

THE ATTORNEY'S ROLE IN MITIGATION OF SEX TRAFFICKING IN THE TRAVEL AND TOURISM SECTOR

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About ECPAT-USA:

ECPAT-USA is a children’s rights organization that fights to protect children worldwide from exploitation and trafficking through advocacy, awareness, policy, and legislation. ECPAT-USA is a member of the ECPAT International network, with offices in 73 countries. For more information visit www.ecpatusa.org.



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Michelle is in charge of ECPAT-USA’s engagement with the private sector on issues related to child protection. Her expertise is in tourism. In her role, Michelle manages relationships with corporations, NGOs, and responsible investors to provide technical assistance on corporate social responsibility initiatives to protect children. She speaks regularly to local, international, and federal agencies as well as industry professionals. Michelle also represents ECPAT-USA as the Local Tourism Child-Protection Code Representative in the United States. Her clients include Carlson Companies, Delta Air Lines, Wyndham Worldwide Corporation, Sabre Holdings, and Hilton Worldwide. Michelle holds a Masters Degree from Columbia University’s School of Social Work and a Bachelors Degree from the University at Albany.



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I. Scope of Article

This paper will look at the significant role that attorneys in the hospitality industry can play in addressing the risks of human trafficking associated with the operation of hotels, airlines, and travel and tourism providers. Attorneys can help companies evaluate the legal, reputational, and operational risks associated with human trafficking concerns. They can also advise clients seeking to incorporate industry best practices, including through the development of internal guidelines for identifying and responding to scenarios in which indicators of trafficking are identified.

II. Introduction to Sex Trafficking

For centuries, the industry of sex has been present in the United States through prostitution and pornography. More recently, an increasing number of children and youth have become involved in the sex industry. When a child is involved in a commercial sex act, whether they are forced, tricked, or appear to be a willing participant, the United States government considers the child a victim of trafficking.

A person is defined by the United States government as a victim of human trafficking when they are recruited, transported, transferred, harbored, or received by the means of threat, coercion, abduction, fraud, deceit, deception, or abuse of power with the goal of prostitution, pornography, violence/sexual exploitation, forced labor, involuntary servitude, debt bondage (with unfair wages), slavery/similar practices. If the person is under 18, force, fraud, or coercion no longer needs to be proven.¹

III. Scope of Problem

The International Labour Organization estimates that human trafficking is a \$32 billion industry, making it the second largest illicit crime, second only to the sale of drugs². While there is scarce research on the numbers of victims of commercial sexual exploitation (CSE) in the United States, Estes and Weiner (2001) estimate that 200,000-300,000 children are *at risk* for commercial sexual exploitation per year.³

IV. Legislative Response

Contrary to the high numbers of commercially sexually exploited American children; most media and legislative attention is on foreign persons trafficked into the United States. In response, the federal government introduced the Trafficking Victims Protection Act (TVPA) to provide protection and services to victims of trafficking. The TVPA also states that anyone under the age of 18 who engages in a commercial sex act is considered a victim of commercial sexual exploitation.⁴ By law, prostituted children are protected from incarceration even if they are not moved across state lines or if the act seems consensual. Therefore, American children arrested for prostitution should be treated as victims of sexual exploitation. They should be referred for services instead of arrested for prostitution and put in jail.

¹18 U.S.C. § 1591

²International Labour Organization. (2005). *A global alliance against forced labour: Global Report under the Follow-up to the ILO Declaration*. Geneva, Switzerland: International Labour Office.

³Estes, R. J., & Weiner, N. A. (2001). *The Commercial Sexual Exploitation of Children: In the U. S., Canada and Mexico*. University of Pennsylvania, School of Social Work Center for the Study of Youth Policy. Philadelphia: University of Pennsylvania.

⁴Ibid.

