Sugar Dating: A New Take on an Old Issue

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When college senior, Lola, was unable to meet her tuition or living expenses, and when forty-year-old B.K. wasn’t getting enough “attention” from his wife, the solution was simple — both Lola and B.K. turned to a website called SeekingArrangement.com (“SeekingArrangement”).¹ Like many other young women on SeekingArrangement, Lola’s profile stressed the need for “immediate financial assistance.”² It was easy for Lola to find out about SeekingArrangement since each time the phrases “student loan,” “tuition help,” “college support,” or “help with rent” are typed into the online search engine Google, advertisements for sugar dating websites appear as search results.³

“Sugar dating” is a recent trend which is best described as an agreement wherein one person agrees to financially support another person in return for a sexual relationship. In the past, when men paid women for sex, it was considered to be “prostitution.” Today, however, many refer to the practice not as prostitution, but instead as a “mutually beneficial arrangement.”⁴ This article examines Internet prostitution, and, more specifically, the recent phenomenon of sugar dating, a form of a “mutually beneficial arrangement.” In regard to a moral opinion of

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² Id.

³ See id.

consensual adults who enter into sexual relationships for a financial benefit, this article is silent. Instead, this article argues that the majority of sugar dating and other similar sex for money “mutually beneficial arrangements” are illegal, as they are forms of prostitution, and state prostitution statutes should reflect this reality, regardless of the wealth of the parties involved.

What becomes clear in a closer analysis of different forms of prostitution is that there have been, and still remain, blatant inequities in how the law is enforced against the practice. Thus, this article also examines how it is possible for two different people to engage in the same illegal behavior, but for only one person be punished for it. It is easier for someone with money and an education to prostitute without law enforcement interference. This article will touch on the correlation of social status and the different forms of prostitution both on the Internet and on the street. In that regard, I demonstrate how “high class hookers” are seldom prosecuted.\(^5\) I further illustrate that law enforcement has less interest in prostitution that involves upper class participants as opposed to streetwalkers, or the Craigslist equivalent to streetwalkers, and examine the possible explanations for this distinction.

Part I of this article discusses the history of prostitution. Part II focuses on the Internet in relation to advertising prostitution services through online periodicals and sugar dating websites. The first section of part III works to understand the difference between sugar dating website services and the definition of prostitution as codified by a variety of state statutes. Further, the second section of part III examines the socioeconomic aspect of sugar dating: in particular, the discrepancies between arrests and prosecutions of streetwalkers as opposed to self-proclaimed sugar babies and their sugar daddies or benefactors.

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I. DEFINITION AND BRIEF HISTORY OF PROSTITUTION
IN THE U.S.

A. The Definition of "Prostitution"

According to Black’s Law Dictionary, prostitution is defined as an “[a]ct of performing or offering or agreeing to perform a sexual act for hire” or as “[e]ngaging in or agreeing or offering to engage in sexual conduct with another person under a fee arrangement with that person or any other person.”6 Religions have also grappled with the act of prostitution, and some have condemned the act in their holy texts. 7 In the Bible, the book of Deuteronomy condemns prostitution by stating: “There shall be no whore of the daughters of Israel.”8

State statutes often differ from one another on what constitutes sexual activity.9 While some states such as North Carolina consider only sexual intercourse to be sexual activity, intercourse is not necessary in all states considered to be a sexual act.10 There are states that consider fellatio, cunnilingus, and even contact with the female breast and other body parts to be sexual contact for prostitution purposes.11 Hawaii, for example, defines sexual contact as “any touching, other than acts of ‘sexual penetration,’ of the sexual or other intimate parts of a person not married to the actor...”12 Therefore, in Hawaii, assisted masturbation, or a “handjob,” qualifies as sexual contact.13 Arkansas also has

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8 Id. (quoting Deuteronomy 23: 17).
10 Id.; State v. Richardson, 300 S.E.2d 379, 380 (N.C. 1983).
11 See Hagner, supra note 9, at 438-39.
12 HAW. REV. STAT. §707-700 (2012). The entire definition is as follows: “[A]ny touching, other than acts of ‘sexual penetration,’ of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.”
13 See State v. Romano, 155 P.3d 1102, 1108 (Haw. 2007) (finding a “handjob” constitutes physical contact with genitals and therefore is sexual conduct).
an expansive definition of sexual contact, as it includes "any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female."\(^{14}\) By contrast, Illinois requires sexual activity to be "an act of sexual penetration."\(^{15}\)

**B. A Brief History of the World's Oldest Profession**

Known as one of the world's oldest professions, prostitution in the United States has been chronicled back to the settlement of the early European Pioneers.\(^{16}\) Prostitution was not prevalent in North America until after the American Revolution because there were very few women who were in the early settlements, especially those that were unmarried.\(^{17}\) There were, however, some exceptions. For example, Native American males often forced the Native American females into prostitution with the European settlers and used alcohol as consideration.\(^{18}\) While many of the women settlers were married, there were some unattached females willing to engage in acts with single men for money.\(^{19}\) Aside from some promiscuous settlers, there was another contributing factor to prostitution in early America: hired servants, indentured servants, as well as servants working off criminal sentences were ineligible to marry.\(^{20}\) Because servants (with the exception of the hired) were not paid and could not marry, some decided to earn money by engaging in sexual relations.\(^{21}\)

Though prostitution was not an offense between the American Revolution and World War I, prostitutes were

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15 720 ILL. COMP. STAT. ANN. 5/11-14 (West 2011).
16 JOHN F. DECKER, PROSTITUTION: REGULATION AND CONTROL 57 (Fred B. Rothman & Co., New York University 1979); see also Hagner, supra note 9, at 433.
17 DECKER, supra note 16, at 58.
18 Id. at 57.
20 Id. at 197-98.
21 Id. at 198.
often punished for different offenses such as adultery, fornication, night walking, or other prostitution-related activities. As punishment for this behavior, "[j]udges could require a couple to marry, pay a fine, or [impose] corporal punishment." Therefore, although it was not called prostitution, the immoral sexual behavior was still considered an offense.

Prostitution continued to flourish into the nineteenth century, which motivated the states and Congress to take control. In 1870, the Social Evil Ordinance was passed in St. Louis, Missouri: "As a part of the state ordinance, all prostitutes needed to be registered and medically examined, and all brothels needed to be licensed." In 1875, the United States Congress passed the Page Act, which makes it illegal to import women into the United States for prostitution purposes. In 1910, United States Congress passed the Mann Act, which made it illegal to transport women for "immoral purposes." The Act was later amended to replace "immoral purposes" with "any sexual activity for which any person can be charged with a criminal offense." One intent of the Mann Act is to criminalize prostitution of women. Originally, only women, and not men, could be a prostitute under the definitions of penalizing statutes in the Act. In 1913, the United States Supreme Court in *Hoke v. United

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22 Howard B. Woolston, Prostitution in the United States 25 (1921). “Night walking” is defined as “strolling the streets at night for immoral purposes.”

