the Internet Dating Safety Act.<sup>135</sup> The Act required that dating companies provide a safety awareness notification that included “a list and description of safety measures reasonably designed to increase awareness of safer dating practices.”<sup>136</sup> The Act also included examples of appropriate safety measures:

- (1) “Anyone who is able to commit identity theft can also falsify a dating profile.”
- (2) “There is no substitute for acting with caution when communicating with any stranger who wants to meet you.”

128. *Id.*

129. *Id.* at 591.

130. *See, e.g., Malwarebytes, Inc. v. Enigma Software Grp. USA*, 141 S. Ct. 13, 15 (2020) (“Courts have discarded the longstanding distinction between ‘publisher’ liability and ‘distributor’ liability. Although the text of § 230(c)(1) grants immunity only from ‘publisher’ or ‘speaker’ liability, the first appellate court to consider the statute held that it eliminates distributor liability too—that is, § 230 confers immunity even when a company distributes content that it *knows* is illegal.”).

131. *See Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710, at \*2–3 (N.Y. Sup. Ct. May 24, 1995).

132. *See Meeran, supra* note 87, at 268–70.

133. 47 U.S.C. § 230(e)(3).

134. Phyllis Coleman, *Online Dating: When “Mr. (Or Ms.) Right” Turns Out All Wrong, Sue the Service!*, 36 OKLA. CITY U. L. REV. 139, 149–51 (2011).

135. *See id.* at 149; Internet Dating Safety Act, 2007 N.J. Sess. Law Serv. c. 272 (West).

136. N.J. STAT. ANN. § 56:8-171(a) (West, Westlaw through L. 2022, c. 115 & J. Res. 14).

- (3) “Never include your last name, e-mail address, home address, phone number, place of work, or any other identifying information in your Internet profile or initial e-mail messages. Stop communicating with anyone who pressures you for personal or financial information or attempts in any way to trick you into revealing it.”
- (4) “If you choose to have a face-to-face meeting with another member, always tell someone in your family or a friend where you are going and when you will return. Never agree to be picked up at your home. Always provide your own transportation to and from your date and meet in a public place with many people around.”<sup>137</sup>

The Act further provided that if the dating service did not conduct criminal background checks on users, it had to “clearly and conspicuously” in “bold, capital letters,” using a twelve-point font disclose this information on its site.<sup>138</sup> Contrarily, if the internet company did do background checks, it needed to inform users that background checks were not “foolproof” and not “perfect safety solution[s]” as at times the record is not complete.<sup>139</sup> Texas and New York followed the lead of New Jersey implementing their own Internet Safety Awareness acts with almost identical language.<sup>140</sup> However, unlike New Jersey’s statute, Texas required that both the background check information as well as the safety tips be “clearly and conspicuously” located on the site.<sup>141</sup> If “[a]n online dating service provider . . . violates this chapter,” it can be held liable to the state for penalties “not to exceed \$250 for each Texas member registered with [its platform].”<sup>142</sup>

Although the intention behind the statutes were to bring awareness of potential issues that may arise due to engaging in online dating, it did not resolve the problems stemming from its use.

### *C. Current Business Practices and Voluntary Preventative Measures Are Inadequate*

With the increase in media attention given to crimes stemming from the use of dating apps, online dating companies have been forced to confront the need to provide safety tools for their users. However, instead of tackling the safety issues as

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137. *Id.* § 56:8-171(a)(1)–(4).

138. *Id.* § 56:8-171(b).

139. *Id.* § 56:8-171(d).

140. *See* TEX. BUS. & COM. CODE ANN. § 106.006 (West 2021).

141. *Id.* § 106.004.

142. *Id.* § 106.007.

an industry, dating app companies are treating safety measures as proprietary.<sup>143</sup> The safety tools available are specific to each dating app company.<sup>144</sup>

For instance, to assist users in feeling safer while meeting in person, Match Group, a dating company that owns approximately forty-five dating apps, including Tinder, OkCupid, Hinge, and Plenty of Fish, partnered with the software application Noonlight.<sup>145</sup> Noonlight is an app designed to assist with connecting users with emergency services when they feel unsafe.<sup>146</sup> Prior to meeting your match in person, Noonlight will connect directly to the user's profile and allow them to upload information to the app regarding where, when, and with whom they are meeting.<sup>147</sup> During the meeting, if the user feels unsafe, the user must open the Noonlight app