In light of the extensive factors that lead youth to prostitution, it is not plausible to view sexually exploited children as willing participants in the sex industry. Prostituted children are often victims of sexual abuse and are manipulated into sex work.⁵ The language of the TVPA implies that children are not capable of consenting to commercial sex acts. Their entrance into the sex industry is not of free choice. It is due to their undeveloped emotional and mental capacity as adolescents.

V. Systematic Response

In recent years, new fields began discussing their roles in ending trafficking. The American Bar Association launched their Task Force on Human Trafficking in the United States in 2012. The goal of the task force is to address sex and labor trafficking of adults and children. Among other things, the task force will engage the business community in developing business conduct standards on human trafficking as well as develop and promote a uniform state law on human trafficking.⁶

The same year, the National Association of Attorneys General announced a presidential initiative against modern-day slavery. The Pillars of Hope initiative outlines their commitment to improve data on the issue, prosecute traffickers, rescue victims, and raise awareness about the issue.⁷

VI. Domestic Minor Sex Trafficking

The general response to prostituted children is detention rather than rehabilitation. The TVPA is not applied at the state level and commercially sexually exploited children (CSEC) are arrested through state and local prostitution related offenses. To address this disconnect, in 2008 New York State became the first state to pass a Safe Harbor Act, which promises to provide protection and services to CSEC.⁸ Since then few states have followed suit.

The current standard assumes that imprisoning youth will deter them from entering or staying in prostitution for fear of getting caught. Arresting victims is also a common solution, because, in some regions, there are no service providers for law enforcement to refer victims. However, incarceration re-traumatizes victims and confirms their beliefs that no one cares about them. In addition, incarceration and arrest records are detrimental to young people, who have no chance of entering any vocational or educational training programs, leaving them with little opportunity for the future.⁹ It is clear that other more effective policy options must be pursued to protect the victims of CSE.

⁵ Ibid.

⁶ American Bar Association. (n.d.). Task Force on Human Trafficking: What We Do. Retrieved January 2, 2013, from American Bar Association: http://www.americanbar.org/groups/leadership/office_of_the_president/task_force_human_trafficking/what_wedo.html

⁷ National Association of Attorneys General. (2011, September 7). Attorney General Rob McKenna's 2011-12 NAAG Presidential Initiative. Retrieved January 1, 2013, from National Association of Attorneys General: http://www.naag.org/assets/files/pdf/meetings/2012_summit/Pillars_of_Hope_One-Pager_9-7-11.pdf

⁸ A.5258

⁹ Norton-Hawk, M. A. (2001). The counterproductivity of incarcerating female street prostitutes. *Deviant behavior: An interdisciplinary Journal*, 22, 403-417.

VII. Sex Trafficking and the Hospitality Industry

With the use of online classified ads, child trafficking has moved off the streets and onto the Internet. Traffickers rent rooms in hotels, log online, create an ad in adult sexual services pages, and sell victims right out of the hotel or have victims meet purchasers at nearby hotels. Hotel rooms are a preferred venue for the sale of children because exploiters believe they are anonymous at hotels, giving them a sense that there is little risk in their behavior. In a study by John Jay College of Criminal Justice and the Center for Court Innovation on CSE in New York City, researchers found that 45% of surveyed youth frequented hotels with their customers.¹⁰

One youth was quoted as saying, “He found me at Franklin Shelter in the Bronx. We was outside. It’s a lotta pimps out there. I know a whole lot of ‘em. So one day, I was in a bad situation because I was gettin’ kicked out because I got into a fight, so he offered to let me stay in a hotel with him. So, I packed my stuff and I left wit’ him.” A second said, when asked where youth go with customers stating, “It depends what they ask for, if we have to do it in a hotel or we have to do it in a car. If they just want, like, oral sex, then we’ll remain in the car, but if they wanna have sex then...I definitely wind up goin’ to a hotel with them.”¹¹

VIII. Current Pressure to Address Sex Trafficking

Legislators have been advocating for business involvement in ending trafficking, with special attention being paid to travel and tourism companies. In 2010 Congressional testimony, Congressman Christopher Smith, R, NJ stressed the role travel and tourism companies have in addressing human trafficking stating, “[t]he airline and hotel industries should be on the front lines of the fight”.