23 Bullough, supra note 19, at 198.


27 Id.

28 Id.

29 Id.; see also State v. Lopez, 570 P.2d 259, 267 (Idaho 1977); State v. Lewis, 343 So. 2d 1056, 1057 (La. 1977); In Louisiana in 1977, the crime of prostitution had to be committed by a woman: "A man practicing [sex] with women for compensation did not commit [the] crime.” State v. Devall, 302 So. 2d 909, 910 (La. 1974).
States held that Congress does not have the power to make prostitution a crime in the states, though Congress can regulate prostitution through interstate commerce.\(^3\) As awareness grew, so did societal concern, and before long, prostitution became illegal in most of the United States.\(^3\) Yet, these historic state prostitution laws only applied to the soliciting sex worker and not to the customers.\(^3\)

With unique exceptions in Nevada and Rhode Island, prostitution is still illegal today in all states.\(^3\) While some states' laws are very specific, there are other states whose laws lack specificity in regard to prostitution. For example, Rhode Island has no specific law that defines sexual services in exchange for money.\(^3\) In fact, in Rhode Island, prostitution indoors among consenting adults is legal, but soliciting sex on the street is prohibited.\(^3\) Although prostitution laws previously only punished the soliciting sex worker, today there are state statutes that criminalize the customers who solicit the prostitutes.\(^3\) Criminalizing the acts of all parties to an exchange involving prostitution has been justified by a number of public policy concerns including morality, prevention of sexually transmitted diseases, and preventing violence and further crimes.\(^3\)

More recently, states such as Nevada have seen strong movements to decriminalize prostitution. In 1971, Nevada passed a law that effectively granted rural counties of less than 200,000 people the option to license brothels.\(^3\) In 1973, the sex worker advocate group, COYOTE (Call Off Your Old Tired Ethics) was formed.\(^3\) Major goals of COYOTE are to

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\(^3\) *Hoke v. United States*, 227 U.S. 308, 323 (1913).

\(^3\) Hagner, *supra* note 9, at 435-36.

\(^3\) Id. at 440.

\(^3\) Id. at 437.

\(^3\) Id. at 445.

\(^3\) Id.

\(^3\) Id. at 440.

\(^3\) See Matthew Green, *Sex on the Internet: A Legal Click or an Illicit Trick?*, 38 CAL. W. L. REV. 527, 532 (2002).


\(^3\) Valerie Jenness, *From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem*, 37 SOCIAL PROBS. 403, 403 (1990). COYOTE was formed by Margo St. James.
legalize prostitution and to put an end to the social stigma associated with prostitution.\textsuperscript{40} Even more recently, 85 percent of people who answered an MSNBC poll favor the decriminalization of prostitution.\textsuperscript{41} Today, if one is prosecuted for the crime of prostitution, the only two valid defenses are marriage and entrapment.\textsuperscript{42}

Most of those involved with various types of prostitution are not openly affiliated with the business; however, the National Task Force on Prostitution "estimates that more than [one] million people have worked as a prostitute in the United States."\textsuperscript{43} Moreover, a recent survey shows that one third of the wealthiest men in America have paid for sex in the past five years.\textsuperscript{44} Some classic types of prostitution are street, brothel, escort, private, and club prostitutes. Streetwalkers, those who openly solicit sex on the street, "represent the lowest, most marginalized class of prostitutes” and are usually controlled by pimps.\textsuperscript{45} Despite the fact that streetwalkers "comprise only ten to twenty percent of all prostitutes," they "are the most visible and familiar” and "account for eighty-five to ninety percent of all prostitution arrests.”\textsuperscript{46} Those who solicit sexual services on the street are disproportionately of low-income backgrounds “and among the most vulnerable in the sex industry to robbery, rape, murder, arrest, criminal prosecution, and police harassment and brutality.”\textsuperscript{47} On the other side of the socio-economic spectrum are, what are commonly referred to as “high class hookers” or escorts.\textsuperscript{48} “High class hookers” or

\textsuperscript{40} Id. at 403.


\textsuperscript{43} See Dirty Money, Poll Results, supra note 41.

\textsuperscript{44} See Dirty Money, Video, supra note 5.


\textsuperscript{46} Id. at 52-53.

\textsuperscript{47} Hagner, supra note 9, at 434.

\textsuperscript{48} Clements, supra note 45, at 53.
escorts are usually educated, of a higher social status, and more difficult to recognize, as they are less visible.\textsuperscript{49}

High-class prostitutes do not share the same statistics as most streetwalkers and lower end sex workers that post on Craigslist and similar forums, as they are rarely discovered.\textsuperscript{50} In contrast to streetwalkers and other prostitutes controlled by a ring of pimps, high-class sex workers are most often not forced into the business as children or teens.\textsuperscript{51} Rather, high-class prostitutes are often educated women from intact families that enter the business while in college or graduate school for extra money to supplement a degree they are pursuing.\textsuperscript{52} In order to work at the high end of the industry women must be "educated, informed, and articulate."\textsuperscript{53} Many escort services are strict businesses, they have stringent cancellation policies, some incorporate, and many even pay taxes.\textsuperscript{54}

The previous examples illustrate what is known as "direct" prostitution—when a prostitute sells sex directly.\textsuperscript{55} However, for centuries, there has also been a form of prostitution that has been coined as "indirect."\textsuperscript{56} With indirect prostitution, the arrangement is not exactly sex for money—either the prostitute sells a service other than sex (at least to begin with), or the client pays for sex in currency other than money (food, security, or other need).\textsuperscript{57} However, it is difficult to identify which part of this agreement makes the prostitution indirect. An example would be an "individual arrangement," or a "mutually beneficial arrangement" where perhaps a "single mother . . . may have sex with her landlord in place of rent."\textsuperscript{58} A recent form of prostitution that takes place through the Internet has made

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{49} Id.
  \item \textsuperscript{50} Dirty Money, Video, supra note 5.
  \item \textsuperscript{51} See id.
  \item \textsuperscript{52} See id.
  \item \textsuperscript{53} Id.
  \item \textsuperscript{54} Id.
  \item \textsuperscript{56} Id.
  \item \textsuperscript{57} Id.
  \item \textsuperscript{58} Id.
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this indirect, "individual agreement" more common and more extreme.\(^{59}\) Throughout history, society has grappled with how to control and regulate prostitution, but this new form of indirect, individual, "mutually beneficial arrangements" as arranged online, certainly challenges the current laws that deem sex in exchange for money illegal in almost every state in the United States.

II. USING THE INTERNET TO SEEK AN ARRANGEMENT OF SEX FOR MONEY

A. The Internet Emerges and Finding a Prostitute Becomes Easier than Ever Before

The birth of the Internet has allowed for a new way of doing business for both the client and provider of sexual services. This technology has reshaped the sex market and made sexual services more accessible than ever before.\(^{60}\) The Internet began promoting the sex industry when the first online escort agency called "A Personal Touch Services," based in Seattle, was advertised in 1994.\(^{61}\) Months later, a Phoenix based prostitution service called "Brandy's Babes" began advertising on the Internet, and The Internet Business Journal named it "the most significant internet marketing innovation of 1994."\(^{62}\) As of early 1995, there were 200 Internet businesses selling sexual services and products.\(^{63}\)

On websites such as the Eros Guide, men can order prostitutes and escorts just as they can order any other product over the Internet.\(^{64}\) The same way that one chooses the color and style of a sweater, men are able to choose the eye color, hair color, and body types of the women whose services they are looking to purchase.\(^{65}\) Some women choose

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\(^{59}\) See, e.g., Padawer, supra note 1.