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143. See Sara Ashley O'Brien, *Tinder Is Making Criminal Background Checks Available on Your Dates*, CNN BUS. (Mar. 9, 2022, 9:36 AM), <https://www.cnn.com/2022/03/09/tech/tinder-garbo-background-checks/index.html> [<https://perma.cc/23UT-FYZD>] ("Beginning this week, Tinder users will see a background check tool integrated into the popular dating app's Safety Center. The new option is part of a partnership between Tinder's parent company, Match Group, and Garbo, a nonprofit background check provider focused on gender-based violence awareness and prevention. The update, announced Wednesday, comes a year after Match Group shared news of an investment in Garbo, putting seven-figures into the organization with the intention of helping build out its service and making it accessible to its users. Alongside the Tinder rollout, Garbo is also removing its waitlist and will allow anyone—Tinder user or not—to conduct searches on its website for a small fee. Garbo, which calls itself a new kind of background check for the digital age, was founded by Kathryn Kosmides, who is a survivor of gender-based violence. Garbo currently searches public records of arrests, convictions, and sex offender registries across counties in the United States where accessible. Match Group is Garbo's first consumer partner."); Steve Morley, *Bumble Safety and Wellbeing Center: What It Is & How to Use It 2022*, DUDEHACK (Mar. 15, 2022), <https://dude-hack.com/bumble-safety-and-wellbeing-center/> [<https://perma.cc/A9Y5-PMMF>] (discussing a feature on the app that provides advice and resources not only for safety purposes but also mental and physical health); Mason Sands, *What You Need to Know About Tinder's New Safety Features*, FORBES (Jan. 24, 2020, 6:40 PM), <https://www.forbes.com/sites/masonsands/2020/01/24/what-you-need-to-know-about-tinders-new-safety-features/?sh=490aa695758d> [<https://perma.cc/V8HA-JP5L>] (discussing the launch of Tinder's safety feature and partnership with Noonlight, specifically stating, "Match Group, an online dating giant that owns Tinder and other dating apps, announced that a panic button, photo verification, and an offensive messages feature will be incorporated into the popular online dating app and possibly the company's other dating app holdings like OkCupid, Hinge, and Match.com in 2020"); Sarah Perez, *Bumble's New Feature Prevents Bad Actors from Using "Unmatch" to Hide from Their Victims*, TECHCRUNCH+ (Nov. 9, 2020, 4:03 PM), <https://techcrunch.com/2020/11/09/bumbles-new-feature-prevents-bad-actors-from-using-unmatch-to-hide-from-their-victims/> [<https://perma.cc/982Q-AWYK>] (discussing a new feature on Bumble that was designed to allow victims of harassment to still be able to report the "bad actor" even if he/she unmatched with the victim).

144. See O'Brien, *supra* note 143; Morley, *supra* note 143; Sands, *supra* note 143; Perez, *supra* note 143.

145. Rachel Siegel, *You Swiped Right, but It Doesn't Feel Right: Tinder Now Has a Panic Button*, WASH. POST (Jan. 23, 2020, 2:14 PM), <https://www.washingtonpost.com/technology/2020/01/23/tinder-panic-button/> [<https://perma.cc/SCV7-G7D3>].

146. Crowe, *supra* note 16.

147. *Id.*

and hold down a button.<sup>148</sup> If the button is released without inputting a pin number, Noonlight will notify emergency services for the user.<sup>149</sup> In addition to notifying emergency services, Noonlight also provides software to assist in verifying profiles on dating apps and to help users avoid being “catfished.”<sup>150</sup>

Additionally, at the beginning of 2021, Match Group announced that it was partnering with a company, Garbo, to allow for users to perform background checks of other users.<sup>151</sup> Garbo is a “female-founded background check platform that is designed to ‘proactively prevent gender-based violence.’”<sup>152</sup> Garbo uses merely the first name and phone number to provide users with a background check.<sup>153</sup> In its release, Match Group’s spokesperson emphasized that Garbo would be utilized by users to determine whether others have past violent tendencies, so nonviolent offenses such as drug possession and traffic violations would be excluded from reports.<sup>154</sup> This partnership will first be launched using Match Group’s dating app Tinder.<sup>155</sup> Garbo provides two free background checks for all Tinder users.<sup>156</sup> There is a small fee for subsequent background checks.<sup>157</sup> Match Group has not announced whether they will be using this partnership to screen for user removal on their own at this time but has stated that the goal of this partnership is to allow users to make safer decisions when interacting with one another.<sup>158</sup>

However, there are some safety features, such as safety centers, that are on all dating app platforms, but the training of how to handle reports may be different across platforms. Within the safety centers sections, users can find safety tips.<sup>159</sup> One

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148. Siegel, *supra* note 145.

