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# THE OLDEST PROFESSION FINDS A NEW MEDIUM: CRAIGSLIST AND THE SEX INDUSTRY

*by* JEFF McDONALD

Commonly known as the world's oldest profession, prostitution is a very contemporary problem in many cities, with 58,784 reported arrests for commercialized sex last year.<sup>1</sup> Though prostitutes have traditionally used informal bulletins or the classified section in the back of newspapers to advertise their services, the Internet now offers them a marketing option that is low cost, wide-ranging and highly anonymous.<sup>2</sup> Many government agencies and public policy groups identify the bulletin board website Craigslist.org as the most popular forum for prostitution and worry about the criminal implications.<sup>3</sup>

Because of the website's illicit following, law enforcement agents across the country have targeted Craigslist with pleas, threats and even lawsuits in an effort to force it to crack down on ads for illegal services.<sup>4</sup> Craigslist, however, has been resistant to curtail user accessibility.<sup>5</sup>

#### “ADULT SERVICES”

Craigslist is arguably the largest classified ad resource in the world.<sup>6</sup> The company maintains individualized bulletin boards for 450 cities worldwide.<sup>7</sup> Almost 50 million new classified ads are posted each month.<sup>8</sup> Although Craigslist only employs approximately 30 people in its San Francisco offices,<sup>9</sup> it enjoys the eighth-highest traffic ranking of any website in the United States and is the 29th most popular website in the world.<sup>10</sup>

Users can find the controversial ads in Craigslist's “Adult Services” section.<sup>11</sup> The link is placed next to other service-for-money categories, such as legal, automotive, computer and real estate.<sup>12</sup> All Craigslist users must agree to the site's Terms of Use, which state in part: “You agree not to post, email, or otherwise make available Content . . . that advertises any illegal service. . .”<sup>13</sup> To reach the “Adult Services” section, users must click through an additional disclaimer screen to verify that they are 18 or older.<sup>14</sup>

Craigslist currently employs computerized word searches to automatically screen ads in the “Adult Services” section that are likely to violate the website's Terms of Use.<sup>15</sup> Law enforcement officials conducting searches of the site have found that this safeguard is not particularly effective; offending ads still abound.<sup>16</sup>

Craigslist does not attempt to manually screen ads before they are posted; the company contends this would be a nearly impossible task, causing such long delays that their service would largely become unusable.<sup>17</sup> Instead, the site depends heavily on user moderation to spot ads for illegal services.<sup>18</sup>

Most ad pages have a button to flag the ad as inappropriate.<sup>19</sup> Interestingly, ads in the “Adult Services” section do not have this option because they have been pre-screened by Craigslist's computers.<sup>20</sup> To flag an ad in this section, a user must email it separately to Craigslist.<sup>21</sup>



In accordance with this agreement, the company began its computerized scanning policy, as well as tagging adult ads to enable recognition by parental screening software.<sup>28</sup> Craigslist deletes an ad when user-submitted flags reach a certain threshold.<sup>29</sup> It has also implemented telephone number and credit card verification.<sup>30</sup>

Connecticut Attorney General Richard Blumenthal spearheaded the push for the joint statement.<sup>31</sup> “The mere act of authentication will be a very significant deterrent,” Blumenthal told the *New York Times*.<sup>32</sup> “There are very few prostitutes who want to be called by Craigslist and asked to give additional identifying information.”<sup>33</sup>

In spite of the pledge, illicit use of Craigslist continued, occasionally with shockingly brutal consequences. In March 2009, 16-year-old John Katehis was charged with the killing of radio news broadcaster George Weber.<sup>34</sup> Weber met Katehis when the teen answered Weber’s Craigslist ad offering \$60 for a sado-masochist rendezvous.<sup>35</sup> Weber’s body was later found in his Brooklyn apartment with over 50 stab wounds.<sup>36</sup>