\(^{60}\) See Teela Sanders, Paying For Pleasure: Men Who Buy Sex 63 (2008).


\(^{62}\) Id.

\(^{63}\) Id.

\(^{64}\) Dirty Money, Video, supra note 5.

\(^{65}\) Id.
not to associate themselves with agencies; instead of going through company websites, many escorts/prostitutes choose to advertise independently for privacy and protection purposes.66

Not only can one directly find a prostitute online, but it is also possible to obtain advice from others on which prostitutes are best and where to find them.67 Men are able to critique their experiences online at Internet forums such as The Erotic Review, a website that claims to get over 10 million hits per day.68 The clients use the online discussion groups to provide first hand general information about the sexual services available in their area.69 They also share personal details of their experiences with the prostitutes.70 Those who post on the forums use a unique lingo of terms and abbreviations to describe the “types of prostitutes, physical description of prostitutes, sex acts, and law enforcement activity.”71 Prostitutes also rely on websites like the Erotic Review for clients.72 High-end women involved in prostitution however, stay off the Erotic Review and prefer to remain more private.73 This makes the high-end women more exclusive and less available to the general public.

One explanation for the rapid growth of the Internet-based sex market is convenience.74 Advertising in periodicals and magazines is expensive and requires a lot of time and maintenance. On the other hand, marketing through the Internet reaches the most people in the

66 Id.
67 See Thomas J. Holt & Kristie R. Blevins, Examining Sex Work From the Client’s Perspective: Assessing Johns Using On-line Data, 28 DEVIANT BEHAVIOR 333, 336 (2007) (“Johns also elaborate[s] on sexual encounters with escorts in their posts, complete with physical descriptions of the prostitutes, their attitudes, and any critiques about their performance during the act.”).
70 See Holt & Blevins, supra note 67, at 334-35.
71 Id. at 340.
72 Dirty Money, Video, supra note 5.
73 Id.
74 See SANDERS, supra note 60, at 63; see generally Hughes, supra note 61.
shortest amount of time for the lowest price. At little or no cost, prostitutes are able to advertise themselves and their sexual services—which usually includes the sex worker’s age, race, contact information, body type, price, and other information regarding the services. The Internet has turned sexual interactions into commercial transactions. Not only can the sex industry’s success be attributed to the Internet, but the Internet’s success can also be attributed to the sex industry. Notably, “the sex industry is among the top five groups buying state-of-the-art computer equipment,” and in 1998, $1 billion was spent online on ‘adult content,’ 69 percent of the total Internet content sales. The Internet has become a vehicle for the supply and demand of sexual services.

In addition to a new way of doing business, there is also a new and, perhaps less expectant, group of participants involved with the industry. Due to the lack of law enforcement in this area, many unexpected women are trading sex for money; it is no longer just your stereotypical prostitute. Soccer moms, academia scholars, housewives, and trained professionals have found their way into the world’s oldest profession. The Internet has made prostitutes more mobile and as a result, the locations of prostitutes are less stereotypical. For example, suburban

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75 See Sanders, supra note 60, at 64.
76 See Scott Cunningham & Todd Kendall, Sex for Sale: Online Commerce in the World’s Oldest Profession, in Crime Online: Causes, Context, and Correlates 147 (Thomas J. Holt ed., 2010).
78 Hughes, supra note 61, at 36-37.
79 Id.
81 Dirty Money, Video, supra note 5.
82 Id.
prostitution has become more common since the Internet emerged.\(^8^4\)

In short, the Internet can be linked to increasing prostitution rates because it makes information on prostitution services widely available, making prostitution services more accessible.\(^8^5\)

**B. Online Classifieds: From Subletting Apartments to Soliciting Sex**

Law enforcement has made it abundantly clear that advertising sexual services and prostituting through the Internet is illegal.\(^8^6\) The majority of arrests and prosecutions that have resulted from Internet prostitution involved blatant sexual service advertisements on periodical websites, such Craigslist.org ("Craigslist"). Craigslist is a local classifieds website started by Craig Newmark in 1995 which allows seekers to limit their searches to specific cities or areas.\(^8^7\) Due to its ease and location specific searches, Craigslist quickly became a popular place on the Internet to solicit sexual services.\(^8^8\) Unlike the "high class" service websites, Craigslist is an Internet forum that is comparable to streetwalking, as it is one of the riskier forums to advertise sexual services.\(^8^9\)

In 2007, police began to crack down on the "erotic services" section of Craigslist.\(^9^0\) Police have rounded up prostitutes who posted on Craigslist just like prostitutes from the street.\(^9^1\) The risk of arrest, however, has not

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\(^8^4\) See id.

\(^8^5\) See Holt & Blevins, supra note 67, at 350.


\(^8^8\) See Holt & Blevins, supra note 67, at 343.

\(^8^9\) Dirty Money, Video, supra note 5.

\(^9^0\) Lambert, supra note 86.

\(^9^1\) Dirty Money, Video, supra note 5.
proven to be a deterrent for all sex workers or their clients. When running a search on Google.com for "Craigslist prostitute," there are frequent news stories about prostitution related arrests involving Craigslist. Sometimes, however, the news stories are far worse than a simple prostitution arrest. In April 2009, a 25-year-old aspiring model, Julissa Brisman, who specialized in "sensual massage," came to Boston from New York after advertising her services on Craigslist. A Boston medical student responded to the advertisement, showed up at Brisman's Boston hotel room and, according to prosecutors, murdered her. Some choose to make their Craigslist postings simpler than others, but they all send the same message. Initially the posts could be found in the "erotic services" section, which was subsequently replaced with the "adult services" section in 2009. In 2010, the "adult services" section was pulled completely. Today, someone looking for a prostitute would visit the "casual encounters" or women seeking men sections of the personals category. Regardless of where the posts are located, the most common Craigslist prostitute postings only have a name, phone number, provocative photograph, and a slogan that encourages prospective clients to call. Not one of the postings, however, use the word "prostitute."

95 Craigslist Gets Rid of 'Erotic Services' Ads, FOX NEWS (May 15, 2009), http://www.foxnews.com/story/0,2933,520032,00.html.
C. Sugar Baby and Sugar Daddy Dating on SeekingArrangement.com

There may be a legal loophole to avoid law enforcement interference when soliciting sex. This loophole is called sugar dating. Sugar dating is said to be a “mutually beneficial relationship” between two individuals, one of which who is older and wealthy, and the other who is younger and in financial need.\(^9\) In this relationship, the wealthy individual gives the younger individual gifts and/or financial assistance in exchange for sex and often companionship.\(^9\) With such similarities to classic prostitution, sugar dating is by no means a new arrangement. However, sugar dating has become more prevalent with the birth of the Internet. A 70-year-old sugar daddy explains the Internet’s affect on sugar dating, by stating, “I only go out with girls 25 and under . . . [b]ut I can’t walk into a bar and go up to a 25-year-old. They’d think I’m a pervert. So, this is how I go about meeting them.”\(^10\)

Websites such as SeekingArrangement.com, SugarDaddie.com, WealthyMen.com, SeekingTuition.com, SugarDaddyForMe.com, and SugarDaddieBabes.com match together those interested in a sugar dating arrangement. While there are numerous sugar dating websites, SeekingArrangement is one of the most popular. Launched in 2005 by Brandon Wade and considered the “premier Sugar Daddy dating site,” SeekingArrangement “is online match making for ‘wealthy benefactors’ and willing women - women who understand there will be no long-term romance, who understand their Sugar Daddy may be married, who understand that sex, and secrecy, is expected.”\(^10\) Critics

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\(^9\) Id.


however, have called the website “at best a convenience store for adulterers and at worst a virtual brothel.”