Pressure from the government increased in 2012, when President Obama’s administration launched increased efforts to “combat human trafficking at home and abroad”. The President administered an Executive Order to strengthen protections against trafficking in federal contracts.¹² In addition, the Administration announced a soon to be launched anti-trafficking toolkit to raise awareness about trafficking within travel and tourism by the U.S. Travel Association. In December 2012, the Department of Transportation launched a partnership called Transportation Leaders Against Human Trafficking, in which companies share best practices, measure progress, and coordinate activities to end trafficking.¹³ Prior to the announcement of Transportation Leaders Against Human Trafficking, the Department of Transportation partnered with the

¹⁰ Curtis, R., Terry, K., Dank, M., & Domb, K. (2008). Commercial Sexual Exploitation of Children in New York City, Volume One: The CSEC Population in New York City: Size, Characteristics, and Needs. New York City: The Center for Court Innovation.

¹¹ Ibid.

¹² The White House. Office of the Press Secretary. (2012, September 25). Fact Sheet: Executive Order Strengthening Protections Against Trafficking in Persons in Federal Contracts. Retrieved January 1, 2013, from The White House: Statements & Releases: <http://www.whitehouse.gov/the-press-office/2012/09/25/fact-sheet-executive-order-strengthening-protections-against-trafficking>

¹³ United States Department of Transportation. (2012, December 4). Human Trafficking and the Department of Transportation. Retrieved January 1, 2013, from United States Department of Transportation: <http://www.dot.gov/stophumantrafficking>

Department of Homeland Security and Amtrak to train all Amtrak employees on the signs of trafficking.¹⁴

Responsible investor groups have long been asking companies to implement policies and programming that addresses human trafficking. Most recently, the Interfaith Center on Corporate Responsibility, which is made up of 90 organizations, asked 27 companies, including 4 travel companies, to take a leadership role in abolishing human trafficking and slavery.¹⁵ Similarly, prior to the 2012 London Olympics, a coalition of United States and United Kingdom-based investor groups sent letters to 13 hospitality companies requesting information on human trafficking policies. They followed-up with specific recommendations and offered support for training staff.¹⁶

Lastly, there is increased pressure from consumers, who are inquiring about human trafficking policies and staff training. This is evident from the growing number of online petitions specifically targeting hospitality companies. Groups of responsible travelers even require companies to address trafficking prior to booking conferences. A specific instance of which is listed below in the **Benefits of Action** section of this paper.

IX. The Tourism Child-Protection Code of Conduct (The Code)

In response to the trafficking of children, companies are asked and requesting to sign the Tourism Child-Protection Code of Conduct. The Code of Conduct is not a Code in the traditional sense of the word, but is a set of six guidelines that companies use to put in place programs and policies that protect children from commercial sexual exploitation. The Code was originally developed by End Child Prostitution and Trafficking (ECPAT) Sweden in conjunction with local tour operators. Due to the flexibility in implementation of the guidelines, hotels, airlines, and even a global distributing system has signed the Code.

When a company signs the Code, it works with a regional group in their respective country to arrange implementation of the steps. The regional group is formally appointed and trained by the Code of Conduct International and is deemed the official “Local Code Representative” (LCR). Together, the LCR and the signatory are able to develop an appropriate plan of action for the company by assessing the corporate structure and culture of each individual signatory.

