

Hey Girls, Did You Know? Slut-Shaming on the Internet Needs to Stop

By EMILY POOLE*

Introduction

A VANDERBILT SORORITY DECIDES TO THROW A PARTY.¹ The girls in charge elect to rent a photo booth for the soirée.² The rental company informs them that the booth has a special feature where the photos can be automatically uploaded to Facebook.³ “Great,” say the girls.⁴ The night of the party arrives, and everyone is drinking alcohol from red plastic cups.⁵ As the hours go by, inhibitions fade away.⁶ A boy and a girl start kissing, and passion moves them to look for a private place.⁷ They find the photo booth.⁸ Clothes come off.⁹ The camera flashes.¹⁰

Bam! The photos hit the Internet and Facebook goes crazy.¹¹ The pictures make their way to Reddit,¹² to Autoadmit,¹³ and to personal

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1. The following story is based on real-life events that occurred to a student at Vanderbilt University in December of 2012. See Heather Rose, *The Vandy Photo Booth Scandal*, DESPERATE FOR SOMETHING BLOG (Dec. 11, 2012, 12:37 PM), <http://desperateforsomething.blogspot.com/2012/12/the-vandy-photo-booth-scandal.html>.

2. See *id.*

3. See *KD Formal at Vanderbilt. They Had a Photo Booth That Uploaded Directly to Facebook*, REDDIT (Dec. 8, 2012), http://www.reddit.com/r/nsfw/comments/14ibop/kd_formal_at_vanderbilt_they_had_a_photo_booth/ [hereinafter *KD Formal*].

4. See *id.*

5. See *id.*

6. See *id.*

7. See Rose, *supra* note 1.

8. See *id.*

9. See *id.*

10. See *id.*

11. See *KD Formal*, *supra* note 3.

12. Reddit is a news and entertainment website where users submit posts, photos, and videos that are rated on interestingness by other users. See REDDIT, <http://www.reddit.com> (last visited June 15, 2013).

email accounts.¹⁴ Instantly, the entire world has access to drunken sex pictures of a college couple.¹⁵ And then the comments start.¹⁶ “You ignorant slut.”¹⁷ “I don’t really think shame is in this chick’s vocabulary.”¹⁸ “She’s so screwed.”¹⁹ Internet users learn the girl’s name; that she recently applied to law school; and someone sends the photos to the law schools.²⁰ “This is a blessing in disguise. Law school is a waste of time and money for women, anyways.”²¹ The girl gets kicked off the cheerleading squad and kicked out of her sorority.²² All of a sudden her future is in jeopardy, and she is subject to humiliation and ridicule.²³

And the boy? What hardships did those photos cause him?

None.²⁴

When it comes to sexual expression, females are denied the freedoms enjoyed by males.²⁵ It is the norm rather than the exception that females are shamed for acting on their sexual desires.²⁶ Even though sexual acts often take both a male and a female, it is the girl that faces society’s judgment when her behavior is made public.²⁷ The

13. AUTOADMIT, <http://www.xoxohth.com/> (last visited June 15, 2013). Autoadmit is a website for college and graduate students that is largely known for its completely unregulated and offensive discussion boards. See Ellen Nakashima, *Harsh Words Die Hard on the Web*, WASH. POST (Mar. 7, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/06/AR2007030602705.html>.

14. See Rose, *supra* note 1.

15. *KD Formal*, *supra* note 3 (“In four hours this image has been viewed 10,508 times. Again, that’s only in four hours. Also, that’s only on imgur, by reddit.”) (comment by Happycrabeatsthefish); *id.* (“6 hours later, 89,000 views on imgur alone.”) (comment by ThunderBuss).

16. *Excellent Whoring, Terrible Internetting, and Everything in Between*, TMB (Dec. 5, 2012), <http://www.the-mainboard.com/index.php?threads/excellent-whoring-terrible-internetting-and-everything-in-between.118129/>.

17. *Id.* (comment by Moxin24).

18. *Id.* (comment by Debaser).

19. *Id.* (comment by Ndamem2000) (accessed by clicking on page 2).

20. See Rose, *supra* note 1.

21. *Id.*

22. *Id.*

23. See *id.*

24. See *KD Formal*, *supra* note 3 (“A frat boy at Vanderbilt? I’m pretty sure he’s going to land on his feet.”) (comment by knifegash); *id.* (“He is a legend now.”) (comment by leshake).

25. See LEORA TANENBAUM, *SLUT! GROWING UP FEMALE WITH A BAD REPUTATION* 58 (Harper Collins 2000) (“[M]en are allowed to engage in coitus for any reason—women only if in love or engaged.”); see also Ted Boscia, *Women Reject Promiscuous Female Peers as Friends, Study Finds*, CORNELL CHRON. (May 30, 2013), <http://news.cornell.edu/stories/2013/05/study-women-reject-promiscuous-female-peers-friends>.

26. See TANENBAUM, *supra* note 25, at 57–58.

27. *Id.*; see Rose, *supra* note 1.

Internet has created a forum for such slut-shaming²⁸ to occur on a whole new level. Now, when a girl is attacked for her sexuality, her attackers can be spread across the United States, or even the world. They may be classmates and neighbors or complete strangers. The Internet is an incredible resource for sharing and gaining information, but it is also allowing attacks on female sexuality to flourish.²⁹

While slut-shaming can and does occur to females of all ages,³⁰ this Article focuses on its prevalence among teen and preteen girls. At these young ages, females are at their most impressionable.³¹ As such, the consequences of slut-shaming are more pronounced in youth. However, this impressionability can also be used for good—to make positive changes. If young boys and girls are educated about the importance of treating everyone equally and with respect, their liberal attitudes can help alleviate the discriminatory attitude that still permeates our society.³²

The online shaming that occurs to young women falls under the umbrella of the malicious practice known as cyberbullying.³³ Cyberbullying is defined as “willful and repeated harm inflicted through the use of computers, cell phones, and other electronic de-

28. *Frequently Answered Questions*, FINALLY, A FEMINISM 101 BLOG, <http://finallyfeminism101.wordpress.com/2010/04/04/what-is-slut-shaming/> (Apr. 4, 2010) [hereinafter FINALLY, A FEMINISM 101 BLOG] (“Slut-shaming . . . is the idea of shaming and/or attacking a woman or a girl for being sexual, having one or more sexual partners, acknowledging sexual feelings, and/or acting on sexual feelings.”); see discussion *infra* Part II.

29. See Beth Stebner, *The Teenage Girls Who Are Fighting Back at Their Peers Who ‘Dress Too Provocatively or Wear Too Much Make-up,’* MAIL ONLINE (Jan. 6, 2013), <http://www.dailymail.co.uk/news/article-2257975/Alarming-trend-teenaged-girls-shame-peers-dressing-slutty-wearing-make-up.html>; see also Christine Roberts, *‘Slut-Shaming’ Trend, Sweeping Internet, Adds Meme Form to Adolescent Cyber Bullying*, N.Y. DAILY NEWS (Jan. 7, 2013), <http://www.nydailynews.com/news/national/adolescents-memes-cyber-bully-article-1.1235246>.

30. Claire Cohen, *It’s Not Just Teenagers: Adults Are ‘Slut-Shaming and Sexting’ Too*, TELEGRAPH (Jan. 23, 2013), <http://www.telegraph.co.uk/women/sex/9819285/Slut-shaming-and-sexting-is-scarily-all-the-rage-with-adults-too.html>; see Mary Bruce, *Sandra Fluke: Rush Limbaugh ‘Slut’ Comment ‘Outside the Bounds of Civil Discourse,’* ABC NEWS (Mar. 2, 2012), <http://abcnews.go.com/blogs/politics/2012/03/sandra-fluke-rush-limbaugh-slut-comment-outside-the-bounds-of-civil-discourse/>.

31. Liz Lasky, *Expert: Talk to Your Children to Find Out If They Are Being Cyber-Bullied*, N.Y. DAILY NEWS (May 23, 2013), <http://www.nydailynews.com/new-york/expert-discusses-cyber-bulling-adolescent-suicides-article-1.1353321> (“Teens are at a critical developmental stage, where their main mental task is to fit in.”).

32. See NATIONAL WOMEN’S LAW CENTER, *HOW TO PROTECT STUDENTS FROM SEXUAL HARASSMENT: A PRIMER FOR SCHOOLS 1–4* (2007), available at <http://www.nwlc.org/sites/default/files/pdfs/Final%20SH%20Fact%20Sheet-Schools.pdf>.

33. See SAMEER HINDUJA & JUSTIN W. PATCHIN, *BULLYING BEYOND THE SCHOOLYARD: PREVENTING AND RESPONDING TO CYBERBULLYING* 5 (Corwin Press 2009) (defining cyberbullying).

vices.”³⁴ Because actions and legislation that address cyber slut-shaming can also remedy other types of cyberbullying, the problems and proposed solutions elaborated in this Article can be expanded to include all types of cyberbullying. This Article addresses a specific and pervasive harm—that caused by sexual shaming—to help bring attention to both the repercussions of cyberbullying and the broader gender inequality that persists in forums and social networking sites across the Internet. By bringing attention to the issue, this Article attempts to accomplish the first step in solving a problem—recognizing and understanding the harm.

The United States has recently begun to acknowledge the harmful nature of cyberbullying on teens.³⁵ Unfortunately, the conversation about online bullying has yet to include a focus on the unique harms faced by females; namely, attacks on female sexuality.³⁶ Cyberbullying and cyber slut-shaming are still trivialized in courtrooms and discussion groups as “puerile attempts by adolescents to outdo each other.”³⁷ Current legislation is not sufficient in preventing and remedying these harms.³⁸ First, § 230 of the Communications Decency Act (“CDA”)³⁹ currently grants complete immunity to Internet Service Providers (“ISPs”) and websites for defamatory, private, or offensive content posted by third parties on their sites.⁴⁰ Such online intermediaries, therefore, have no incentive to monitor the bullying that occurs on their sites, offering teens an unregulated forum for cyberbullying. Second, the anti-bullying statutes of most states do not grant schools clear power to punish or reprimand cyberbullies who attack their victims while off-campus, nor do they provide sufficient guidance about how administrators should address cyberbullying.⁴¹ Finally, victims are often unable to find relief through tort claims, such as

34. *Id.*

35. See, e.g., STOPBULLYING.GOV, <http://www.stopbullying.gov/cyberbullying/> (last visited June 16, 2013) (providing information on the growing threat of cyberbullying); CYBERBULLYING RESEARCH CENTER, <http://cyberbullying.us/> (last visited June 16, 2013) (providing information on the growing threat of cyberbullying); STOPCYBERBULLYING, <http://www.stopcyberbullying.org/> (last visited June 16, 2013) (providing information on the growing threat of cyberbullying).

36. See, e.g., *Risk Factors*, STOPBULLYING.GOV, <http://www.stopbullying.gov/at-risk/factors/index.html> (last visited June 16, 2013) (identifying traits shared by children who are at risk of being bullied, without mentioning female sexuality).

37. E.g., *Finkel v. Dauber*, 906 N.Y.S.2d 697, 702 (N.Y. Sup. Ct. 2010).

38. See *infra* Part III–V.

39. 47 U.S.C. § 230 (2006).

40. See *infra* Part III.

41. See *infra* Part IV.

defamation and intentional infliction of emotional distress, when choosing to pursue a cyberbully in court.⁴²

Part I of this Article opens with a discussion of teen Internet use and the emergence of online social networking sites. Part II defines slut-shaming and examines its prevalence on various sites and forums across the Internet. Additionally, Part II describes the impact of cyber slut-shaming and cyberbullying on young females and explains why online shaming and bullying are worse than their “traditional” face-to-face counterparts. Part III describes how the CDA protects service providers from liability for cyberbullying that occurs on their sites and proposes an amendment that would make providers responsible for removing bullying content upon request from the victim. Part IV discusses state and national anti-bullying statutes and argues for more guidance and clarity. Finally, Part V explains why tort law is not a good option for teenaged cyber-bullying victims.

The legal system can respond to these critiques in the following ways: First and foremost, Congress should amend the CDA to impose liability on ISPs and websites for, upon notification, failure to remove defamatory or bullying content about children seventeen years of age and younger.⁴³ Second, every state should amend its anti-bullying statute, or, alternatively, the federal government should pass an anti-cyberbullying statute.⁴⁴ Such statutes should define the power and responsibilities of schools when dealing with cyberbullying and clearly grant schools the authority to address on-campus and off-campus cyberbullying. Finally, courts should recognize the real and harmful effect of cyberbullying on victims and allow tort claims to proceed against cyberbullies.⁴⁵ The courtroom route, however, is not practical for most victims; it should be reserved for only the most egregious forms of cyberbullying and should be considered the absolute last resort.

