

Ethical and Legal Considerations for Crafting Rigorous Online Sex Trafficking Research Methodology

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Published online: 1 August 2015
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Abstract The literature involving human trafficking is limited and often involves advocacy groups, victim shelters, and gatekeepers. As a result, an inaccurate representation of human trafficking may occur. To increase the existing literature base, many investigators are crafting methodology that involves examining Internet-based commercial sex advertisements. Such investigation involves the undetermined ontological status of the Internet and raises the question of whether such postings are representative of written, publicly available text or if they are representative of human participants. This paper postulates that the increased risk of examining Internet-based commercial sex advertisements may dissuade scholars from interpreting the Internet as a textual repository. This could be the result of mandatory reporting of suspected child abuse as required by state law and the required reporting of felonious behavior as required by federal law. The authors advocate for the adoption of a human subjects approach to Internet-based sex trafficking research as it reduces the potential for inadvertent harm to parties, but to also request a waiver of informed consent as is outlined in §46.116 and §46.408 (c) of Part 46, Protection of Human Subjects.

Keywords Human trafficking · Sex trafficking · Mandatory reporting · Methodology · IRB

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Introduction

Human trafficking is often speculated to rank amongst the largest worldwide criminal enterprises along with the sale of illegal drugs and illicit firearms. It is generally considered a crime of economic exploitation and intense human rights violations that occurs when one is forced to work through fraud or threat of violence without remuneration (Bales 2004, 2007; Skinner 2008). There has been a recent call by the academic community to craft more rigorous research methodology in order to investigate sex trafficking devoid of rough estimations or questionable techniques (Tyldum 2010; Brunovskis and Suertees 2010; Fedina 2014). Statements involving the breadth and depth of human trafficking may be unreliable as much of the current literature involving human trafficking involves advocacy groups, victim shelters, or “gate-keepers” and, as such, may not be representative of the population of trafficked victim/survivors or of the crime of trafficking as a whole (Tyldum 2010; Brunovskis and Suertees 2010; Fedina 2014). To narrow the scope of human trafficking, which involves a vast array of exploitation including child soldiers, forced labor, and organ trafficking, this paper will center on considerations for crafting rigorous research methodology to examine three distinct forms of sex trafficking including (1) adult forced prostitution (AFP), which occurs when an individual above the legal age of consent engages in commercial sex through force, (2) fraud and/or coercion for the financial benefit of another, (3) domestic minor sex trafficking (DMST), which occurs when actual physical commercial sexual contact is made with an individual under the legal age of consent, and (4) the commercial sexual exploitation of children (CESC), a form of sex trafficking which may include contact offenses such as DMST. The CESC form of trafficking can also include noncontact offenses with minors such as

appearing on pornographic Internet-based webcams or being photographed in sexually suggestive positions.

Generating rigorous methodology involving human trafficking is hindered in terms of ethical and legal considerations as it is difficult to gain access to willing research participants (Tyldum 2010; Brunovskis and Suertees 2010). The trafficker, the consumer, and the victim/survivor are considered a part of a vulnerable population. As such, agencies working with and protecting such individuals rarely grant research access making the population exceedingly difficult to recruit to be interviewed. Additionally, a local university institutional review board (IRB) may not be familiar with the intricacies of conducting research within the trafficking arena and may be less likely to approve research due to general lack of precedence.

Researchers are often hesitant to explore human trafficking due to the lack of methodological precedence, the oftentimes hesitant members of IRBs, the unpredictable environments in which trafficking occurs, and the mandatory reporting of child abuse and felonious activities. These considerations form a paradox where the established legal, ethical, and professional obligations which aim to protect participants, researchers, and universities may instead cause harm by discouraging research and subsequent misunderstandings surrounding human trafficking. The purpose of this paper is to encourage research involving AFP, DMST, and CESC, as well as various other aspects of exploitation by outlining considerations that may aid the investigator in crafting well-designed, rigorous, and thoughtful research methodology.

Ethical and Legal Considerations

To overcome the lack of accessibility to traffickers and the victims/survivors, researchers are increasingly developing and employing methodology that examines Internet-based public forums regarding commercial sex (Latonero 2011; Dank et al. 2014). This process of accessing and recording publicly posted and available data for research is considered data mining, a process that can be accomplished via computer automation or actual human readings and subsequent recordings (Schrag 2008). As those gathering the research are not directly contacting or gaining access to participants, but rather merely browsing publicly available postings, she/he may think that data mining is low impact and presents little-to-no harm to the participant, the researcher, or the university. One must, however, consider the potential risks to the participants (as commercial sex is illegal in most jurisdictions), as well as the ethical and legal requirements as applied to the researcher (as the researcher is most likely a mandatory reporter of suspected child abuse). There are also considerations in the reporting of suspected child abuse and/or sexually abusive

situations as the majority of researchers do not hold federal permission to investigate US Code: Title 18, including §18.1591—Sex trafficking of children or by force, fraud, or coercion, or §18.2251—Sexual exploitation of children. In short, researchers are prohibited by law to screen capture, download, or otherwise maintain an image of any commercial sex advertisement that they may feel involves minors or suspected child abuse, even if it is to report such suspicions to authorities.