In April 2009, Philip Markoff, who later became known as the “Craigslist Killer,” was arrested for the murder of a masseuse he had contacted through her sex advertisement on Craigslist.<sup>37</sup> Markoff had previously used the website to lure a prostitute to his hotel room in order to ambush and rob her.<sup>38</sup>

By the time that story was breaking, Blumenthal was demanding that Craigslist completely remove the ad category, then called “Erotic Services.”<sup>39</sup> Other parties to the original statement voiced similar complaints.<sup>40</sup> Illinois Attorney General Lisa Madigan accused the company of ignoring the joint statement and called the section an “Internet brothel.”<sup>41</sup>

Craigslist’s most vocal critic may have been South Carolina Attorney General Henry McMaster, who warned of criminal prosecution against company executives if the ad category was not taken down.<sup>42</sup> On May 15, 2009, McMaster threatened to commence his criminal investigation.<sup>43</sup> Craigslist stalled the investigation by suing for a restraining order against the South Carolina Attorney General five days later.<sup>44</sup>

Craigslist did concede to pressure by changing the name “Erotic Services” to the more ambiguous “Adult Services” on its bulletin boards for all U.S. cities,

though international Craigslist sites retain the original “Erotic” category.<sup>45</sup> In addition, Craigslist has filed 14 separate lawsuits against businesses it claims offer software and services designed to circumvent the company’s automated compliance measures.<sup>46</sup> Though these are viewed as positive steps, law enforcement officials believe the site should be doing more.<sup>47</sup>

g recover	sporting	music instr	software / qa / dba
religion	tickets	photo+video	systems / network
rofo	tools	toys+games	technical support
science	wanted	video gaming	transport
shop			tv / film / video
spirit	<b>services</b>		web / info design
sports	beauty	automotive	writing / editing
t.v.	computer	farm+garden	[ETC] [part time
tax	creative	household	
testing	event	labor/move	<b>gigs</b>
y transg	financial	skill'd trade	computer
travel	legal	real estate	creative
vegan	lessons	sm biz ads	crew
w4w	pet	therapeutic	domestic
r wed	<u>adult</u>	travel/vac	ad
o wine		write/ed/tr8	<b>resumes</b>
women			
words			
writers			

*Craigslist confines erotic ads to the computer-screened “Adult Services” section, listing them among other paid services.*

#### PROVIDERS, NOT PUBLISHERS

Craigslist has faced legal challenges over the content of its ads in the past.<sup>48</sup> As a defense, the company has cited Section 230 of the Communications Decency Act of 1996 (CDA). The CDA states that “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”<sup>49</sup>

In 2006, this defense was tested when the Chicago Lawyers' Committee for Civil Rights Under the Law sued the company over discriminatory housing ads posted in the Chicago area.<sup>50</sup> The Court of Appeals for the Seventh Circuit ruled that under Section 230 of the CDA websites were not legally responsible for the posted content of their users.<sup>51</sup>

According to the Seventh Circuit, Craigslist and other online bulletin boards are providers, not publishers.<sup>52</sup> "One might as well say that people who save money 'cause' bank robbery, because if there were no banks there could be no bank robberies," the court reasoned.<sup>53</sup> "An interactive computer service 'causes' postings only in the sense of providing a place where people can post."<sup>54</sup>

Despite this ruling, Cook County, Ill. Sheriff Tom Dart became the next to sue the company on March 5, 2009, in an effort to block prostitution advertising.<sup>55</sup> The complaint alleged that Craigslist was a public nuisance, accused the company of solicitation and racketeering and included the naughty-sounding charge of "directing persons to houses of ill-fame."<sup>56</sup>

From January 2007 to March 2009, the Sheriff estimated that his office arrested over 200 people through Craigslist for prostitution-related crimes.<sup>57</sup> "We want for them to be good corporate citizens and not to allow their business to be used to facilitate crime," said Sheriff's Office spokesman Steve Patterson.<sup>58</sup> "We believe they are knowingly allowing their business to be used for criminal activity and we'd like them to stop."<sup>59</sup>