It is important to note that cyber slut-shaming is not the only type of cyberbullying occurring among youth. Young, homosexual men feel the effects of cyberbullying based on sexuality just as much as young women.⁴⁶ In fact, anyone who is seen as “different” is suscepti-

42. See *infra* Part V.

43. See discussion *infra* Part III.

44. See discussion *infra* Part IV.

45. See discussion *infra* Part V.

46. Homosexual boys are also the victims of sexual shaming, which has similarly led to tragic consequences. See Laura Hibbard, *Brandon Elizares, Gay Teen, Commits Suicide, Writing 'I Couldn't Make It. I Love You Guys,'* HUFFINGTON POST (June 14, 2012), http://www.huffingtonpost.com/2012/06/14/brandon-elizares-gay-teen-commits-suicide-leaves-note_n_

ble to attacks by cyberbullies.⁴⁷ This Article does not mean to trivialize the harms felt by people who are bullied on a basis other than female sexuality or purport to argue that cyber slut-shaming is the worst form of bullying. All forms of cyberbullying are offensive. The purpose of focusing on one particularly cruel type of bullying is to call attention to both the severity of cyber slut-shaming and the pervasiveness of gender inequality on the web.

I. The Internet: The New Digital Hangout

The Internet has become this generation's hangout.⁴⁸ Teens and preteens no longer need their parents or older siblings to cart them back and forth between their homes, movie theatres, or shopping centers to meet up with their peers. Face-to-face interactions are being replaced with computer screens. These days, a teen need only pull a phone out of his or her purse or back pocket, and, with a few clicks, he or she can link up with both friends and strangers through various websites and social networks.

One would be hard-pressed to find a teenager not connected to the digital world in some fashion. Reports from the Pew Research Center show that 97% of teens aged twelve to seventeen access the Internet and that 75% do so through a mobile device.⁴⁹ This ease in connectivity has shifted the way teens interact by decreasing the amount of time teens communicate in person.⁵⁰ The Internet allows for immediate, widespread, and ever-present communication—which can be both a blessing and a curse.⁵¹

1598272.html; Jack Reese, *Gay Utah Teen, Commits Suicide After Allegedly Being Subjected to Bullying in School*, HUFFINGTON POST (Apr. 29, 2012), http://www.huffingtonpost.com/2012/04/29/jack-reese-gay-teen-suicide_n_1462594.html; Kenneth Weishuhn, *Gay Iowa Teen, Commits Suicide After Allegedly Receiving Death Threats*, HUFFINGTON POST (Apr. 17, 2012), http://www.huffingtonpost.com/2012/04/17/kenneth-weishuhn-gay-iowa-teen-suicide_n_1431442.html; Dan Avery, *Gay Oregon Teen Jadin Bell Commits Suicide After Enduring Years of Bullying*, QUEERTY (Jan. 29, 2013), <http://www.queerty.com/gay-oregon-teen-jadin-bell-commits-suicide-after-enduring-years-of-bullying-20130129/>.

47. *Risk Factors*, *supra* note 36 (describing children that “[a]re perceived as different from their peers” as at risk for bullying).

48. See PEW RESEARCH CENTER, *TEENS AND TECHNOLOGY 2013* at 4 (Mar. 13, 2013), available at http://pewinternet.org/~media/Files/Reports/2013/PIP_TeensandTechnology2013.pdf.

49. *Id.*

50. Chris Crosby, *The Effects of Social Media on Teenagers*, SOCIALLYACTIVE (Nov. 22, 2012), <http://sociallyactive.com/social-media-effect/> (describing the negative effects of social networking on teenagers).

51. The Internet is a great resource for quickly and easily learning vast amounts of information. However, when the shared information is meant to defame, harass, or hurt an

A. Facebook

Since its inception in 2004,⁵² Facebook has exploded into *the* social networking website.⁵³ In 2012, Facebook hit one billion active users.⁵⁴ That same year, Facebook also captured the title of number one U.S. mobile app and ranked as number one in app engagement.⁵⁵ At the end of 2012, 680 million active users were signed into Facebook mobile apps.⁵⁶ Facebook app usage currently accounts for 23% of users' time spent on mobile apps.⁵⁷ This means that when you see someone on his or her phone, there is a near one in four chance that person is browsing Facebook!⁵⁸

Facebook allows users to connect through updates, photos, messages, and pages.⁵⁹ Not only can users share information with other Facebook friends, depending on their privacy settings, it is incredibly easy to share posted information with strangers.⁶⁰ Even if an individual user chooses not to share personal photos and updates, there are few restrictions in place to prevent others from uploading and sharing photos and comments containing that individual's name or image.⁶¹ While users can alert Facebook to undesirable or abusive information that they wish to be removed, Facebook's user policy

individual, the speed and effortless manner in which the information is disseminated is less desirable.

52. *About Facebook*, FACEBOOK, <https://www.facebook.com/facebook/info> (last visited Apr. 11, 2013).

53. Steven J. Vaughan-Nichols, *Facebook Remains Top Social Network, Google+, YouTube Battle For Second*, ZDNET (May 14, 2013), <http://www.zdnet.com/facebook-remains-top-social-network-google-youtube-battle-for-second-7000015303/>.

54. Barry Schwartz, *Facebook Reaches One Billion People and Releases TV Ad*, MARKETING LAND (Oct. 4, 2012), <http://marketingland.com/facebook-reaches-one-billion-people-releases-tv-ad-23267>.

55. Andrew Lipsman, *Facebook Vaults Ahead of Google Maps to Finish 2012 as #1 U.S. Mobile App*, COMSCORE (Jan. 23, 2013), http://www.comscore.com/Insights/Blog/Facebook_Vaults_Ahead_of_Google_Maps_to_Finish_2012_as_number_1_US_Mobile_App. App engagement is a measurement of the time users spend in a particular mobile app. *See id.*

56. *Key Facts*, FACEBOOK, <http://newsroom.fb.com/Key-Facts> (last visited Apr. 11, 2013).

57. Lipsman, *supra* note 55.

58. *See id.*

59. *See* FACEBOOK, <https://www.facebook.com> (last visited Apr. 11, 2013).

60. *See Sharing and Finding You on Facebook*, FACEBOOK, <http://www.facebook.com/about/privacy/your-info-on-fb> (last visited June 16, 2013).

61. *See id.* ("[Y]our friends and others may share information about you. They may share photos or other information about you and tag you in their posts. If you do not like a particular post, tell them or report the post.").

gives the site considerable discretion in deciding whether to actually remove the offending material.⁶²

For instance, classmates of fourteen-year-old Alex Boston created a fake Facebook page using Alex's information.⁶³ The page made it appear that Alex used drugs, left obscene and sexual comments on others' pages, and spoke a language called "Retardish."⁶⁴ Upon learning about the page, Alex and her parents contacted Facebook and requested the page be removed. Facebook, however, did not take down the page.⁶⁵

B. Tumblr

Tumblr is a microblogging and social networking site where users can post "text, photos, quotes, links, music, and videos" from a "browser, phone, desktop, email or wherever [one] happen[s] to be."⁶⁶ Unlike more traditional blogging sites,⁶⁷ Tumblr users are not expected to post full-length articles but rather can post short quips or a single photo.⁶⁸ This feature has attracted younger users who do not want to expend the time or energy on the upkeep of a blog, preferring to post or repost sporadic quotes or photos.⁶⁹

Founded in February 2007, Tumblr has over ninety-eight million blogs and forty-four billion posts.⁷⁰ Users can follow friends or other bloggers that have set their privacy settings to public and can allow friends or strangers to follow their own blog.⁷¹ The site is largely used by teens and college-aged persons with users under twenty-five repre-

62. *Facebook Community Standards*, FACEBOOK, <https://www.facebook.com/communitystandards> (last visited Apr. 11, 2013).

63. Dorie Turner & Greg Bluestein, *Victims of Cyberbullying Fight Back in Lawsuits*, BLOOMBERG BUSINESSWEEK (Apr. 27, 2012), <http://www.businessweek.com/ap/2012-04/D9UD9QQ00.htm>.

64. *Id.*

65. *Id.*

66. TUMBLR, <http://www.tumblr.com/about> (last visited Apr. 11, 2013).

67. Traditional blogs tend to consist of text-based content posted daily, or almost daily, by the blog owner.

68. *See Tumblr*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Tumblr> (last visited July 23, 2013) (describing Tumblr as a "microblogging platform" that allows users to post content to a "short-form blog"); *see also Microblogging*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Microblogging> (last visited July 23, 2013) (defining microblogging).

69. *See Andrew Lipsman, Tumblr Defies Its Name as User Growth Accelerates*, COMSCORE (Aug. 30, 2011), http://www.comscore.com/Insights/Blog/Tumblr_Defies_its_Name_as_User_Growth_Accelerates.

70. *Id.*

71. *See How to Make a Private Tumblr Blog*, HOW-TO GEEK (July 23, 2010), <http://www.howtogeek.com/howto/22806/how-to-make-a-private-tumblr-blog/> ("By default, Tumblr blogs are available for all the world to see.").

senting over half of all total users.⁷² Teens aged fourteen to seventeen are two times as likely to visit Tumblr when compared to the average Internet user.⁷³

Tumblr offers “Community Guidelines” to its users, one of which states, “Don’t bully minors, even if you are one. Life as a teenager is hard enough without the fear, anguish, and isolation caused by online bullying.”⁷⁴ A violation of these policies could result in an email notification and, subsequently, account suspension or a blocked IP address.⁷⁵ Although Tumblr reserves the right to monitor undesirable content, it does not have a clear system in place where users can request removal of offending content.⁷⁶ Similar to Facebook, users can contact Tumblr and ask that Tumblr remove offensive content, but Tumblr does not have to honor the request.⁷⁷

C. Formspring and Ask.fm

Formspring⁷⁸ and Ask.fm⁷⁹ are digital question and answer platforms—the latest trend in websites popular among teens and preteens.⁸⁰ These sites allow users to sign up using their names, photos, and bios—which then become publicly available information—and ask (often controversial) questions.⁸¹ Other users browse the site and respond to posted questions.⁸² Responses can be submit-

72. Lipsman, *supra* note 69.

73. *Id.*

74. *Community Guidelines*, TUMBLR, <http://www.tumblr.com/policy/en/community> (last modified Mar. 22, 2012).

75. *Id.*

76. *See id.*

77. *See id.* For a discussion of Tumblr staff ignoring removal requests, see Dion Beary, *Racial Abuse on Tumblr Goes Ignored by Support Staff*, BLACK KIDS TABLE (July 30, 2012), <http://theblackkidstable.wordpress.com/2012/07/30/racial-abuse-on-tumblr-goes-ignored-by-support-staff/>.

78. Formspring began as a social question and answer site but was recently relaunched as a site designed for users with shared interests to connect and discuss those interests. Sarah Perez, *Formspring Relaunches as an Interest-Based Social Network*, TECHCRUNCH (June 19, 2012), <http://techcrunch.com/2012/06/19/formspring-relaunches-as-interest-based-social-network/>; *About Formspring*, FORMSPRING, <http://www.formspring.me/about/> (last visited June 23, 2013).

79. ASK.FM, <http://ask.fm> (last visited June 23, 2013).

80. Jennifer Van Grove, *Ask.fm, the Troubling Secret Playground of Tweens and Teens*, CNET (June 8, 2013), http://news.cnet.com/8301-1023_3-57588247-93/ask.fm-the-troubling-secret-playground-of-tweens-and-teens/.

81. *See* Sharon Vaknin, *Teens Abuse, Find Comfort in Anonymity on Formspring.me*, CNET (Apr. 1, 2010), http://news.cnet.com/8301-17939_109-20001513-2.html; *see also* ASK.FM, *supra* note 79.

