

THE ARCHAIC ATTEMPTS TO PROTECT NONHUMAN  
SUFFERING: SUGGESTIONS FOR THE  
ADVANCEMENT OF LEGISLATIVE REGULATION OF  
ONLINE DEPICTIONS OF ANIMAL CRUELTY

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*The Internet is often used to disseminate acts of cruelty to nonhuman animals through social media postings, live feeds, remote-controlled Internet hunting, and industry videos, such as dogfighting and crush videos. Some state and federal laws regulate the depiction of animal cruelty online, either directly or indirectly. However, current statutory regulations do not fully address or completely prohibit the viewing, promoting, and depicting of animal cruelty online. Preventing Internet animal cruelty requires new or revised legislation encompassing the marketing, promoting, and depicting of online animal suffering. While more specific laws are necessary, legislators must consider numerous issues and potential ramifications of creating prohibitive legislation directed at online depictions of animal cruelty.*

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## I. INTRODUCTION

The rapid spread of the Internet and technological advancement has enabled the instantaneous sharing of information on a global level. This information can be educational, focused on helping humanity on a domestic and international level, and representative of collective aid to those who may need it, such as help in natural disasters or fundraising for people in need. However, largely due to the anonymity of its users and the desire to ‘go viral’ or become ‘insta-famous,’ there is difficulty in regulating its use, particularly with behaviors that can be deemed as offensive or shocking to a reasonable person. In fact, posts that display such behavior often get the most ‘views.’ One such behavior is the depiction of animal cruelty online. The Internet, particularly with regard to social media, has increasingly been used as a tool for the dissemination of acts of cruelty and deliberate harm to animals.<sup>1</sup>

## II. BACKGROUND CASES

### A. *Social Media*

Recent cases of online depictions of animal cruelty on social media include two cases involving the killing of pit bull dogs, one of which was an emotional support animal being brutalized, and one case involving the torture of a cat on live feed. First, in 2016, Steven Sadler and Boots Stanley, both of Arkansas, videotaped themselves slitting the throat of a stolen pit bull, Choppa, and posted it on Snapchat.<sup>2</sup> Sadler and Stanley first placed the dog on the back of a horse in the hopes of him falling off and getting kicked to death.<sup>3</sup> When that did not work, they used a knife to slit the dog’s throat, all the while laughing and stating that “Michael Vick has nothing on me.”<sup>4</sup> During the entire video, the dog showed no aggression or resistance, and did nothing other than wag his tail. The video went viral and was shared on Snapchat prior to hitting the mainstream media.<sup>5</sup>

The individuals were each charged with aggravated cruelty to animals and conspiracy.<sup>6</sup> The prosecution requested a “severe sentence commensurate with the crime,” and the defense referenced Chapter

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<sup>1</sup> *Cruelty on the Internet*, PETA, <https://www.peta.org/action/get-active-online/cruelty-internet/> [<https://perma.cc/KYA4-S94M>] (accessed Feb. 7, 2020).

<sup>2</sup> Fleur Dawes, *Louisiana Snapchat Dog Slayers to be Sentenced*, IN DEF. OF ANIMALS (June 14, 2018), <https://www.idausa.org/campaign/justice-for-animals/latest-news/louisiana-snapchat-dog-slayers-to-be-sentenced/> [<https://perma.cc/2VNY-73JV>] (accessed Feb. 7, 2020).

<sup>3</sup> Brandy Arnold, *No Jail Time for ‘Snapchat Dog Slayers’ Sentenced Only to Probation*, DOGINGTON POST, <https://www.dogingtonpost.com/no-jail-time-for-snapchat-dog-slayers-sentenced-only-to-probation/> [<https://perma.cc/FMS6-TX6N>] (accessed Feb. 7, 2020).

<sup>4</sup> *Id.*

<sup>5</sup> Dawes, *supra* note 2.

<sup>6</sup> *Id.*

Five of the Bastrop, Louisiana Code of Ordinances.<sup>7</sup> The defense argued Sections 5-23, 5-29, and 5-31 stated that there should be a presumption that any pit bull is a dangerous dog and should be subject to requirements such as a leash law, confinement, and display of ‘Beware of Dog’ signage.<sup>8</sup> In addition, Section 5-35 stated that the director of animal control, or their designee, may kill any dangerous or vicious dog.<sup>9</sup> After both individuals pleaded guilty, both individuals were sentenced to three years in prison—which was later reduced to one year of probation, a fine, and community service.<sup>10</sup> The public response, particularly on social media, extended internationally and expressed disgust for both the original act and the lenient sentence.<sup>11</sup>

Second, in 2017, Marinna Rollins and her boyfriend, Jarren Heng, tied Rollins’s emotional support dog named Cami,<sup>12</sup> a pit bull, to a tree in the woods and videotaped Rollins shooting Cami in the head five times.<sup>13</sup> The adopted shelter dog originally belonged to Rollins’s husband, Matt, who had asked her to watch Cami while he was deployed to Korea.<sup>14</sup> While Matt was in Korea, Rollins had Cami registered as her Emotional Support Animal.<sup>15</sup> After Rollins shot Cami, Heng asked for the weapon and stated, “I want to pop him,” before shooting him

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<sup>7</sup> *Probation for Slitting Dogs Throat: Posting it Online*, ASSOCIATED PRESS (June 14, 2018), <https://apnews.com/17fd30706c384f53aaec1892eaadbb85> [<https://perma.cc/8GDL-6D5V>] (accessed Feb. 7, 2020).

<sup>8</sup> BASTROP, LA., CODE OF ORDINANCES, §§ 5–23, 5–29, 5–31 (2018).

<sup>9</sup> BASTROP, LA., CODE OF ORDINANCES, § 5–35 (2018).

<sup>10</sup> Doll Stanley, *Demand Reform After Lenient Sentencing of Sadistic Snapchat Dog Slayers*, IN DEF. OF ANIMALS (June 22, 2018), <https://www.idausa.org/campaign/justice-for-animals/latest-news/demand-reform-after-lenient-sentencing-of-sadistic-snapchat-dog-slayers/> [<https://perma.cc/7QP8-STET>] (accessed Feb. 7, 2020).

<sup>11</sup> Denise Carey-Costa, *Another Case of Animal Cruelty in Bastrop, Louisiana*, PET RESCUE REP. (Aug. 7, 2018), <https://petrescuereport.com/2018/another-case-of-animal-cruelty-in-bastrop-louisiana/> [<https://perma.cc/23TK-Y2WF>] (accessed Feb. 7, 2020) (indicating “a petition was launched and over 21,000 letters poured in from around the world” demanding justice for Choppa and that there was a strong public outcry at the leniency of Louisiana’s animal cruelty laws after Sadler and Stanley were sentenced to “only three years’ probation, a fine, and community service”).

<sup>12</sup> The dog originally was named Huey, but Marinna registered the dog as her emotional support dog and renamed him Camboui, using the nicknames Cam or Cami. See Justice for Huey, *The Story, from Huey’s Owner Matt Dyer*, FACEBOOK (Apr. 26, 2019), <https://www.facebook.com/justiceforhuey/> [<https://perma.cc/UW2Y-HXXE>] (Feb. 7, 2020) (“The stories all over the internet call the dog Cam, but his actual name is Huey. He was renamed Camboui by Matt Dyer’s estranged wife Marinna Rollins.”).

<sup>13</sup> Alexandra Larkin & Sophie Lewis, *Veteran Arrested in Dog’s Killing on Facebook Found Dead*, CNN (May 9, 2017), <https://www.cnn.com/2017/05/09/us/nc-veteran-dog-abuse-suicide-trnd/index.html> [<https://perma.cc/8N5A-BFSW>] (accessed Feb. 7, 2020).

<sup>14</sup> Andy Wolf, *Owner of Dog Slain by Veteran and Soldier Speaks out on What Really Happened*, POPULAR MILITARY (Apr. 26, 2017), <https://popularmilitary.com/exclusive-owner-dog-slain-veteran-soldier-speaks-really-happened/> [<https://perma.cc/8HUA-UZA5>] (accessed Feb. 7, 2020).

<sup>15</sup> *Id.*

five additional times.<sup>16</sup> Rollins and Heng were laughing throughout the killing, and posed for pictures with Cami after he was killed.<sup>17</sup> They later filmed themselves burying Cami in a shallow grave in the woods and placing a sheet on him.<sup>18</sup> The video was posted on Facebook and it immediately went viral.<sup>19</sup> Both individuals were charged with felony animal cruelty.<sup>20</sup> Rollins committed suicide prior to trial and Heng, who was and still is active duty army at Fort Bragg, pleaded guilty to the lesser charges of having a gun on educational property and conspiracy to commit cruelty to animals.<sup>21</sup> Heng received a 6–17-month prison sentence, which was later suspended, 12 months supervised probation, and was ordered to pay a \$100 fine and \$450 in court costs, continue psychiatric counseling, and, ironically, perform community service in an animal shelter.<sup>22</sup>

The third case involving an online depiction of animal cruelty on social media, which also occurred in 2017, was that of 21-year-old Tyrike Richardson of Staten Island.<sup>23</sup> Richardson was convicted of “mercilessly” torturing his neighbor’s cat, Chester, and then throwing the beaten cat into a trash can.<sup>24</sup> Richardson took a stick and a knife and beat Chester in the face, head, and body, resulting in the cat suffering from “blunt force trauma, pneumothorax . . . rib fractures, contusions on the ear, bloody nose, blood in the urine, broken teeth, tongue abrasions, liver and kidney injuries, head trauma, and severe muscle injury.”<sup>25</sup> The entire event was filmed live on a Facebook feed.<sup>26</sup> District Attorney Michael McMahon noted the import of the live feed, stating, “[N]ot only did this defendant mercilessly torture an innocent animal, but he showed off his sick and twisted actions by broadcasting video of the incident to Facebook . . . [M]y office will not

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<sup>16</sup> *I Want to Pop Him’: Video Shows Solider, Veteran Shooting Dog*, WRAL.COM (Apr. 26, 2017), <https://www.wral.com/i-want-to-pop-him-video-shows-soldier-veteran-shootingdog/16664791/> [<https://perma.cc/W2LC-93CD>] (accessed Feb. 7, 2020).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *No Justice for Camboui, the PTSD Dog Slain on Camera by Two Fort Bragg Soldiers*, OHMIDOG!, <https://www.ohmidog.com/2017/06/29/no-justice-for-camboui-the-ptsd-dog-slain-on-camera-by-two-fort-bragg-soldiers/> [<https://perma.cc/2BHZ-YC4P>] (accessed Feb. 7, 2020).

<sup>20</sup> Larkin & Lewis, *supra* note 13.

<sup>21</sup> Monica Vendituoli & Nancy McCleary, *Soldier Pleads to Lesser Offenses; Cruelty to Animals Charge Dismissed*, FAYETTEVILLE OBSERVER (June 27, 2017), <https://www.fayobserver.com/news/20170627/soldier-pleads-to-lesser-offenses-cruelty-to-animals-charge-dismissed> [<https://perma.cc/SR7M-PN76>] (accessed Feb. 7, 2020).