Current United States-based signatories include large companies such as Carlson Companies (signed in 2004), Wyndham Worldwide Corporation (signed in 2011, Hilton Worldwide (signed in 2011), Delta Air Lines (signed in 2011), Real Hospitality Group

¹⁴ Department of Homeland Security Press Office. (2012, October 4). DHS, DOT and Amtrak Announce New Partnership to Combat Human Trafficking. Retrieved January 1, 2013, from Homeland Security: <http://www.dhs.gov/news/2012/10/04/dhs-dot-and-amtrak-announce-new-partnership-combat-human-trafficking>

¹⁵ Interfaith Center on Corporate Responsibility. (2011, June 27). Investor Statement Urges Business to "Do its Part" to Make Modern Day Slavery History. Retrieved January 1, 2013, from Press Releases: http://www.iccr.org/news/press_releases/2011/pr_slaveryinvestorstatement062711.php

¹⁶ Tanner, J. (2012). Corporate strategies to address human trafficking: Investor recommendations for London Olympic sponsors and hospitality companies. New York: Christian Brothers Investment Services, Inc., Interfaith Center on Corporate Responsibility, The Ecumenical Council for Corporate Responsibility.

(signed in 2012), and Sabre Holdings (signed in 2012).¹⁷ Accor Hotels, which is based in France, is also a signatory of the Code.

Implementing the Tourism Child Protection Code of Conduct

In order to become a signatory of the Code, companies must complete an application and work with the regional LCR to create an action plan outlining their strategy for implementing the six steps of the Code. The steps outlined in the Code are to:

1. Establish an ethical policy regarding commercial sexual exploitation of children.
2. Train the personnel in the country of origin and travel destinations.
3. Introduce a clause in contracts with suppliers, stating a common repudiation of commercial sexual exploitation of children.
4. Provide information to travelers by means of catalogues, brochures, in-flight films, ticket-slips, homepages, etc.
5. Provide information to local “key persons” who will be informally supportive of the Code, at the travel destinations.
6. Report annually to the Code of Conduct Steering Committee.

Each United States-based signatory is supported by ECPAT-USA in their development plans, implementation, and monitoring of the Code.

X. Benefits of Action

Some companies have begun to address human trafficking by signing the Code and creating programs to train staff. Incorporating these features into risk management procedures offers a layer of protection should a trafficking-related situation arise at a property. They can also inform the concerned public that they are implementing expert-approved training and procedures as a preventative measure to trafficking. Lastly, implementing preventative programming can ensure that staff is adequately trained if they suspect a case of trafficking.

Employee morale will improve if staff is knowledgeable of the signs and appropriate procedures for reacting to trafficking. Instead of feeling confused, uncomfortable, and helpless when they view a relationship between a victim and trafficker or buyer, they will be trained to proceed in a safe and effective manner. Employees who learn of their brand’s commitment to this issue and receive training have been receptive and proud of the initiatives. One particular example of this support was the more than 500 employees in attendance at Sabre Holdings headquarters for the launch of the company’s human trafficking awareness campaign “Passport to Freedom”, where Sam Gilliland, CEO of Sabre Holdings signed the Tourism Child-Protection Code of Conduct.¹⁸

Another benefit to addressing this issue is protection and improvement of the corporate brand. When a company signs the Code or creates programming to stop trafficking on its properties prior to identifying instances of trafficking, it is in a better position to promote its work as a risk management and responsible business effort. In

¹⁷ ECPAT-USA. (2012, October). The Tourism Child-Protection Code of Conduct. Retrieved January 3, 2013, from ECPAT-USA: <http://ecpatusa.org/wp-content/uploads/2012/10/CodeSignatories.pdf>

¹⁸ Sabre Holdings Corporation. (2012, October). Knowledge Is Power Passport to Freedom. Retrieved January 10, 2013, from Sabre Holdings Corporation Passport to Freedom: http://www.sabre.com/home/knowledge_is_power

comparison, companies that are identified as having a problem and do not have any plans in place to prevent further instances are seen as uncaring or cold.