82. *See* Vaknin, *supra* note 81; *see also* ASK.FM, *supra* note 79.

ted anonymously.⁸³ Ask.fm currently has more than fifty million users worldwide.⁸⁴

Formspring was thrust into the spotlight when user Alexis Pilkington, a seventeen-year-old high school student in Suffolk County, New York, committed suicide after being severely bullied online.⁸⁵ Formspring was similarly implicated in the cyberbullying-related suicide of fifteen-year-old U.K. student Natasha MacBryde.⁸⁶ Natasha ended her life by jumping in front of a railway train.⁸⁷

Question and answer sites such as Formspring and Ask.fm are a growing concern, as each can essentially act as a platform for anonymous bullying.⁸⁸ While both sites retain the right to monitor or amend content, neither site states that it *will* monitor the content on the site or screen its users.⁸⁹

Online social networking has become the norm for teens in the past decade. More than 80% of teens on the Internet aged twelve to seventeen use social networking sites with most logging in daily to check their pages.⁹⁰ Essentially, social networking has become central to many teenagers lives. In fact, asked to choose between their sense of smell or access to technology, 53% of youth aged sixteen to twenty-two would pick their laptops over their noses.⁹¹

Social networking sites currently face zero legal consequences when third parties post offensive, bullying, or defamatory content.⁹² While users of some platforms can request the removal of offensive content, the sites' terms of service generally grant the sites broad dis-

83. See Vaknin, *supra* note 81; see also ASK.FM, *supra* note 79.

84. Facebook page of *Ask.fm*, FACEBOOK, <https://www.facebook.com/askfmpage> (last visited Apr. 30, 2013).

85. Vaknin, *supra* note 81.

86. *Teenager in Rail Suicide Was Sent Abusive Message on Social Networking Site*, TELEGRAPH (July 22, 2011), <http://www.telegraph.co.uk/technology/social-media/8653867/Teenager-in-rail-suicide-was-sent-abusive-message-on-social-networking-site.html> (“[Natasha’s] parents . . . said they believed anonymous messages on Formspring had played a significant role in the events leading up to her death.”).

87. *Id.*

88. Van Grove, *supra* note 80.

89. See *Terms of Service*, ASK.FM, <http://ask.fm/about/tos> (last visited Apr. 7, 2013) [hereinafter *Ask.fm Terms of Service*]; *Terms of Service*, FORMSPRING.ME, <http://www.formspring.me/about/terms> (last visited Apr. 7, 2013) [hereinafter *Formspring Terms of Service*].

90. PEW RESEARCH CENTER, TEENS, KINDNESS AND CRUELTY ON SOCIAL NETWORK SITES 2 (Nov. 9, 2011), available at http://pewinternet.org/~media/Files/Reports/2011/PIP_Teens_Kindness_Cruelty_SNS_Report_Nov_2011_FINAL_110711.pdf.

91. Leslie Horn, *Majority of Kids Would Rather Lose Their Sense of Smell Than Lose Facebook*, PCMAC (May 26, 2011), <http://www.pcmag.com/article2/0,2817,2385960,00.asp>.

92. See *infra* Part III.

cretion in deciding whether to actually remove the material.⁹³ As such, social networking sites can act as unregulated havens for bullies to attacks their victims.

II. A New Age of Harassment: Cyber Slut-Shaming

Slut-shaming is the act or idea of attacking a female for being sexual.⁹⁴ The purpose of slut-shaming is to make a woman feel guilty or inferior for acting in ways that do not conform with traditional gender expectations, such as having more than one sexual partner, acting on sexual feelings, or wearing revealing clothing.⁹⁵

In the United States, women have long been judged by their sexuality. Historically, as a culture that held men out as the breadwinners and women as the homemakers, women were expected to be pure and submissive.⁹⁶ It was not until the 1960s and 1970s that the modern women's sexual liberation movement finally emerged.⁹⁷ With strong feminist writers and leaders like Betty Friedan,⁹⁸ Gloria Steinem,⁹⁹ and Kate Millett,¹⁰⁰ women began to embrace their sexuality openly and in public.¹⁰¹ Birth control use increased, as did the number of women who had sex outside of marriage.¹⁰²

93. See, e.g., *Ask.fm Terms of Service*, *supra* note 89; *Formspring Terms of Service*, *supra* note 89; *Facebook Community Standards*, *supra* note 62.

94. FINALLY, A FEMINISM 101 BLOG, *supra* note 28.

95. See TANENBAUM, *supra* note 25, at xiv–xv.

96. Barbara Welter, *The Cult of True Womanhood: 1820–1960*, 18 AM. Q. 151, 152 (1966), available at <http://www.csun.edu/~sa54649/355/Womanhood.pdf>.

97. Rachel A. Rosenfeld & Kathryn B. Ward, *The Contemporary U.S. Women's Movement: An Empirical Example of Competition Theory*, 6 SOC. F. 471, 471 (1991).

98. See generally BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (W.W. Norton & Co. 1963). “The Feminine Mystique is a . . . book by Betty Friedan which is widely credited with sparking the beginning of second-wave feminism in the United States.” *The Feminine Mystique*, WIKIPEDIA, http://en.wikipedia.org/wiki/The_Feminine_Mystique (last visited Sept. 8, 2013).

99. See generally GLORIA STEINEM, <http://www.gloriasteinem.com> (last visited June 23, 2013) (official website of Gloria Steinem describing her as a feminist and social activist for over forty years).

100. See generally KATE MILLETT, *SEXUAL POLITICS* (Double Day & Co. 1970). *Sexual Politics*, written by Kate Millett, “was an important theoretical touchstone for the second wave feminism of the 1970s.” *Sexual Politics*, WIKIPEDIA, http://en.wikipedia.org/wiki/Sexual_Politics (last visited Sept. 8, 2013).

101. See Anita Allen, *Privacy and the Public Official: Talking About Sex as a Dilemma for Democracy*, 67 GEO. WASH. L. REV. 1165, 1176 (1999) (“The sexual revolution was a sweeping rejection of traditional sexual morality and gender roles, embracing birth control, abortions, premarital sex, and non-marital cohabitation.”).

102. JANE GERHARD, *DESIRING REVOLUTION: SECOND-WAVE FEMINISM AND THE REWRITING OF AMERICAN SEXUAL THOUGHT, 1920–1982* at 81 (Columbia University Press 2001); David

While the past forty years have seen the United States adopt a more accepting view of women's sexuality,¹⁰³ slut-shaming remains a tremendous problem.¹⁰⁴ Although society might now accept and expect a woman to engage in sex outside of marriage, we still expect women's sexual behavior to be tied to feelings of love.¹⁰⁵ In other words, a female can have sex with a man she has emotional feelings for, but casual meaningless sex is still taboo.

Women are not only judged on sexual activity but also on the clothes they wear and their own attitudes about sexuality. Women who wear tight shirts, short skirts, or bare their cleavage open themselves up to slut-shaming.¹⁰⁶ As do women who are deemed sexually aggressive or too forward in their sexual advances.¹⁰⁷ Ironically enough, women who do not have sex or act sexually can still be subjected to slut-shaming.¹⁰⁸ We live in an era where the word "slut" is tossed around anytime a woman does something that another person does not like.¹⁰⁹

Slut-shaming not only demeans women, but it also highlights the sexual double standard still rampant in our society.¹¹⁰ This double standard is the belief that men can freely engage in sexual behavior, but that women should engage in such behavior only when in love or in a committed relationship.¹¹¹ When a woman acts outside of this norm, she will be stigmatized and shamed.¹¹² The emotional harms caused by slut-shaming can follow a woman around for years, damage her self-perception, and possibly cause her to either dismiss her own

J. Harding & Christopher Jencks, *Changing Attitudes Toward Premarital Sex: Cohort, Period, and Aging Effects*, 67 PUB. OPINION Q. 211, 211-26 (2003).

103. See Hanna Rosin, *Sexual Freedom and Women's Success*, WALL ST. J. (Mar. 23, 2012), <http://online.wsj.com/article/SB10001424052702304724404577299391480959420.html>.

104. Temitayo Fagbenle & Courtney Stein, *Sexual Cyberbullying: The Modern Day Letter A*, WNYC (Dec. 28, 2012), <http://www.wnyc.org/shows/rookies/articles/radio-rookies/2012/dec/28/sexual-cyberbullying-modern-day-letter/>.

105. TANENBAUM, *supra* note 25, at 66-67.

106. See FINALLY, A FEMINISM 101 BLOG, *supra* note 28.

107. *Id.*

108. *Id.* ("A virgin can be a victim of slut-shaming . . . [A]ny female who acts in a way that another person doesn't like is at risk for being slut-shamed.").

109. Rush Limbaugh, for example, called Sandra Fluke a "slut" and a "prostitute" on his talk show when he disagreed with her support for insurance-covered birth control. Bruce, *supra* note 30.

110. TANENBAUM, *supra* note 25, at xix.

111. *Id.* at 58.

112. *Id.*

sexuality or be labeled as *easy*, thus becoming a target for further harassment or even rape.¹¹³

Women's sexual histories and sexual expression are still used against them in harassment or rape instances. In March of 2013, two Steubenville, Ohio football players were sentenced to juvenile jail for sexually assaulting a sixteen-year-old girl.¹¹⁴ Online responses to the sentences focused on the fault of the girl.¹¹⁵ In Twitter posts, users called her "drunk," "loose," and "slutty," claiming that she was to blame for the rape.¹¹⁶ At the same time, a similar story unfolded across the country in Torrington, Connecticut, where authorities arrested seventeen-year-old and eighteen-year-old male athletes for sexually assaulting thirteen-year-old girls.¹¹⁷ After the arrests, social media users blamed the girls for hanging around with older guys.¹¹⁸ Users called the girls "sluts" and "whores" and faulted them for "ruining" the lives of the male rapists.¹¹⁹ Even an eleven-year-old girl, who was gang raped by eighteen young men in Cleveland, Texas, experienced such victim blaming when, in breaking the story, the media seemed to justify the men's assaults by focusing on the girl's behavior: "[S]he dressed older than her age, wearing makeup and fashions more appropriate to a woman in her 20s. She would hang out with teenage boys at a playground."¹²⁰

Slut-shaming is a serious problem. It harms women's self-perceptions, breeds gender inequality, and perpetuates the rape culture.¹²¹ These days, one has to go no further than the Internet to see the prevalence of slut-shaming.

113. *Id.* at 229.

114. Christina Ng, *Steubenville, Ohio, Football Players Convicted in Rape Trial*, ABC NEWS (Mar. 17, 2013), <http://abcnews.go.com/US/steubenville-football-players-guilty-ohio-rape-trial/story?id=18748493#.UWctSNH5mXQ>.

115. *Tweets of Privilege*, PUBLIC SHAMING (Mar. 17, 2013), <http://publicshaming.tumblr.com/day/2013/03/17>.

116. *Id.*

117. Al Baker, *Sex Charges in Connecticut Are Dissected on Internet*, N.Y. TIMES, Mar. 20, 2013, at A22, available at http://www.nytimes.com/2013/03/21/nyregion/sexual-assault-charges-in-torrington-conn-are-dissected-in-social-media.html?_r=0.

118. Jessica Glenza, *Victim Bullied After Rape Allegations Against Torrington Football Players*, REGISTER CITIZEN (Mar. 20, 2013), <http://registercitizen.com/articles/2013/03/20/news/doc51493e14b1a0a944806262.txt>.

119. *Id.*

120. James C. McKinley Jr., *Vicious Assault Shakes Texas Town*, N.Y. TIMES, Mar. 8, 2011, at A13, available at http://www.nytimes.com/2011/03/09/us/09assault.html?_r=3.

121. See FINALLY, A FEMINISM 101 BLOG, *supra* note 28 (discussing "[t]he effects of slut-shaming and what we can do about it").

A. Slut-Shaming on the Internet: “Hey Girls, Did You Know?”

The entire planet is connected through a worldwide network of computers. The Internet has opened the floodgates on instant and widespread communication. Send an email from California; a recipient in Beijing can open it in a number of seconds. Post a photo to Facebook; that picture will be almost instantaneously available to any one of your Facebook friends. However, because no one entity controls the Internet, anyone and everyone can post anything that he or she wants. There is no omniscient being editing our posts or nixing offending material. A user simply decides to post something, clicks *submit*, and that content is on the Internet for the world to see. Of course, there is the risk of posting something that will later be deemed illegal or taken down by a service provider, but that is an after-the-fact risk. There are no boundaries to an initial posting. And that means some online communications will be undesirable, even harmful.

In June 2012, Tumblr user @officialsabrina_xo posted what would soon become the next Internet craze among teens: the “Hey Girls, Did You Know?” meme.¹²² An Internet meme is a video, image, catchphrase, or other viral phenomenon that is shared person-to-person over the web.¹²³ This particular meme featured four sequential pictures of a teenage girl with four different captions that read, “Girls, did you know . . . That uhm, Your boobs Go inside your shirt.”¹²⁴ Tumblr removed the post, but not before it had been seen and reblogged by numerous users.¹²⁵

The four-panel meme went viral and inspired numerous spin-offs and response posts. The spin-offs ranged from cruel—“Hey girls. Did you know? That you spread Nutella. . .Not your legs,”¹²⁶ and “For the girls that say . . all guys are the same — nobody told you to try them all . . SLUT”¹²⁷—to positive—“Hey Girls, did you know that uhhh. . .Your boobs. . .Can go wherever they want. . .Because it’s YOUR body,” and “Girls, did ‘ya know. . .That, uhm. Your Boobs Are

122. *About Hey Girls, Did You Know. . .*, KNOW YOUR MEME, <http://knowyourmeme.com/memes/hey-girls-did-you-know> (last visited June 15, 2013).