149. *Id.*

150. *Id.* See generally CATFISH (Relativity Media & Rogue Pictures 2010) (coining the term “catfished”). Catfished is a term that originated from the documentary, *Catfish*, which followed Nev Schulman, a guy who believed he had been dating a nineteen-year-old woman but learned that his match was actually a forty-year-old housewife. Since the inception of the documentary, the term has been used to mean “luring” someone into a relationship by means of a fictional online persona. *Id.*

151. Cortney Moore, *Tinder Will Add Background-Checking Feature to Screen Dates for Violent Crimes, Offenses*, FOX BUS. (Mar. 15, 2022, 6:00 PM), <https://www.foxbusiness.com/lifestyle/tinder-add-garbo-background-check-feature-screen-dates-violent-crimes> [<https://perma.cc/3YP2-BF8E>].

152. *Id.*

153. Pavithra Mohan, *How Background Check Startup Garbo Protects People from Gender-Based Violence*, FAST CO. (Aug. 10, 2021), <https://www.fastcompany.com/90651839/most-creative-people-2021-kathryn-kosmides> [<https://perma.cc/N76H-VCRR>].

154. Moore, *supra* note 151.

155. *Id.*

156. *Tinder x Garbo*, TINDER, <https://policies.tinder.com/web/safety-center/tools/garbo/us/en/> [<https://perma.cc/4BMX-MJXN>].

157. O’Brien, *supra* note 143.

158. Moore, *supra* note 151.

159. See *Safety & Reporting*, TINDER, <https://www.help.tinder.com/hc/en-us/categories/360006058312-Safety-Reporting> [<https://perma.cc/5CYF-3DAX>]; *Safety, Security, and Privacy*, HINGE, <https://hingeapp.zendesk.com/hc/en-us/categories/360001641614-Safety-Security-and-Privacy> [<https://perma.cc/SLQ6-6UWJ>]; *Stay Safe on Bumble*, BUMBLE, <https://bumble.com/help/safety-on-the-app> [<https://perma.cc/X2HQ-LY8W>].

common section among the apps includes advice on how to safely engage with your match prior to and during your initial encounter to remain safe.<sup>160</sup>

Additionally, recognizing that some users utilize their platforms to prey on others, dating app companies have provided reporting centers within the safety center sections of their apps.<sup>161</sup> Users can report other users that have misused the apps in ways such as soliciting, committing crimes outside of the app, or committing sexual assaults during their encounters with other users.<sup>162</sup> With the statistics documented from these reporting centers, many apps encourage their users to remain on the app when engaging in conversations with other users as many companies have begun to utilize “safe message filters,” an artificial intelligence tool that “scans interactions” between users of the dating platforms for the sole purpose of finding “harmful or illegal behavior.”<sup>163</sup> Agents review the messages found by the tool and messages reported by users as inappropriate as means to make sure the platform is being used for its appropriate purpose.<sup>164</sup> Another perk of engagement via the apps is that users can chat, text, and video message without having to provide the other user their personal telephone number.<sup>165</sup> This is supposed to assist app users with screening potential matches prior to taking the conversation off the app.

While these tools provide users with ways to safely engage with other users as well as give notice to the app companies of inappropriate app usage, the issue with the current tools provided is that they are merely reactive safety measures versus a proactive means of avoiding unsafe situations. In order to use these safety features, the user must be placed in an unsafe environment or already hurt by the encounter with another user.

Data has shown that users have reported that the lack of uniformity among the different platforms regarding safety measures has made some tools less effective.<sup>166</sup> For example, it was reported in a 2020 exposé that a young woman named Emily C. was sexually assaulted by a man who she had met on the popular dating app Bumble.<sup>167</sup> She reported the man to Bumble, but two months later, she found the

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160. *Safety & Reporting*, *supra* note 159; *Safety, Security, and Privacy*, *supra* note 159; *Stay Safe on Bumble*, *supra* note 159.

161. Keith Cousins & Brian Edwards, *How to Report a Sexual Assault to a Dating App* PROPUBLICA (Mar. 9, 2020, 5:00 AM), <https://www.propublica.org/article/how-to-report-a-sexual-assault-to-a-dating-app> [<https://perma.cc/6WVN-6VMW>].

162. *See Safety & Reporting*, *supra* note 159; *Safety, Security, and Privacy*, *supra* note 159; *Stay Safe on Bumble*, *supra* note 159; *Safety*, MATCH GRP., <https://mtch.com/safety> [<https://perma.cc/V5QJ-FKT3>].

