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# DIGITAL COERCIVE CONTROL (DCC): THE ROLE OF PLATFORMS IN VICTIMS' (IN)JUSTICE AND POTENTIAL FOR ONLINE DISPUTE RESOLUTION

Reeve Lanigan\*

## I. INTRODUCTION

Domestic Violence (DV), the most common form of gender-based violence, is characterized by acts of coercion where a perpetrator uses tactics of power and control to isolate, surveil, harass, and abuse a current or former intimate partner.<sup>1</sup> DV impacts women most frequently; however, men and non-binary individuals can be victims as well.<sup>2</sup> DV has been deemed a global epidemic

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<sup>1</sup> Delanie Woodlock et al., *Technology as a Weapon in Domestic Violence: Responding to Digital Coercive Control*, 73 AUST. SOC. WORK 368, 368–69 (2020).

<sup>2</sup> *Understand Relationship Abuse*, NAT'L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/identify-abuse/understand-relationship-abuse/> (last visited May 20, 2024); see also *Statistics*, NAT'L COALITION AGAINST DOMESTIC VIOLENCE (2020), <https://ncadv.org/STATISTICS>.

with one in four women having been stalked, harassed, and/or physically abused by an intimate partner during her lifetime.<sup>3</sup> Gender-based violence and methods of perpetuating DV have intensified and proliferated through the rise and reliance on digital technologies, particularly through communication and interaction via social networking sites, with over 67% of the world population using the Internet and its associated services.<sup>4</sup>

Researchers view technology-enabled and technology-facilitated abuse as a specialized form of DV given the distinctive ways a victim experiences violence, posing special challenges for justice and recourse.<sup>5</sup> However, most literature to date conceptualizes DV in online spaces as merely an extension of in-person DV, thereby ignoring how gender-based violence in digital spaces is unique in and of itself.<sup>6</sup> Instead, the term **Digital Coercive Control (DCC)** more accurately describes mechanisms perpetrators use to stalk, harass, and abuse current or former partners in digital society through technological platforms and their associated social networking services.<sup>7</sup> The pervasive expansion and power allocated to social networking sites and technology platforms has furthered the opportunity for perpetrating abuse.<sup>8</sup> Not only has digital society fostered the speed and severity at which an individual can be harmed, but technology platforms' business models often profit from such exploitation, imploring a need to effectively provide a legal remedy for victims now more than ever.<sup>9</sup>

This comment argues that technological platforms, as key stakeholders of DCC through their design and control of digital society, must be proactively incorporated into DCC justice through

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<sup>3</sup> *Violence Against Women*, WORLD HEALTH ORG., <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> (Mar. 9, 2021); see also NAT'L COALITION AGAINST DOMESTIC VIOLENCE, *supra* note 2.

<sup>4</sup> *Number of internet and social media users worldwide as of April 2024*, STATISTA (May 7, 2024), <https://www.statista.com/statistics/617136/digital-population-worldwide/>; see also Woodlock et al., *supra* note 1, at 377.

<sup>5</sup> Woodlock et al., *supra* note 1, at 369.

<sup>6</sup> See generally *id.*

<sup>7</sup> *Id.*; see also Greg Stratton et al., *Crime and Justice in Digital Society: Towards a 'Digital Criminology'?*, 6 INT'L. J. CRIME JUST. SOC. DEMOCRACY 17, 27 (2017).

<sup>8</sup> See generally Rojan Afrouz, *The Nature, Patterns and Consequences of Technology-Facilitated Domestic Abuse: A Scoping Review*, 24 TRAUMA, VIOLENCE & ABUSE 913 (2023) (finding social media accounts and other digital service providers exacerbating the consequences of domestic abuse).

<sup>9</sup> See *id.*

a model of alternative online dispute resolution, given their abilities to both prevent and respond to gender-based violence. By analyzing digital society and the platform economy that fuels coercive control online, this comment will focus specifically on technological corporations' role in encouraging DCC and how these actors can provide justice.<sup>10</sup> Remaining victim-focused by using DCC victims' perceptions of justice, this comment seeks to understand (1) how contemporary technologies facilitate DCC, (2) how justice is defined and understood for victims of DCC, (3) why current formal and informal legal options fail to provide adequate remedies and, (4) how platforms, as the creators and distributors of digital services, can provide justice for DCC victims by engaging in a system of accountability.