<sup>22</sup> *Id.*

<sup>23</sup> Press Release, Michael E. McMahon, District Attorney, Office of the Dist. Att’y, Richmond Cty., DA McMahon: Staten Island Man Sentenced to Jail for Torturing Neighbor’s Cat (Feb. 28, 2018), <https://statenislанда.org/wp-content/uploads/2018/03/Man-Sentenced-to-Jail-for-Torturing-Neighbor’s-Cat-.pdf> [<https://perma.cc/84RE-RLAN>] (accessed Feb. 7, 2020).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

tolerate this type of disturbing and criminal behavior.”<sup>27</sup> Richardson pleaded guilty to aggravated animal cruelty and was banned from possessing animals for ten years.<sup>28</sup> He had to register with the Animal Abuse Registry in New York and was ordered to pay a little over \$8,000 to the American Society for the Prevention of Cruelty to Animals.<sup>29</sup>

The outcomes of these three cases were met with considerable, yet predictable, resistance from both domestic and international society. Concerned citizens intently followed the cases, many by personally attending court proceedings and others by writing letters to the court, “which could accumulatively fill up a several-inches-thick folder.”<sup>30</sup> Social media sites were set up demanding justice for Cami and Choppa.<sup>31</sup> The prosecutors searched for appropriate and applicable statutes, and the defense attorneys fell back on long-held statutes and ordinances that did not capture the magnitude of the viewing audience, the promotion of cruelty, or the callous intent and laughter from the individuals being charged. Sadly, these cases are not isolated. Animal cruelty has been increasingly posted on social media accounts and the postings often include depictions of the torture and killing of cats, dogs, and other small animals, or even bestiality, by both adults and juveniles.<sup>32</sup>

### B. Internet Hunting

Internet hunting, or remote-controlled hunting, originated in Texas in 2005 and involves the utilization of webcams to aim, shoot, and kill a fenced-in animal at a feeding station.<sup>33</sup> Similar to a real-life video game, individuals trigger a kill-shot by lining up the crosshairs and clicking their computer mouse.<sup>34</sup> If the person misses, or the shot does not kill the animal, workers standing by will kill the animal and

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Vendituoli & McCleary, *supra* note 21. See, e.g., Ashley Mott, *No Jail Time for Snapchat Dog Killers*, NEWS STAR (June 14, 2018), <https://www.thenewsstar.com/story/news/crime/2018/06/14/no-jail-time-snapchat-dog-killers/701156002/> [<https://perma.cc/UFX9-M6FJ>] (accessed Feb. 7, 2020) (describing community members attending each hearing).

<sup>31</sup> See, e.g., Justice for Cam, FACEBOOK (Apr. 25, 2017), <https://www.facebook.com/pg/justiceforcam/> [<https://perma.cc/Q8MQ-FBQD>] (accessed Feb. 7, 2020) (giving updates on the trial of Cam’s killer); Justice for Huey, *supra* note 12.

<sup>32</sup> Michael Walsh, *Facebook Users May Find Pictures of Animal Abuse Funny, but the Authorities Sure Don’t*, DAILY NEWS (Aug. 22, 2013), <https://www.nydailynews.com/news/crime/photos-animal-abuse-online-users-arrested-article-1.1433929> [<https://perma.cc/23ZA-VQU3>] (accessed Feb. 7, 2020). Online depictions of bestiality are mentioned because it is important to note they do occur, however, it is not a main focus of this Article.

<sup>33</sup> *Internet Hunting Fact Sheet*, HUMANE SOC’Y U.S., <https://www.humanesociety.org/resources/internet-hunting-fact-sheet> [<https://perma.cc/NX47-9LT8>] (accessed Feb. 7, 2020).

<sup>34</sup> *Id.*

ship the carcass to the fee-paying customer.<sup>35</sup> In response, thirty-eight states quickly outlawed Internet hunting before it could become popular based on arguments including:

1. Desensitization to death;<sup>36</sup>
2. Bypassing the ‘fair chase’ aspect of hunting;<sup>37</sup>
3. Bypassing an understanding of local or state hunting laws;<sup>38</sup>
4. Disrespecting the animal in death.<sup>39</sup>

Despite public backlash over the invention of Internet hunting<sup>40</sup> and unprecedented alliances between pro-hunting organizations and animal welfare organizations,<sup>41</sup> no federal law exists that prevents this form of Internet hunting. Representative Brad Sherman (D-Cal.) presented the Computer-Assisted Remote Hunting Act to the House in 2007.<sup>42</sup> This bill, which proposes to amend Title 18 of the U.S. Code to prohibit certain computer-assisted hunting, indicates that the “instrumentality of interstate commerce” and not being in “the physical presence of the targeted animal” are key components to the justification for

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<sup>35</sup> Chris Marlowe, *How Internet Hunting Works: Introduction*, HOWSTUFFWORKS.COM (Dec. 9, 2008), <https://adventure.howstuffworks.com/outdoor-activities/hunting/alternative-methods/internet-hunting.htm> [<https://perma.cc/89YK-497R>] (accessed Feb. 7, 2020).

<sup>36</sup> See, e.g., Trevor Desane & Laura Nirenberg, *The Ethical Use of Imagery: Does Exposing the Hunting Industry’s Exploitation of Children Further Exploit the Victims?*, CTR. FOR WILDLIFE ETHICS, <https://www.centerforwildlifeethics.org/youth-hunting-imagery> [<https://perma.cc/RP6X-JNXR>] (accessed Feb. 7, 2020) (“Desensitizing . . . [anyone] to acts of violence for fun begins to strip that individual of the innately human qualities of compassion and empathy.”).

<sup>37</sup> See *Internet Hunting Fact Sheet*, *supra* note 33 (“[F]air chase, being in the field with your firearm or bow, is an important element of hunting tradition.”).

<sup>38</sup> See *Senate Bill to End Internet Hunting*, BIG CAT RESCUE (Dec. 7, 2007), <https://bigcatrescue.org/senate-bill-to-end-internet-hunting/> [<https://perma.cc/Z53G-DJVR>] (accessed Feb. 7, 2020) (“This is disembodied killing in which the hunter experiences no consequences: He sees no blood, hears no cries, feels nothing but the joy of the kill . . .”).

<sup>39</sup> *Internet Hunting Fact Sheet*, *supra* note 33; Chris Marlowe, *How Internet Hunting Works: Arguments Against Internet Hunting*, HOWSTUFFWORKS.COM (Dec. 9, 2008) <https://adventure.howstuffworks.com/outdoor-activities/hunting/alternativemethods/internet-hunting3.htm> [<https://perma.cc/PU54-Z9T2>] (accessed Feb. 7, 2020).

<sup>40</sup> Kris Axtman, *Hunting by Remote Control Draws Fire from All Quarters*, CHRISTIAN SCI. MONITOR (Apr. 5, 2005), <https://www.csmonitor.com/2005/0405/p01s02-ussc.html> [<https://perma.cc/N57U-XUEQ>] (accessed Feb. 7, 2020).

<sup>41</sup> *Id.* (“In a rare alliance, the Humane Society of the United States and Safari Club International, the world’s leading trophy-hunting organization, are both supporting legislation banning the practice.”); see also Chris Marlowe, *How Internet Hunting Works: The Legality of Internet Hunting*, HOWSTUFFWORKS.COM (Dec. 9, 2008), <https://adventure.howstuffworks.com/outdoor-activities/hunting/alternative-methods/internet-hunting1.htm> [<https://perma.cc/6P2J-BKEU>] (accessed Feb. 7, 2020) (noting that a bill in Virginia won “support from two organizations rarely in agreement: the American Society for the Prevention of Cruelty to Animals [ASPCA] and the National [Rifle] Association”).

<sup>42</sup> Computer-Assisted Remote Hunting Act, H.R. 2711, 110th Cong. (2007) (proposing an amendment to the federal criminal code establishing penalties for making a computer-assisted remote hunt available).

placing a ban on this activity.<sup>43</sup> The bill was referred to the Subcommittee on Crime, Terrorism, and Homeland Security in July of 2007, but no action has been taken since that time.<sup>44</sup>

### C. Entertainment Industry Videos such as Dogfighting and Crush Videos

Social media is also used to post videos depicting dogfighting and cockfighting, often resulting in the death of one or both animals.<sup>45</sup> Additionally, over the last few years, websites have been created to promote sexual fetishes involving animals such as crush videos and bestiality.<sup>46</sup> Three cases, one California case and two federal cases, have addressed the availability of industry videos on social media: *People v. Thomason*, *United States v. Stevens*, and *United States v. Richards*.

#### 1. People v. Thomason

Defendant Gary Thomason and his co-defendant, Diane Aileen Chaffin, engaged in the production of multiple ‘crush videos.’<sup>47</sup> In the videos, Chaffin taped or held down mice—including young mice called pinkies—and rats and slowly impaled them with the spike of her high heel or crushed them with her bare feet.<sup>48</sup> The animals were “taunted, maimed, tortured, mutilated, disemboweled and ultimately slowly killed” by Chaffin and recorded by Thomason, with the aim of selling the videos as sexual fetish videos.<sup>49</sup> The defendants were charged under California Penal Code Section 597(a), the California Animal Abuse and Cruelty Laws.<sup>50</sup> Section 597(a) makes it a crime to maliciously and intentionally maim, mutilate, torture, wound, or kill an animal.<sup>51</sup> It protects domesticated pets, stray animals, wild animals,

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<sup>43</sup> *Id.*

<sup>44</sup> *All Actions of H.R. 2711 – Computer-Assisted Remote Hunting Act*, CONGRESS.GOV, <https://www.congress.gov/bill/110th-congress/house-bill/2711/all-actions> [<https://perma.cc/G67N-DYHC>] (accessed Feb. 7, 2020).

<sup>45</sup> See Jamie Doward, *Facebook ‘Gives Global Platform to Illegal Dogfighting,’* THE GUARDIAN, (May 26, 2019), <https://www.theguardian.com/world/2019/may/26/facebook-gives-global-platform-to-illegal-dogfights> [<https://perma.cc/Y654-32C5>] (accessed Feb. 7, 2020).

<sup>46</sup> *Crush Videos*, ANIMAL WELFARE INST., <https://awionline.org/content/crush-videos> [<https://perma.cc/UU97-AEH5>] (accessed Feb. 7, 2020); Paul Bedard, *Shutdown of Bestiality Sites Applauded by Animal Activists*, WASH. EXAMINER (Feb. 7, 2019, 2:30 PM), <https://www.washingtonexaminer.com/washington-secrets/shutdown-of-bestiality-sites-applauded-by-animal-activists> [<https://perma.cc/XL8W-UJPA>] (accessed Feb. 7, 2020).

<sup>47</sup> *People v. Thomason*, 84 Cal. App. 4th 1064, 1065–66 (2nd Cir. 2000).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> CAL. PENAL CODE § 597 (West 2012).

and livestock.<sup>52</sup> Violation of Section 597(a) can result in either a misdemeanor or felony.<sup>53</sup> Thomason was found guilty of three felony counts of cruelty to animals.<sup>54</sup>

Thomason appealed his conviction in the California Second District Court of Appeal arguing Section 597 only applied to ‘animals’ and rodents were “different from animals within the meaning of the statute in that they may be killed at any time by any means because they represent a health and property hazard.”<sup>55</sup> Section 599(b) classified ‘animal’ as “every dumb creature; the words ‘torment,’ ‘torture,’ and ‘cruelty’ include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.”<sup>56</sup> The defendant contended “every dumb creature” included rodents.<sup>57</sup> However, there was an exception under Section 599(c) that excepted practices including “the right to destroy any . . . animal known as dangerous to life, limb or property, or to interfere with the right to kill all animals used for food . . . .”<sup>58</sup> The defendant argued that, because the mice and rats used in the videos were rodents, which historically carried diseases, they presented a hazard to human health and property and therefore could be “killed at any time by any means.”<sup>59</sup> The court rejected this argument first noting that the animals used in Thomason’s videos were not wild animals, pests, or public nuisances, but were held in cages, bred for feed, and purchased at a feed store, though they were not purchased as feed for other animals.<sup>60</sup> Therefore, the animals were not a public hazard or a safety concern.<sup>61</sup> Ultimately, Thomason had utilized them for sexual gratification and commercial gain, two purposes for which the animals were not intended.<sup>62</sup>

The court likewise was not persuaded by the defendant’s claim that Section 597(c) permitted “the destruction of all mice and rats . . . ‘using any means.’”<sup>63</sup> Furthermore, even if the animals in the video were deemed a public nuisance or a pest, they were not poisoned, trapped, or otherwise humanely killed, but were tortured, mutilated, and maimed.<sup>64</sup> In other words, even if the animals fell under an exception, the statute did not allow “intentional malicious torture.”<sup>65</sup> The

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<sup>52</sup> *Penal Code 597 PC – California “Animal Abuse & Cruelty” Laws*, SHOUSE CAL. L. GROUP, <https://www.shouselaw.com/animal-abuse.html> [<https://perma.cc/TZ8L-LNSU>] (accessed Feb. 7, 2020).