The Coalition Against Trafficking in Women filed an amicus brief backing Dart on public policy grounds.<sup>60</sup> The group accused Craigslist of profiting from prostitution, and ultimately the sex trade.<sup>61</sup> In its brief, the Coalition alleged that many prostitutes begin working as minors.<sup>62</sup> Supporting the group's argument, the FBI found more than 2,800 ads for child prostitution in a recent sting.<sup>63</sup>

In its defense, Craigslist returned to the Seventh Circuit's interpretation of the CDA.<sup>64</sup> The company claimed that a publisher cannot be held responsible for illegal postings unless it produced the postings or encouraged the illegal content.<sup>65</sup>

The District Court sided with Craigslist, labeling the site a neutral party not responsible for the crimes of its users.<sup>66</sup> It criticized Dart for failing to make allegations meaningfully different from those already rejected by the Seventh Circuit.<sup>67</sup> Dart is considering appealing the ruling.<sup>68</sup>

Despite the adverse outcome, the Cook County Sheriff's Office still contends that a more proactive approach is needed on Craigslist's part to address the problem.<sup>69</sup> According to Patterson, the adult services ads are too profitable to Craigslist for the company to remove them of its own volition, even though the \$10 fee is donated to charity.<sup>70</sup>

While Craigslist does not keep the money from these postings, it does collect revenue for job and apartment ads in certain markets.<sup>71</sup> "A majority of traffic to Craigslist's website is for these [adult services] ads," Patterson said.<sup>72</sup> "They use the traffic numbers to charge for apartment postings. . . They come up with the amount they charge based on total web traffic."<sup>73</sup>

Some believe the focus on Craigslist has a more political purpose.<sup>74</sup> Thomas Bucaro, a Chicago attorney who has represented more prostitutes than he admits he can remember, believes the suit is more a grab for headlines than a legitimate crime-reduction tactic.<sup>75</sup> He states, "Sheriff [Dart] gets great publicity for prostitution cases. . . Anything for sex gets in the news."<sup>76</sup>

Bucaro sees the suit as a move to check a practice that has thus far escaped serious regulation.<sup>77</sup> "It makes Craigslist look bad," Bucaro said.<sup>78</sup> He speculates that putting the spotlight on Craigslist may force the company to take some sort of action to save face.<sup>79</sup> "You can justify Mr. Dart's behavior as a control technique."<sup>80</sup>

Thus far, Craigslist has been able to resist pressure from law enforcement without major changes to the way it operates. But with state and local governments left to pay for prostitution enforcement, police certainly have an incentive to find new and creative ways of reigning in the Internet bulletin board.