Part II begins with an overview of digital society to understand how human interaction shapes and is shaped by technological platforms. Additionally, DCC tactics of omnipresence, isolation and ostracism, and additional risks to victim safety are presented to illustrate the range of abuse perpetuated in digital spaces. Part III explores DCC victim justice through the lens of equal digital citizenship and principles of justice including recognition, dignity, voice, prevention, and consequences. Current options for DCC recourse are critiqued, showcasing how these remedies are inadequate in meeting principles of justice and why reform is needed. Part IV introduces the context of surveillance capitalism and the digital economy that trades and sells human behavior, showing how platforms serve as stakeholders by profiting from the market of DCC. Platforms' lack of liability is assessed by highlighting the overwhelming legal protections provided for corporations and their reliance on performative accountability. Finally, Part V explores how to engage platforms in prevention and response to DCC through methods of Online Dispute Resolution (ODR), concluding with a proposed reimagination of how to effectively provide justice in digital society.

## **II. DEFINING & CATEGORIZING GENDER-BASED VIOLENCE IN DIGITAL SOCIETY**

### **A. UNDERSTANDING DIGITAL SOCIETY**

The concept of the “digital society” serves as a useful framework to understand crime and justice as “technosocial

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<sup>10</sup> See generally SHOSHANA ZUBOFF, *THE AGE OF SURVEILLANCE CAPITALISM* (2019); *infra* Part IV (describing platforms' insurmountable influence of designing, implementing, and encouraging human behavior in digital society).

practices” within online space. This framework is particularly beneficial because it breaks through dualisms of online violence versus offline violence, as well as real realities versus virtual realities.<sup>11</sup> Technology continuously shapes and is shaped by human interaction, expanding the range of ways crime and violence can be both perpetrated and experienced, including acts rooted in larger systemic issues of gendered inequality like DCC.<sup>12</sup> Understanding digital harms within a human-technical hybrid of digital society presents a holistic and victim-focused framework for evaluating the ways technologies impact victims both online and offline, often simultaneously.<sup>13</sup> Additionally, using digital society instead of the digital age or era confronts the deeper underlying logic of crime and justice driven by platforms and systems embedded into every facet of our lives which has produced a new, permanent society, demanding a contemporary conceptualization of response, regulation, and reformation.<sup>14</sup>

Using digital society as a framework also exposes the range of technological developments that foster gender-based violence, as many feminist criminologists to date have instead focused on technology serving as merely a weapon for facilitating conventional crimes including sexual assault and harassment, rape, and sexual exploitation.<sup>15</sup> Scholars often use terms such as “technology facilitated sexual violence,”<sup>16</sup> “technological intimate partner violence,”<sup>17</sup> and “technology-facilitated coercive control”<sup>18</sup> to document the ways digital mediums worsen existing forms of gender-based violence. However, assuming technology is merely a tool used to facilitate gender-based violence ignores victims’ harms that span between online and offline realities that cannot always be

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<sup>11</sup> See generally Stratton et al., *supra* note 7, at 24.

<sup>12</sup> *Id.* at 18, 22–23.

<sup>13</sup> *Id.* at 22.

<sup>14</sup> *Id.* at 24; see also generally Sheila Brown, *The Criminology of Hybrids: Rethinking Crime & Law in Technosocial Networks*, 10 THEORETICAL CRIMINOL. 223 (2006).

<sup>15</sup> See, e.g., Nicola Henry et al., *Technology-Facilitated Domestic and Sexual Violence: A Review*, 26 VIOLENCE AGAINST WOMEN 1828 (2019).

<sup>16</sup> See Nicola Henry & Anastasia Powell, *Embodied Harms: Gender, Shame, and Technology-Facilitated Sexual Violence*, 21 VIOLENCE AGAINST WOMEN 758, 759 (2015).