On its website, SeekingArrangement defines sugar daddies and sugar babies. SeekingArrangement defines a sugar daddy as “a successful and generous man who is willing to pamper and offer financial help or gifts to a young person in return for friendship and companionship.” The website has the following message posted to their prospective sugar daddies: “You are always respectful and generous. You only live once, and you want to date the best. Some call you a mentor, sponsor or benefactor. But no matter what your desires may be, you are brutally honest about who you are, what you expect and what you offer.” The website seeks to flatter and confirm the normalcy of the desires of prospective sugar daddies. Similarly, SeekingArrangement defines a sugar baby as “an attractive, ambitious and goal oriented individual who has a lot to offer. He or she is generally younger and is looking to meet wealthy, successful and generous people who are willing to pamper and offer financial assistance or gifts in return for their friendship or companionship.” To persuade interested young people to become sugar babies, the website has the following message posted: “Attractive, intelligent, ambitious and goal oriented. Sugar Babies are students, actresses, models or girls & guys next door. You know you deserve to date someone who will pamper you, empower you, and help you mentally, emotionally and financially.”

In an effort to normalize the sugar dating relationship and entice those who are potentially interested, SeekingArrangement emphasizes the simplistic and complementary nature of the types of relationships.

However, past versions of the website’s definitions reveal that sugar dating may be less “normal” and much more like prostitution than its current definitions imply. The

102 Padawer, supra note 1.
105 What’s An Arrangement, SEEKINGARRANGEMENT, supra note 103.
106 The Elite Sugar Daddy Dating Site, SEEKINGARRANGEMENT, supra note 104.
previously listed definition of a sugar daddy was "[a] wealthy, usually older man who gives expensive gifts to a young person in return for intimacy or companionship."\textsuperscript{107} The website's old definition of a sugar baby was "[a] young person who gives intimacy or companionship to an older man or woman in exchange for expensive gifts."\textsuperscript{108} SeekingArrangement has also removed the following language which was previously on its website for potential sugar daddies: "Rich and successful. Single or married, you have no time for games. You are looking to mentor or spoil someone special - perhaps a 'personal secretary'? secret lover? student? or a mistress for an extra-marital affair?"\textsuperscript{109} It seems that after recent media attention, SeekingArrangement has modified its definitions of sugar babies and sugar daddies by replacing the word intimacy with friendship.

SeekingArrangement is free for sugar babies to join.\textsuperscript{110} For sugar daddies or sugar mommas to join SeekingArrangement it costs $50 per month, but if a sugar daddy or sugar momma wants his or her wealth verified and a prominent spot on the website, then it can cost up to $2,400 per year.\textsuperscript{111} Men also have the option to pay an extra $5 per month to ensure that the name SeekingArrangement.com does not show up on their credit card statements.\textsuperscript{112} As of 2011, Wade estimated that SeekingArrangement had about 800,000 members, 35 percent of which were college students.\textsuperscript{113} If sugar babies register with a .edu email address they are automatically upgraded from a standard membership to a premium membership.\textsuperscript{114} Registering with a .edu email address will


\textsuperscript{108} Id.


\textsuperscript{110} Fairbanks, supra note 100.

\textsuperscript{111} Id.

\textsuperscript{112} Padawer, supra note 1.

\textsuperscript{113} Fairbanks, supra note 100.

\textsuperscript{114} Id.
also certify a profile as a “college sugar baby.” The ratio of sugar babies to sugar daddies is ten to one.\textsuperscript{115}

Sugar arrangements are said to be “mutually beneficial” as each party offers to fulfill some unmet need or desire of the other party. Usually, one party wants money that he or she would not usually be able to earn so quickly, and the other party wants a young partner whom they would not ordinarily be able to court. Neither sugar daddies nor sugar babies are limited to seeing one man or woman at a time.\textsuperscript{116} Women have admitted to dating up to four sugar daddies at once.\textsuperscript{117} On SeekingArrangement, the average age of a sugar daddy is forty five, while the average age of a sugar baby is twenty six.\textsuperscript{118} Online, the sugar babies and sugar daddies have profiles with pictures of themselves and a description of the type of arrangement that they are looking for.\textsuperscript{119} More specifically, the women post how much money they require in return for providing the men companionship.\textsuperscript{120}

Common expectations in sugar relationships are financial allowances, intimacy, appearances, and punctuality.\textsuperscript{121} There are women who do not require a set amount from the start, but others ask for up to $30,000 per month.\textsuperscript{122} Many sugar babies request money specifically for tuition.\textsuperscript{123} Other sugar babies are involved in arrangements that include health insurance, as 52% of polled sugar babies are uninsured.\textsuperscript{124}

\textsuperscript{115} Id.
\textsuperscript{117} Id.
\textsuperscript{119} Stossel, Brosseau, & Kirell, supra note 116.
\textsuperscript{120} Id.
\textsuperscript{122} Stossel, Brosseau, & Kirell, supra note 116.
\textsuperscript{123} Padawer, supra note 1.
\textsuperscript{124} \textit{SUGAR DADDY & SUGAR BABY BLOG}, supra note 121.
There are some sugar daddies that choose not to pay for health insurance directly, but they do make sure they pay a high enough allowance for the women to buy their own insurance.\textsuperscript{125} The sugar babies have control over how much money and/or benefits they will receive and often negotiate with sugar daddies. Especially during today's economy, becoming a sugar baby is desirable to many young women. Conversely, another result of the poor economy is that there are less sugar daddies available.\textsuperscript{126} In response to this, some sugar babies have paired up with each other as "sugar sisters," where they split the sugar daddy's benefits between them.\textsuperscript{127}

Most sugar baby posts describe the sugar babies' bodies, what they are willing to offer sexually, and their financial expectations in return. One sugar baby describes herself as someone who "love[s] to please."\textsuperscript{128} She expects between $1,000-$3,000 monthly.\textsuperscript{129} Her profile states: "I am young healthy blonde hair with blue eyes and natural D boobs. I have a high sex drive . . . I am flexible and can be a classy lady for a party or a naughty kitten alone. Give me a try and I will make you smile. I also enjoy a good spanking."\textsuperscript{130} Other sugar babies are looking for contributions to charitable causes they are affiliated with.\textsuperscript{131} One sugar baby seeking a graduate degree seeks between $3,200 and $5,000 per month, and after graphically describing the sexual nature of her body in her post, she states "I might ask u to help me with this one thing/ my 501(c)(3) recognized Youth Outreach program that I've been crafting for the past few

\textsuperscript{125} See id.