<sup>53</sup> CAL. PENAL CODE § 597(d).

<sup>54</sup> *Thomason*, 84 Cal. App. 4th at 1065.

<sup>55</sup> *Id.* at 1066.

<sup>56</sup> *Id.* at 1067.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 1067.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 1067–68.

<sup>61</sup> *Id.* at 1068.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 1068–69.

<sup>65</sup> *Id.*

conduct of the defendant therefore fell clearly within the type of conduct the statute meant to prohibit.<sup>66</sup> Thus, the court upheld Thomason's conviction and sentence.<sup>67</sup>

## 2. United States v. Stevens

The defendant in this case, Robert Stevens, ran a business that sold dogfighting videos online.<sup>68</sup> The videos showcased historical dogfights, pit bulls attacking other dogs and livestock, dogs attacking wild boars and farm animals,—a domestic pig in one instance—and a video library of international dogfights.<sup>69</sup> Stevens was indicted on three counts of violating 18 U.S.C. § 48, a federal statute that criminalized the commercial creation, sale, or possession of depictions of animal cruelty.<sup>70</sup> He challenged each count, moving to dismiss the indictment on First Amendment grounds.<sup>71</sup> The district court denied his motion to dismiss, holding the depictions of dogfighting were “categorically unprotected by the First Amendment” and “[Section] 48 is not substantially overbroad.”<sup>72</sup> On appeal, the Third Circuit vacated the conviction, declaring Section 48 unconstitutional and holding content-based regulation of protected speech could not pass strict scrutiny, rendering it facially invalid.<sup>73</sup> In 2010, the Supreme Court upheld the decision of the Third Circuit, finding Section 48 substantially overbroad, encompassing otherwise lawful images in other contexts.<sup>74</sup> The Court noted the Government's “attempt to narrow the statutory ban” by creating an exemption for “any depiction that has serious religious, political, scientific, educational, journalistic, historical, or artistic value” was unpersuasive because video depictions of legal hunting could fall under the overly broad scope of Section 48.<sup>75</sup> Additional discussion on Section 48 is presented later in this Article.

## 3. United States v. Richards

As part of a crush video series filmed from 2010 to 2012, defendant Ashley Nicole Richards bound a kitten, puppy, and rooster, impaled the animals with her high heels, and proceeded to chop off their limbs, gut their innards, and urinate on the animals.<sup>76</sup> While engaging in

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<sup>66</sup> *Id.* at 1071.

<sup>67</sup> *Id.*

<sup>68</sup> *United States v. Stevens*, 559 U.S. 460, 466 (2010).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 464–66.

<sup>71</sup> *Id.* at 467.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 477, 480, 482.

<sup>75</sup> *Id.* at 477–79.

<sup>76</sup> *United States v. Richards*, 755 F.3d 269, 272 (5th Cir. 2014); Andrew Blake, *Texas Woman Admits to Killing Small Animals for Money*, WASH. TIMES (Sept. 9, 2015), <https://www.washingtontimes.com/news/2015/sep/9/ashley-nicole-richards-24-year-old-texas-womanadm/> [<https://perma.cc/GW7P-V5HC>] (accessed Feb. 7, 2020).

these activities, the scantily clad Richards used sexually suggestive speech directed toward the animals.<sup>77</sup> Richards and the individual who filmed her acts, Brent Justice, were charged with federal cruelty to animals and a subsequent federal indictment including:

[F]our counts of creation and one count of distribution of animal crush videos in violation of 18 U.S.C. § 48 . . . one count of engaging in the business of selling or transferring of obscene matter in violation of 18 U.S.C. § 1466 . . . and one count of production and transportation of obscene matters for sale or distribution in violation of 18 U.S.C. § 1465.<sup>78</sup>

Richards and Justice moved to dismiss, arguing that Section 48 was facially invalid on First Amendment grounds and was narrowly written to focus on the causation of serious bodily harm to an animal.<sup>79</sup> The district court found Section 48 facially invalid because it was not “narrowly tailored to serve a compelling government interest” and therefore proscribed speech that “is neither obscene nor incidental to criminal conduct.”<sup>80</sup> On appeal, the Fifth Circuit reversed the lower court’s decision, finding Section 48 was indeed facially valid, not overbroad, because it was limited to unprotected speech such as obscenity.<sup>81</sup> In 2015, Richards and Justice appealed to the Supreme Court, but their petitions for writ of certiorari were ultimately denied.<sup>82</sup>

### III. CURRENT LEGISLATION

The lack of legislation governing online depictions of animal cruelty is evinced at both the state and federal levels. Viewing, promoting, or depicting animal cruelty on the Internet is not specifically addressed at the state level because the widespread reach of the Internet makes it difficult to prosecute many online depictions of violence to animals on social media posts or in crush videos under state law. State animal cruelty laws, such as California’s Section 597(a) discussed earlier in this Article, vary in how they define or categorize animals, define cruelty, and exempt certain practices, such as veterinary practice and animal research.<sup>83</sup> Often the variations are representative of the social and political leanings of the state. For example, if the state is primarily an agricultural or farming state, legislation regulating animal cruelty, particularly for livestock, may be sparse, vague, or exclusive of entire classes of animals.<sup>84</sup>

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<sup>77</sup> *Richards*, 755 F.3d at 272.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 272, 276–77.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 276, 279.

<sup>82</sup> *Richards v. United States*, 575 U.S. 915 (2015); *Justice v. United States*, 575 U.S. 915 (2015).

<sup>83</sup> Pamela D. Frasch et al., *State Animal Anti-Cruelty Statutes: An Overview*, 5 ANIMAL L. 69, 70 (1999).

<sup>84</sup> *Id.* at 72.

Federal legislation that has been used to combat online depictions of animal cruelty includes laws governing online communications, and obscenity. This Article also examines the ramifications of laws that protect animal enterprises, that may operate online, from animal rights activists.

### A. *Communications Decency Act*

In 1996, Congress passed the Communications Decency Act (CDA) to address the use of the Internet and online communications for pornography, particularly regarding minors.<sup>85</sup> At the time, many Americans were concerned that minors could easily be exposed to pornography, including videos and pictures, via computer networks.<sup>86</sup> Additionally, child pornography was becoming widely accessible online.<sup>87</sup> In an earlier case, the Supreme Court found that “the state has a compelling interest in regulating child pornography” because children are subject to harm when they see other children in pornographic contexts, as well as when they are exploited for these activities.<sup>88</sup> In response to these concerns, President Clinton signed the Telecommunications Competition and Deregulation Act of 1996, which included the Communications Decency Act of 1996.<sup>89</sup> The CDA made it a crime to knowingly disseminate, over a telecommunications device or interactive computer, indecent material in a manner accessible to a child.<sup>90</sup> Included in the final version of the CDA was an amendment, Section 230, which declassified Internet providers as publishers; that is, ensuring Internet providers would not be liable for the activities of their users.<sup>91</sup>

The constitutionality of the CDA was almost immediately attacked. In a landmark case, the American Civil Liberties Union (ACLU) filed a lawsuit criticizing the “standard of indecency” for vagueness.<sup>92</sup> The Supreme Court agreed, despite prior application of the standard of indecency by the Court to radio, television, telephone,

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<sup>85</sup> Telecommunications Act of 1996, 47 U.S.C.A. § 230 (1996); *see also* *CDA Legislative History*, ELECTRONIC FRONTIER FOUND., <https://www.eff.org/issues/cda230/legislative-history> [<https://perma.cc/QB25-8GSD>] (accessed Feb. 7, 2020) (indicating the reason the Communications Decency Act was introduced was to “regulate obscenity and indecency online” and make it “illegal to knowingly send to or show minors obscene or indecent content online”).

<sup>86</sup> Laura J. McKay, *The Communications Decency Act*, 20 SETON HALL 463, 472 (1996).

<sup>87</sup> *Id.* at 473.

<sup>88</sup> *Id.*; *see* *New York v. Ferber*, 458 U.S. 747, 756–57 (finding a State has a compelling interest in regulating pornography to protect children).

<sup>89</sup> McKay, *supra* note 86, at 475.

<sup>90</sup> *Id.*; 47 U.S.C.A. § 230.

<sup>91</sup> Valerie C. Brannon, *Liability for Content Hosts: An Overview of the Communication Decency Act's Section 230*, CONG. RES. SERV. (June 6, 2019), <https://fas.org/sgp/crs/misc/LSB10306.pdf> [<https://perma.cc/K6DG-QGPJ>] (accessed Feb. 7, 2020).

<sup>92</sup> *Reno v. American Civil Liberties Union*, 521 U.S. 844, 860 (1997).

and cable use.<sup>93</sup> Additionally, the Court pointed out that there was no effective way to determine the age of the user, despite an Internet user's ability to block or restrict child access.<sup>94</sup> The Court found that the CDA violated the First Amendment because it lacked precision and was overbroad, placing a burden on adult speech.<sup>95</sup> The decision invalidated the criminal penalty provisions of the CDA for indecent and offensive material that could be accessible or transmitted to minors, leaving only Section 230.<sup>96</sup>

In response to the Supreme Court's stance that the CDA was too broad, legislators narrowed the terminology and range of material covered and passed the 1998 Child Online Protection Act (COPA).<sup>97</sup> COPA required all distributors of material that could be considered harmful to minors, to restrict their sites to adults only.<sup>98</sup> The Act defined "material that is harmful to minors" as "material that by contemporary community standards was judged to appeal to the prurient interest" and that showed sexual acts or nudity.<sup>99</sup> From 1999 to 2009, the federal government battled for enforcement of the Act, but the courts, including both the Third Circuit Court of Appeals and Supreme Court, ultimately found COPA unconstitutional and a violation of the First and Fifth Amendment.<sup>100</sup>

Because the CDA prohibited interstate commerce and commercial gain from the dissemination of obscene and indecent material, a similar law could apply to depictions of animal cruelty online, including crush videos that have a sexual element. Learning from the mistakes of the overly broad CDA, a law that more clearly defines indecent communication has the potential to offer an avenue for protecting minors from being able to access obscene material in the form of online depictions of animal cruelty.

### B. *Animal Crush Video Prohibition Act*

The Animal Crush Video Prohibition Act was first enacted in 1999 as 18 U.S.C. § 48.<sup>101</sup> The Act banned the production and sale of online

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<sup>93</sup> *Id.* at 849; *see also* Federal Commc'ns Comm. v. Pacifica Found., 438 U.S. 726, 778–80 (1978) (finding that Congress intended the term 'indecent' to be synonymous with obscene in the context of speech).

<sup>94</sup> *Reno*, 521 U.S. at 876.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 882.

<sup>97</sup> Child Online Protection Act, 47 U.S.C.A. § 231 (West 1998).

<sup>98</sup> 47 U.S.C.A. § 231.

<sup>99</sup> 47 U.S.C.A. § 231.

<sup>100</sup> *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 565–66, 568, 571–72, 585–86 (2002), *aff'd*, 542 U.S. 656 (2004); *see also* *American Civil Liberties Union v. Gonzales*, 478 F. Supp. 2d 775, 777–78 (E.D. Pa. 2007) (finding "COPA facially violates the First and Fifth Amendment rights of the plaintiffs because . . . COPA is not narrowly tailored to Congress' compelling interest" and "COPA is impermissibly vague and overbroad").