<sup>17</sup> See Kari B. Duerksen & Erica M. Woodin, *Technological Intimate Partner Violence: Exploring Technology-Related Perpetration Factors and Overlap with In-Person Intimate Partner Violence*, 98 COMPUTS. IN HUMAN BEHAV. 223 (2019).

<sup>18</sup> See Molly Dragiewicz et. al., *Technology Facilitated Coercive Control: Domestic Violence and the Competing Roles of Digital Media Platforms*, 18 FEMINIST MEDIA STUD. 609, 610 (2018).

captured under formal, stagnant legal definitions.<sup>19</sup> Additionally, terms that invoke the weaponization of technology for gender-based violence focus on the medium of technology rather than the actors or context that allow violence to occur in digital society. Though gender-based violence in digital society may certainly further “in-person” DV, it also creates new ways for perpetrators to cause harm.<sup>20</sup> Therefore, to fully encapsulate the scope and span of violence victims face in digital society, DCC will be used as a term to illustrate the ways victims are targeted and afflicted to evaluate recourse.

## B. DEFINING DIGITAL COERCIVE CONTROL

DCC encompasses the range and changing nature of gender-based violence in digital society as it specifies the “method (digital), the intent (coercive behavior) and impact (control over a current or former partner),” while situating harm within a “wider setting of [gender]-based inequality.”<sup>21</sup> The term DCC builds upon feminist research on gender-based violence in digital society to allow for a deeper analysis into the underlying logic of perpetrators, technology designers, and cultures that facilitate harm in digital society.<sup>22</sup> When society views DCC as a phenomenon in and of itself, it removes the potential for people to “responsibilize” victims for using technology in the first place.<sup>23</sup> Additionally, since DV in digital society can take many forms, DCC is a comprehensive term that reflects the range of violent acts victims experience in digital spaces and the continuum of harms victims endure.<sup>24</sup>

Framing a victim’s perception of justice within a continuum of harms maintains an inclusive understanding of a victim’s experience. Furthermore, using a continuum illustrates why a singular definition of justice is unsuitable for violence within digital

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<sup>19</sup> See Henry & Powell, *supra* note 16, at 765; Stratton et al., *supra* note 7 at 24; see also *infra* Part III for further discussion on how criminal justice remedies fail to provide adequate justice.

<sup>20</sup> See Bridget A. Harris & Delanie Woodlock, *Digital Coercive Control: Insights From Two Landmark Domestic Violence Studies*, 59 BRIT. J. CRIMINOLOGY, 530, 537–38, 541 (2019).

<sup>21</sup> *Id.* at 533; see also Woodlock, *supra* note 1, at 368 (analyzing DCC and its patterns of coercive control as a “liberty crime, aimed at undermining the victim’s autonomy, social support, equality, and dignity”).

<sup>22</sup> See Harris & Woodlock, *supra* note 20, at 534.

<sup>23</sup> *Id.* at 539–40.

<sup>24</sup> *Id.* at 533 (explaining the range of ways victims can endure DCC by being stalked, harassed, and abused by current or former intimate partners).

society.<sup>25</sup> Victims of DCC can experience gender-based violence ranging from “choice to pressure to coercion to force.”<sup>26</sup> The range of DCC exposes how technology can be repurposed to produce DV in new, amplified ways, while also incorporating acts, like gender-based hate speech or virtual rape, that may not be visible, nor legally considered criminal.<sup>27</sup> In addition, employing a continuum show the range of DCC harms while also “challeng[ing] the notion of a hierarchy of sexual offenses,” because victims’ experiences are unique and differently situated, which make it difficult to objectively assess or assign severity.<sup>28</sup> The continuum epitomizes a victim-focused approach by encompassing harms that may not “fit” within criminal or civil definitions of crimes, which usually focus on physical injuries to determine whether a harm occurred.<sup>29</sup>