\textsuperscript{127} See Wade, supra note 126.


\textsuperscript{129} Id.

\textsuperscript{130} Id.

summers.” Like most sugar baby postings, the women post what they need and what they can offer in return.

While most of the sugar babies’ posts consist of descriptions of their own bodies, the sugar daddies’ posts mostly describe the physical attributes they seek from sugar babies as well as the money they are willing to offer to have their desires met. The ideal relationship of one 39 year-old “sugar daddy” is as follows:

[A] monogamous business-associate-with-benefits deal in which he pursues an entrepreneurial project with a young, beautiful, intelligent woman. He provides financial backing, mentoring and networking; she provides sex, fun and, inevitably, a bit of worshiping, all of which make him feel virile and influential. In between vacations using his private jet, both work hard on the project.

While the proposed arrangements vary, they all share the common theme of sex in exchange for something of value.

Types of mutually beneficial relationships vary drastically. An eighteen-year-old New York City part-time model named Melanie lives a stress-free lifestyle, but her modeling does not fund this. Rather, her 40-year-old married sugar daddy funds her lifestyle. Melanie’s sugar daddy pays the rent on her $5,000 per month apartment and in return he gets a sexual companion. Other relationships consist of lavish four hour dates about once a week where the sugar daddy gives the sugar baby financial assistance in the form of a lump sum per visit.

One 50 year-old entrepreneur told ABC’s 20/20 that he likes SeekingArrangement because “[y]ou can make a deal with the girl. You don’t have to worry about whether it’s going to be ‘yes’ or ‘no’...[y]ou don’t have to take them to dinner and hope that maybe something will happen. The
cards are on the table.” It seems as though he is arguing that a deal to have sex in exchange for money or gifts is easier than going on a regular date. While that may be true, it has long been established that “sexual activity with another person in exchange for something of economic value” is prostitution. Therefore while a “deal with the girl” may be easier or more economical for some, morals aside, it happens to be against the law. The entrepreneur further stated:

[In 1955, my father made an arrangement with my mother. He put a ring on her finger and he said, “I’m going to support you for the rest of your life.” So my father made an arrangement with my mother. If you make an arrangement for an hour, it’s sleazy. But an arrangement for 50 years is OK. So, is it a time factor?

What many fail to realize however, is that it is not about whether or not an arrangement is “sleazy,” it has to do with whether or not an arrangement is legal.

In response to whether she thought sugar daddy relationships were exploitive, a twenty three year-old Rutgers University student and sugar baby laughed and said “[n]o, I turned promiscuity into profit . . . I get more than I give because these men are paying for companionship and a fantasy.” Many college students defend their choice to involve themselves with sugar daddies because their only other option to gain income would be working three jobs at minimum wage. Depending on how many sugar daddies one has at the same time, they can put in less time working and have more fun doing it, and as a result, have more time to focus on school work. In January of 2012, SeekingArrangement released its Top 20 list of universities

138 Stossel, Brosseau & Kirell, supra note 116.
139 N.J. STAT. § 2C:34-1 (West 2010).
140 Id.
141 Stossel, Brosseau & Kirell, supra note 116.
143 See Padawer, supra note 1.
144 See id.
who had the largest amount of sugar baby signups in 2011.145 New York University came in first with 185 sugar baby signups followed by University of Georgia at 155 sign ups.146 The universities on the list ranged across a wide spectrum of prestige as well as geographical location, making it very clear sugar dating is a reality at universities across the United States.147

III. IS SUGAR DATING A FORM OF PROSTITUTION?

A. IS THERE A DIFFERENCE BETWEEN A SUGAR BABY AND A PROSTITUTE?

Most of the relationships on the sugar dating websites differ slightly from certain types of prostitution, such as street walking. Even the laws and law enforcement seem to distinguish between the two as they consider street prostitution (with lower class participants) to be illegal and punishable, while they consider sugar dating (with higher class participants) to be legal and not punishable.148

When examining the parallels between sugar dating and prostitution, there are four predominant aspects to be considered: monetary relationships and contracts, the language used and specificity of partner requirements, the length of the arrangement, and whether or not sex is involved. Each of these aspects has legal implications which will be explored in this section to illustrate that sugar dating should, in fact, be illegal as a form of prostitution.

146 Id.
147 Id. The list also included University of Phoenix, Tulane University, Temple University, Virginia Community College, University of Southern Florida, Arizona State University, Michigan State University, Ivy Tech Community College, Georgia State University, University of Wisconsin, Penn State University, University of Central Florida, Kent University, Maricopa Community College, Indiana University, University of California, Berkeley, The Art Institute, and Florida International University.
148 See Dirty Money, Video, supra note 5.
1. Monetary Requirements

While many sugar arrangements fit the definition of prostitution as codified by state statutes, there are clearly nuances between the arrangements that may explain why sugar babies and sugar daddies avoid prosecution. One possible explanation is that there are other similarly arranged relationships in our society that are not prosecuted.149 For example, a University of Chicago Law School professor, Richard Epstein, said, "[w]e have senior couples that live together without marriage because of their need to keep Social Security."150 And that "[t]he sugar daddy could well be an informal arrangement that is a substitute for a prenuptial agreement."151 Comparing sugar arrangements to relationships that society considers socially acceptable is a common strategy in attempting to legitimize the arrangements.

Some argue that while the sugar dating websites themselves may be legal, once money is exchanged for sex, it becomes a crime.152 In response to that, sugar babies have argued that it is not anyone else's business if someone wants to financially assist them.153 The same argument however, can be made in defense of general prostitution, which is known to be illegal. This defense does not offer an argument that distinguishes sugar daddy dating from prostitution. Though some sugar babies require only gifts in return for sex as opposed to money, that is still prostitution because there is no requirement that the compensation be monetary.154 Most states only require that there be sexual relations in exchange for some form of consideration for an act of prostitution to be committed.155 For example, a gold necklace is sufficient as compensation for sexual services.156

149 See Guzder, supra note 142.
150 Id.
151 Id.
152 See Stossel, Brosseau & Kirell, supra note 116.
153 See id.
156 Muse, 522 A.2d at 888.
The 1976 case of *Marvin v. Marvin* held that a contract that includes sexual services does not violate public policy unless the contract is based solely on sex.\(^{157}\) In *Marvin*, the plaintiff asserted that she and the defendant entered into an oral agreement that the parties would live together and equally share all property accumulated while they were living together.\(^{158}\) The parties, who were not married, agreed that they would hold themselves out as husband and wife, and the plaintiff would become a companion, homemaker, and housekeeper for the defendant.\(^{159}\) The plaintiff agreed to give up her career and the defendant agreed to support her financially for the rest of her life.\(^{160}\) Years later, the plaintiff alleged that she was forced to leave the home and the defendant refused to pay her support or distribute any interest that she had in the property accumulated while they were living together.\(^{161}\) The defendant argued that the contract violated public policy because it was based on the parties' illicit relationship and therefore unenforceable.\(^{162}\) The court held that if an agreement is based purely on sexual services, then the agreement is deemed void as a violation of public policy.\(^{163}\) The court, however, went on to say that, “a contract between non-marital partners is unenforceable only to the extent that it explicitly rests upon the immoral and illicit consideration of meretricious sexual services.”\(^{164}\) Therefore an entire contract will be found to be “invalid only if sexual acts form an inseparable part of the consideration for the agreement.”\(^{165}\) While many of the sugar dating agreements include other forms of consideration such as companionship and mentoring, most of the relationships rest upon consideration of a sexual exchange, and consequently would be unenforceable as contracts.