## NOTES

- 1 Federal Bureau of Investigation, Criminal Justice Information Services Division, Uniform Crime Report: Crime in the United States, 2008, [http://www.fbi.gov/ucr/cius2008/data/table\\_42.html](http://www.fbi.gov/ucr/cius2008/data/table_42.html).
- 2 Interview with Thomas Bucaro, Attorney at Law, Bucaro and Associates, in Chi., Ill. (Oct. 9, 2009).
- 3 “‘Craigslist is the single largest source of prostitution in the nation,’ Dart said.” *Lawsuit Accuses craigslist of Promoting Prostitution*, CNN, Mar. 5, 2009, <http://www.cnn.com/2009/CRIME/03/05/craigs.list.prostitution/index.html>.
- 4 Complaint at 11-13, *Dart v. Craigslist, Inc.*, 2009 WL 564291 (N.D. Ill. 2009) (No. 09 CV 01385).
- 5 Olga Kharif, *craigslist Sues South Carolina Attorney General*, Bus. Wk., May 20, 2009, available at [http://www.businessweek.com/the\\_thread/techbeat/archives/2009/05/craigslist\\_sues.html?chan=technology\\_technology+index+page\\_top+stories](http://www.businessweek.com/the_thread/techbeat/archives/2009/05/craigslist_sues.html?chan=technology_technology+index+page_top+stories).
- 6 Alexa – Craigslist.org, <http://www.alexa.com/siteinfo/craigslist.org#> (last visited Oct. 21, 2009).
- 7 Craigslist Public Relations Factsheet, <http://www.craigslist.org/about/pr/factsheet> (last visited Oct. 21, 2009).
- 8 Craigslist Factsheet, <http://www.craigslist.org/about/factsheet> (last visited Oct. 21, 2009).
- 9 *Id.*
- 10 Alexa, *supra* note 6.
- 11 Craigslist, <http://www.craigslist.org> (last visited Oct. 21, 2009).
- 12 *Id.*
- 13 Craigslist Terms of Use, <http://www.craigslist.org/about/terms.of.use> (last visited Oct. 21, 2009).
- 14 Craigslist Adult Services Warning & Disclaimer, <http://chicago.craigslist.org/cgi-bin/services.cgi?category=ads> (last visited Oct. 21, 2009).
- 15 Craigslist Erotic Services FAQ, [http://www.craigslist.org/about/erotic\\_services\\_FAQ](http://www.craigslist.org/about/erotic_services_FAQ) (last visited Oct. 21, 2009).
- 16 Letter from Richard Blumenthal, Att’y Gen., Conn., to Barry Reingold, Attorney for craigslist, Inc. (March 27, 2008), <http://www.ct.gov/ag/lib/ag/consumers/craigslistletter.pdf>.
- 17 Craigslist, *supra* note 15.
- 18 *Id.*
- 19 Craigslist, *supra* note 11.
- 20 Craigslist Flags and Community Moderation, [http://www.craigslist.org/about/help/flags\\_and\\_community\\_moderation](http://www.craigslist.org/about/help/flags_and_community_moderation) (last visited Oct. 21, 2009).
- 21 *Id.*
- 22 Craigslist, *supra* note 15.
- 23 *Id.*
- 24 Craigslist Posting Fees, [http://www.craigslist.org/about/help/posting\\_fees](http://www.craigslist.org/about/help/posting_fees) (last visited Oct. 21, 2009).
- 25 Craigslist, *supra* note 15.
- 26 Blumenthal, *supra* note 16.
- 27 Craigslist, Inc., et al., Joint Statement (Nov. 6, 2008), <http://www.tn.gov/attorneygeneral/cases/craigslist/craigsliststatement.pdf>.
- 28 *Id.*
- 29 *Id.*

30 *Id.*

31 Press Release, Craigslist, Inc., Joint Statement with Attorneys General, NCMEC (Nov. 6, 2008), <http://blog.craigslist.org/2008/11/joint-statement-with-attorneys-general-ncmec>.

32 Brad Stone, *Craigslist Agrees to Curb Sex Ads*, N.Y. TIMES, Nov. 6, 2008, *available at* <http://www.nytimes.com/2008/11/07/technology/internet/07craigslist.html?pagewanted=all>.

33 *Id.*

34 Ryan Thompson & Vinnie Rotondaro, *'Prince of Darkness' Due in Court Today for S&M Killing on Henry St.*, BROOKLYN DAILY EAGLE, Oct. 1, 2009, *available at* [http://www.brooklyn.eagle.com/categories/category.php?category\\_id=4&cid=31097](http://www.brooklyn.eagle.com/categories/category.php?category_id=4&cid=31097).

35 Larry Celona, John Doyle & Perry Chiamonte, *Teen Confesses in Newsman Slay*, N.Y. POST, Mar. 25, 2009, *available at* [http://www.nypost.com/p/news/regional/brooklyn/teen\\_confesses\\_in\\_newsman\\_slay\\_0bm9j2NpfbUnSDtcRdUNWL](http://www.nypost.com/p/news/regional/brooklyn/teen_confesses_in_newsman_slay_0bm9j2NpfbUnSDtcRdUNWL).