<sup>101</sup> Animal Crush Video Prohibition Act of 1999, Pub. L. No. 106-152, 113 Stat 1732 (1999) (codified at 18 U.S.C.A. § 48 (1999)).

videos that depict animals being crushed to death to satisfy a sexual fetish.<sup>102</sup> However, the Animal Crush Video Prohibition Act was deemed too broad and vague, as discussed above in *United States v. Stevens*, and was thus nullified.<sup>103</sup> In 2010, the Act was reinstated in narrower terms, banning the creation and distribution of the videos, but not the underlying cruelty.<sup>104</sup> The Act explicitly prohibits the creation, sale, marketing, exchange, or distribution of animal crush videos in interstate or foreign commerce.<sup>105</sup> ‘Animal crush videos’ are defined as videos that depict “[one] or more living non-human animals, birds, reptiles, or amphibians . . . intentionally crushed, burned, drowned, suffocated, impaled, or otherwise subjected to serious bodily harm” and states the depiction must be obscene.<sup>106</sup>

Importantly, the Act extends its reach to persons selling, marketing, advertising, exchanging, distributing, or creating crush videos outside the United States if they intend or have reason to know it will be viewed in the United States, or if the video is actually transported into the United States.<sup>107</sup> The Act also exempts certain legitimate depictions of customary or normal veterinary or agricultural practices; the slaughter of animals for food, hunting, trapping, or fishing; and good faith distribution for the sole purpose of determining whether referral to law enforcement is necessary.<sup>108</sup>

In 2015, the Preventing Animal Cruelty and Torture Act (the PACT Act) was introduced, further amending 18 U.S.C. § 48 to address the issue of vagueness.<sup>109</sup> The PACT Act added additional exceptions, including medical and scientific research, actions necessary to protect the life and liberty of a person or performed as part of a humane euthanasia, and a component of unintentional conduct.<sup>110</sup> The PACT Act passed the House of Representatives and the Senate unanimously with no amendments.<sup>111</sup> On November 25, 2019 President Donald Trump signed the PACT Act into legislation, making limited forms of animal

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<sup>102</sup> *Id.*

<sup>103</sup> See *Stevens*, 559 U.S. at 482 (holding that the statute as originally written was “substantially overbroad, and therefore invalid under the First Amendment”).

<sup>104</sup> Animal Crush Video Prohibition Act of 2010, Pub. L. No. 111-294, 124 Stat 3177 (2010) (amending 18 U.S.C.A. § 48).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Preventing Animal Cruelty and Torture Act, H.R. 2293, 114th Cong. (2015).

<sup>110</sup> *Id.*

<sup>111</sup> See Lauren M. Johnson & Cole Higgins, *The House Passes a Bill That Makes Animal Cruelty a Federal Felony*, CNN (Oct. 23, 2019, 1:13 PM), <https://www.cnn.com/2019/10/23/politics/house-passes-pact-act-trnd/index.html> [<https://perma.cc/YZK7-EY93>] (accessed Feb. 7, 2020) (“The house unanimously passed a bill that makes animal cruelty a felony.”); *Preventing Animal Cruelty and Torture (PACT) Act (Federal)*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/project/preventing-animal-cruelty-and-torture-pact-act/> [<https://perma.cc/8NA4-QDZJ>] (accessed Feb. 7, 2020) (“In fall 2019, Congress passed the PACT Act. It is now awaiting consideration by the President.”).

cruelty a felony.<sup>112</sup> This means the underlying acts of animal cruelty in crush videos are now illegal, marking a huge step forward in addressing online depictions of animal cruelty.

### C. 2006 Federal Animal Enterprise Terrorism Act

In August 1992, the Animal Enterprise Protection Act, became public law.<sup>113</sup> The law was created to protect animal enterprises from animal rights activists.<sup>114</sup> The Act defines an animal enterprise as: “A commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing; a zoo, aquarium, circus, rodeo, or competitive animal event; or any fair or similar event intended to advance agricultural arts and sciences.”<sup>115</sup> Animal enterprises are protected from activists who “used the mail or any facility in interstate or foreign commerce, for the purpose of causing physical disruption to the functioning of an animal enterprise . . . by intentionally stealing, damaging, or causing the loss of any property . . . used by the animal enterprise,” which would result in economic damage of more than \$10,000.<sup>116</sup> Victims may receive restitution for the reasonable cost of repeating experimentation, the loss of food production, or farm income.<sup>117</sup>

The Animal Enterprise Protection Act of 1992 was later amended, ultimately becoming the Animal Enterprise Terrorism Act (AETA) in 2006.<sup>118</sup> AETA granted the government greater authority to apprehend, prosecute, and regulate the behavior of animal rights activists, and garner protections for businesses that are in the category of animal enterprise.<sup>119</sup> The 2006 amendment added pet stores, breeders, and furriers to the definition of animal enterprise; protections to the immediate family, spouse, or intimate partner of an individual engaged in an animal enterprise from harassment, trespassing, or intimidation.<sup>120</sup> An element of conspiracy was also added, enabling the

<sup>112</sup> See Caitlin O’Kane, *Trump Signs Bill Making Animal Cruelty a Federal Felony*, CBS (Nov. 25, 2019, 5:56 PM), <https://www.cbsnews.com/news/animal-cruelty-felony-president-trump-signs-animal-cruelty-pact-act-bill-making-it-a-federal-felony-2019-11-25/> [https://perma.cc/LV55-9JB4] (accessed Feb. 7, 2020).

<sup>113</sup> Animal Enterprise Protection Act, Pub. L. No. 102-346, 106 Stat. 928 (1992) (codified at 18 U.S.C.A. § 43 (1992)).

<sup>114</sup> See Paige, *Animal Enterprise Terrorism Act (AETA)*, CIV. LIBERTIES DEF. CTR. (Apr. 24, 2014), <https://cldc.org/animal-enterprise-terrorism-act-aeta/> [https://perma.cc/ZE9R-6UYP] (accessed Feb. 7, 2020) (stating the purpose of the Animal Enterprise Protection Act “was to make it easier to silence animal rights advocates who [were] successful in publicly exposing business practices that abuse animals”).

<sup>115</sup> 18 U.S.C.A. § 43(d)(1).

<sup>116</sup> 18 U.S.C.A. § 43(a).

<sup>117</sup> 18 U.S.C.A. § 43(c).

<sup>118</sup> 18 U.S.C.A. § 43.

<sup>119</sup> Paige, *supra* note 114.

<sup>120</sup> Animal Enterprise Terrorism Act, 18 U.S.C.A. § 43 (2006); Kim McCoy, *The Animal Enterprise Terrorism Act*, in *THE TERRORIZATION OF DISSENT: CORPORATE REPRESSION, LEGAL CORRUPTION, AND THE ANIMAL ENTERPRISE TERRORISM ACT* 3, 8–9 (Jason Del Gandio & Anthony J. Nocella II eds., 2014).

government to find individuals guilty of conspiracy to interfere with an animal enterprise.<sup>121</sup>

Animal rights advocates have proffered many challenges to AETA through litigation. Litigation efforts have claimed AETA violates the right to free speech, is constitutionally vague, is arbitrary in the categorization of acts as terrorism, and violation occurs solely based on economic issues.<sup>122</sup> However, the merits of these arguments have often been rejected by the courts.<sup>123</sup>

When examining the use of social media depictions of animal cruelty online, the ramifications of AETA could be detrimental for individuals looking to expose animal cruelty. Such individuals would need to be able to determine whether a company qualifies as an animal enterprise to ensure they do not open themselves up to prosecution as terrorists. For example, under AETA an online outlet for live streaming or video depictions of animal cruelty could constitute an animal enterprise, so long as they sell any animal product. There is also confusion surrounding what activities are unlawful, such as what constitutes conspiracy with regard to an online enterprise, or whether ‘trolling’<sup>124</sup> counts as a terrorist act or is it simply part of the social nature of the Internet. For example, in a case involving four individuals who were charged as terrorists for unlawful conduct, including protesting and chalking the sidewalk of a biomedical research center, one of the activities that was considered unlawful under AETA was “the alleged use of ‘the internet to find information on biomedical researchers.’”<sup>125</sup> This brings into question whether someone using the Internet to find infor-

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<sup>121</sup> Paige, *supra* note 114.

<sup>122</sup> See *Blum v. Holder*, 744 F.3d 790, 792 (1st Cir. 2014) (“[P]laintiffs allege that . . . AETA [is] substantially overbroad in violation of the First Amendment.”); see also *United States v. Buddenberg* (Buddenberg I), No. CR-09-00263 RMW, 2009 WL 3485937, at \*4 (N.D. Cal. Oct. 28, 2009) (asserting “AETA interferes with their constitutional rights of free speech and expression”); *United States v. Fullmer*, 584 F.3d 132, 152–53, 158 (3d Cir. 2009) (arguing AEPA was void for vagueness); *United States v. Johnson*, 875 F.3d 360, 372–73 (7th Cir. 2017) (“Defendants contend that they have a substantive due process right not to have their non-violent property crimes prosecuted under a statute whose non-codified title has the word ‘terrorism’ in it.”).

<sup>123</sup> See *Blum*, 744 F.3d at 792 (1st Cir. 2014) (affirming the district court’s dismissal of the complaint for lack of standing); *Buddenberg I*, 2009 WL 3485937, at \*12 (N.D. Cal. Oct. 28, 2009) (denying the defendants’ motion to dismiss); *Fullmer*, 584 F.3d at 158 (3d Cir. 2009) (affirming the lower court’s decision finding the void for vagueness unconvincing); *Johnson*, 875 F.3d at 372–73 (7th Cir. 2017) (denying the defendants’ motion to dismiss, finding the defendants’ argument unpersuasive, and noting that not all property crimes are non-violent).

<sup>124</sup> See *Troll*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/troll> [<https://perma.cc/3JRV-CC28>] (accessed Feb. 8, 2020) (“[T]o antagonize (others) online by deliberately posting inflammatory irrelevant, or offensive comments or disruptive content.”).

<sup>125</sup> *United States v. Buddenberg* (Buddenberg II), No. CR-09-00263 RMW, 2010 WL 2735547, at \*4 (N.D. Cal. July 12, 2010) (including the fact the defendants “used the internet to find information on bio-medical researches [sic] at the University of California at Santa Cruz” as one of three overt acts of conspiracy in count one of the indictment).

mation on an animal enterprise that engages in distributing online depictions of animal cruelty could face legal consequences under AETA.

*D. Additional Attempts at Legislation*

Over the years, legislators have attempted to pass additional acts to curb online depictions of animal cruelty, but the bills have often gone no further than the House or the Subcommittee on Crime, Terrorism, and Homeland Security.<sup>126</sup> For example, on the heels of the Animal Crush Video Prohibition Act, a new bill, H.R. 5337, was introduced in the House in 2010.<sup>127</sup> H.R. 5337 was designated the Animal Torture Prevention Act of 2010.<sup>128</sup> It amends the federal criminal code to impose fines and imprisonment for creating, selling, distributing, or offering to sell or distribute, a depiction of extreme animal cruelty that does not have religious, political, scientific, educational, journalistic, historical, or artistic value.<sup>129</sup> The bill went no further than the House of Representatives.<sup>130</sup>

With regard to Internet hunting, discussed in Section II of this Article, there is a recent bill in the House of Representatives which is potentially applicable. The Prohibiting Threatened and Endangered Creature Trophies Act of 2019 (ProTECT Act), proposed by Sheila Jackson Lee of Texas, amends the Endangered Species Act (ESA) to prohibit taking or importing threatened species within the United States.<sup>131</sup> It defines trophy as “a whole dead animal, or a readily recognizable part or derivative of an animal that . . . was obtained under a hunting license or other authorization issued by any state, foreign government, or private landowner.”<sup>132</sup> Current federal law does not explicitly prohibit Internet hunters from killing a threatened species from their computer and having such kill delivered. However, the proposed ProTECT Act of 2019 will make it unlawful for any person to take for a trophy any species listed as endangered or threatened under

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<sup>126</sup> See *H.R. 2293 – Preventing Animal Cruelty and Torture (PACT Act)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/2293?r=1&s=9> [https://perma.cc/5UX6-UR BK] (accessed Feb. 7, 2020) (indicating the latest action was a referral to the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations on June 1, 2015); *S. 654 – PACT Act*, CONGRESS.GOV, <https://www.congress.gov/bill/115th-congress/senate-bill/654?r=1&s=1> [https://perma.cc/52YP-LFWF] (accessed Feb. 7, 2020) (indicating the bill passed the Senate, but the latest action was a referral to the House Committee on the Judiciary on December 15, 2017).