163. *See Privacy FAQs*, TINDER, [https://www.help.tinder.com/hc/en-us/articles/5349453268877-Privacy-FAQs#h\\_01G63PGMBC1RQ5ESM3RC72ZF0M](https://www.help.tinder.com/hc/en-us/articles/5349453268877-Privacy-FAQs#h_01G63PGMBC1RQ5ESM3RC72ZF0M) [<https://perma.cc/975A-FG5W>].

164. *Id.*

165. *See Dating Safety Tips*, TINDER, <https://policies.tinder.com/safety/intl/en> [<https://perma.cc/LH4U-BFPN>] (encouraging users to stay on the platform when first communicating).

166. *See Elizabeth Naismith Picciani, He Sexually Assaulted Her After They Met on Bumble. Then She Saw Him on Tinder. Then Hinge.*, PROPUBLICA (Mar. 9, 2020, 5:00 AM), <https://www.propublica.org/article/he-sexually-assaulted-her-after-they-met-on-bumble-then-she-saw-him-on-tinder-then-hinge> [<https://perma.cc/4WKQ-HLMR>].

167. *Id.*

man's profile again on the app and had received no notification from Bumble regarding their investigation into her report.<sup>168</sup> Over the course of the next few months, she matched with her assailant on both Tinder and Hinge due to the fact that many dating app companies utilize geolocation to match users who live within a certain geographic area.<sup>169</sup> Each time she was matched with her assailant, Emily C. reported him, and each time she received no status from the dating companies regarding the report she filed against him.<sup>170</sup> Unfortunately, Emily's situation is not uncommon, and it highlights why reactive measures are not the most effective means to assist users in engaging safely online as assailants move from one app to another to continue victimizing users.<sup>171</sup>

### III. PROPOSING AN INDUSTRY STANDARD SAFETY PROTOCOL FOR DATING APP COMPANIES

Much has been written about the lack of legal redress for harms facilitated through online companies, specifically dating companies. Most of the discussion centers on the different ways to overcome section 230 of the CDA, such as amending section 230, adding federal regulation, creating more robust state statutes, etc.<sup>172</sup> Although federal and state regulation is one of the best means to ensure uniform safety policies for dating app users, congressional action is slow. Since congressional action takes time, it is difficult for the law alone to regulate innovative and fast-paced industries. Due to the need to protect consumers but still allow for growth, many industries have employed self-regulatory processes to govern their practices.<sup>173</sup> This Part of the Article will explore different self-regulation approaches and discuss examples of those approaches in practice. Lastly, it will advocate that due to the innovative nature

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168. *Id.*

169. *Id.*

170. *Id.*

171. See, e.g., Katherine Gregory, *A Predator Kept Targeting Victims on Tinder for Years. Why Wasn't He Stopped Sooner?*, ABC NEWS, <https://www.abc.net.au/news/2020-02-07/dating-app-sexual-assault-predator-was-using-dating-profiles/11931586> [<https://perma.cc/38ES-TWMN>] (Feb. 6, 2020, 6:40 PM); Bridget Read, *When You See Your Rapist on Tinder*, THE CUT (Dec. 4, 2019), <https://www.thecut.com/2019/12/investigation-sex-offenders-can-use-most-free-dating-apps.html> [<https://perma.cc/59RB-XPEH>].

172. See Meeran, *supra* note 87, at 276 (discussing the need to revisit current interpretations of section 230 in order to limit the scope to be more in align with the intent of the statute); Hashemi & Hashemi, *supra* note 8 (discussing alternatives to addressing the issues that arise from online dating outside of the scope of section 230). Specifically, the article argues for "Congress to implement federal regulations [for] online dating platforms in an effort to prevent or lessen the current risks." *Id.* at 423.

173. See DANIEL CASTRO, THE INFO. TECH. & INNOVATION FOUND., BENEFITS AND LIMITATIONS OF INDUSTRY SELF-REGULATION FOR ONLINE BEHAVIORAL ADVERTISING 5–6 (2011), <https://itif.org/files/2011-self-regulation-online-behavioral-advertising.pdf> [<https://perma.cc/5NZN-5PYX>] (explaining that several industries, including health care, higher education, advertising, fashion, nuclear power, and professional sports employ self-regulatory processes, and discussing the different types of regulatory styles, how they work, and the benefits of self-regulatory procedures).

of online dating, these companies should create an industry self-regulation policy to adequately protect the consumers who use their platforms.