123. *Internet Meme*, WIKIPEDIA, http://en.wikipedia.org/wiki/Internet_meme (last visited Apr. 7, 2013).

124. *About Hey Girls, Did You Know. . .*, *supra* note 122.

125. *Id.*

126. Christine Roberts, ‘Slut-Shaming’ Trend, Sweeping Internet, Adds Meme Form to Adolescent Cyber Bullying, N.Y. DAILY NEWS (Jan. 7, 2013), <http://www.nydailynews.com/news/national/adolescents-memes-cyber-bully-article-1.1235246>.

127. *Hey Girls, Did You Know. . . Images*, KNOW YOUR MEME, <http://knowyourmeme.com/memes/hey-girls-did-you-know/photos> (last visited July 21, 2013).

something to be proud of!”¹²⁸ These memes have been compiled into a “Hey Girls, Did You Know” Facebook page that currently has over 45,500 likes.¹²⁹ While arguably humorous, these memes are, nonetheless, a digital form of slut-shaming. They exacerbate harmful gender stereotypes, espousing the idea that there is something wrong or shameful with a girl who embraces her sexuality and that it is okay to attack a female when she wears a short skirt or a low-cut top.

Further troubling is the existence of a Facebook page named “12-year-old sluts.”¹³⁰ The page contains pictures of young girls who dress “too sexy,” and the page operators encourage visitors to post cruel comments under the photos in order to “put these sluts in their place.”¹³¹

It is important to note that these attacks on females and female sexuality are not led solely by males. For instance, the posters behind the Hey Girls, Did You Know meme are overwhelmingly female.¹³² In the patriarchal culture of the United States, which “defines women’s worth by their physical attractiveness and limits their ability to distinguish themselves by other means,”¹³³ women slut-shame other women to compete for male approval.¹³⁴ Females also participate in slut-shaming as a way to feel powerful.¹³⁵ “If you feel insecure or ashamed about your own sexual desires, all you have to do is call a girl a ‘slut’ and suddenly you’re the one who is ‘good’ and on top of the social pecking order.”¹³⁶

Sadly, the most severe psychological harms caused by cyber slut-shaming can be described through the tragic stories of girls like Amanda Todd,¹³⁷ Felicia Garcia,¹³⁸ Rehtaeh Parsons,¹³⁹ and Hope

128. *About Hey Girls, Did You Know*. . . , *supra* note 122.

129. Facebook page of *Hey Girls, Did You Know*, FACEBOOK, <https://www.facebook.com/Girlsdidyoukno?fref=ts> (last visited Apr. 11, 2013).

130. Facebook page of *12 Year Old Sluts*, FACEBOOK, <https://www.facebook.com/pages/12-year-old-sluts/315541631912594?fref=ts> (last visited June 23, 2013).

131. Nancy Lynne Kanter, *Facebook’s 12 Year Old ‘Sluts,’ BEAUTY IS INSIDE* (Oct. 22, 2012), <http://beautyisinside.com/2012/10/facebook-12-year-old-sluts/>.

132. *See About Hey Girls, Did You Know*. . . , *supra* note 122.

133. Nine Deuce, *Sluts!, RAGE AGAINST THE MAN-CHINE* (July 28, 2012), <http://rageagainstthemanchine.com/2008/07/28/sluts/>.

134. *Id.*

135. TANENBAUM, *supra* note 25, at 238.

136. *Id.*

137. *See infra* Part II.A.1.

138. *See infra* Part II.A.2.

139. *See infra* Part II.A.3.

Witsell.¹⁴⁰ All four of these girls were victims of cyber slut-shaming. All four of them turned to suicide to end the harassment.

1. Amanda Todd

When Amanda Todd was twelve years old she began using a video-chatting site that connected her with strangers.¹⁴¹ One of these strangers told Amanda that she was “stunning” and asked her to flash her breasts, and she did.¹⁴² The stranger captured a photo while Amanda was topless.¹⁴³ A year later, he found Amanda on Facebook and told her that he would send the topless image to her friends and family unless she “put on a show” for him over a web cam.¹⁴⁴ She did not, and so he sent the photo.¹⁴⁵

Amanda only discovered that the photo had been shared when the police showed up at her house one night at four a.m. to tell Amanda and her parents that the topless photo was circulating the web.¹⁴⁶ Unfortunately, it was too late to do anything, and the photo made its way to the computer screens of her classmates.¹⁴⁷ Then the cyberbullying began. The man continued posting the topless photo around Facebook.¹⁴⁸ Amanda’s classmates turned against her, circulating the photo and calling her names.¹⁴⁹ Amanda switched schools three times, but she could not evade harassment because the Internet connected her new classmates to her old classmates.¹⁵⁰ She had no escape.

A few years after the incident, a boy from Amanda’s first high school convinced her to engage in sexual activity with him while he had a girlfriend.¹⁵¹ Afterward, the boy told his friends and girlfriend,

140. See *infra* Part II.A.4.

141. Ryan Grenoble, *Amanda Todd: Bullied Canadian Teen Commits Suicide After Prolonged Battle Online and in School*, HUFFINGTON POST (Oct. 11, 2012), http://www.huffingtonpost.com/2012/10/11/amanda-todd-suicide-bullying_n_1959909.html?utm_hp_ref=amanda-todd.

142. Christina Ng, *Bullied Teen Leaves Behind Chilling YouTube Video*, ABC NEWS (Oct. 12, 2012), <http://abcnews.go.com/International/bullied-teen-amanda-todd-leaves-chilling-youtube-video/story?id=17463266>.

143. Grenoble, *supra* note 141.

144. *Id.*

145. *Id.*

146. Ng, *supra* note 142.

147. See *id.*

148. ChiaVideos, *Amanda Todd’s Story: Struggle, Bullying, Suicide, Self Harm*, YOUTUBE (Oct. 11, 2012), <http://www.youtube.com/watch?v=ej7afkypUsc>.

149. *Id.*

150. See *id.*

151. *Id.*

and a mob physically attacked Amanda at her new school.¹⁵² The shaming increased.¹⁵³ Amanda tried to kill herself by drinking bleach.¹⁵⁴ She survived, but the tormenting did not stop.¹⁵⁵ Bullies began making fun of her for the suicide attempt, posting memes like, “Make a mess out of life? Don’t worry! Bleach has you covered!” and comments like, “Sick of seeing Amanda Todd on my news feed, let’s focus our attention on more important matters, like cats. [T]hey’re not whores.”¹⁵⁶

Feeling hopeless and ashamed, Amanda hanged herself in October of 2012. Before she took her life, Amanda posted a video to YouTube.¹⁵⁷ In the video, Amanda shared her heartbreaking story through a series of note cards.¹⁵⁸ The video currently has over sixteen million views.¹⁵⁹ Sadly, even after her death, people still attack Amanda’s sexuality.¹⁶⁰ Posts on “R.I.P. Amanda Todd” Facebook pages claim that a girl who is willing to expose her breasts over the Internet got what she deserved.¹⁶¹ Other posts contain pictures of a girl hanging herself, comments on drinking bleach, and hateful messages like, “Posts her own tits online then kills herself. Gets Internet sympathy for suddenly not being responsible for her own actions.”¹⁶²

2. Felicia Garcia

Felicia Garcia jumped in front of a train in a Staten Island subway station in October of 2012 after facing unrelenting bullying at her

152. *Id.*

153. *Id.*

154. ChiaVideos, *supra* note 148.

155. *Id.*

156. Prettyfake, *On the Posthumous Slut Shaming of Amanda Todd*, FAKE PRETTY BLOG (Oct. 16, 2012), <http://fakepretty.com/2012/10/on-the-posthumous-slut-shaming-of-amanda-todd/>.

157. *See* ChiaVideos, *supra* note 148.

158. *Id.* Amanda’s story prompted other girls to share similar experiences. For another girl’s horrific high school experience, see Anonymous, *Like Amanda Todd, I Was Blackmailed With Naked Pictures at 16*, XOJANE.COM (Oct. 18, 2012), <http://www.xojane.com/it-happened-to-me/it-happened-to-me-i-was-blackmailed-with-naked-pictures-at-16-years-old>.

159. ChiaVideos, *supra* note 148 (last visited Oct. 14, 2013).

160. *See* Prettyfake, *supra* note 156.

161. Arthur Weinreb, *Bullying of Amanda Todd Continues After Her Death*, DIGITAL JOURNAL (Oct. 14, 2012), <http://www.digitaljournal.com/article/334807>.

162. *Id.*; Ruth Haworth, *Bullying, Anti-Bullying, and Anti-Anti-Bullying*, YAPPA DING DING BLOG (Oct. 13, 2012), <http://yappadingding.blogspot.com/2012/10/bullying-anti-bullying-and-anti-anti.html>.

high school.¹⁶³ Felicia, fifteen years old, was the victim of a major on-line and offline slut-shaming and bullying campaign for having sex with four football players at a party.¹⁶⁴ Felicia's classmates, notably the football team, tormented her in the hallways and classrooms of their school for her sexual behavior.¹⁶⁵ Unfortunately, when the day was over, Felicia could not leave these hurtful comments on school property because her classmates continued the bullying over Facebook.¹⁶⁶ Felicia tried to complain to school authorities, but no action was taken to stop the bullying or address Felicia's emotions, and the situation resulted in tragedy.¹⁶⁷

3. Rehtaeh Parsons

Rehtaeh Parsons was a seventeen-year-old high school student in Nova Scotia who hanged herself in April of 2013.¹⁶⁸ When Rehtaeh was fifteen, she was raped by four teenage boys while passed-out drunk at a party.¹⁶⁹ Someone took a photo of the rape and shared it through social media.¹⁷⁰ The photo quickly made it to her classmates' cell phones and spread around her community.¹⁷¹ Rehtaeh went to the police, but officers determined that there was insufficient evidence to either file charges for rape or for distribution of the nude photo.¹⁷²

Rehtaeh's classmates did not support her after the horrifying event.¹⁷³ Rehtaeh was called a "slut" and was bullied relentlessly both online and offline.¹⁷⁴ Boys began texting Rehtaeh and sending her Facebook messages, harassing her and asking for sex.¹⁷⁵ Rehtaeh's

163. Frank Rosario, *Bullied SI Teen Who Killed Self 'Tortured' by Classmates After Sex at Party: Sources*, N.Y. POST (Oct. 25, 2012), http://www.nypost.com/p/news/local/staten_island/friends_girl_suicide_teen_ask_how_5wFhq0y96sEgMWVegRSmO.

164. *Id.*

165. *Id.*

166. *See id.*

167. *See id.*

168. Charles Clymer, *Why My Hand Is Up for Rehtaeh Parsons*, HUFFINGTON POST BLOG (May 31, 2013), http://www.huffingtonpost.com/charles-clymer/why-my-hand-is-up-for-reh_b_3362242.html.

169. Christine Pelisek, *Rehtaeh Parsons's Best Friend Speaks Out*, DAILY BEAST (Apr. 27, 2013), <http://www.thedailybeast.com/articles/2013/04/27/rehtaeh-parsons-s-best-friend-speaks-out.html>.

170. *Id.*

171. *Id.*

172. *Id.*

173. *See* Christine Salek, *Rehtaeh Parsons: Nova Scotia Girl Raped, Bullied, and Commits Suicide*, POLICYMIC (Apr. 11, 2013), <http://www.policymic.com/articles/33989/rehtaeh-parsons-nova-scotia-girl-raped-bullied-and-commits-suicide>.

174. *Id.*

175. *Id.*

family was forced to relocate when the bullying became unbearable.¹⁷⁶ Rehtaeh wound up switching high schools four times in one year and was hospitalized for psychiatric care due to suicidal tendencies.¹⁷⁷ Two years of torment plus a lack of legal recourse ultimately led Rehtaeh to take her own life.¹⁷⁸

4. Hope Witsell

Hope Witsell was only thirteen when she hanged herself with her favorite scarf.¹⁷⁹ When Hope was twelve, she sent a topless photo to her boyfriend as a text message.¹⁸⁰ A classmate got a hold of the boy's phone and sent the photo to other students.¹⁸¹ The photo quickly went viral throughout six different schools in the area.¹⁸² Bullies anonymously attacked Hope on a MySpace¹⁸³ page entitled Shields Middle School Burn Book, writing cruel and hateful things about her.¹⁸⁴

Hope's parents knew that she was upset, but they had no idea about the extent of the bullying.¹⁸⁵ School officials could see that something bad was going on, but it is unclear whether they tried to contact Hope's parents.¹⁸⁶

B. The Impact of Slut-Shaming

The stories of the girls mentioned above show the painful impact of cyber slut-shaming. These girls did not only suffer due to cyberbullying, they were also victims of the vicious and pervasive sexism still existent in our culture.¹⁸⁷ Each one of them was made to feel

176. *Id.*

177. *Why Did Rehtaeh Parsons, an Alleged Victim of a Gang Sexual Assault, Have to Leave Her High School?*, GLOBE AND MAIL (June 16, 2013), <http://www.theglobeandmail.com/commentary/editorials/why-did-rehtaeh-parsons-an-alleged-victim-of-a-gang-sexual-assault-have-to-leave-her-high-school/article12569905/>.