<sup>127</sup> Animal Torture Prevention Act of 2010, H.R. 5337, 111th Cong. (2010).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> See *H.R. 5337 – Animal Torture Prevention Act of 2010*, CONGRESS.GOV, <https://www.congress.gov/bill/111th-congress/house-bill/5337/all-info?r=1&s=7> [https://perma.cc/8Q23-YPDA] (accessed Feb. 7, 2020) (indicating the latest action was a referral to the Subcommittee on Crime, Terrorism, and Homeland Security on July 26, 2010, but noting that further action on a related bill, H.R. 5566, was signed into law in December 2010, becoming the Animal Crush Video Prohibition Act of 2010).

<sup>131</sup> Prohibiting Threatened and Endangered Creature Trophies Act (ProTECT Act), H.R. 4804, 116th Cong. (2019).

<sup>132</sup> H.R. 4804 § 3(d).

the ESA within the United States.<sup>133</sup> Furthermore, the Act will make it illegal to import as a trophy any species listed under the ESA as an endangered or threatened species.<sup>134</sup> The ProTECT Act was referred to the House Subcommittee on Water, Oceans, and Wildlife in November of 2019 but no further action has been taken.<sup>135</sup>

#### IV. ANALYSIS OF CURRENT LEGISLATION

The United States has come far regarding animal protection and animal welfare legislation, but still has a long way to go. The rapid advancement of technology and the difficulty regulating its use have brought to light numerous issues that often arise when attempting to protect the welfare of animals. There are positive and negative aspects of current legislation, as well as many obstacles to overcome prior to creating a framework that is applicable to animals and can adequately protect them.

##### A. *Positive Aspects of Current Legislation*

The United States is one of a few dozen countries with legislative protections against animal cruelty.<sup>136</sup> It is somewhat progressive in its provisions regulating animal conditions, neglect, use, and abuse. Currently, there are multiple bills pending in the House and Senate, including bills focused on domestic violence victims and their pets, livestock and wildlife protections, and preserving the safety of nonhumans.<sup>137</sup> While current legislation is embroiled in conflict, debated, and sometimes overturned, there is at least some legislation on the books emphasizing the importance of animal welfare, protection for vulnerable classes, and that provides a building block for additional legislation.<sup>138</sup> There is a growing need to advance legislation, without

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<sup>133</sup> H.R. 4804 § 3(a).

<sup>134</sup> H.R. 4804 § 3(a).

<sup>135</sup> *H.R. 4804 – Prohibiting Threatened and Endangered Creature Trophies Act of 2019*, CONGRESS.GOV, <https://www.congress.gov/bill/116th-congress/house-bill/4804/text> [https://perma.cc/C3MA-AQZ3] (accessed Feb. 7, 2020).

<sup>136</sup> See generally *Review Animal Welfare Standards Around the World*, WORLD ANIMAL PROTECTION, <https://www.worldanimalprotection.org/our-work/help-protect-animals-globally/review-animal-welfare-standards-around-world> [https://perma.cc/JMB5-ZTXD] (accessed Feb. 7, 2020) (“The Animal Protection Index . . . rank[s] 50 countries worldwide on how well their legislation protects animals.”).

<sup>137</sup> See generally Kitty Block & Sara Amundson, *116th Congress Brings New Hope, Opportunities for Animal Protection*, HUMANE SOC’Y U.S. (Jan. 3, 2019), [https://blog.humanesociety.org/2019/01/116th-congress-brings-new-hope-opportunities-for-animal-protection.html?credit=BLog\\_post\\_010319\\_id10314](https://blog.humanesociety.org/2019/01/116th-congress-brings-new-hope-opportunities-for-animal-protection.html?credit=BLog_post_010319_id10314) [https://perma.cc/HSG9-TU64] (accessed Feb. 7, 2020) (describing animal welfare bills that are either pending or being introduced by the current Congress); *Animals*, GOVTRACK, <https://www.govtrack.us/congress/bills/subjects/animals/5840> [https://perma.cc/PN2E-STNQ] (accessed Feb. 7, 2020) (listing all bills in the U.S. Congress related to the subject ‘Animals’).

<sup>138</sup> See generally Block & Amundson, *supra* note 137 (listing pending legislation and stating “[w]hile some fear a gridlock this year because of a divided Congress, we do not

which there is no way to adequately govern and prevent online depictions of animal cruelty.

*B. Negative Impacts of Current Legislation and Obstacles to Overcome*

Multiple obstacles exist when attempting to move the slow tide of animal cruelty legislation in the United States. Differences in statutory definitions, legislative debate, and tension with constitutional rights, including many individual freedoms, pose distinct challenges to the advancement of animal welfare legislation.

First, definitions and semantics pose a problem in the advancement of animal cruelty legislation. Ambiguous definitions of ‘animal’ in existing animal cruelty statutes result in unique difficulties.<sup>139</sup> Differing by state or even era of legislation, animals are defined in multiple categories such as domestic animals, wildlife, livestock, pests, invertebrates, and captive animals.<sup>140</sup> For example, in one state, invertebrates may be included in the definition of animals, and in another they are not.<sup>141</sup> These differences lead to an uneven application of protections to different animals, often within the same state.

One of the key issues that arises when individuals are charged with animal cruelty, and appears in most related state and federal cases, is a ‘void for vagueness’ defense regarding what conduct is allowable under the statute the defendant has purportedly violated.<sup>142</sup> The statute cannot be so vague the average person could not understand that they were violating the law. Additionally, the statute cannot be overbroad, encompassing activities that are otherwise legal. Both of these doctrines leave room for an individual to abuse a class of animal that is left out of the legal definition.

Furthermore, animals—however defined—are considered property by the law, resulting in individuals having the liberty to treat them as such. This setup leads to tension between individual property

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[because] [p]eople on both sides of the political aisle care about helping animals, and we are extremely hopeful about getting a great deal accomplished for animals this year”).

<sup>139</sup> See Rebecca F. Wisch, *Brief Summary of State Cruelty Laws*, MICH. ST. U.: ANIMAL LEGAL HIST. CTR. (2005, updated 2010), <https://www.animallaw.info/intro/state-anti-cruelty-laws> [<https://perma.cc/74A9-HPN2>] (accessed Feb. 7, 2020) (“[T]he term ‘animal’ can be as broad under statutes to include ‘all living creatures’ or as narrow to include only vertebrates or mammals.”).

<sup>140</sup> See WASH. REV. CODE 16.52.011(2)(b) (2019) (defining ‘animal’ as “any nonhuman mammal, bird, reptile, or amphibian”); 510 ILL. COMP. STAT. 70/2.01 (2019) (defining ‘animal’ as “every living creature, domestic or wild, but does not include man.”).

<sup>141</sup> Compare M.G.L.A. 272 § 77C(a) (2018) (defining animal as “a living nonhuman mammal, bird, reptile, amphibian, fish or invertebrate”) with NEB. REV. STAT. § 28-1008 (2019) (“Animal means any vertebrate member of the animal kingdom. Animal does not include an uncaptured wild animal or a livestock animal . . .”).

<sup>142</sup> Charles E. Friend, *Animal Cruelty Laws: The Case for Reform*, UNIV. RICHMOND L. REV. 201, 205 (1974) (providing an example of a typical anti-cruelty statute and noting that the “broad language of these statutes has led to challenges on the ground that the statutes are unconstitutionally vague”).

rights and animal welfare.<sup>143</sup> Common sense dictates the difference between animals and other forms of property; however, the law has yet to redefine this class of victims as legal persons deserving of fundamental rights instead of property, leaving current legislation stuck in a legal framework that does not adequately protect nonhuman animals from harm.

The second obstacle in advancing legislation, particularly focused on regulating the depictions of animal cruelty online, is there is no specific framework for the apprehension and prosecution of obscene behavior toward animals. The law essentially circumvents animal cruelty in this instance by borrowing laws deemed applicable to online obscenity that focus on the viewing habits of minors and preferences for sexual fetishes. These obscenity laws are not directly applicable to depictions of animal cruelty online. Thus, they have offered unsuccessful challenges to online depictions of animal cruelty.<sup>144</sup>

Current legislation used to prosecute depictions of animal cruelty online is based on comparing animal cruelty to child pornography due to the many parallels between the two.<sup>145</sup> Victims in both instances are often vulnerable, and may suffer emotional and physical trauma. Societal harm occurs in addition to the harm caused to those that are involved in the situation, often affecting indirect victims, including bystanders.<sup>146</sup> Perhaps the single most important commonality between child pornography and certain online depictions of animal cruelty, like crush videos, is that often the ultimate purpose of both activities is

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<sup>143</sup> *Animals' Legal Status*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/issue/animals-legal-status/> [<https://perma.cc/R58K-GPQP>] (accessed Feb. 7, 2020). For a larger discussion of animals as property and the limitations this has placed on the ability to extend legal protections to nonhumans, see Gary L. Francione, *Animals as Property*, 2 ANIMAL L. I 1, 2 (1996) (providing a detailed look at the status of animals as property).

<sup>144</sup> See, e.g., Joseph J. Anclien, *Crush Videos and the Case for Criminalizing Criminal Depictions*, 40 U. MEM. L. REV. 1, 6–7 (2009) (“*Miller* requires, *inter alia*, that ‘the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by state law.’ The *Miller* Court suggested that ‘sexual conduct’ should include a representation of ‘ultimate sex acts,’ ‘masturbation, excretory functions, [or] lewd exhibitions of genitals,’ and Pennsylvania, where Mr. Stevens was prosecuted, has enacted an obscenity statute that largely tracks these categories. Crush videos, which typically show a woman from only the knees down, simply do not fit within this definition of ‘sexual conduct.’”).

<sup>145</sup> See, e.g., Brief for Northwest Animal Rights Network as Amici Curiae Supporting Petitioner at 4–5. *United States v. Stevens*, 559 U.S. 460 (2009) (No. 08-769), 2009 WL 1703215 (arguing that the precedent set by child pornography cases addressing unprotected categories of speech can be applied to cases involving depictions of animal cruelty because of “the obvious parallels between child pornography and depictions of animal cruelty”).

<sup>146</sup> *The Lasting Effects of Child Pornography*, INNOCENT LIVES FOUND., <https://www.innocentlivesfoundation.org/the-lasting-effects-of-child-pornography/> [<https://perma.cc/PE2V-P722>] (accessed Feb. 7, 2020); Craig Cheatham, *Continued Sharing of Images ‘Worse than Actual Abuse’ for Child Pornography Victim*, WCPO (Sept. 24, 2019, 10:48 PM), <https://www.wcpo.com/news/local-news/i-team/child-pornography-victim-its-worse-than-the-actual-abuse> [<https://perma.cc/8GRC-G5D9>] (accessed Feb. 7, 2020).

sexual gratification.<sup>147</sup> This is of great concern when examining the exploitation and treatment of these victims, both of whom are highly vulnerable groups, who may be potentially unable to heal emotionally or physically and, in the case of human victims, are at risk of becoming abusers themselves.<sup>148</sup> By allowing someone to become a victim, we perpetuate the cycle of violence.