#### A. What Is Self-Regulation?

Self-regulation is “defined as ‘a regulatory process whereby an industry-level organization . . . as opposed to a governmental- or firm-level[] organization, sets and enforces rules and standards relating to the conduct of firms [within] the industry.’”<sup>174</sup> It is used as a tool for businesses to “decrease risks to consumers, increase public trust, and combat negative public perceptions.”<sup>175</sup> There are several forms of self-regulation ranging from “‘pure’ self-regulation” to “co-regulation.”<sup>176</sup> In the “pure self-regulation” form, “private, market-based institutions govern[] their actions through voluntary agreements, peer pressure and other methods to coordinate their actions.”<sup>177</sup> “Co-regulation occurs when industry and government jointly administer the regulatory process.”<sup>178</sup> Although studies indicate different forms of self-regulation can be effective depending on the industry, the most effective means of self-regulation is co-regulation.<sup>179</sup>

Self-regulation has several benefits.<sup>180</sup> Since the polices are crafted by companies involved in the industry, they allow for speed of implementation, provide flexibility in administration, lower costs associated with implementation to the company and consumers, and “sensitivity to market circumstances.”<sup>181</sup> First, the speed and flexibility of execution allow companies to continue developing and responding to an ever-changing market in manners that government intervention could potentially restrict.<sup>182</sup> Second, the cost of implementing industry self-regulation policies can be controlled better than those regulations established by the government. Government policymakers are not as well informed regarding technologically based industries,<sup>183</sup>

174. *Id.* at 3.

175. *Id.*

176. Neil Gunningham & Joseph Rees, *Industry Self-Regulation: An Institutional Perspective*, 19 L. & POL’Y 363, 364–66 (1997); see also CASTRO, *supra* note 173, at 2.

177. CASTRO, *supra* note 173, at 2; Gunningham & Rees, *supra* note 176.

178. CASTRO, *supra* note 173, at 2.

179. See Gunningham & Rees, *supra* note 176, at 406.

180. See JANET M. EVANS & RICHARD F. KELLY, FED. TRADE COMM’N, SELF-REGULATION IN THE ALCOHOL INDUSTRY: A FEDERAL TRADE COMMISSION REPORT TO CONGRESS 4 (1999), [https://www.ftc.gov/sites/default/files/documents/reports/self-regulation-alcohol-industry-federal-trade-commission-report-congress/1999\\_alcohol\\_report.pdf](https://www.ftc.gov/sites/default/files/documents/reports/self-regulation-alcohol-industry-federal-trade-commission-report-congress/1999_alcohol_report.pdf) [<https://perma.cc/C3QP-5VJQ>] (discussing that voluntary self-regulation policies can be an effective approach to regulating industries). Specifically, “[w]ell-constructed industry self-regulatory efforts offer several advantages over government regulation or legislation. Self-regulation often can be more prompt, flexible, and effective than government regulation. It can permit application of the accumulated judgment and experience of an industry to issues that are sometimes difficult for the government to define with bright line rules.” *Id.*

181. Gunningham & Rees, *supra* note 176, at 366.

182. See CASTRO, *supra* note 173, at 6.

183. See Org. for Econ. Coop. & Dev. (OECD), *Industry Self-Regulation: Role and Use in Supporting Consumer Interests*, at 9, 11, OECD Doc. No. 247 (Mar. 1, 2015), <https://doi.org/10.1787/5js4k1fjqkwh-en> [<https://perma.cc/EXN4-RZfZ>]; Richard M. Marsh, Jr., *Legislation*



such as online dating. This failure of understanding of the day-to-day operations, as well as the market itself, leads to, at times, ineffective yet financially burdensome regulations.<sup>184</sup> Therefore, regulations established by the government risk not only restricting the development of the industry but may lead to unnecessary costs.<sup>185</sup> Typically, these costs are not borne by the company but instead passed to the consumer using the product.<sup>186</sup> Lastly, industry self-regulation allows companies to shift policies in response to consumer needs and environmental changes. This allows industries to pull back regulations that have had unintended adverse effects or update policies more quickly as social norms change.<sup>187</sup>

Though industry self-regulation has many benefits to the market and the consumers, industry self-regulation has its challenges. Many individuals are skeptical of the effectiveness of self-regulation policies because the policies are seen as: (1) “less stringent” than government regulations;<sup>188</sup> (2) ineffective as they are seen as means to serve the business versus the consumer; and (3) a “charade . . . to give the appearance of regulation (thereby warding off more direct and effective government intervention).”<sup>189</sup> Although these criticisms can be valid depending on the industry and the policy established, if an industry self-regulation policy has a well-constructed design, it can be an effective tool.<sup>190</sup> To establish an effective industry self-regulation policy, the creation, implementation, and enforcement of the policy are pertinent as well as assent by “industry participant[s].”<sup>191</sup>