### C. TACTICS USED TO FACILITATE DIGITAL COERCIVE CONTROL

Unlike terms referring to a particular crime, such as “cyberstalking,” DCC includes a variety of harmful tactics of coercion and violence.<sup>30</sup> Categorizing gender-based violence in digital spaces under broader themes instead of specific crimes ensures a victim’s experience can continue to be classified in the future, informing law and justice to go beyond a single incident to show a larger pattern of abuse often ignored.<sup>31</sup> Additionally, understanding DCC in this way ensures “new experiences can be located and accurately understood as abusive,” so that justice can withstand change throughout digital society.<sup>32</sup> DCC tactics include

<sup>25</sup> See ANASTASIA POWELL & NICOLA HENRY, SEXUAL VIOLENCE IN A DIGITAL AGE 302–03 (2017); see also Malcolm Cowburn, *Perceiving the Continuum of Sexual Harm and the Need for Varied Responses to Sexual Violence*, 55 INT’L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 179 (2011).

<sup>26</sup> Henry & Powell, *supra* note 16, at 759.

<sup>27</sup> See Clare McGlynn et al., *Beyond ‘Revenge Porn’: The Continuum of Image-Based Sexual Abuse*, 25 FEMINIST LEGAL STUD. 25 (2017); see also Weilun Soon, *A researcher’s avatar was sexually assaulted on a metaverse platform owned by Meta, making her the latest victim of sexual abuse on Meta’s platforms, watchdog says*, INSIDER NEWS (May 29, 2022), <https://www.businessinsider.com/researcher-claims-her-avatar-was-raped-on-metas-metaverse-platform-2022-5>.

<sup>28</sup> McGlynn et al., *supra* note 27, at 27.

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

<sup>30</sup> Woodlock et al., *supra* note 1, at 368–69.

<sup>31</sup> See generally McGlynn et al., *supra* note 27, at 28.

<sup>32</sup> *Id.*

producing a sense of omnipresence, isolation, and ostracism, as well as threats to the victim's safety.<sup>33</sup>

## 1. OMNIPRESENCE

Technology affords a multitude of ways to intrude into another's personal space by force and fear to harass, stalk, and torment.<sup>34</sup> The endless opportunity for a perpetrator surveil a victim through digital means creates an insidious omnipresence where an abuser can invade virtually every area of a victim's life at anytime and anywhere, whether the perpetrator is physically present or not.<sup>35</sup> One prominent way omnipresence manifests is through Global Positioning Systems (GPS) tracking technology on a victim's mobile phone or other personal service device.<sup>36</sup> Surveillance tactics employed through GPS can be exceptionally dangerous as a victim's physical location is constantly available for their perpetrator, thereby making abuse "portable."<sup>37</sup> This ubiquitous surveillance tactic can impact a DCC victim's mental and physical health, and even lead to attempted or actual homicide.<sup>38</sup>

## 2. ISOLATION & OSTRACISM

Perpetrators use technology to isolate victims or hijack technology by coercing partners to disclose personal information, photographs, videos, or other information.<sup>39</sup> The relational element in DCC makes isolation and ostracism tactics particularly pervasive and severe, as abusers can gain access to a victim's intimate secrets, including information about their family, friends, personal history.<sup>40</sup> A perpetrator can then use this proprietary information as ammunition to target and torment victims.<sup>41</sup> Isolation tactics can make a victim vulnerable to physical and emotional harm from not only their abuser, but also other online preparators seeking to take

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<sup>33</sup> See Woodlock et al., *supra* note 1, at 369–72; Harris & Woodlock, *supra* note 20, at 530. It is important to note these themes only illustrate a few examples among the myriad of ways DCC victims can be aggrieved in digital society. For purposes of this comment, generalized themes of DCC harms will be used to critique potential for reimagining victim justice.

<sup>34</sup> See Woodlock et al., *supra* note 1, at 372.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 372–73.

<sup>38</sup> *Id.* at 369, 373.

<sup>39</sup> *Id.* at 373.

<sup>40</sup> *Id.* at 372–73.