Neither animals nor children can avoid becoming victims, and often cannot stop the victimization once it begins, because they are vulnerable populations that cannot defend themselves. The injury and damage is done at the victim's expense, and for someone to receive sexual pleasure from either form of activity leads to a general societal concern for humanity and a problem of public safety. The general problem of labeling either crime as "I will know it when I see it" imposes a level of ambiguity that courts still struggle with regarding pornography,<sup>149</sup> and animal protection laws that reach online depictions of animal cruelty will not advance until this ambiguity is cleared up.

The third obstacle in advancing legislation addressing online depictions of animal cruelty is the tension between animal cruelty and First Amendment rights. Issues have arisen surrounding individual freedoms such as the freedom of religion—including the practices of

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<sup>147</sup> Sherry F. Colb, *Lessons from an Animal Cruelty Case in the U.S. Supreme Court*, FINDLAW (Aug. 3, 2009), <https://supreme.findlaw.com/legal-commentary/lessons-from-an-animal-cruelty-case-in-the-us-supreme-court.html> [<https://perma.cc/WA8M-Z2XF>] (accessed Feb. 7, 2020).

<sup>148</sup> Cathy Spatz Widom, *Understanding the Consequences of Childhood Victimization*, in *THE TREATMENT OF CHILD ABUSE: COMMON GROUND FOR MENTAL HEALTH, MEDICAL, AND LEGAL PRACTITIONERS* 339, 352 (Robert M. Reece ed., 2000) ("Abuse or neglect may lead to the development of certain styles of coping that might be less than adaptive. For example, early abuse or neglect might encourage the development of impulsive behavioral styles that are related to deficiencies in problem-solving skills, inadequate school performance, or less than adequate functioning in occupational spheres."); Jeanne G. Kaufman & Cathy Spatz Widom, *Childhood Victimization, Running Away, and Delinquency*, 36 *J. RES. CRIME & DELINQ.* 347, 347 (1999) ("Results indicate that being abused or neglected in childhood increases the likelihood that a youth will run away from home, both childhood victimization and running away increase the risk of juvenile arrest, and chronic runaways were at greater risk of arrest as juveniles."); Helene Raskin White & Cathy Spatz Widom, *Intimate Partner Violence Among Abused and Neglected Children in Early Adulthood: The Mediating Effects of Early Aggression, Antisocial Personality, Hostility, and Alcohol Problems*, 29 *AGGRESSIVE BEHAV.* 332, 332 (2003) ("[A]bused and neglected children reported significantly higher rates of ever hitting or throwing things at a partner than matched controls . . . Overall, the results reveal a link between early childhood victimization and later perpetration of violence against partners for both men and women.").

<sup>149</sup> See Debra D. Burke, *Cybersmut and the First Amendment: A Call for a New Obscenity Standard*, 9 *HARV. J.L. & TECH.* 87, 97–113 (1996) (arguing that the Miller test's focus on community standards is antiquated in cyberspace).

ritual sacrifice<sup>150</sup> and kosher slaughter methods<sup>151</sup>—and freedom of speech.<sup>152</sup> At the core of issues surrounding animal cruelty depictions online is the question of “what [the] dividing line [is] between bad taste, exploitation, entertainment, education, advocacy, and potentially criminal behavior.”<sup>153</sup> It is important to note that there is also a historical component of depictions of animal killing in art, namely the use of animals in early cave paintings, and in film, including documentaries capturing the forced killings of animals.<sup>154</sup> Although guidelines now monitor the *actual* use and killing of animals in cinematography and the making of movies and documentaries, this has not yet translated to online depictions of animal cruelty.<sup>155</sup> The clash between First Amendment rights and animal cruelty is perhaps the greatest obstacle encountered by those attempting to create or enforce protections for nonhuman victims.

The fourth obstacle in advancing legislation is the extreme difficulty of regulating global Internet content and viewership. The sheer breadth and depth of the Internet makes it difficult to jurisdictionally regulate.<sup>156</sup> Because of its global nature, the Internet is almost impossible to police.<sup>157</sup> Additionally, because the Internet encompasses multiple platforms, including email, websites, applications, and social media, monitoring of all components is research intensive, making

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<sup>150</sup> See *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–32 (1993) (striking down a law banning animal sacrifice, stating that the law targets the church’s religious practice of animal sacrifice and violates the First Amendment).

<sup>151</sup> It is important to note the slaughter by itself is not at issue, but the fact that the methods used in shackle and hoist kosher slaughter are not conducted humanely. See Melissa Lewis, *The Regulation of Kosher Slaughter in the United States: How to Supplement Religious Law so as to Ensure the Humane Treatment of Animals*, 16 ANIMAL L. 259, 261–62 (2010) (describing the inhumane ‘shackle and hoist’ techniques used in kosher slaughter).

<sup>152</sup> See *Animal Cruelty and Free Speech*, N.Y. TIMES (Oct. 5, 2009), <https://www.nytimes.com/2009/10/06/opinion/06tue2.html?auth=login-email&login=email> [https://perma.cc/MS47-5WTW] (accessed Feb. 7, 2020) (“The First Amendment protects even disturbing speech . . . [t]he United States Court of Appeals . . . declined to create another [exception] category for depictions of animal cruelty.”).

<sup>153</sup> ABIGAIL PERDUE & RANDALL LOCKWOOD, ANIMAL CRUELTY AND FREEDOM OF SPEECH: WHEN WORLDS COLLIDE 17 (2014) (examining *United States v. Stevens*, 559 U.S. 460 (2010) in a detailed monograph focusing on the clash between law, policy, and amendment rights).

<sup>154</sup> *Id.* at 18–19.

<sup>155</sup> See Vincent Rizzo, *Detailed Discussion of the Legal Protections of Animals in Filmed Media*, MICH. ST. U.: ANIMAL LEGAL HIST. CTR., <https://www.animallaw.info/article/detailed-discussion-legal-protections-animals-filmed-media> [https://perma.cc/UF8T-GUN6] (accessed Feb. 7, 2020).

<sup>156</sup> See Adam Scholl, *The Problem with Internet Regulation*, WORLD POL’Y (Sept. 25, 2012), <https://worldpolicy.org/2012/09/25/the-problem-with-internet-regulation/> [https://perma.cc/W7SJ-ASDB] (accessed Feb. 7, 2020).

<sup>157</sup> See, e.g., Rick Sarre et al., *Responding to Cybercrime: Current Trends*, 19 POLICE PRAC. & RES. 515, 516 (2018).

stopping or shutting down content difficult.<sup>158</sup> Legal issues including privacy rights, content protections, and First Amendment rights emerge, making it hard to regulate online activities across domestic and national borders as global regulation is not consistent or agreed upon. Users consistently violate the policies and procedures in place on social media websites such as Facebook, Instagram, and Snapchat, leaving it up to each individual company to regulate it via terms of use.<sup>159</sup> Thus, it becomes nearly impossible to apprehend and prosecute those individuals who engage in explicit acts of cruelty to either humans or animals.

The fifth obstacle when trying to pass a bill focused specifically on online depictions of animal cruelty consists of the viewpoint impediments that exist. Individual viewpoints on animals are often based on cultural, social, and moral beliefs.<sup>160</sup> These beliefs range from people who believe that animals have inherent value and should not be subject to human use, to those who believe an animal's value, if any, is derived *solely* from human use.<sup>161</sup> Members of Congress pass bills based on what their constituents desire, and it is often difficult for them to focus on advancing animal protection when balancing such interests with a multitude of broader human issues. Solutions are not easy. There are conflicting views even amongst animal rights groups over which behaviors are appropriate to express toward animals. Even when animal protection bills are presented, they go either nowhere or to the Subcommittee on Crime, Terrorism, and Homeland Security, where no further action is taken.<sup>162</sup>

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<sup>158</sup> See, e.g., Dan Byman et al., *Regulating Internet Content: Challenges and Opportunities*, LAWFARE (Nov. 16, 2017, 11:30 AM), <https://www.lawfareblog.com/regulating-internet-content-challenges-and-opportunities> [<https://perma.cc/ZGC8-D2RZ>] (accessed Feb. 7, 2020).

<sup>159</sup> See, e.g., Queenie Wong, *Instagram Has New Rules for Removing Accounts*, CNET (July 18, 2019), <https://www.cnet.com/news/instagram-has-new-rules-for-removing-accounts/> [<https://perma.cc/ZF8Q-6QB6>] (accessed Feb. 7, 2020) (describing changes to Instagram's policy for removing accounts).

<sup>160</sup> See Lori Gruen, *The Moral Status of Animals*, STAN. ENCYCLOPEDIA OF PHIL. (Aug. 23, 2017), <https://plato.stanford.edu/entries/moral-animal/> [<https://perma.cc/X473-F2AT>] (accessed Feb. 7, 2020) (explaining that some individuals believe "humans have moral status while non-humans do not" yet others believe that, although humans are different from other animals, "these differences do not provide a philosophical defense for denying non-human animals moral consideration"); Pat Shipman, *Why Do We Have Such a Close Relationship with Animals?*, NEWSIDENTIST (Sept. 27, 2017), <https://www.newscientist.com/article/mg23531450-500-why-do-we-have-such-a-close-relationship-with-animals/> [<https://perma.cc/7WMW-PMJT>] (accessed Feb. 7, 2020) (discussing the ways domestic utility contributes to social attitudes toward animals); E. Szűcs et al., *Animal Welfare in Different Human Cultures, Traditions and Religious Faiths*, 25 ASIAN-AUSTRALASIAN J. ANIMAL SCI. 1499 (2012) (reviewing cultural practices and beliefs that impact human behavior toward animals).

<sup>161</sup> *Ethics Guide: Animal Rights*, BBC, [www.bbc.co.uk/ethics/animals/rights/rights\\_1.shtml](http://www.bbc.co.uk/ethics/animals/rights/rights_1.shtml) [<https://perma.cc/U3A3-B3XD>] (accessed Feb. 7, 2020).

<sup>162</sup> See *Prevention of Equine Cruelty Act of 2008, and the Animal Cruelty Statistics Act of 2008: Hearing on H.R. 6598 and H.R. 6597 Before the Subcomm. on Crime, Ter-*

There are two components to online depictions of animal cruelty: the actual underlying animal cruelty and the use of online media to portray or promote it. As seen in *United States v. Stevens*, it's difficult for a law to successfully cover both components without violating constitutional protections.<sup>163</sup> Additionally, bills may simply not place enough emphasis on animals as a class of victim, leaving the victimization likely not only to continue, but also evolve into new, crueler forms.

The sixth obstacle to advancing legislation is there are risks that could come with sweeping legislation regulating online depictions of animal cruelty. One such possibility is the disappearance of evidence that could be used to apprehend and prosecute an individual engaging in acts of animal cruelty. For example, if a post on social media depicts animal cruelty but someone reports it, and then the individual removes the post, evidence of the abuse is no longer available. On the surface it may seem that removing the post is a good thing, however, “that is the worst possible first step because once data is pulled off of the site it is (as a general rule) gone and not recoverable and cannot be used as evidence at a trial.”<sup>164</sup> PETA, ASPCA, ALDF, and American Humane, among others, each provide a list of steps for an individual to follow if they see abuse, including how to gather evidence via screenshots and video, identify whom to report the instance to, and how to contact the Internet Service Provider.<sup>165</sup> While it is arguable that few in society want to view an animal being tortured and killed, the fact that people post their acts on the Internet leaves an online trail of evidence. Without these trails, offenders will more than likely continue their behavior, possibly manifesting in the victimization of humans. This indirect consequence must be considered.

Another potential risk stemming from the regulation of online depictions of animal cruelty is that, due to the public nature of these cases, the general public is desensitized to these instances that do indeed occur. Educating the public can be a double-edged sword. Such education of the general public can bring positive results such as a

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*rorism, & Homeland Sec.*, 110th Cong. 43–44 (2008) (exemplifying an animal cruelty bill).