### B. Examples of Self-Regulation Approaches

Industry self-regulation works because it places the decisions regarding the policy and implementation of it in the hands of those with intimate knowledge of the business.<sup>192</sup> Because of the numerous benefits of industry self-regulation policies, there are various examples of effective policies in a variety of industries. A recent example of “pure self-regulation” can be found in the newly announced Industry Sharing Safety Program established by ride-sharing powerhouses, Uber and Lyft.<sup>193</sup> The two companies recently announced that to better protect their consumers, they will be sharing information across platforms regarding drivers that have been banned

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*for Effective Self-Regulation: A New Approach to Protecting Personal Privacy on the Internet*, 15 MICH. TELECOMM. & TECH. L. REV. 543, 553 (2009); CASTRO, *supra* note 173, at 6; Gunningham & Rees, *supra* note 176, at 366.

184. See Org. for Econ. Coop. & Dev., *supra* note 183, at 9, 11; Marsh, *supra* note 183, at 553; CASTRO, *supra* note 173, at 6; Gunningham & Rees, *supra* note 176, at 366.

185. See Marsh, *supra* note 183, at 558.

186. CASTRO, *supra* note 173, at 8; Gunningham & Rees, *supra* note 176, at 390.

187. CASTRO, *supra* note 173, at 6.

188. *Id.*

189. Gunningham & Rees, *supra* note 176, at 366–70.

190. *Id.* at 370.

191. *Id.* at 391.

192. Marsh, *supra* note 183.

193. Erik Bascome, *Uber, Lyft Partner on Industry Sharing Safety Program*, GOV'T TECH. (Mar. 15, 2021), <https://www.govtech.com/fs/uber-lyft-partner-on-industry-sharing-safety-program.html> [<https://perma.cc/N6V5-U8SF>].

because of “most serious safety incidents including sexual assault and physical assaults resulting in a fatality.”<sup>194</sup> The companies will determine if drivers should be banned through use of “the five most critical safety issues within the National Sexual Violence Resource Center’s (NSVRC) Sexual Misconduct and Sexual Violence Taxonomy, along with physical assault fatalities.”<sup>195</sup> The companies have hired HireRight to share the information regarding driver termination across platforms and verify that the industry participants are complying with the policy.<sup>196</sup> Noting that “[s]afety should never be proprietary,” the companies have opened the Industry Sharing Safety Program to other transportation and delivery companies within the United States.<sup>197</sup> However, to participate, the companies will have to agree to meet certain requirements such as “meeting data accuracy expectations, applying the shared taxonomy to consistently classify incident reports, maintaining consistent and fair handling procedures and privacy measures, and communicating data on deactivated drivers with HireRight to be shared with the other participants.”<sup>198</sup>

Although the effectiveness of this plan has yet to be assessed, based on the factors that go into an effective industry self-regulation policy, it meets all the criteria. HireRight is serving as the enforcement body for the companies. The companies have bought into the policy and used stakeholders (such as organizations that work with survivors of sexual violence) to create a comprehensive safety policy to better protect their consumers. Additionally, the companies will be providing a safety report to provide transparency to consumers (i.e., building consumer trust).

An example of an effective co-regulation policy can be seen in the Environmental Protection Agency’s (EPA) Audit Policy Program.<sup>199</sup> The program, “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,” provides incentives to encourage entities to create self-regulation policies to “voluntarily discover and fix violations of federal environmental laws and regulations.”<sup>200</sup> To be eligible for the program, outside of creating these policies to discover violations, the companies must “promptly disclose to EPA, expeditiously

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194. *Lyft and Uber Launch Industry Sharing Safety Program in the US*, LYFT BLOG (Mar. 11, 2021), <https://www.lyft.com/blog/posts/lyft-and-uber-launch-industry-sharing-safety-program-in-the-us> [<https://perma.cc/HH4D-96TW>].