178. *See* Salek, *supra* note 173.

179. Randi Kaye, *How a Cell Phone Picture Led to Girl's Suicide*, CNN LIVING (Oct. 7, 2010), <http://www.cnn.com/2010/LIVING/10/07/hope.witsells.story/index.html>.

180. *Id.*

181. *Id.*

182. *Id.*

183. MySpace is an online social networking service. MYSPACE, <https://myspace.com> (last visited June 23, 2013).

184. *See* Kaye, *supra* note 179.

185. *Id.*

186. *Id.*

187. *See* Fagbenle & Stein, *supra* note 104; *see also* Boscia, *supra* note 25 ("Sexually permissive women are ostracized for being 'easy,' whereas men with a high number of sexual partners are viewed with a sense of accomplishment.").

ashamed for acting on natural sexual impulses. It is important to realize that their behavior was not outside of the norm¹⁸⁸—they were just a few of the unlucky girls to have their pictures reach the Internet. Sadly, many more females than those mentioned here have experienced such online shaming and, like Amanda, Felicia, Rehtaeh, and Hope, chose to end their lives through suicide.¹⁸⁹

188. Kathryn Stamoulis, *Yes Your Teenager Is Having Sex . . . But It's Not That Bad*, PSYCHOLOGY TODAY (June 14, 2010), <http://www.psychologytoday.com/blog/the-new-teenage/201006/yes-your-teenager-is-having-sex-it-s-not-bad> ("Having sex as a teenager is a normal part of human development."); Mark Brush, *Studies: 'Sexting' Normal Among Teens, Adults Getting Into the Act*, MICHIGAN RADIO (July 24, 2012), <http://www.michiganradio.org/post/studies-sexting-normal-among-teens-adults-getting-act> ("‘Sexting,’ the act of sending racy messages or photos using a mobile phone, isn’t a sign of moral turpitude [T]he act is just part of normal dating for young people.”).

189. Other girls that chose to take their lives after facing relentless cyberbullying and slut-shaming include Erin Gallagher (13 years old); Phoebe Prince (15); Carolina Picchio (14); Audrie Pott (15); Gabrielle Molina (12); Britney Tongel (15); Jessica Logan (18); Jessica Laney (16); Rachel Ehmke (13); Alexis Pilkington (17); Natasha MacBryde (15); and Ciara Pugsley (13). *Erin Gallagher, Irish Teen, Commits Suicide After Battle With ‘Vicious’ Cyberbullying*, HUFFINGTON POST (Oct. 29, 2012), http://www.huffingtonpost.com/2012/10/29/erin-gallagher-irish-teen-commits-suicide-battle-cyberbullying_n_2040850.html; Helen Kennedy, *Phoebe Prince, South Hadley High School’s ‘New Girl,’ Driven to Suicide by Teenage Cyber Bullies*, N.Y. DAILY NEWS (Mar. 29, 2010), <http://www.nydailynews.com/news/national/phoebe-prince-south-hadley-high-school-new-girl-driven-suicide-teenage-cyber-bullies-article-1.165911>; Barbie Latza Nadeau, *Italy’s Tragic Teen Cyberbullying Suicide*, WOMEN IN THE WORLD (May 31, 2013), <http://www.thedailybeast.com/witw/articles/2013/05/31/will-italy-sue-facebook-over-cyberbullying-suicide.html>; *Teenage Girl Commits Suicide Following Alleged Sexual Assault and Cyber Bullying*, INSIDE EDITION (Apr. 15, 2013), <http://www.insideedition.com/headlines/6173-teenage-girl-commits-suicide-following-alleged-sexual-assault-and-cyber-bullying>; *Police Investigating Possible Cyberbullying in Suicide of Queens Girl, 12*, CBS N.Y. (May 23, 2013), <http://newyork.cbslocal.com/2013/05/23/police-investigating-possible-cyberbullying-in-suicide-of-queens-girl-12/>; Mariah Sylvain & N.H. Heikkinen, *Pennsylvania Student Britney Tongel Becomes Latest Teen to Commit Suicide Due to Cyber-Bullying*, REPUBLICAN (Feb. 24, 2011), http://www.masslive.com/bullying/index.ssf/2011/02/pennsylvania_student_britney_tongel_becomes_latest_teen_to_c.html; *Jessica Logan Suicide: Parents of Dead Teen Sue School, Friends Over Sexting Harassment*, HUFFINGTON POST (May 25, 2011), http://www.huffingtonpost.com/2009/12/07/jessica-logan-suicide-par_n_382825.html; Steve Robson & Lydia Warren, *‘Can You Kill Yourself Already?’ The Vile Online Messages From Internet Trolls ‘That Led Girl, 16, to Hang Herself,’* MAIL ONLINE (Dec 12, 2012), <http://www.dailymail.co.uk/news/article-2246896/Jessica-Laney-16-committed-suicide-internet-trolls-taunted-told-kill-herself.html>; Helena, *Slut-Shaming, Suicide and Why at This Point We All Know Better*, XOJANE (May 11, 2012), <http://www.xojane.com/issues/bullying-suicide-and-why-point-we-all-know-better>; *Alexis Pilkington Facebook Horror: Cyber Bullies Harass Teen Even After Suicide*, HUFFINGTON POST (May 24, 2010), http://www.huffingtonpost.com/2010/03/24/alexis-pilkington-faceboo_n_512482.html; *Teenager in Rail Suicide Was Sent Abusive Message on Social Networking Site*, TELEGRAPH (July 22, 2011), <http://www.telegraph.co.uk/technology/social-media/8653867/Teenager-in-rail-suicide-was-sent-abusive-message-on-social-networking-site.html>; Alison O’Reilly, *‘Sorry to Hear You Tried to Kill Urself . . . Next Time Finish It’: One Young Woman’s Harrowing Account of How Cyber-Bullies Pushed Her to Breaking Point*, MAIL ONLINE (Sept. 29, 2012), <http://www.dailymail.co.uk/news/arti>

The thread that ties each one of these girls' stories together is that each was shamed, in one form or another, based on female sexuality. One would be hard pressed to find examples of heterosexual boys in the same age group getting called out for sharing provocative photos or having sex with girls.¹⁹⁰ The lives of the four girls above ended in the most tragic of ways, all because of slut-shaming. However, suicide is by no means the only harm endured by females who are attacked based on sexuality. Shaming a girl into feeling negatively about her body or sexual expression leads to emotional and physiological distress.¹⁹¹ In our culture, females are expected to be pretty and dress nicely.¹⁹² They are expected to be sexy, but not too sexy.¹⁹³ It is a difficult, if not impossible, standard to achieve. Ultimately, it is an undesirable standard because it is unhealthy for females to focus so much on looks and perfection, especially young females.¹⁹⁴

These young girls are receiving mixed messages about sex. Media and culture tell them that they have to be sexy and skinny,¹⁹⁵ but when they go too far, they are harassed for being *too* sexy and *too* skinny.¹⁹⁶ This leads to uneasy and anxious feelings about sexuality.¹⁹⁷ As a result, adolescent girls may carry problems with intimacy and sexual expression well into the adult phases of their lives, if not forever.¹⁹⁸ Girls may be unsure how to act because of society's competing expectations—they must be sexually attractive, while still maintaining an aura of purity and virginity. This creates an uncertainty about having sex, about not knowing when or how to say “yes” or “no.”¹⁹⁹ Many girls end up engaging in sexual acts that they did not really want to

cle-2210661/ Sorry-hear-tried-kill-urself—time-finish-One-young-womans-harrowing-account-cyber-bullies-pushed-breaking-point.html.

190. See *supra* note 46 and accompanying text for instances of homosexual boys experiencing similar cyberbullying and the tragedies that ensued.

191. See AM. PSYCHOL. ASS'N, REPORT OF THE APA TASK FORCE ON THE SEXUALIZATION OF GIRLS 2 (2010), available at <http://www.apa.org/pi/women/programs/girls/report-full.pdf> [hereinafter REPORT ON THE SEXUALIZATION OF GIRLS].

192. See *id.* at 4–14.

193. See *id.*

194. *Id.* at 21 (“Chronic attention to physical appearance leaves fewer cognitive resources available for other mental and physical activities.”).

195. *Id.* at 4–18.

196. See Hugo Schwyzer, *The Paris Paradox: How Sexualization Replaces Opportunity With Obligation*, HUGO SCHWYZER BLOG (Nov. 9, 2010), <http://www.hugoschwyzner.net/2010/11/09/the-paris-paradox-how-sexualization-replaces-opportunity-with-obligation/>.

197. See *id.*

198. See REPORT ON THE SEXUALIZATION OF GIRLS, *supra* note 191, at 25–27.

199. See JACLYN FRIEDMAN & JESSICA VALENTI, YES MEANS YES!: VISIONS OF FEMALE SEXUAL POWER & A WORLD WITHOUT RAPE 1–4 (Seal Press 2008) (foreword by Margaret Cho).

engage in.²⁰⁰ They may feel guilty or afraid to disappoint.²⁰¹ These shameful feelings and beliefs all exacerbate the negative sexual stereotypes society imposes on females.²⁰²

It is also of great concern that slut-shaming reinforces society's double standard²⁰³ and traditional gender roles, thereby elongating the road toward equality. Slut-shaming perpetuates the idea that there are differences between males and females—that men should be applauded for their sexual exploits, while women should feel ashamed.

Finally, slut-shaming has a severe impact on the way our culture treats rape. When a female steps forward and reports that she was raped, one of the first questions raised is: Was it her fault?²⁰⁴ Peers, adults, media, and courts all give attention to how much make-up a girl uses, the type of clothing she wears, how late she stays out, and how she acts toward males.²⁰⁵ These factors should have no part in the rape analysis. There is nothing a female might do, say, or wear that could ever justify someone raping her.

When bullies shame a girl who comes forward after being raped, they trivialize the female's trauma and blame her for the rapist's behavior. These bullies not only harm the victim, but their actions also adversely affect other females. Every female is a potential victim of sexual assault. When girls are exposed to a culture where rape victims are shamed, the fear of such shaming acts to silence other victims from disclosing sexual assaults.

C. Why Slut-Shaming and Bullying Are Worse Online

Slut-shaming has been around much longer than the Internet. Unfortunately, the Internet has provided a platform for the shaming to be publicized in a manner never before possible. Shamers can attack females in a global forum that can be seen by anyone with access to a computer, and they can do it without revealing their identity.²⁰⁶

200. See *id.*; see also *Teach Girls to Say 'No' to Sex, Says Leading Tory MP*, MAIL ONLINE (May 4, 2011), <http://www.dailymail.co.uk/health/article-1383488/Abstinence-Nadine-Dorries-says-teach-girls-say-NO-sex.html> ("Girls are taught to have safe sex, but not how to say no to a boyfriend who insists on sexual relations."); see also UnderstandingU4U, *Teaching Teens to Say No to Sex Is Important*, HUBPAGES (last updated Mar. 18, 2011), <http://understandingu4u.hubpages.com/hub/Teaching-Teens-To-Say-No>.

201. See FREIDMAN & VALENTI, *supra* note 199, at 1–4.

202. See Boscia, *supra* note 25.

203. *Id.*

204. See McKinley, *supra* note 120.

205. *Id.*

206. SAMUEL C. MCQUADE, III, CYBERBULLYING: PROTECTING KIDS AND ADULTS FROM ONLINE BULLIES ix–x (Praeger 2009).

The Internet has expanded the power and scope of shaming. This is due to (1) anonymity and the lack of consequences; (2) the allowance of instant and widespread communication; (3) the near impossible removal of harmful material; (4) the availability of a forum that is often beyond the reach of parents' and teachers' eyes; and (5) a lack of respite from torment.