No Code signatory company has reported bad press for trafficking since becoming a signatory. Rather, companies that sign the Code have received positive responses from media outlets internationally. For example, in 2011, CNN launched the Freedom Project, a year-long initiative to raise awareness about “modern day slavery” and has reported on many corporate initiatives to end trafficking, including the signing of the Code by Millennium Hotel in St. Louis, Wyndham Worldwide, and Hilton Worldwide. In addition, the New York Times covered the industry response to trafficking in their November 2012 Giving issue.¹⁹

Another benefit to action is access to industry and stakeholder knowledge. Companies that are engaged in the fight against trafficking are very open to sharing best practices, programming ideas, and partnering with others on addressing the issue. Recently, a group of corporations including- Manpower Group, Microsoft, Carlson Companies, Travelport, Coca Cola, Exxon Mobil, Delta Air Lines, and Ford Motor Company-formed Global Business Coalition Against Trafficking (gBCAT), a coalition of companies working on “eradicating trafficking in supply chains, including forced labor and all sex trafficking, notably child prostitution”. They recently began compiling their individual experiences and resources addressing trafficking to disseminate best practices.²⁰ Signatories of the Code also meet annually at the Code of Conduct Annual General Meeting to discuss their experiences with implementation and learn from each other.

Increased revenue is not often cited as a benefit to acting on human rights issues but companies that have signed the Code are profiting from their actions. In 2011, the Sisters of St. Joseph asked the Millennium Hotel in St. Louis to sign the Code prior to booking their week-long conference. Sister Kathleen McCluskey, CSJ, Executive Director of the Federation was quoted as saying, “We wanted to host our national Event at a hotel that supports this mission and spirituality”.²¹ The Sisters booked the entire hotel for the conference and the Millennium signed the Code at the conference. The following year, the Sisters again booked their conference at the Millennium, and the FBI honored a local St. Louis anti-trafficking advocate at the property. More recently, United States Code signatories have entered into working relationships that show preference to Code partners during travel.

XI: Sample Language Against Commercial Sexual Exploitation of Children

Sample Policies:

As a socially responsible company, our Company stands firm in our resolve to create awareness of sex trafficking of children by utilizing our professional resources in the travel and tourism industry.

¹⁹ Mohn, T. (2012, November 8). The Travel Industry Takes On Human Trafficking. Retrieved January 20, 2013, from The New York Times. Giving.: http://www.nytimes.com/2012/11/09/giving/the-travel-industry-takes-on-human-trafficking.html?_r=0

²⁰ gBCAT. (2012, September 25). Global Business Coalition Announces Human Trafficking Initiative. Retrieved January 15, 2013, from gBCAT: http://www.gbcat.org/res/announcement-9_25_12.pdf

²¹ Nix Conference and Meeting Management. (2011, June 6). Sisters of Saint Joseph collaborate with St. Louis Hotel and ECPAT to address Human Trafficking. Retrieved January 3, 2013, from Press Releases: <http://www.nixassoc.com/more-about-nix/press-releases/>

The Company condemns all forms of commercial sexual exploitation of children. The Company supports every child's right to a safe and secure childhood, and is committed to the principle that everyone has the right to grow up and develop without fear of exploitation or harm. The protection of children from sexual exploitation is a moral imperative, and socially responsible business policies and practices must reflect this principle. The Company will strictly comply with all applicable laws and regulations regarding the prevention of the commercial sexual exploitation of children, including the prevention of the use of its premises for such exploitation.

Our Company condemns the sexual exploitation of children in travel and tourism. We will train our staff and partners to ensure that they know what to do if they suspect such exploitation in the course of their work.

Sample Clause in Contracts:

Our Company condemns the sexual exploitation of children in travel and tourism. We will train our staff and partners to ensure that they know what to do if they suspect such exploitation in the course of their work. We ask our business partners to consider doing the same.

Sample Line in Request for Proposal:

Preference will be given to proposals that address human trafficking and/or facilities that sign on to the Tourism Child-Protection Code (www.thecode.org, www.ecpatusa.org).