195. CHAD STIFFEN, JULIA DURNAN & JANINE ZWEIG, RALIANCE & URB. INST., *HELPING INDUSTRIES TO CLASSIFY REPORTS OF SEXUAL HARASSMENT, SEXUAL MISCONDUCT, AND SEXUAL ASSAULT: A JOINT REPORT OF RALIANCE AND THE URBAN INSTITUTE* (2018), <https://www.raliance.org/wp-content/uploads/2018/11/helping-industries.pdf> [<https://perma.cc/52LB-FKC2>] (discussing the best approach to classifying reports of sexual misconduct/violence to figure out the best ways to respond to allegations and prevent future matters). See also *Helping Industries to Classify Reports of Sexual Harassment, Sexual Misconduct, and Sexual Assault*, NSVRC, <https://www.nsvrc.org/helping-industries-classify-reports> [<https://perma.cc/859G-DTPM>]; *Lyft and Uber Launch Industry Sharing Safety Program in the US*, *supra* note 194.

196. *Lyft and Uber Launch Industry Sharing Safety Program in the US*, *supra* note 194.

197. *Id.*

198. *Id.*

199. *EPA’s Audit Policy*, EPA, <https://www.epa.gov/compliance/epas-audit-policy> [<https://perma.cc/84QX-9NVD>] (Apr. 20, 2022).

200. *Id.*

correct, and prevent recurrence of future environmental violations.”<sup>201</sup> Those that comply with the program are rewarded by waiver or reduction of penalty fines, avoidance of criminal prosecution for environmental violations, and no requested routine audits from the EPA.<sup>202</sup> The program incentivizes companies to thoroughly think through industry self-regulation procedures and protocols; the program does not offer a pass for committing environmental violations. The program can only be used as a means to waive penalties for violations that have not occurred prior or are not related to a previous violation that occurred in the last three years.<sup>203</sup>

*C. Proposing an Industry Self-Regulation Policy for Safety Procedures for Dating App Companies*

Since online dating is a fast-paced industry, the best approach to setting an industry standard for safety procedures would be through an industry self-regulation policy. In this Section, I propose the means for online dating companies to create an industry safety standard protocol and potential criteria for the policy.

As a means to enforce as well as create the Industry Safety Standard, dating app companies should create a self-regulation organization. This organization should include representatives from the parent companies of the dating apps to discuss common issues their users are facing regarding safety. The organization should also consult with industry stakeholders, such as the Rape, Abuse, & Incest National Network (RAINN)<sup>204</sup> and other companies focused on assisting survivors of abuse. Additionally, similar to Uber and Lyft, the dating app companies should consider a partnership with a company that can evaluate current safety practices by the company to determine which protocols are effective and which should be reevaluated. This will assist in the creation of a comprehensive Industry Safety Standard that not only considers the demands of the companies but also allows for input from consumers.

A model Industry Safety Standard protocol should rely on communication between the dating apps, screening for violent offenders, and a rating system. The cornerstone of the Industry Safety Standard protocol would be communication. Users of dating apps typically utilize more than one simultaneously; however, offenses that occur on dating apps are not shared amongst the different apps. This lack of communication brings with it a lack of knowledge regarding users that plan to or do use the dating services inappropriately, allowing predators to hop from one

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201. *Id.*

202. *Id.*

203. *Id.* (“Repeat violations are ineligible, i.e., the specific (or closely related) violations have occurred at the same facility within the past 3 years or those that have occurred as part of a pattern at multiple facilities owned or operated by the same entity within the past 5 years; if the facility has been newly acquired, the existence of a violation prior to acquisition does not trigger the repeat violations exclusion.”) (emphasis in original).

204. *About RAINN*, RAINN, <https://www.rainn.org/about-rainn> [<https://perma.cc/3LKG-NUGW>] (RAINN is “the nation’s largest anti-sexual violence organization.” It “created and operates the National Sexual Assault Hotline in partnership with more than 1,000 local sexual assault service providers across the country and operates the DoD Safe Helpline for the Department of Defense. RAINN also carries out programs to prevent sexual violence, help survivors, and ensure that perpetrators are brought to justice.”).

dating app to another without having to suffer repercussions. Similar to the “Industry Sharing Safety Program”<sup>205</sup> implemented by Lyft and Uber, the dating app companies need to share information about sexual and physical assaults with each other so as not to foster an environment that allows predators easy access to victims. Sharing this information would allow other dating app companies to better evaluate claims made by users on their sites. Furthermore, it will force them to proactively screen and possibly block users that may inappropriately use their site. Additionally, since sexual offenses and acts of domestic violence are habitually underreported,<sup>206</sup> this step of being able to communicate amongst dating app companies would help catch offenders in ways a normal background screening process could not.