1. Anonymity and Lack of Consequences

On the Internet, we are free to be whoever we want to be. Computer screens shield our faces and voices from recognition. This anonymity offers users the freedom to do or say what they might not otherwise for fear of embarrassment or retribution. The anonymity of the Internet gives cyberbullies courage and free reign to attack others because they know they will not be detected.²⁰⁷ Before the Internet, victims knew who their attackers were because the bullying occurred face-to-face; now, pseudonyms and nameless posts can make it nearly impossible for victims to know the source of an online threat.²⁰⁸ The inability to punish cyberbullying as we would traditional face-to-face bullying makes it very appealing for today's bullies to use the Internet to attack their victims.²⁰⁹

2. Instant and Widespread Communication

Another significant factor that changes the scope of bullying is that the Internet allows for instant and widespread communication. Cruel and embarrassing content "can be sent to a large number of people in a short period of time."²¹⁰ Whereas before, if a student posted a humiliating picture on a girl's locker, it would only be seen by whoever walked by the locker. These days, all it takes is a post on one website, and that picture can be seen and shared by hundreds of thousands, if not millions, of people.²¹¹ Amanda Todd, for instance, attempted to distance herself from bullying by switching schools.²¹²

207. *Id.*

208. Nicole P. Grant, *Mean Girls and Boys: The Intersection of Cyberbullying and Privacy Law and Its Social-Political Implications*, 56 *How. L.J.* 169, 198 (2012).

209. McQUADE, *supra* note 206, at ix-x.

210. SAMEER HINDUJA & JUSTIN W. PATCHIN, CYBERBULLYING RESEARCH CTR., CYBERBULLYING FACT SHEET: WHAT YOU NEED TO KNOW ABOUT ONLINE AGGRESSION (2009), *available at* http://www.cyberbullying.us/cyberbullying_fact_sheet.pdf.

211. As of June 30, 2012, more than two billion people were connected to the Internet. *Internet Usage Statistics*, INTERNET WORLD STATS, <http://www.internetworldstats.com/stats.htm> (last updated Feb. 17, 2013).

212. *See supra* Part II.A.1.

But the Internet is not confined to a single locale, and the bullying followed her because her former classmates informed her new classmates of Amanda's situation, gave them access to the offensive online content, and incited them to continue the bullying.²¹³

3. Impossible to Take Down

Similarly, once a picture or comment is posted, it is there to stay. The Internet does not have an instant removal button. Unlike the locker scenario where the girl can immediately take down the offending picture, embarrassing content posted online cannot be easily removed.²¹⁴ It is possible to entreat a service provider to take down offending material,²¹⁵ but, more likely than not, the material will have already been seen and shared by many. Trying to get the content taken down is like playing a game of whac-a-mole.²¹⁶ Take a photo down on one webpage, and it is likely to immediately appear again on another.

4. Lack of Supervision

Additionally, there is a lack of supervision in the cyber world. It is hard for parents and teachers to see or hear someone being bullied when those adults may not have access to the digital space where the bullying occurs. In many of the female suicide cases, the girls' parents and teachers did not realize the extent of the bullying that led to the death of their daughter or student until they obtained access to her social media accounts after her death.²¹⁷

5. Lack of Respite

Finally, online bullying is different than face-to-face bullying because the attacks follow the victim around every hour of the day. Victims cannot escape their attackers by simply leaving the school grounds. Phones, laptops, and home computers are the forum for the bullying, and those forums are with the victims throughout the day.

213. See ChiaVideos, *supra* note 148.

214. Stephanie Chen, *In a Wired World, Children Unable to Escape Cyberbullying*, CNN (Oct. 5, 2010), <http://www.cnn.com/2010/LIVING/10/04/youth.cyberbullying.abuse/index.html> ("Messages posted on the internet are often permanent and difficult to remove.").

215. See Turner & Bluestein, *supra* note 63 (Facebook ignoring a request for removal of a bullying Facebook profile).

216. Whac-a-mole is an arcade game where players try to hit a never-ending stream of moles with a mallet. See *Whac-A-Mole*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Whac-A-Mole> (last visited Sept. 8, 2013).

217. See discussion on Hope Witsell, *supra* Part.II.A.4.

The home is no longer a place of refuge for someone who is being victimized.

Telling kids to simply stay off the Internet to avoid being bullied is not the solution. Even if the victim avoids viewing the hurtful posts and comments, the content is still disseminated to friends and classmates, which can incite further offline bullying. Additionally, the Internet has become an indispensable part of life—used for communication, homework, and entertainment. Expecting someone to avoid logging onto to such a system is asking her to forgo a valuable and essential resource.

III. Addressing the Issue—Intermediary Liability

Section 230 of the CDA currently protects online service providers—both ISPs and websites—from liability for content posted by third parties.²¹⁸ This means that service providers have no obligation to remove bullying content from their sites. Cyberbullying has become a serious threat to the safety and emotional well-being of teens and preteens.²¹⁹ It is time to amend § 230 and scale back the immunity provided to these intermediaries.

Congress passed § 230 of the CDA in 1996.²²⁰ At that time, the Internet was radically different from what we know it as today. The web was used for sending and receiving email or for browsing the handful of news sites that had web publications—there was not much other content available. In fact, in 1996, the average American with Internet access spent less than thirty minutes a month surfing the web.²²¹ This means that teens and preteens did not communicate with each other over the Internet in the way they do today.²²² The social networking boom had yet to hit; there was no Facebook or Tumblr.²²³ Without forums in which it could occur, cyberbullying was not yet a problem—it was not even a word.²²⁴

218. 47 U.S.C. § 230.

219. See *supra* Part II.A.

220. 47 U.S.C. § 230.

221. Farhad Manjoo, *Jurassic Web: The Internet of 1996 Is Almost Unrecognizable Compared With What We Have Today*, SLATE (Feb. 24, 2009), http://www.slate.com/articles/technology/technology/2009/02/jurassic_web.html.

222. See *id.*

223. Facebook was founded in 2004, and Tumblr was founded in 2007. See *About Facebook*, *supra* note 52; see also *About Tumblr*, TUMBLR, <http://www.tumblr.com/about> (last visited June 1, 2013).

224. *Cyberbullying Definition*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/cyberbullying> (last visited June 1, 2013) (stating that the first known use of the term cyberbullying was in 2000).

The rapid expansion of the Internet has changed all of this. Cyberbullying is now a serious, recurring issue that can and does lead to tragedy.²²⁵ While § 230 might have made sense in 1996, the harms created by granting service providers immunity for third-party content now outweigh the benefits.²²⁶ It is time for service providers to be held accountable for cyberbullying that occurs on their sites.

A. History of Section 230 of the Communications Decency Act

For the reasons described in Section II.C—namely, the anonymity of the Internet and the ability to quickly and easily post or repost online content—it is often too hard or impractical for victims to discover the identity of, or reprimand, a cyberbully.²²⁷ As such, a victim may be tempted to hold the ISP or website liable for the defamatory or harassing content posted on its site. These providers are, in fact, supplying the platform on which the bullying occurs. Section 230 prevents this option by providing a safe harbor for online intermediaries so long as they are not the creators or developers of the bullying, defamatory, or other tortious content.²²⁸

Congress passed § 230 in response to *Stratton Oakmont v. Prodigy Services Company*.²²⁹ In that case, Prodigy, an ISP, was sued over defamatory content posted by an anonymous user on Prodigy's online bulletin board.²³⁰ Labeling Prodigy a "publisher," the court held Prodigy liable for defamation.²³¹ The court deemed Prodigy a publisher (as opposed to a distributor—which only faces liability if it knew, or had reason to know of defamatory content) because, rather than disclaim control over the content on its site, Prodigy purported to regulate and edit its message boards.²³² Since Prodigy retained some amount of editorial discretion over the posts on its site, the court decided that Prodigy—and other such sites—would be treated similar to publishing houses and, therefore, liable for any defamatory content posted by its users.²³³

After *Prodigy*, online service providers lacked incentive to regulate content because they did not want to be treated as publishers and thus

225. See discussion *supra* Part II.

226. See *id.*

227. See discussion *supra* Part II.C.

228. 47 U.S.C. § 230(c)(1).

229. No. 031063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995).

230. *Id.*

231. *Id.*

232. *Id.*

233. See *id.*

expose themselves to greater liability than an ISP or website without editorial control.²³⁴ The effect of *Prodigy* was that a site would either take a completely hands-off approach and not monitor any content, or it would choose to edit content and remove any and all posts that could potentially open it up to liability.²³⁵ Neither option was considered desirable because either the service provider would not remove any offensive postings for fear of liability, or it would remove too much content for the same reason, thereby chilling speech.²³⁶

As a solution, § 230 of the CDA was passed to encourage service providers to take a proactive stance and remove offensive material from their sites without fear of liability for not removing all defamatory or offensive content.²³⁷ Section 230 was meant to protect websites and ISPs who acted in good faith when editing their sites.²³⁸ However, today, intermediaries use it more like a shield from certain types of liability.²³⁹ Since the law does not require service providers to remove offensive content, the providers tend not to remove content—thus, the prevalence of cyberbullying posts and victims' struggles in getting ISPs and websites to remove those posts.²⁴⁰

The first case to implicate § 230 involved an anonymous user—claiming to be someone named Ken Zeran—posting offensive messages on AOL about the Oklahoma City Bombings of 1995.²⁴¹ The user posted Zeran's actual phone number alongside the messages.²⁴² The real Ken Zeran soon began receiving abusive phone calls and even death threats.²⁴³ Zeran notified AOL, who eventually removed the posts.²⁴⁴ The anonymous user, however, set up new accounts and continued to post messages as Zeran. Ken Zeran sued AOL for negligence, claiming that AOL had a duty to promptly remove the offend-

234. See Matthew C. Siderits, *Defamation in Cyberspace: Reconciling Cubby, Inc. v. CompuServe, Inc. and Stratton Oakmont v. Prodigy Servs. Co.*, 79 MARQ. L. REV. 1065, 1079–80 (1996); Susan Freiwald, *Comparative Institutional Analysis in Cyberspace: The Case of Intermediary Liability for Defamation*, 14 HARV. J.L. & TECH. 569, 594 (2001).

235. Siderits, *supra* note 234, at 1079–80.

236. Freiwald, *supra* note 234, at 594–98.

237. See 47 U.S.C. § 230; *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331–33 (4th Cir. 1997).

238. See 47 U.S.C. § 230(c) (“Protection for ‘Good Samaritan’ blocking and screening of offensive material.”).

239. Wendy Seltzer, *Free Speech Unmoored in Copyright's Safe Harbor: Chilling Effects of the DMCA on the First Amendment*, 24 HARV. J.L. & TECH. 171, 228 (2011).

240. See Turner & Bluestein, *supra* note 63; Beary, *supra* note 77.

241. *Zeran*, 129 F.3d 327.

242. *Id.* at 329.

243. *Id.*

244. *Id.*

ing content, post a retraction, and screen future content from the anonymous user.²⁴⁵ The court, however, ruled that § 230 provided absolute immunity to AOL, regardless of whether it was aware of the defamatory content.²⁴⁶

In *Zeran*, the court was afraid that requiring online service providers to honor take down requests would impose an impossible burden on ISPs and websites.²⁴⁷ In deciding whether the request was legitimate, the service provider would have to conduct “a careful yet rapid investigation of the circumstances surrounding the posted information, a legal judgment concerning the information’s defamatory character, and an on-the-spot editorial decision whether to risk liability by allowing the continued publication of that information.”²⁴⁸ The sheer number of posts on the Internet would make these inquiries near impossible.²⁴⁹ Therefore, service providers would have a tremendously strong incentive to remove all postings upon notification without an inquiry into its defamatory status, thereby chilling online speech and implicating the right to free speech.²⁵⁰

B. Amending the Communications Decency Act

It is time to reconsider whether granting online intermediaries total discretion and immunity when dealing with defamatory, hateful, or bullying content posted by third parties is logical. The growing number of teenage suicides caused by online bullying shows that the current system needs a make-over; it is time to amend § 230 and hold service providers liable for the cruel and hateful messages on their sites that are directed at youth.

Unarguably, such an amendment raises concerns. The Internet is an incredible, continually evolving information-sharing resource. By holding intermediaries liable for third-party content, there is a risk of stifling Internet growth and development.²⁵¹ The fear is that, in the face of liability, service providers would remove more content than necessary.²⁵² Similarly, there is a debate about whether it is fair or

245. *Id.* at 328.

246. *Id.* at 333–35.

247. *See Zeran v. Am. Online, Inc.*, 129 F.3d 327, 333–34 (4th Cir. 1997).

248. *Id.* at 333.

249. *Id.* at 331–33.

250. *Id.*

251. *Id.* at 333.

252. *See Freiwald, supra* note 234, at 593.

practical to hold the intermediaries liable.²⁵³ The Internet allows posts to occur immediately. Unlike the traditional editor or publisher, ISPs and websites cannot reasonably review content before it goes up. Is it fair to require service providers to edit content when, unlike publishing houses, they did not have any say in what was posted? Also, because there is so much content continually posted on the Internet, at all hours of the day, is it practical, or even possible, for service providers to monitor all of this material?