<sup>163</sup> *Stevens*, 130 S. Ct. at 464 (“The statute does not address underlying acts harmful to animals, but only portrayals of such conduct.”).

<sup>164</sup> *What to Do if You Witness Animal Cruelty Online*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/what-to-do-if-you-witness-animal-cruelty-online/> [https://perma.cc/N777-B4PE] (accessed Feb. 7, 2020).

<sup>165</sup> See *Cruelty on the Internet*, *supra* note 1 (detailing the process of reporting animal cruelty online to PETA); see also *Report Animal Cruelty*, ASPCA, <https://www.aspcanet.org/take-action/report-animal-cruelty> [https://perma.cc/B6QH-EDBU] (accessed Feb. 7, 2020) (detailing how to recognize and report suspected cruelty to “local law enforcement agency, animal control agency, or taxpayer-funded animal shelter”); *What to Do if You Witness Animal Cruelty Online*, *supra* note 164 (detailing suggested steps to take to report images depicting animal cruelty online); *Reporting Internet Animal Abuse*, AM. HUMANE (Aug. 25, 2016), <https://www.americanhumane.org/fact-sheet/reporting-internet-animal-abuse/> [https://perma.cc/DU5H-FJBS] (accessed Feb. 7, 2020) (describing how to report suspected internet animal cruelty).

public outcry or a movement to catch the abuser; however, it can also be an unintended teachable moment where individuals first see and learn how to commit abuse against animals. Lawmakers should carefully consider whether the public exposure that would result from proposed legislation is worth the potential risks involved, especially knowing that violence against animals will continue to occur in some capacity regardless of whether it is filmed. One important question to ask when attempting to regulate this behavior is whether or not it should be hidden or brought into the light so people can address it accordingly.

Lastly, when these abuses are posted online, the public outcry is often swift. Social media pages are created by individuals dedicated to finding justice for the victim.<sup>166</sup> This is of concern because people begin fundraising for victims or offering services for the prosecution of the offender or individuals involved, and hoax cases or intentional abuse may result.<sup>167</sup> There are people in society who would consider intentionally hurting an animal to raise funds, creating a story for media attention, or engaging in some other fraudulent activity. For example, in 2017, a woman created a website requesting money to help dogs in need and to help set up a rescue, picturing injured and dead dogs that she was planning on helping.<sup>168</sup> After collecting over \$1,000 in donations, she was charged with five counts of animal torture and five counts of animal neglect after police determined she had harmed the dogs herself.<sup>169</sup> In March of 2018, a New Jersey man named Reid Herjo was charged with taking close to \$15,000 from a GoFundMe account, claiming that his puppy had been hit by a car.<sup>170</sup> Police later found that he had beaten his puppy, posted pictures of the animal's injury and within a few months, had killed the puppy.<sup>171</sup> Therefore, while hoax cases or intentional abuse may seem like a stretch, there are instances where they have occurred. Thus, they cannot be ignored as a possible side effect of the public nature of online depictions of animal cruelty.

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<sup>166</sup> See Justice for Cam, *supra* note 31 (giving updates on the trial of Cam's killer); see also Justice for Huey, *supra* note 31 (describing Huey's story).

<sup>167</sup> See Kyle Iboshi, *The Dark Side of Crowdfunding: Bogus Campaigns Hurt Real Victims*, KGW8 (Feb. 26, 2018), <https://www.kgw.com/article/news/investigations/the-dark-side-of-crowd-funding-bogus-campaigns-hurt-real-victims/283-523541837> [<https://perma.cc/2XCR-3767>] (accessed Feb. 7, 2020) (reporting on numerous cases of fraudulent crowdfunding campaigns and noting that stories about animals often pop up because of the emotional appeal).

<sup>168</sup> *Let's Talk About the GoFundMes For the Iowa Dog Rescuer Charged with Cruelty and Torture*, GoFRAUDME (Feb. 16, 2017), <http://gofraudme.com/lets-talk-gofundmes-iowa-dog-res-cuer-charged-cruelty-torture/> [<https://perma.cc/3QN2-DKCP>] (accessed Feb. 7, 2020).

<sup>169</sup> *Id.*

<sup>170</sup> *Pathetic Excuse for a Man Beats His Puppy to Death, Scams GoFundMe Out of \$15k*, GoFRAUDME (Apr. 10, 2018), [gofraudme.com/pathetic-excuse-for-a-man-beats-his-puppy-to-death-scams-gofundme-out-of-15k/](http://gofraudme.com/pathetic-excuse-for-a-man-beats-his-puppy-to-death-scams-gofundme-out-of-15k/) [<https://perma.cc/9PGG-3MS7>] (accessed Feb. 7, 2020).

<sup>171</sup> *Id.*

## V. FUTURE DIRECTIONS

Despite these obstacles, it is critical that legislation is advanced to create a framework to apprehend, arrest, and sentence individuals who engage in acts of cruelty to animals and subsequently post those acts online. There are two components to address: one is the cruelty itself and the other is the posting of the cruelty online, both of which are critical to protect society, children, and victims. Online depictions of animal cruelty are an increasing public safety issue. One critical reason for addressing online depictions of animal cruelty is the well-researched link between cruelty toward animals and cruelty toward humans.<sup>172</sup> Animal cruelty is one of the strongest supported risk predictors<sup>173</sup> of violence toward both animals and humans and is a consistent characteristic of offenders that mutilate or torture both human and nonhumans.<sup>174</sup> Study after study finds that animal cruelty is a direct predictor of future victimization of humans.<sup>175</sup> Placing these acts online suggests someone who is proud, disconnected, and more violent than someone who does not engage in such acts.

On social media, people post what they are proud of, what they want attention for, or how they want to be perceived. An individual who takes the extra step of posting animal cruelty online is of more concern than one who does not. The risk predictors of that individual

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<sup>172</sup> TIM BATTLE, ALBERTA SPCA, *THE CRUELTY CONNECTION: THE RELATIONSHIPS BETWEEN ANIMAL CRUELTY, CHILD ABUSE AND DOMESTIC VIOLENCE* 1, 3 (2013), <https://www.albertaspc.org/wp-content/uploads/2019/02/CrueltyConnection-web.pdf> [<https://perma.cc/G7CP-NLSJ>] (accessed Feb. 7, 2020); Phil Arkow, *The Relationships Between Animal Abuse and Other Forms of Family Violence*, 12 *FAM. VIOLENCE & SEXUAL ASSAULT BULL.* 29, 29 (1996); see also Arnold Arluke & Randall Lockwood, *Understanding Cruelty to Animals*, 5 *SOC'Y & ANIMALS* 183, 184 (1997) (examining the potential to use childhood instances of animal cruelty as ways of analyzing tendencies for violence against other humans).

<sup>173</sup> Risk predictors, also called risk factors, are characteristics that make an individual more likely than the average person to develop a disorder commonly utilized by criminologists to assess a person's chance of becoming a delinquent. See MICHAEL SHADER, OFFICE OF JUV. JUST. AND DELINQ. PREVENTION, U.S. DEPT. OF JUSTICE, *RISK FACTORS FOR DELINQUENCY: AN OVERVIEW* 2 (2004) ("Risk factors have been broadly defined as "those characteristics, variables, or hazards that, if present for a given individual, make it more likely that this individual, rather than someone selected from the general population, will develop a disorder.").

<sup>174</sup> Llian Alys, J. Clare Wilson, John Clarke & Peter Toman, *Developmental Animal Cruelty and its Correlates in Sexual Homicide Offenders and Sex Offenders*, in *LINK BETWEEN ANIMAL ABUSE & HUMAN VIOLENCE* 145, 159 (Andrew Linzey ed., 2009); see Arnold Arluke et al., *Harming Animals and Massacring Humans: Characteristics of Public Mass and Active Shooters Who Abused Animals*, 36 *BEHAV. SCI. L.* 739, 748 (2018) ("[O]ur study suggests that much like with serial killers, active/mass shooters who had histories of animal abuse in our sample were often involved in close-up harm perpetrated against dogs and cats.").

<sup>175</sup> See *The Link Between Cruelty to Animals and Violence Toward Humans*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/the-link-between-cruelty-to-animals-and-violence-toward-humans-2/> [<https://perma.cc/FL5A-UD22>] (accessed Feb. 7, 2020) ("Ample research backs up the finding that there is a direct link between acts of cruelty to animals and violence toward humans.").

committing violence and harming others is higher because they feel little remorse and are proud of their ability to harm another.<sup>176</sup> Criminologically, they are the most dangerous of offenders,<sup>177</sup> and anyone who views their abuse, including the prosecution, is now aware of their precursor to human violence. Additionally, those who witness the abuse and have trauma associated with that abuse are at risk of becoming abusers themselves.<sup>178</sup> In sum, these are dangerous individuals that place not only their victims at risk, but also anyone associated with their act at risk. It is imperative that legislation be created with this in mind, or the government or prior viewers of the cruelty will become complicit in the abusers next act of cruelty.

Significant obstacles exist when addressing animal cruelty depictions online. Addressing these obstacles will need to be done one small piece at a time, with the hope of protecting not only animals, but also society. There are, however, ways to change or advance the legislation to address these obstacles.

First, if the definition of animal within a statute is so ambiguous that people have difficulty classifying whether a particular animal fits the definition, the legislature should create a new term or classification. For example, if the language of a statute is broad and remains ambiguous regarding what animals are covered, then legislators should include a descriptor term such as 'sentient' nonhuman, nonhuman with life, or a nonhuman capable of breathing.

Second, if the existing framework for obscenity cannot be applied to online depictions of animal cruelty, there are three potential options for the legislature: (1) abandon the term obscene, (2) add a second component that must be met in addition to, or instead of, obscene, or (3) create a framework that is specifically applicable to animals. The cases presented in this Article often discuss the use of the animal and the defendant's violation of that use. One suggested framework is the addition of a clause such as 'use and necessity.' For example, if you are not going to utilize the puppy, kitten, or mouse for its intended use, either as a companion animal or food—societally accepted uses, depending on the animal—but instead plan to crush it, you have violated the use and necessity clause. If a domestic animal is maimed, tortured, or killed, and such treatment is not culturally acceptable for that animal, you have again violated the use and necessity clause. This clause could also address the concerns of law-abiding hunters depicting their activities online. Creating a new framework based upon the societally expected use of an animal or the necessity of its death could result in

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<sup>176</sup> Mark Dadds, Cynthia Turner & John McAloon, *Developmental Links Between Cruelty to Animals and Human Violence*, 35 AUSTL. & N.Z. J. CRIMINOLOGY 363, 367, 370–71 (2002).

<sup>177</sup> See Arluke et al., *supra* note 174, at 748 (suggesting a correlation between childhood histories of animal abuse and psychopathic traits associated with active or mass shooting offenders).

<sup>178</sup> UNICEF, BEHIND CLOSED DOORS: THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN 7 (2006).

appropriately stringent legislation that prevents cruelty for cruelty's sake. Therefore, future legislation must include the *intent of the individual* and the *manner of which the act occurred*.

Third, it can be difficult to determine the purpose of the punishment or remedy that should be dictated by legislation. The core tenets of punishment focus on deterrence, incapacitation, rehabilitation, restoration, and retribution.<sup>179</sup> While many may hope that retribution or deterrence are enough to keep offenders from repeating their abuse against animals, these are the least likely to work.<sup>180</sup> The core concept of deterrence is that an individual is a rational person thinking of weighing the costs versus the benefits of a criminal act, and the only manner in which the individual will not choose criminal activity is if the remedy is swift, certain, and severe. Animal abusers, however, often fall outside of this category of criminal because they are not as easily deterred from future abuse even if they are caught. Punishment is often not harsh, nor swift, for animal cruelty. In other words, deterrence is often not an appropriate form of punishment for animal cruelty because society has not legally set up enough of a framework for it to be an effective punishment mechanism. With retribution, often referred to as 'an eye for an eye,' if the animal is already damaged or deceased there are no retributive options, besides monetary compensation, that are constitutionally sound. Likewise, an approach focused on incapacitation would add to an already overburdened prison population. An offender can become acclimated to the prison environment and all its consequences, such as disease, re-entry issues, and constitutional violations, and would again, not result in the animal being either healed or brought back to life.