\(^{158}\) Id. at 116.

\(^{159}\) Id. at 110.

\(^{160}\) Id.

\(^{161}\) Id.

\(^{162}\) Id. at 112.

\(^{163}\) Id.

\(^{164}\) Id. (emphasis added).

\(^{165}\) Id. at 114.
Similar to Marvin, in the case of Whorton v. Dillingham the parties entered into a cohabitation agreement.\textsuperscript{166} The parties were involved in a homosexual relationship, and orally agreed that the plaintiff would halt his education and his full time occupation would be working as the defendant's "chauffeur, bodyguard, social and business secretary, partner and counselor in real estate investments, and [plaintiff would] appear on [defendant's] behalf when requested."\textsuperscript{167} As consideration for plaintiff's promises, defendant agreed to support plaintiff for life, to give plaintiff a one-half equity interest in real estate the parties acquired jointly, open, maintain, and allow access to his personal bank accounts.\textsuperscript{168} Lastly, as part of the agreement, the parties were to engage in a homosexual relationship.\textsuperscript{169} Interestingly, the parties agreed that if any part of the agreement was found to unenforceable, that portion would be severed from the agreement and the remaining provisions would remain in effect.\textsuperscript{170} Later, the plaintiff asserted that defendant stopped complying with the agreement and brought an action claiming property rights.\textsuperscript{171} Therefore, the issue before the court was "whether the sexual component of the consideration [was] severable from the remaining portions of the contract."\textsuperscript{172} The court in Whorton held that plaintiff "stated a cause of action arising from a contract supported by consideration independent of sexual services."\textsuperscript{173} The court noted that services such as being a "chauffeur, bodyguard, secretary, and partner and counselor in real estate investments" are the type of services that are of monetary value and usually compensated for.\textsuperscript{174} The court however went on to state that "such services as being a constant companion and confidant are not the type which are usually monetarily compensated nor considered to have a 'value' for purposes of contract consideration, and, absent peculiar circumstances, would

\textsuperscript{167} Id. at 450.
\textsuperscript{168} Id.
\textsuperscript{169} Id.
\textsuperscript{170} Id.
\textsuperscript{171} Id.
\textsuperscript{172} Id. at 452.
\textsuperscript{173} Id. at 454.
\textsuperscript{174} Id.
likely be considered so intertwined with the sexual relationship as to be inseparable." Therefore unless the non-monied party of the sugar dating arrangement provided services in addition to sex and companionship, the arrangement violates public policy.

2. Language Used and Specificity of Partner Requirements

What may seem most puzzling is that those who post on Craigslist and other online periodicals advertising erotic massages or just themselves, almost never mention sex or use the word prostitution, as opposed to sugar dating websites, where it is not uncommon for a sugar baby to mention her sexual strengths. The sugar dating websites actually make the transaction more efficient because they do not use coded language. Ironically, it may be the specificity of Sugar Dating postings that keep law enforcement at bay with accusations of prostitution.

A reason that sugar babies get away with mentioning sex on their profiles or postings may be because sugar babies usually are not willing to sell themselves to just anyone; they are looking for a specific buyer to enter into a mutually beneficial arrangement. One sugar baby who is open to negotiating her support payment, says:

I am very flexible and open to different types of relationships or arrangements. . . In an ideal world you would be interested in art, science (especially anthropology and cultural studies) and literature and we would have many things to teach one another. What is important to me is the time I am physically in someone's presence. I feel that if that time together is wonderful and fulfilling then it really isn't my business what you are doing when we aren't together.

175 Id.; see also Jones v. Daly, 122 Cal.App.3d 500 (1981).
176 See Whorton, 202 Cal.App.3d at 454.
178 See Dirty Money, Video, supra note 5.
At first this profile appears to be more like the more common dating website like match.com, however, the nuance here is that she states she does not care what the man does when they are not in each other’s presence. This makes the arrangement seem closer to prostitution. However, the key to avoiding accusations of prostitution may be to mention terms like “relationship” and to seek specific characteristics in their sugar daddies because then it seems more like a personal ad for a companion as opposed to sex for money. Quite often, sugar babies specifically advertise their “companionship” and “affection.” Those who post classified ads offering their services or have escort service profiles, on the other hand, seem to be less discriminatory when accepting clients, which makes it necessary to speak in code and not mention sex at all. When sex workers are willing to meet with anyone, it makes law enforcement’s job easier.

While prostitutes who use online periodicals almost never use the word prostitute, they are blunt in a different way than sugar babies. These prostitutes usually post a provocative photograph, slogan, and phone number. Essentially, they send the message, “I’m here for whoever wants me,” while many sugar babies require certain credentials. For example, after Albuquerque, New Mexico detectives found an advertisement on Backpage.com titled "Rocky Mountain’s Sexiest Redhead" with explicit photographs attached, they called the phone number listed, made arrangements to purchase the woman’s services, and arrested her. A spokeswoman for the police department commented, "It's not that they're discreet -- they're blatant about it.”

3. Length of Arrangement

Sugar dating arrangements are advertised to be “friendships” or “relationships” that will last over an

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181 See Alleged Internet Prostitution Ring Busted, supra note 92; Smith, supra note 80.
182 See postings on Craigslist.org.
183 Alleged Internet Prostitution Ring Busted, supra note 92.
184 Id.
extended length of time, and this characteristic of time seems to protect many sugar babies and daddies from investigations or allegations of prostitution. Other types of online classifieds that offer one service at one time, however, carry a heavier risk of law enforcement interference than sugar dating websites.\footnote{See Kroll, supra note 180.} For example, Craigslist is easy for police to monitor and does not require the same type of investigation as sugar daddy websites.\footnote{See id.} For example, a Chappaqua, New York mother and registered nurse was accused of soliciting prostitution on Craigslist, after offering a “sensuous massage” to “generous gentlemen,” even though she never mentioned sex in her advertisement, when offered, she accepted $200 for sex with an undercover police officer who responded to the ad.\footnote{See Smith, supra note 80.} This most likely only took a few hours for the police to complete. Law enforcement does not have the time and resources to pose as multi-millionaires and sit through lavish dinners with potential “sugar babies.” While it is likely that the sugar baby would eventually engage in prostitution, it is easier and less time consuming to uncover a faster moving, even exchange, such as an erotic massage that leads to sex.