While these questions and concerns are very worthy, they must be balanced against the harms felt by those who are attacked on the Internet. ISPs and websites host the forums where ugly, offensive speech can be rapidly and widely disseminated. When that speech is targeted at one particular person, such as Amanda Todd²⁵⁴ or Felicia Garcia,²⁵⁵ it can lead to tragedy. In the cases described above, the girls who were attacked online had only one option to get the posted material off of the Internet: ask the ISP or website to take it down. But since there is no law mandating that service providers abide by, or even take notice of such a request, the offensive content remained on the Internet.

Online service providers are in the best position to remove harmful content. In fact, other than the poster, the providers are often the only ones who can remove this content.²⁵⁶ It is not unreasonable to require that an entity with the power to erase cyberbullying content delete the content or face a penalty. When ISPs and websites are responsible for removing harmful content, victims no longer face the insurmountable problems associated with attempting to identify online bullies. Cyberbullies can hide behind fake user names or post anonymously, making filing a complaint against them incredibly burdensome, if not impossible. If victims are able to file a complaint against the entity on which the cyberbullying posts occur, identification is no longer an issue. Furthermore, it is reasonable to hold service providers responsible for cyberbullying that occurs on their sites—rather than the teenage bullies themselves—because the providers are

253. See Bradley A. Areheart, *Regulating Cyberbullies Through Notice-Based Liability*, 177 YALE L.J. POCKET PART 41 (2007), <http://www.yalelawjournal.org/the-yale-law-journal-pocket-part/intellectual-property/regulating-cyberbullies-through-notice%11based-liability/> (arguing that service providers should be responsible for some offensive cyber behavior). But see David A. Myers, *Defamation and the Quiescent Anarchy of the Internet: A Case Study of Cyber Targeting*, 110 PENN. ST. L. REV. 667 (2006) (arguing that intermediary liability is ineffective).

254. See *supra* Section II.A.1.

255. See *supra* Section II.A.2.

256. See Turner & Bluestein, *supra* note 63; Beary, *supra* note 77.

run by adults who are old enough to understand the effects of cyberbullying. Children and teens are in a transitory period, still learning about the causes and effects of their actions and not always able to appreciate the harms their words or behavior may create.²⁵⁷ When the burden of regulating cyberbullying shifts to the online intermediaries, courts may be more comfortable allowing victims redress since the defendants would be websites and ISPs run by adults—individuals with the critical thinking skills to understand the effects of malicious bullying.

When cyberbullying adversely affects teens and preteens, service providers should have a duty to act. To prevent the cyber attacks to which teenagers like Amanda,²⁵⁸ Felicia,²⁵⁹ Rehtaeh,²⁶⁰ and Hope²⁶¹ have been victim, § 230 of the CDA should be amended to require ISPs and websites to remove bullying or defamatory content about children. The least imposing way to do this would be to implement a notice and takedown system similar to the Digital Millennium Copyright Act (“DMCA”).²⁶² The DMCA protects online intermediaries from secondary copyright infringement liability, so long as the entities, upon notice from the copyright holder, remove the copyrighted material from their sites.²⁶³

When an ISP or website is notified that a child aged seventeen or younger is being bullied or attacked on its site, the service provider should be obligated to remove the offending post and/or cut off the offender’s access to the site. The notifier should have to certify that he or she is either the person or parent of the person being bullied and that the content being requested for removal is bullying, defamatory, or intentionally causes emotional distress. The service provider will then have a reasonable amount of time, perhaps forty-eight hours, to remove the material.

Keeping in mind that the Internet is like a game of whac-a-mole and new posts can pop up by different users and on different web pages, the law should also grant a “good faith” exception from liability for ISPs and websites who act to remove offending content, but because of the nature of the Internet, cannot remove it all. Similar to the take-down policy in the DMCA, once a service provider is properly

257. See Lasky, *supra* note 31.

258. See *supra* Section II.A.1.

259. See *supra* Section II.A.2.

260. See *supra* Section II.A.3.

261. See *supra* Section II.A.4.

262. 17 U.S.C. § 512 (2006).

263. *Id.*

notified of offending material regarding a child under the age of eighteen, the provider should remove it or face liability.

IV. Addressing the Issue—State and Federal Cyberbullying Laws and Policies

The increase in cyberbullying nationwide has elicited governmental response. Many state governments have passed legislation regarding how schools should deal with the issue, and a federal anti-cyberbullying statute was proposed in Congress.²⁶⁴ While these actions are a move in the right direction, state and national governments need to improve anti-bullying laws and policies and clearly grant schools the authority to address online bullying.

A. State Laws and Policies

Currently, every state except Montana has an anti-bullying statute.²⁶⁵ However, of these forty-nine state statutes, only sixteen specifically address cyberbullying.²⁶⁶ As explained in Part II, cyberbullying is different than face-to-face bullying;²⁶⁷ therefore, it should be treated as a separate problem. Students, parents, and school administrators need to be aware of the unique and harmful nature of cyberbullying and of the effects a cyberbullying campaign can have on a youth. One way to help achieve this is to call attention to the behavior by having a state statute specifically banning cyberbullying. Rather than prohibiting bullying generally, statutes should address cyberbullying separately, in its own section, and clearly defining the meaning of the term.

Additionally, of the forty-nine state statutes that address bullying—all of which require schools to implement anti-bullying policies—only ten state laws give schools clear guidance on how to address the behavior.²⁶⁸ This means that many administrators ignore cyberbul-

264. See Megan Meier Cyberbullying Prevention Act, H.R. 1966, 111th Cong. (1st Sess. 2009). The federal statute, however, was not passed. Grant, *supra* note 208, at 201.

265. SAMEER HINDUJA & JUSTIN W. PATCHIN, CYBERBULLYING RESEARCH CTR., STATE CYBERBULLYING LAWS: A BRIEF REVIEW OF STATE CYBERBULLYING LAWS AND POLICIES (2013), available at http://www.cyberbullying.us/Bullying_and_Cyberbullying_Laws.pdf [hereinafter STATE CYBERBULLYING LAWS].

266. *Id.*

267. See discussion *supra* Part.II.C.

268. See STATE CYBERBULLYING LAWS, *supra* note 265.

lying because they feel ill-equipped to deal with the problem.²⁶⁹ Furthermore, many of the statutes do not define or specify the types of programs or policies that the schools should enact to prevent bullying, leaving substantial discretion to administrators regarding which policies might make a difference.²⁷⁰ This ambiguity presents significant problems when schools attempt to punish cyberbullies, most notably First Amendment concerns, Due Process concerns, and lack of clear guidance for implementing anti-bullying policies.

1. First Amendment Implications

The First Amendment is almost always implicated when a school attempts to punish a student for off-campus speech. Schools generally have the authority to discipline student speech and behavior that occurs on the school grounds or during a school related-activity (on-campus speech) but speech and behavior which occurs at home or after school hours (off-campus speech) is generally outside of a school's jurisdiction. Cyberbullying is often off-campus speech since the Internet allows teens to bully at all hours of the day and from any location.

The determination of when the off-campus, online speech sufficiently makes its way onto campus is a grey area. Since the effects of off-campus cyberbullying are not confined to off-campus locations—the harms follow victims around throughout their daily lives—schools need to be able to discipline students for cyberbullying that is disseminated while out of the classroom. To determine when and if a school can regulate speech that was not made on school grounds or at a school-sponsored event, courts apply the *Tinker*²⁷¹ substantial disruption test: Schools can regulate speech if it “materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school.”²⁷² The *Tinker* test was announced in the 1969 Supreme Court case *Tinker v. Des Moines Independent Community School District* in which a school principal violated students' First Amendment

269. Rick Nauert, *Social Workers Struggle to Deal With Cyber Bullying*, PSYCH CENTRAL (Jan. 11, 2011), <http://psychcentral.com/news/2011/01/11/social-workers-struggle-to-deal-with-cyber-bullying/22507.html>.

270. See Naomi Harlin Goodno, *How Public Schools Can Constitutionally Halt Cyberbullying: A Model Statute That Considers First Amendment, Due Process, and Fourth Amendment Challenges*, 46 WAKE FOREST L. REV. 641, 653–56 (2011).

271. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 505 (1969).

272. *Id.*

rights by banning them from wearing black armbands to protest the Vietnam War.²⁷³

While *Tinker* is still applicable in some student speech instances, it arguably has not caught up with the advent of the Internet. Online activity blurs the line between on-campus and off-campus behavior. While a bully may post a hurtful comment from his or her bedroom, the post remains online for other students to view while either on-campus or off-campus. Further, effects of the post on the victim will likely spill over onto the school grounds. Forced to rely on an outdated standard that does not take online student behavior into account, administrators do not know when they can address cyberbullying without violating the First Amendment.²⁷⁴ Courts face similar uncertainties in attempting to apply the *Tinker* test when cyberbullies challenge a school's disciplinary response to their online behavior.²⁷⁵

Many state anti-bullying statutes do not give schools sufficient guidance on how to address cyberbullying.²⁷⁶ The lack of guidelines leads to students getting away with posting hateful and bullying speech, so long as they post outside of school grounds, because schools simply ignore the behavior. For instance, in *J.C. v. Beverly Hills Unified School District*,²⁷⁷ the plaintiff posted a YouTube video recorded outside of school grounds in which a group of friends call a classmate, C.C., a "slut," "spoiled," "the ugliest piece of shit I've ever seen in my whole life" and mocked C.C. for talking about "boners."²⁷⁸ The court first addressed whether there was a "sufficient nexus" between the off-campus speech and the school to allow the school to discipline the bully.²⁷⁹ A nexus generally exists when off-campus behavior is brought onto the school grounds,²⁸⁰ or where it is reasonably foreseeable that content made while off-campus would make its way into the class-

273. *Id.*

274. *See generally* Goodno, *supra* note 270.

275. *See* J.S. *ex rel.* Snyder v. Blue Mountain Sch. Dist., 593 F.3d 286 (3d Cir. 2010), *vacated, reh'g granted en banc*, No. 08-4138, 2010 U.S. App. LEXIS 7342, at *1 (3d Cir. Apr. 9, 2010), *rev'd en banc*, 650 F.3d 915, (3d Cir. 2011) (finding that a school could not discipline a student for creating, from home, an offensive MySpace page about the school principal—seven judges of the en banc court joining the majority, five judges concurring, and six judges dissenting).

276. *See* Goodno *supra* note 270, at 682–84.

277. J.C. *ex rel.* R.C. v. Beverly Hills Unified Sch. Dist., 711 F. Supp. 2d 1094 (C.D. Cal. 2010).

278. *Id.* at 1098.

279. *Id.* at 1107–10.

280. *See* J.S. *ex rel.* H.S. v. Bethlehem Area Sch. Dist., 807 A.2d 847, 865 (Pa. 2002).

room.²⁸¹ The *Beverly Hills* court found that there was a sufficient nexus because the video had been shared among five to ten students; therefore, it was reasonable to expect the students to discuss it the next day at school.²⁸² Also, C.C. had informed school officials of the video, which the officials then watched while on campus, further satisfying the nexus test.²⁸³ The court then applied the *Tinker* test and found that although there was a sufficient nexus between the off-campus speech and the school, the video had not substantially disrupted school activities.²⁸⁴ The court felt that the video was neither threatening nor violent; rather it had merely caused C.C. to feel hurt and embarrassed.²⁸⁵ For the *Beverly Hills* court, a substantial disruption “must equate to something more than the ordinary personality conflicts among middle-school students that may leave one student feeling hurt or insecure.”²⁸⁶

Although there is no Supreme Court case on the issue, lower courts seem willing to allow schools to punish off-campus behavior (cyberbullying) so long as it causes a substantial disruption.²⁸⁷ However, proving that the speech caused such a disruption appears to be no easy feat.²⁸⁸ Shameful, embarrassing, or cruel comments made online that only substantially affect one student and do not disrupt teachers’ and administrators’ abilities to run the school will not always suffice.²⁸⁹

2. Due Process Concerns

The second problem with current anti-bullying legislation is that schools in states whose anti-bullying laws and policies do not mention off-campus speech may face Due Process challenges when punishing cyberbullying. For example, in *Beverly Hills*, the poster of a bullying YouTube video challenged her two-day suspension on Due Process grounds (as well as First Amendment grounds).²⁹⁰ In a separate, inter-

281. *Beverly Hills Unified Sch. Dist.*, 711 F. Supp. 2d at 1108.

282. *Id.* at 1108.

283. *Id.*

284. *Id.* at 1110–19.

285. *Id.* at 1117.

286. *Id.* at 1119.