Rehabilitation offers an attractive approach to address animal abusers. The rehabilitative approach could attempt to integrate the defendant into a system that could address deficiencies that led to the acts of cruelty. Criminal risk predictors such as prior abuse, substance abuse issues, and anger and rage management could then be addressed. Socio- and psycho-pathic tendencies can be treated via medication, and cognitive or dialectical behavior therapy could be provided to replace abusive patterns of behavior with pro-social patterns of behavior. Thus, rehabilitation is possibly the only meaningful solution that could prevent the offender from engaging in acts of cruelty again or passing those characteristics on to others. Importantly, rehabilitative efforts must be attempted as early as possible in an individual's criminal career for it to be most protective of all members of society.

Effectively, there are few appropriate punishments currently in place for online depictions of animal cruelty, nor are there effective

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<sup>179</sup> *Addressing Transgressions: Types of Criminal Punishment*, POINT PARK U. ONLINE (Nov. 28, 2016), <https://online.pointpark.edu/criminal-justice/types-of-criminal-punishment/> [https://perma.cc/E25V-APAB] (accessed Feb. 7, 2020).

<sup>180</sup> See NAT'L INST. OF JUST., U.S. DEP'T OF JUSTICE, FIVE THINGS ABOUT DETERRENCE 1 (2016) ("[P]rison sentences (particularly long sentences) are unlikely to deter future crime.").

ways to prevent it. A solution may start with legislation integrating cruelty prevention tactics into early education to address individuals that may commit acts of cruelty and proudly disseminate those acts. Criminologically speaking, early childhood education is critical to prevent future violent behavior.<sup>181</sup> Education programs that attempt to integrate components of cognitive behavior therapy, for example, have shown to be effective for decreasing violent behavior.<sup>182</sup> Such programs include Big Brothers Big Sisters,<sup>183</sup> The First Step for Success<sup>184</sup> program for 5- to 8-year-olds, the Good Behavior Game<sup>185</sup> for 6- to 10-year-olds, Operation Peacekeeper<sup>186</sup> for 10- to 18-year-olds, and the Promoting Alternative Thinking Strategies Program (PATHS).<sup>187</sup> Integrating components of anti-cruelty or a program on violence against animals could easily be adapted to, or added into, these programs.

Fourth, while the goal of this Article is to address the need for a federal law appropriately regulating animal cruelty, particularly depictions of animal cruelty online, an effective social movement approach to proposing such legislation may start at a lower level. To begin such a movement, start small and start at the local or state level. Local ordinances are often the easiest laws to pass.<sup>188</sup> Multiple local ordinances passed within a state on the same issue can provide state legislators with an incentive to pass similar laws on the state level.

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<sup>181</sup> PREVENTION INST., *FIRST STEPS: TAKING ACTION EARLY TO PREVENT VIOLENCE* 30 (2002).

<sup>182</sup> See *Program Directory Search*, YOUTH.GOV, [https://youth.gov/evidence-innovation/program-directory?keywords=&field\\_pd\\_factors\\_risks\\_tid=436&field\\_pd\\_factors\\_protective\\_tid=all](https://youth.gov/evidence-innovation/program-directory?keywords=&field_pd_factors_risks_tid=436&field_pd_factors_protective_tid=all) [https://perma.cc/54LT-FCJY] (accessed Feb. 7, 2020) (listing educational programs that implement cognitive behavior therapy components into their work with youth).

<sup>183</sup> *Our Impact on Juvenile Justice*, BIG BROTHERS BIG SISTERS, <https://www.bbbs.org/impact-juvenile-justice/> [https://perma.cc/88UG-96PS] (accessed Feb. 7, 2020) (“Bigs help teach Littles right from wrong and help them make good decisions.”).

<sup>184</sup> *Good Behavior Game*, PAXIS INST., <https://www.goodbehaviorgame.org/> [https://perma.cc/9DQE-XXHF] (accessed Feb. 7, 2020) (“The PAX Good Behavior Game® is a powerful evidence-based practice, consisting of proven and behavioral health strategies used daily by teachers and students in the classroom.”).

<sup>185</sup> *Welcome to First Step to Success*, FIRST STEP TO SUCCESS, <http://firststepstosuccess.org/> [https://perma.cc/EC42-ZZCG] (accessed Feb. 7, 2020) (“First Step to Success is an early intervention program designed to divert young children with challenging behaviors from a path leading to . . . interpersonal violence.”).

<sup>186</sup> *Peacekeepers*, CITY OF STOCKTON, <http://www.stocktonca.gov/government/departments/manager/peacekeepers.html> [https://perma.cc/7P5D-872P] (accessed Feb. 7, 2020) (“Operation Peacekeeper Outreach Workers are street-wise men and women . . . [who] work in schools and neighborhoods, wherever young people at risk of violence are.”).

<sup>187</sup> *Welcome to the PATHS® Training Website*, PATHS TRAINING, <http://www.paths.training.com/main/> [https://perma.cc/3Y7N-2KRF] (accessed Feb. 7, 2020) (indicating PATHS provides “research-based and proven-effective social and emotional learning (SEL) curricula for children in preschool through grade 6”).

<sup>188</sup> *Steps to Pass a Local Ordinance*, HUMANE SOC’Y U.S., (2015), [https://www.humanesociety.org/sites/default/files/docs/pass-a-local-ordinance-steps.pdf?credit=web\\_id527761502](https://www.humanesociety.org/sites/default/files/docs/pass-a-local-ordinance-steps.pdf?credit=web_id527761502) [https://perma.cc/XPD6-SSJW] (accessed Feb. 7, 2020).

Draft a proposal for the law and include a justification for the law with relevant research showing why the proposed law would benefit society. Determine which representative is the correct individual to sponsor the proposed law, depending on the appropriate level of government.<sup>189</sup> If legislators refuse to sponsor or vote on proposed animal cruelty laws, take the initiative to the ballot.<sup>190</sup> While such an initiative is not an option at the federal level, if a concentrated and national effort is made to regulate animal cruelty and mandate specific sentencing, treatment, or rehabilitative efforts for offenders that use the Internet as a tool for dissemination of animal cruelty, the effect would be similar to a ballot initiative. Eventually the federal government may feel the pressure to listen to how their constituents want to address a growing social problem, online depictions of animal cruelty.

Fifth, a ‘strict liability’ approach could be considered for individuals creating videos that depict aggressive or fighting animals. The strict liability approach imposes legal responsibility for injury or damages regardless of whether or not a person acted with fault or negligence.<sup>191</sup> As applicable to animal abuse, strict liability would enable the government to focus on the harm to the animal, without emphasizing *why* that harm occurred. Creation of videos that depict aggressive or fighting animals, would illustrate just that. If an animal was harmed, the creator of the video would be strictly liable for the injury or damage to the animal, thus the animal must be removed from the harm. Other factors, such as economics or First Amendment rights, would not be at the forefront and focus would remain on the fact that a harm occurred. Animals seized under a strict liability approach could be seized as evidence and placed in rescue instead of being euthanized after they have been disposed of as evidence. Strict liability, as applied to animal cases, may result in more protection of the animal than traditional legalistic approaches, and should be considered when creating legislation or a new framework to address this issue.

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<sup>189</sup> If the proposed law would apply at a local level, check the city or county government website for the applicable city council member or equivalent. If the proposed law would apply at the state level, locate the representative and senator for your jurisdiction

<sup>190</sup> A deep dive into the ballot initiative process is not explored in this Article, however, there are many resources out there for someone interested in getting involved in such a process. See *Initiative Process 101*, NAT’L CONF. OF ST. LEGISLATURES, <http://www.ncsl.org/research/elections-and-campaigns/initiative-process-101.aspx> [https://perma.cc/85C4-84U3] (accessed Feb. 7, 2020) (detailing the different types of ballot initiatives and how to qualify an initiative for inclusion in a ballot); see also *Initiative, Referendum and Recall*, NAT’L CONF. OF ST. LEGISLATURES (Sept. 20, 2012), <http://www.ncsl.org/research/elections-and-campaigns/initiative-referendum-and-recall-overview.aspx> [https://perma.cc/Y8X7-8Q9L] (accessed Feb. 7, 2020) (providing specific information on how to begin the initiative process).

<sup>191</sup> *Strict Liability*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“Liability that does not depend on proof of negligence or intent to do harm but that is based instead on a duty to compensate the harms proximately caused by the activity or behavior subject to the liability rule.”)

Lastly, the social and cultural context of animal cruelty must be considered when creating appropriate legislation to regulate online depictions of animal cruelty. The recording and posting of animal cruelty on social media to get likes, or even business, is not negligent, but intentional. Legislators need to consider these contexts when creating the law, classifications, and anticipating its results. Depending on the state, negligent or intentional acts against animals, such as causing unjustifiable pain or suffering, hoarding, poisoning, and unlawful restraint, are typically misdemeanors,<sup>192</sup> and malicious acts, such as animal torture, maiming, or sexual assault,<sup>193</sup> are typically felony cruelty acts.<sup>194</sup> Legislators should consider implementing mandatory reporting for bystanders. Such consideration will add an additional layer of regulation by incentivizing community members to report animal abuse when they see it.

## VI. CONCLUSION

The Internet is increasingly used as a tool to disseminate depictions of animal cruelty ranging from Internet hunting, to the posting of brutal torture, maiming, and killing of nonhuman animals on social media. Legislation currently in place is sorely lacking to prevent these animals from being victimized. The individuals who find pleasure, sexual or otherwise, in hurting nonhuman animals are often one small step away from hurting humans, making this problem a public safety issue. As this Article discusses, addressing this problem can be accomplished in multiple ways. The definition and use of the term animal can be revised. A legislative framework that addresses animal cruelty, and depictions of animal cruelty online can be created. The punishment system can be revised to focus on a more rehabilitative or preventative education-based model. Constituents can actively participate in the lawmaking process by drafting local ordinances or proposing laws to their local and state government officials. A strict liability framework could be implemented to deter the creation of videos depicting aggressive or fighting animals. Finally, the intent and manner of the behavior can be kept in mind while legislators create appropriate legislation. It is critical that advancements are made to regulate online

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<sup>192</sup> See E. A. Gjelten, *Animal Cruelty Laws*, NOLO, <https://www.criminaldefenselawyer.com/resources/cruelty-to-animals.html> [https://perma.cc/DN7X-CWXF] (accessed Feb. 7, 2020) (“Often, animal cruelty is a misdemeanor if the conduct was negligent or intentional.”).

<sup>193</sup> See Rebecca F. Wisch, *Table of State Animal Sexual Assault Laws*, MICH. ST. U.: ANIMAL LEGAL & HIST. CTR. (2019), <https://www.animallaw.info/topic/table-state-animal-sexual-assault-laws> [https://perma.cc/4GTS-QP5S] (accessed Feb. 7, 2020) (indicating twenty-five states categorize sexual assault of an animal as a felony, while twenty-one states categorize it as a misdemeanor).

<sup>194</sup> See Gjelten, *supra* note 192 (“[A]nimal cruelty . . . becomes a felony if it’s done maliciously or with ‘extreme indifference to life’ . . . [i]n several states, animal cruelty becomes a felony if the animal dies, is seriously injured, or suffers for a long time.”)

depictions of animal cruelty as a public safety concern and a manner of curbing the violent behavior of individuals in order to protect those who are unable to protect themselves.