Another difference between traditional prostitution and sugar arrangements is that sugar babies do not charge by hourly rates, and this makes it more difficult to prove that sex was exchanged directly for money or some other form of consideration.\footnote{Dirty Money, Video, supra note 5.} Further, an hourly rate is rarely discussed in sugar arrangements.\footnote{Id.} Rather, an ongoing monthly rate is established or the sugar daddy gives the sugar baby a discretionary lump sum without being prompted.\footnote{Id.} Sugar daddies also do not use online forums to critique the sugar babies as many other clients of prostitutes do. There is however a sugar daddy blog for “mutually beneficial arrangement advice, tips, questions, and stories.”\footnote{SUGAR DADDY BLOG, http://www.seekingarrangement.com/blog/ (last visited Jan. 20, 2012).} Although, the sugar daddy blog is more akin to a dating advice blog as opposed to the Eros Guide.
The form and style of the transaction differentiates the sugar arrangement from what society considers the more traditional form of prostitution. And while these differences may only seem like slight nuances, they appear to differentiate the arrangements enough to curb law enforcement interference.

4. With or Without Sex

Finally, there is one major factor that distinguishes sugar dating arrangements from prostitution—not all sugar dating arrangements include sex. There are sugar babies that are not prostitutes at all. While almost every sugar arrangement does involve sex, there are exceptions. One sugar daddy told his sugar baby that the only thing he wanted was for her to do well in school.192 All the sugar daddy required was that his sugar baby send him her school transcript, and if he was satisfied, he sent her $500 per month.193 They never even met each other or spoke on the phone.194 Their means of communications were hand written letters where the sugar daddy would encourage the sugar baby’s studies.195 While this arrangement is rare, it is this type of situation that makes it difficult to charge other sugar babies with prostitution.

Regardless of the differences between sugar babies and the traditional prostitute, and excluding the sugar babies who do not have sexual contact with their sugar daddies, the majority of sugar babies still fulfill each required element of prostitution. For example, an Indian Wells, California sugar baby calls herself someone who “loves to please.”196 She seeks a sugar daddy who will pay between $1,000 and $3,000 a month and states the following on her profile: “I found out many men just want to pay for sex im (sic) not against this.”197 In California, one commits prostitution when they “engage in sexual conduct for money

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192 See Padawer, supra note 1.
193 Id.
194 Id.
195 Id.
197 Id.
or other consideration." This sugar baby asks for money and even specifically states that she is not against the idea of sex for money. If law enforcement had the time and resources, it is probable that they would be able to charge this sugar baby with prostitution after an arrangement was agreed upon.

**B. Law Enforcement of Sugar Dating**

1. **Why Law Enforcement Does Not Seem to be Cracking Down on Sugar Dating**

   One explanation of why sugar babies are seldom prosecuted is that law enforcement is publicly funded, and each dollar spent must yield results. It is very difficult to yield quick results for sugar dating investigations. Because it takes too much time and money to record telephone conversations, obtain phone records, and secretly record suspects just to charge them with misdemeanors, the police often choose not to investigate sugar babies. Instead, it is easier to arrest the women who are visible on the street. Taking that idea a step further explains why those who post on more open and monitored areas of the Internet such as Craigslist, put themselves more at risk. This is especially true when people do not attempt to conceal the type of offer they are proposing.

2. **Some Sugar Babies and Daddies have been Caught and Charged**

   While the specialty sugar daddy websites such as SeekingArrangement are less likely to be monitored by law enforcement, the example below proves that one can never be 100% safe when engaging in illegal activity. There are some sugar babies and daddies that make law enforcement’s job easy. It all comes down to how much time law enforcement is willing to devote in order to catch their suspect.

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199 See Kroll, supra note 180.
200 Id.
201 Id.; see also Alleged Internet Prostitution Ring Busted, supra note 92.
202 Dirty Money, Video, supra note 5.
203 See Kroll, supra note 180.
Dr. Roger Weiner's story supports this theory on law enforcement involvement. In contrast to the previous sugar daddy and sugar baby profiles, Dr. Weiner's correspondences do not give the impression of a relationship in the slightest way.\textsuperscript{204} In one chat with a sugar baby, through SugarDaddieForMe.com, Weiner said, "[d]inner and a nite [sic] at the Peabody......what would you like as your consulting fee?.......is it negotiable. I would suggest that the more adventurous you are, the higher the fee. What are your boundaries? What is the 'kinkiest' thing you ever did?"\textsuperscript{205} Weiner told someone else to "send a photo and maybe [S]anta will start ur [sic] gifts tonight."\textsuperscript{206} Weiner told yet another Sugar Daddy For Me member that they should get together for an interview and that she must prepare for the interview by wearing "victoria secret undies [sic]."\textsuperscript{207} He later told her, "If you are bored and would like to use your cute little body to get your first allowance we could meet in a motel..."\textsuperscript{208} On May 17, 2009, the Mississippi cardiologist was arrested by the FBI and charged with human trafficking and prostitution.\textsuperscript{209}

Dr. Roger Weiner's charges were later thrown out based on the federal court not having jurisdiction.\textsuperscript{210} Regardless, the doctor was charged for something that many men and women openly participate in. Perhaps Dr. Weiner is one of the only participants in this recent phenomenon who was charged because he violated the Mann Act by traveling through interstate commerce. It is likely, however, that many of the other sugar daddies and sugar babies also travel through interstate commerce. It appears to be his tone and pure interest in sex as opposed to proposing an ongoing arrangement with various elements that most significantly led to his charges. When it comes down to the

\textsuperscript{205} Id.
\textsuperscript{207} Aff. In Support of Criminal Compl., supra note 204, at ¶9.
\textsuperscript{208} Id.
\textsuperscript{209} See Broach, supra note 206; Aff. in Support of Criminal Compl. ¶21.
basic exchange though, there is no difference between Dr. Weiner's proposal and the ability to “make a deal with the girl” that the 50 year-old entrepreneur proudly shared with ABC's 20/20. Even if other participants in sugar baby and sugar daddy relationships are not being as blunt, it is clear that most of them are not different than Dr. Weiner. The fact that charges were initially brought against Weiner establishes that sugar dating is not above the law.

3. Some Caught and Charged for Other Crimes: Extortion

Law enforcement has shown an interest in sugar daddy arrangements when crimes that they believe to be more serious are involved. Though prostitution charges are seldom brought against sugar daddy website participants, extortion charges are more common and highly publicized.\textsuperscript{211} For example, Stephen Dent, a 54-year old, wealthy, married, Harvard educated Connecticut businessman and DuPont heir, was blackmailed by SeekingArrangement users.\textsuperscript{212} It is rumored that Dent, a multimillionaire, paid a woman he met on the site $15,000 to have sex with him for one night at a Greenwich, Connecticut hotel.\textsuperscript{213} The father of two's involvement in this industry shocked many friends and acquaintances.\textsuperscript{214} Dent allegedly wrote the following to one sugar baby: “[I] am not available at night or [on] weekends. Furthermore, we would need to meet only when my wife is away.... Regarding your financial assistance, my initial thoughts are cash compensation in the range of $2,000 to $3,000 per meeting, assuming that we meet about twice a month, plus expenses.”\textsuperscript{215} This arrangement is representative of many of the sugar relationships formed on SeekingArrangement.