287. See, e.g., *Beverly Hills Unified Sch. Dist.*, 711 F. Supp. 2d 1094; *J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915 (3d Cir. 2011).

288. See *Beverly Hills Unified Sch. Dist.*, 711 F. Supp. 2d 1094. For an example of cyberbullying that a court found to cause a substantial disruption, see *J.S. ex rel. H.S. v. Bethlehem Area Sch. Dist.*, 807 A.2d 847 (Pa. 2002).

289. *Beverly Hills Unified Sch. Dist.*, 711 F. Supp. 2d 1094.

290. *Id.*

locutory decision, the California court agreed with the poster that her Due Process rights had been violated because she was not given notice that she could be disciplined for her off-campus actions.²⁹¹ Neither the state's statute nor the school's student handbook had included language that the school could punish bullying that occurred outside of school grounds.²⁹²

Although California has since amended its anti-bullying laws to allow schools to discipline off-campus cyberbullying,²⁹³ forty states are susceptible to Due Process challenges when addressing online posts, emails, or texts that are made when a bully is not on school grounds or at a school-sponsored function.²⁹⁴ It is crucial that these forty states update their statutes to include language that grants school officials the authority to address off-campus cyberbullying that spills onto the school ground. Otherwise, bullies can evade disciplinary action by claiming lack of notice.

3. Lack of Guidance for Policy Implementation

Another problem with current anti-bullying laws is that many do not address the causes of cyberbullying or mandate specific anti-bullying policies for schools to enact. Bullies use the Internet to perpetuate gender stereotypes and attack females based on their sexuality. While these attacks fall under the category of bullying, state statutes that delineate the specific *type* of prohibited behavior would help focus attention on the harm to be prevented. The Supreme Court "has found that 'enumerating' personal characteristics is the 'essential device used to make the duty not to discriminate concrete.'"²⁹⁵ Rather than using broad language such as "bullying will not be tolerated," anti-bullying statutes should specifically state that harassment based on sexuality, or other similar traits, is prohibited. This approach will open the door to a conversation about the causes and effects of gender stereotypes or other discriminatory beliefs.

291. Order Granting Plaintiff's Motion for Summary Adjudication as to Her Third Cause of Action for Violation of Due Process Rights Under 42 U.S.C. § 1983, and Granting Individual Defendant's Motion for Summary Judgment on the Issue of Qualified Immunity as to the First Cause of Action at 9, 12, 14, J.C. *ex. rel.* R.C. v. Beverly Hills Unified Sch. Dist., 711 F. Supp. 2d 1094 (C.D. Cal. 2010) (No. CV 08-03824).

292. *Id.*

293. CA. EDUC. CODE ANN. § 48900 (West Supp. 2013).

294. See STATE CYBERBULLYING LAWS, *supra* note 265.

295. Anti-Defamation League, *Bullying / Cyberbullying Prevention Law: Model Statute and Advocacy Toolkit*, at 5 (Apr. 2009), http://archive.adl.org/civil_rights/anti-bullying%20law%20toolkit_2009.pdf (quoting *Romer v. Evans*, 517 U.S. 620 (1996)).

The anti-bullying policies should also specify certain acts a school must take to prevent cyberbullying. For example, students should be required to take an Internet education course to learn about the effects of online posts and conduct. Schools should also be required to bring parents into the conversation about cyberbullying by hosting informational sessions that lay out the harms of cyberbullying, giving parents advice on monitoring their child's Internet behavior, and explaining how to recognize if their child is a perpetrator or victim of cyberbullying. The policies should mandate that the schools appoint a counselor to whom students can turn to if they believe they, or someone they know, is being bullied online. Additionally, the counselor should be required to investigate the bullying and contact the parents of the children involved.

B. Federal Laws and Policies

Currently, there is no federal anti-bullying statute. In 2009, after Megan Meier was bullied on MySpace by a classmate's mother—ultimately leading to Megan's suicide²⁹⁶—the Meier Cyberbullying Prevention Act was proposed in Congress.²⁹⁷ The act would have subjected anyone who “transmit[ted] . . . with the intent to coerce, intimidate, harass, or cause substantial emotional distress to a person, using electronic means to support severe, repeated, and hostile behavior,” to a fine or up to two years imprisonment, or both.²⁹⁸ Ultimately, the bill did not pass,²⁹⁹ but it opened the door to the possibility of federal action against cyberbullying.

A federal law would bring national attention to the problem of cyberbullying. However, rather than impose criminal liability for bullies under the age of eighteen, a federal law should grant schools the authority to discipline cyberbullying that occurs on-campus and off-campus, and require schools to implement educational programs that promote tolerance and teach students about the effects of cyberbullying.³⁰⁰ Additionally, the federal government should provide funds for schools to comply with such requirements.

Whether it be state or federal government that modifies or creates anti-cyberbullying laws and policies, such laws and policies should

296. *United States v. Drew*, 259 F.R.D. 449, 452 (C.D. Cal. 2009).

297. Megan Meier Cyberbullying Prevention Act, H.R. 1966, 111th Cong. (1st Sess. 2009).

298. *Id.*

299. Grant, *supra* note 208, at 201.

300. See discussion *supra* Part IV.A.

give schools explicit authority to regulate and discipline off-campus cyberbullying behavior. The laws should also require schools to implement specific anti-bullying policies such as tolerance programs, Internet education and awareness courses, and informational sessions for parents, and should mandate that schools assign a specific counselor to deal with instances of cyberbullying.

V. Addressing the Issue—Tort Law

As discussed previously, schools are not always able or willing to act when it comes to cyberbullying. As such, some victims may choose to turn to the courts for relief. The two most applicable and common tort theories used for cyberbullying harms are defamation and intentional infliction of emotional distress.³⁰¹ The requirements of these tort claims are strict; and thus, cyber-bullied victims have not had much success in the courtroom.³⁰² While some argue that victims should seek relief through civil actions against the bully,³⁰³ the courtroom is not the place to fix the problem. A legal battle is time-consuming, expensive, and emotionally draining. Furthermore, cyberbullies are generally teens and preteens—people whose minds are still growing and developing.³⁰⁴ The court system should be reserved for adults—those with the capacity to make informed choices and decisions and understand the consequences of their actions. Pursuing litigation against a teen is a waste of courts' resources when the school system can address the issue. Cyberbullying should be dealt with in the school system or in the home. Dealing with a bully in the courtroom should be a victim's last resort.

A. Defamation

Cyberbullying victims can attempt to bring claims against their attackers for defamation. To plead defamation, a plaintiff must generally demonstrate that (1) the defendant made a false statement that harmed the plaintiff's reputation, (2) the statement was published to

301. See Joan M. Gilbride & Brian M. Sher, *E-Mail, Text, Facebook . . . Lawsuit? Legal Minefield of Cyberbullying*, N.Y. L.J. (Oct. 24, 2011), available at <http://kbrlaw.com/070111131Kaufman.pdf>.

302. See *id.*

303. See generally Adrienne Morris, *Cyberbullying in Texas: Reform Is Necessary to Keep the Virtual Playground Safe*, 63 BAYLOR L. REV. 498, 500 (2011) (examining Texas's response to the cyberbullying problem and arguing for "an addition to the currently recognized tort causes of action that could better protect our youth against the dangers of the virtual playground").

304. See Lasky, *supra* note 31.

a third party, (3) the defendant acted with some degree of fault, and (4) the plaintiff was actually harmed by the statement.³⁰⁵ Only statements of fact are actionable, leaving opinion statements—no matter how offensive or derogatory—free from liability.³⁰⁶ Typically, even the cruelest Facebook opinion post is protected by the First Amendment.

Recently, a New York trial court denied a defamation claim when the bullies had posted statements on Facebook that the plaintiff used drugs and had contracted HIV by having sex with various animals and/or a prostitute.³⁰⁷ The court dismissed the suit, finding that a reasonable person would not believe these statements to be fact, classifying them as merely “puerile attempts by adolescents to outdo each other.”³⁰⁸ Since bullying statements are generally not stated as fact, a defamation claim is not practical for most victims of cyberbullying.

B. Intentional Infliction of Emotional Distress

Victims can also make a claim for intentional infliction of emotional distress (“IIED”). The Second Restatement of Torts, adopted by a number of jurisdictions, reads, “[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress.”³⁰⁹ Essentially, the conduct complained of must be “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”³¹⁰ There must also be (1) intent to cause or reckless regard in causing severe emotional distress, (2) a connection between the conduct and the injury, and (3) actual emotional distress suffered by the victim.³¹¹

Scholars and courts agree that the IIED tort should be limited to the severest cases. “[L]iability . . . does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.”³¹² This is a relatively difficult standard to meet, both because it is difficult to quantify and prove the severity of emotional distress and because it is difficult to show that a defendant’s conduct was extreme

305. RESTATEMENT (SECOND) OF TORTS § 558 (1977).

306. *See id.*

307. Finkel v. Dauber, 906 N.Y.S.2d 697 (N.Y. Sup. Ct. 2010).

308. *Id.*

309. RESTATEMENT (SECOND) OF TORTS § 46 (1965).

310. Howell v. New York Post Co., Inc., 81 N.Y.2d 115, 122 (1993) (quoting Murphy v. Am. Home Prods. Corp., 58 N.Y.2d 293 (1983)).

311. *See* RESTATEMENT (SECOND) OF TORTS § 46.

312. *Id.* at cmt. (d).

and outrageous.³¹³ As a result, only the most egregious cases of cyberbullying can be successfully litigated under IIED.³¹⁴

C. Tort Reform Is Not the Solution

Expecting tort law to sufficiently remedy the harms felt by cyberbullied victims is unreasonable. Beyond the problems mentioned previously, it is often difficult to discover the identity of an attacker. The Internet allows people to post and criticize anonymously, and social networking sites do not have to turn over the name of cyberbullies when asked.³¹⁵ Additionally, cyberbullying often takes place at the hands of numerous bullies. There is a mob mentality on the Internet³¹⁶—one person starts bullying and another jumps on board, and then another, and another. Victims may have a hard time singling out a single attacker or figuring out against whom to bring a claim. It is logistically and jurisdictionally difficult to sue a large group of bullies who are spread out across the country or the world. Even if a victim is able to identify and single out a cyberbully, that bully may not have the resources to adequately compensate a victim for any damages awarded. Furthermore, it is often hard to find an attorney who will take a case that revolves around kids being mean.³¹⁷ Bullying is still seen by many as an unavoidable part of growing up. Not all attorneys are willing to take the case of a bullying victim.³¹⁸ Finally, some judges will not acknowledge a bullied victim's injury as reaching the level of a tort³¹⁹ and/or do not want to impose liability on a child who does not yet have the critical thinking skills to understand the repercussions of his or her actions.³²⁰

While courts should be more receptive to tort claims for egregious bullying, such civil suits against bullies are not sufficient as a solution to cyberbullying or shaming attacks. A female who is strong

313. See Shira Auerback, *Screening Out Cyberbullies: Remedies for Victims on the Internet Playground*, 30 CARDOZO L. REV. 1641 (2008–09).

314. *Id.*

315. See Grant, *supra* note 208, at 200 (describing how a plaintiff must usually meet the “summary judgment” standard before a court will require a service provider to reveal the identity of an anonymous defamer).

316. See Pattie Byrd, *The Mob Mentality of Cyber-Bullying*, YAHOO! VOICES (Jan. 27, 2010), <http://voices.yahoo.com/the-mob-mentality-cyber-bullying-5359529.html?cat=25>.

317. See Christina Ng, *Georgia Teen Sues Cyberbullying Classmate*, ABC NEWS (May 1, 2012), <http://abcnews.go.com/US/georgia-teen-alex-boston-sues-cyberbullying-classmates/story?id=16251586#.UeDsuWQ6WnM>.

318. See *id.*

319. See Finkel v. Dauber, 906 N.Y.S.2d 697 (N.Y. Sup. Ct. 2010).

320. See *id.*

and brave enough to take a case to court should have the chance to proceed under a tort theory against her attacker, but it should not have to be her only option.

Conclusion

We are in a perpetual state of adapting to an ever-changing, technological world. The Internet, while continuing to expand, remains largely unregulated—a characteristic that can, and does, lead to tragedy. Cyber slut-shaming has proven to have devastating psychological and physical effects on young girls. Schools, courts, and service providers need to work together to prevent and remedy the harms caused by cyberbullying. Congress should amend the CDA to impose quasi-liability on ISPs and websites who, upon notification, do not remove bullying content directed at children. State and federal government should create or improve anti-cyberbullying laws and policies to give schools the power to address cyberbullying, as well as clearly define the anti-bullying policies that schools should adopt. Finally, in the case of particularly egregious cyberbullying, courts should recognize cyberbullying as a true injury, deserving of judicial relief.