The unprecedented developments of networked technologies and Internet-enabled devices have contributed both to the occurrence of and the research of sex trafficking (Latonero 2011). The ability to investigate Internet-based advertisements for commercial sex represents an opportunity for methodologists because advertisements which contain unwilling, forced individuals are posted alongside advertisements which contain willing, consensual parties. By gaining a greater understanding of the methods behind commercial sex, it is possible for one to also advance their understanding of sex trafficking. However, the undetermined ontological status of the Internet muddies the nature of important ethical and legal considerations as they relate to crafting rigorous Internet research methodology (Berry 2004; Capurro and Pingel 2002; Hudson and Buckman 2004).

Researchers who view the Internet as a textual repository, rather than representative of human subjects, may consider developing research methodology that invokes the *Fair Use* provision of Section 107 of the US Copyright act as found in US Code—Title 17:

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

With respect to sex trafficking research, such written materials as transcripts of chat sessions or Internet postings are considered copyrighted materials and, therefore, can be studied within the bounds of fair use as long as researchers do not hide or anonymize the identities of their participants in any way (Cavasos and Morin 1994; Hudson and Buckman 2004).

However, the provision contained within the *Fair Use* of US copyright law prohibits the anonymizing of participants, which subsequently increases the risk to participants and clashes with Subpart A of the Basic HHS Policy for Protection of Human Research Subjects as found in U.S. Department of Health & Human Services (2009) wherein:

§46.101 (2) Research involving the use of educational tests, survey procedures, interview procedures or observation of public behavior [is exempt], unless (i) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation

§46.101 (4) Research involving the collection or study of existing data, documents, records pathological specimens or diagnostic specimens [is exempt], if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

§46.102 (i) Minimal Risk means the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during their performance of routine physical or psychological examination or tests

When examining Internet-based advertisements for commercial sex, the researcher must be cognizant that such text, although publicly available and readily accessible, is representative of human participants who may be in danger. Due to the environment in which suspected sex trafficking occurs, the researcher, in performing their duties, may be required by law to report immediately their suspicions to law enforcement in order to stop a potentially abusive and/or exploitative situation. Currently, 48 states require social workers, teachers, school personnel, physicians, health-care workers, mental health professionals, childcare providers, medical examiners, coroners, and law enforcement officials to report all suspected incidences of child abuse; two states, Wyoming and New Jersey, require all individuals to report (U.S. Department of Health & Human Services 2009). In addition, since sex trafficking in all of its forms is felonious, researchers may be subject to reporting known instances per US Code: Title 18

§4—Misprision of a felony, wherein:

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

The human participants approach to Internet research considers Web-based postings as representative of actual lived human experiences and considers protections such as anonymity, informed consent, and beneficence paramount when developing research methodology (King 1996; Hudson and Buckman 2004). It is often considered the safest model to apply when employing Internet research (Bassett and O'Riordan 2002). One of the precedents of human participants research, informed consent, is exceedingly difficult when researching online commercial sex advertisements due to the clandestine nature of the crime and the environments that host it. If the researcher's intentions were known by virtue of obtaining previously informed consent, the potential for research influence and observer effects would most likely increase and render the work invalid. In addition, one cannot know the potential for harm to a sex trafficking victim if a trafficker or consumer feels threatened by such observations.

There are ways, however, to work within the human subjects model for safety while altering consent procedures to pass IRB standards as covered in Subpart A of the Basic HHS Policy for Protection of Human Research Subjects (2009).

§46.116 (d) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth in this section, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

- (1) The research involves no more than minimal risk to the subjects;
- (2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;
- (3) The research could not practically be carried out without the waiver or alteration; and
- (4) Whenever appropriate the subjects will be provided with additional pertinent information after participation

In this case, one could argue that when considering informed consent via §46.116, section (1), the researcher will not be directly contacting any individual contained within any commercial sex advertisement, and, as such, there is no increased risk to their current situation. In fact, any potential

forms of suspected exploitation will be reported to proper authorities, which may in turn hold a prospect of direct benefit. Additionally, in section (2), the waiver will not adversely affect the right or welfare of the subject, as they are not directly interacting but merely observed. Section (3) indicates that there is no other way to safely and confidentially conduct Internet-based sex trafficking research. And finally, in section (4) the language states “whenever appropriate.” It can be inferred that when safety and confidentiality are concerned, one should not have to provide additionally pertinent information after participation in all instances.

When working within the human subjects approach to Internet research involving sex trafficking research, one must also consider the potential for encountering children who are being forcibly prostituted. Informed consent procedures involving children often involve parents/guardians or other family members. One must be exceedingly careful surrounding informed consent with children as it pertains to sex trafficking, as the child may not understand the context of their actions. Also, there is a potential for family members to be involved in the perpetration of the crime. Subpart A of the Basic HHS Policy for Protection of Human Research Subjects (2009) states:

§46.408 Requirements for permission by parents or guardians and for assent by children.