\textsuperscript{211} See James, supra note 118.
\textsuperscript{214} James, supra note 118.
\textsuperscript{215} Rothman, supra note 213.
Many fail to realize that sugar daddy websites attract con artists who take advantage of wealthy men. One woman that Dent met online allegedly had a mafia boyfriend who demanded $40,000 from Dent after he found out that his girlfriend and Dent had sex. A few months after the first extortionist was arrested, Dent was still using SeekingArrangement and was blackmailed again. The second time the extortionists were a couple from Ohio who were charged with attempting to extort $50,000 in addition to the $100,000 Dent already paid them. While Dent concedes that he has sent emails offering to pay for sex, the police chose not to charge him with a crime because they did not want to deter other sugar daddy extortion victims from coming forward.

4. Legal Implications for the Online Periodicals and Sugar Dating Websites

It could be argued that if those who solicit sex through the Internet are prostitutes, then the websites that facilitate the postings are virtual pimps. As established above, there are Internet prostitutes and clients who escape liability and there are also those who are charged with the crime. But Internet prostitutes and their clients are not the only ones who should be held responsible for their actions. There is a third party involved—the websites that facilitate the arrangements—but the websites escape liability. The case of Dart v. Craigslist is a prime example. In July 2009, a Cook County, Illinois sheriff, Thomas Dart, filed a lawsuit against Craigslist alleging that “Craigslist’s erotic-services category constitutes a public nuisance” by violating federal, state, and local prostitution laws. Dart contended that Craigslist solicited prostitution within the meaning of Illinois law by “arrang[ing] meetings of persons for purposes of prostitution and directing persons to places of

216 James, supra note 118.
217 Rothman, supra note 213.
218 Id.
219 Id.
220 James, supra note 118.
222 Id. at 963.
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prostitution.”223 He further alleged that Craigslist organizes the prostitution process, and as a result, violates Chicago’s Municipal Code, which makes it illegal to “assist any person by any means to seek or to find any prostitute.”224 Dart argued that, despite Craigslist’s warnings, users regularly post advertisements in the erotic services category “openly promising sex for money.”225

After the Sheriff filed the lawsuit, Craigslist voluntarily pulled its “erotic services” section off the website and replaced it with an “adult services” section.226 Many critics argue, however, that there is little to no difference between the “erotic” and “adult” services.227 The Sheriff argued that, “a change in the category name from ‘Erotic Services’ to ‘Adult Services’ had failed to deter prostitutes from using the site.”228 The court found that according to § 230(c)(1) of the Communications Decency Act, they could not consider Craigslist to be the creator of the advertisements.229 The Communications Decency Act provides that “no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another content provider.”230 The Act further provides that

[n]o provider or user of an interactive computer service shall be held liable on account of any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be

225 Id. at 962.
228 Dart, 665 F. Supp. 2d at 961; Mike Robinson, Judge Dismisses ‘Adult Services’ Craigslist Suit, MSNBC (Oct. 22, 2009), http://www.msnbc.msn.com/id/33440825/ns/technology_and_science-tech_and_gadgets/. It should be noted that Craigslist removed the “adult services” section in 2010 but the same posts can be found in the “casual encounters” section.
229 Dart, 665 F. Supp. 2d at 967.
obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.\textsuperscript{231}

Under this Act, the court held that Craigslist should not be held liable because it did not create the objectionable material. In response to Dart's allegation that "Craigslist provides the contact information of prostitutes and brothels," the court said that "Craigslist doesn't provide that information, its users do."\textsuperscript{232} But Dart asserted that Craigslist encourages its users to post the prostitution advertisements "by having an adult services category with subsections like w4m and by permitting the users to search through the ads based on their preferences."\textsuperscript{233} While the court conceded that a website operator can be considered a content provider for information they are responsible for creating or developing, they did not find anything in Craigslist's services that encourage anyone to post a specific listing.\textsuperscript{234} Further, the court said that, "[i]ntermediaries are not culpable for 'aiding and abetting' their customers who misuse their services to commit unlawful acts."\textsuperscript{235} The court went on to say that, "the phrase 'adult' even in conjunction with "services," is not unlawful in itself nor does it necessarily call for unlawful content."\textsuperscript{236} Using an example of an advertisement for erotic dancing, the court found that not all postings under the "adult services" category constitute prostitution, and therefore granted Craigslist's motion for judgment on the pleadings.

According to the court in Dart, a website is not liable for prostitution if they do not create the advertisements, if they offer other services besides prostitution, and if they warn its users not to post illegal content.\textsuperscript{237} This ruling gives sugar websites like SeekingArrangement a questionable status. While SeekingArrangement is not the author of the specific profiles, the website provides a blank profile template for

\textsuperscript{231} 47 U.S.C.A. §230(c)(2).
\textsuperscript{232} Dart, 665 F. Supp. 2d at 967.
\textsuperscript{233} Dart, 665 F. Supp. 2d at 967; "W4M" means Women for Men.
\textsuperscript{234} Id.
\textsuperscript{235} Id.
\textsuperscript{236} Id.
\textsuperscript{237} See Dart, 665 F. Supp. 2d at 961.
the user to fill in.\textsuperscript{238} Under the section titled “Arrangement You Are Seeking,” there is a pull down menu listing different amounts of money.\textsuperscript{239} Therefore the website does more than encourage the women to select an amount of money, rather, they require it, as the website created the profile template.\textsuperscript{240} Unlike online periodicals such as Craigslist, finding “mutually beneficial arrangements” is the only service that SeekingArrangement and its progeny offer.\textsuperscript{241}

Furthermore, while SeekingArrangement’s CEO, Brandon Wade claims that his website does not allow prostitution, there is no blatant warning on the website that prohibits the act.\textsuperscript{242} It also appears that Brandon Wade’s definition of prostitution is different than the definition codified by state statutes.\textsuperscript{243} In fact, SeekingArrangement does not share any of the features of Craigslist that led the court in Dart to dismiss the complaint.

\textbf{CONCLUSION}

The majority of sugar dating arrangements constitute prostitution, but there still seems to be a question as to whether they are legally acceptable. No matter how it is packaged, or what time period it is, sex in exchange for money is prostitution. The real determination is made by considering who someone is, what they are doing, where they are doing it, who they are doing it with, and why they are doing it.

Engaging in sexual relations in exchange for money or something of value is prostitution. Although America’s typical idea of a prostitute is a streetwalker controlled by a pimp, the Internet has allowed for a broad expansion of

\textsuperscript{239} Id.
\textsuperscript{240} Id.
\textsuperscript{241} The Elite Sugar Daddy Dating Site, SeekingArrangement, supra note 104.
prostitution participants. The internet has made “mutually beneficial arrangements” a common way for debt strapped 20-somethings to earn money. An arrangement is not excluded from falling under the definition of prostitution simply because there is dinner involved. It becomes more blurry however when the parties to the arrangement require certain personality attributes and interests.

The more complex society becomes, the lenses through which prostitution is viewed change. Today, prostitution is not as clear-cut as it once was. If sugar dating continues to be legal and grows more common, the slope will become even more slippery when defining prostitution. If the current status of sugar dating does not change, it is possible that Facebook and other social networking websites will, too, become outlets for prostitution. Only time will tell.