Additionally, dating app companies need to screen for violent offenders. As highlighted above, the companies recognize that there is a problem with sexual predators and other violent offenders having access to their dating sites, which is why Match Group launched a partnership with Garbo.<sup>207</sup> However, this partnership places the onus on the users to seek the background check of other users. In the terms and conditions of all dating sites, the dating apps specifically state that in order to be eligible to use its services the user must have never “been convicted of, or pled no contest to a felony, a sex crime, or any crime involving violence or a threat of violence . . . and that [the user is] not required to register as a sex offender with any state, federal or local sex offender registry.”<sup>208</sup> The screening process implemented by the dating app companies should align with those that would be deemed ineligible for using the app in the first place. The list of screened offenses should include, at a minimum: (1) violent offenses such as murder and nonnegligent manslaughter, aggravated assaults, and robbery;<sup>209</sup> (2) sexual offenses such as rape, statutory sexual

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205. *Lyft and Uber Launch Industry Sharing Safety Program in the US*, *supra* note 194 (announcing a new program being implemented by Uber and Lyft). The Industry Sharing Safety Program is designed to share information regarding drivers and delivery people whom the company has deactivated. The information will be shared only for serious offenses that may jeopardize the safety of users, such as sexual assault and physical assaults. The announcement focused on the fact that “[s]exual assault is drastically underreported, making these crimes less likely to show up in our rigorous background check and screening processes,” thus sharing information among the two companies will allow the companies to enhance their screening process. *Id.*

206. Cameron Kimble, *Sexual Assault Remains Dramatically Underreported*, BRENNAN CTR. FOR JUST. (Oct. 4, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/sexual-assault-remains-dramatically-underreported> [<https://perma.cc/85PN-3RUG>]; *The Criminal Justice System: Statistics*, RAINN, <https://www.rainn.org/statistics/criminal-justice-system> [<https://perma.cc/3JTF-8XJ3>].

207. *See* Press Release, Match Grp., Garbo Launches Background Check Platform to Public and on Tinder (Mar. 9, 2022), <https://ir.mtch.com/news-and-events/press-releases/press-release-details/2022/Garbo-Launches-Background-Check-Platform-To-Public-and-On-Tinder/default.aspx> [<https://perma.cc/YZ4T-VFTB>].

208. *Terms of Use*, TINDER, <https://policies.tinder.com/terms/us/en> [<https://perma.cc/UM4K-AP22>] (Feb. 28, 2022); *see also Terms of Use Agreement*, HINGE (Feb. 28, 2022), <https://hinge.co/terms/> [<https://perma.cc/T4WZ-QGEC>]; *Terms & Conditions*, OKCUPID (Feb. 28, 2022), <https://www.okcupid.com/legal/terms> [<https://perma.cc/7TS3-HM4C>].

209. U.S. Dep’t of Just. Fed. Bureau of Investigation, *Violent Crime*, CRIME IN THE U.S., <https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/violent-crime>

assault, and other offenses that would require someone to be on the sex offender registry; and (3) other crimes that may lead to harmful conduct by the perpetrator such as stalking, harassment, and kidnapping.

Finally, such as with ride-sharing companies and delivery services, dating app companies should formulate a rating system that lets their users score their matches based on their interactions. Potential user questions could include: What went wrong? Would you connect with this profile again? Provide details. Were you concerned about your safety at any point while connecting? Did this match ask for your personal information? Did this person seem to know information about you that you did not provide? Did you learn something about this person from another user, friend, family, or the internet that was concerning? Just like with the ride-sharing apps, if a user is rated below a certain “star,” their profile is removed from the application. Dating app companies could then share with each other the negative or concerning feedback received about a particular profile.

As a means to hold the industry participants accountable for adhering to the Industry Safety Standard, companies should release a safety report for their users. The safety report should note the procedures implemented by the companies to ensure the safety of users, the number of incidents reported, the steps the company took generally with the reported complaints, and the measures that they have taken to ensure their policies are updated to prevent further safety violations, if a gap in protocol allowed for the incident to occur.

#### CONCLUSION

In conclusion, federal and state laws do not currently incentivize dating companies to provide safeguards for their users. Furthermore, current safety protocols implemented by dating app companies, although helpful, are a reactive means of protection for users instead of the proactive tools users need.

The public will likely continue to see an influx in violent and petty crimes stemming from interactions on dating apps as long as there is a lack of communication and information sharing amongst the different apps. The anonymity of users allows for crimes to go unreported or offenders to easily move from one app to another without fear of repercussions. The implementation of an Industry Safety Standard will remove this cloak of anonymity and bring back the safeguard of earlier courtship—awareness. This will likely serve as a deterrent for users seeking to use the apps inappropriately.