36 Thompson & Rotondaro, *supra* note 34.

37 Emily Friedman & Michele McPhee, *'Craigslist Killer' Appears in Court, Shouts 'Not Guilty'*, ABC NEWS, Jun. 22, 2009, <http://www.abcnews.go.com/US/story?id=7897975&page=1>.

38 *Id.*

39 *Conn. AG Wants Craigslist To Clean Up Site*, WBZ BOSTON, Apr. 22, 2009, <http://wbztv.com/curious/craigslist.erotic.ads.2.991555.html>.

40 Press Release, Lisa Madigan, Ill. Att'y Gen., Craigslist to Shut Down Erotic Services Section (May 13, 2009), [http://www.illinoisattorneygeneral.gov/pressroom/2009\\_05/20090513.html](http://www.illinoisattorneygeneral.gov/pressroom/2009_05/20090513.html).

41 *Id.*

42 Letter from Henry McMaster, S.C. Att'y Gen., to Jim Buckmaster, CEO, Craigslist, Inc. (May 5, 2009), [http://www.scag.gov/newsroom/pdf/2009/craigslist\\_letter.pdf](http://www.scag.gov/newsroom/pdf/2009/craigslist_letter.pdf).

43 Press Release, Henry McMaster, S.C. Att'y Gen., McMaster Statement on Craigslist (May 15, 2009), <http://www.scattorneygeneral.org/newsroom/advisories/2009/5-15.pdf>.

44 Kharif, *supra* note 5.

45 Craigslist, *supra* note 11.

46 Craigslist, *supra* note 31.

47 Telephone Interview with Steve Patterson, Spokesperson, Cook County Sheriff's Office, in Chi., Ill. (Oct. 21, 2009).

48 *Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666 (7th Cir. 2008).

49 Communications Decency Act of 1996, 47 U.S.C.A. § 230(c)(1) (West 1998).

50 *Chicago Lawyers' Comm. for Civil Rights*, *supra* note 48.

51 *Id.* at 671.

52 *Id.*

53 *Id.*

54 *Id.*

55 Complaint, *Dart v. Craigslist, Inc.*, 2009 WL 564291 (N.D. Ill. 2009) (No. 09 CV 01385).

56 *Id.* at 18-26.

57 *Id.* at 14-15.

58 Interview with Patterson, *supra* note 47.

59 *Id.*

60 Brief for the Coalition Against Trafficking in Women as Amicus Curiae Supporting Plaintiff, *Dart v. Craigslist, Inc.*, 2009 WL 2446750 (N.D. Ill. 2009) (No. 09 CV 01385).

61 *Id.* at 7.

62 *Id.* at 3.

63 CNN, *supra* note 3.

- 64 Brief for Defendant, *Dart v. Craigslist, Inc.*, 2009 WL 1370729 (N.D. Ill. 2009) (No. 09 CV 01385).
- 65 *Id.* at 14-16.
- 66 *Dart v. Craigslist, Inc.*, No. 09 CV 01385, 2009 WL 3416106, at 6-7 (N.D. Ill. 2009).
- 67 *Id.* at 7.
- 68 Geoffrey Fowler, *Sheriff Still Thinks Craigslist Needs Some Policing*, WALL ST. J., Oct. 23, 2009, <http://blogs.wsj.com/digits/2009/10/23/sheriff-still-thinks-craigslist-needs-some-policing>.
- 69 Interview with Patterson, *supra* note 47.
- 70 *Id.*
- 71 Craigslist, *supra* note 8.
- 72 Interview with Patterson, *supra* note 47.
- 73 *Id.*
- 74 Interview with Bucaro, *supra* note 2.
- 75 *Id.*
- 76 *Id.*
- 77 *Id.*
- 78 *Id.*
- 79 *Id.*
- 80 *Id.*