(a) ...If the IRB determines that the capability of some or all of the children is so limited that they cannot reasonably be consulted or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research, the assent of the children is not a necessary condition for proceeding with the research.

(c) ... if the IRB determines that a research protocol is designed for conditions or for a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children), it may waive the consent requirements in Subpart A of this part and paragraph (b) of this section, provided an appropriate mechanism for protecting the children who will participate as subjects in the research is substituted, and provided further that the waiver is not inconsistent with federal, state or local law. The choice of an appropriate mechanism would depend upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and their age, maturity, status and condition.

When considering waiving informed consent for the protection of children in online sex trafficking research, as outlined in §46.408 (a), it could be argued that the children

cannot reasonably be consulted due to safety concerns and that through mandatory reporting laws the research does indeed hold a prospect of direct benefit that is important to the health and well-being of the child. Additionally, waiving informed consent due to the potential of parental involvement in sex trafficking where obtaining parental consent is not reasonable, §46.408 (c) states, there is the potential of waiving parental informed consent if there is an appropriate “mechanism” in place that is consistent with federal, state, and local law. Within the wording, it seems that this mechanism is open to interpretation between the researchers and the IRB.

The final consideration offered in this paper is that of potentially saving and/or capturing images associated with the exploitation of children. Researchers are prohibited by law to screen capture, data scrape, download, or otherwise maintain an image of any commercial sex advertisement that they may feel involves minors or suspected child abuse, even if it is to conduct research or to report such suspicions to authorities. Researchers may only capture these images if they had been previously authorized by the federal government as an investigator of US Code: Title 18, including §18.1591- Sex trafficking of children or by force, fraud, or coercion, or §18.2251- Sexual exploitation of children. The idea of inadvertently capturing or recording images of child pornography is especially important if one is attempting to develop methodology that uses automated bots, Web-crawlers, or a computer code, which identifies, records, or otherwise captures information at the source code of the host website. In short, if scraping (the term computer coders often use for automated data capture) records the images contained within the commercial sex advertisement, that code, and the individuals who wrote it may be in violation of the law. As found in US Code §18:2252A—Certain activities relating to material constituting or containing child pornography:

(a) Any person who—

(1) knowingly mails, or transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any child pornography;

(2) knowingly receives or distributes—

(A) any child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer; or

(B) any material that contains child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(3) knowingly—

(A) reproduces any child pornography for distribution through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer; or

(B) advertises, promotes, presents, distributes, or solicits through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains—

(i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or

(ii) a visual depiction of an actual minor engaging in sexually explicit conduct;

There is a sub-item denoting an affirmative defense within US Code §18:2252A—Certain activities relating to material constituting or containing child pornography as it pertains to promptly identifying and reporting child pornography. It is noted that this language is referred to as a “defense,” but it is not a consideration outlining practices for researchers who may inadvertently download child pornography. The word “defense” implies that one could still be charged with a crime and face prosecution.

(d) Affirmative Defense.— It shall be an affirmative defense to a charge of violating subsection (a)(5) that the defendant—

(1) possessed less than three images of child pornography; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof—

(A) took reasonable steps to destroy each such image; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

Uncovering potentially exploitative situations during Internet-based, evaluative, sex trafficking research is not without precedent and is evident in The Cleveland Backpage Report (Bach and Dalton 2011). In this particular case, two human trafficking advocacy groups, The Imagine Foundation and Operation Broken Silence, were evaluating a website to discern its role in localized sex trafficking when they happened upon numerous advertisements for commercial sex that were linked to a single, out of state phone number. The researchers involved were mandatory reporters of the crime and, as required, contacted the National Human Trafficking Resource Center and the Federal Bureau of Investigations Child Exploitation Task Force in Cleveland, OH, immediately upon

uncovering the findings. Several weeks after reporting the data to proper authorities, an individual was arrested and charged with sex trafficking of a minor and several individuals were removed from an exploitative situation.

Conclusion

The information contained within this article may seem commonplace to academics familiar with the social science sphere. However, the investigation of sex trafficking is increasingly attracting individuals from different academic fields who may be less familiar with human participants research. Innovative and interdisciplinary research into Internet-based sex trafficking is necessary to both understand the breadth and depth of the crime as well as to craft future interventions. As such, emerging methodologies and differing research specialties may challenge the precedence and norms of existing ethical and legal requirements as the venue and subject is a relatively new area in which to conduct investigations.

As this line of research matures, newly developed methodologies will uncover and present unique situations as they cross active crimes and individuals who are in need of immediate help. We hope that this paper and the considerations within will play a small part in the development of a well-thought-out and rigorous research methodology as it pertains to investigating online sex trafficking.

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