<sup>41</sup> *Id.*



advantage of a victim's compromised state.<sup>42</sup> This can be done through perpetrators ostracizing or "outing" a victim's personal identity online and spreading violence across multiple platforms within digital society.<sup>43</sup> Threats of constant surveillance, blackmail tactics, and public humiliation can cause a victim to lose their support networks, withdraw from social interactions and activities, and even prevent them from reaching out for needed mental assistance services.<sup>44</sup>

### 3. BARRIERS TO SAFETY

DCC's scope for disseminating harm can be extremely devastating for victims who are already geographically, culturally, or socially isolated.<sup>45</sup> Intersectional research on victims living in rural areas or from Culturally and Linguistically Diverse (CALD) backgrounds shows how DCC can be perilous for those who already have limited outreach-capacity on digital platforms, further jeopardizing potential for victims to seek assistance.<sup>46</sup> When an abuser exploits a victim's language barrier or disability it makes accessing safety through platforms extremely difficult.<sup>47</sup> Moreover, given the international and trans-jurisdictional spread of digital society, harms can be transferred and intercepted across numerous localities, posing difficulties in accessing safety for victims who rely on technology to maintain relationships overseas.<sup>48</sup> Given DCC's range of tactics, including omnipresence, isolation and ostracism, and additional barriers to safety, DCC victim justice must accurately reflect and respond to these human-technical hybrids of harms.

### III. DEFINING & PROVIDING JUSTICE FOR DCC VICTIMS

Foundations of equality, liberty and freedom that hallmark many adversarial criminal systems' justice deliverance for "real world" crimes should be equally applied to crimes perpetrated "online" within digital society.<sup>49</sup> However, just as victims of "real world" gender-based crimes face difficulties in maintaining equality and liberty through justice in the law, victims of DCC face similar

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<sup>42</sup> *Id.* at 373–74.

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

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 374.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

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

<sup>49</sup> See POWELL & HENRY, *supra* note 25, at 200–01.

issues in digital society.<sup>50</sup> Gender-based violence in both the “real” and “digital” world erode victims of their autonomy and freedom to participate safely in society.<sup>51</sup> To reflect this fundamental denial of liberty, the conceptualization of **digital citizenship** is useful. Digital citizenship involves “users’ capability to partake freely and safely in the internet’s diverse political, social, economic, and cultural opportunities, which inform[] and facilitate[] their civic engagement.”<sup>52</sup> Experiencing DCC takes a victim’s digital citizenship away because they are no longer able to participate freely and safely without experiencing violence.<sup>53</sup> Maintaining that everyone who partakes in digital society should be considered an equal digital citizen, it is therefore inherently unjust for victims to withstand DCC harms because these harms impact their participation as a digital citizen.<sup>54</sup> Considering what justice looks like for victims of DCC to keep their right to digital citizenship, scholars can use overarching principles to evaluate what recourse currently exists and why reform is necessary.

#### A. GUIDING PRINCIPLES OF JUSTICE FOR DCC VICTIMS

Conceptualizing justice in a multifaceted and victim-focused way through guiding principles is essential to incorporate and respect the varying experiences of DCC victims. Though research on DCC victims’ perceptions of and access to justice is limited, feminist criminologists who have compiled accounts from victims of conventional gender-based violence suggest that victims desire “fluid justice” for violence experienced in the digital world.<sup>55</sup> McGlynn & Westmarland coined the term “kaleidoscopic justice” as a “conceptual underpinning, for the vital work of making a real commitment to justice from the perspective of victim-survivors.”<sup>56</sup> This victim-driven approach to understanding justice is critical because if processes and resources are to be reformed, those who

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<sup>50</sup> *Id.* at 224.

<sup>51</sup> *Id.* at 224–25.

<sup>52</sup> *Id.* at 254; see also Danielle Citron, *Intermediaries and Hate Speech: Fostering Digital Citizenship for Our Information Age*, 91 B.U. L. REV. 1435, 1440 (2011) (addressing potential to reform online corporations’ policies to inform and educate users about their rights and responsibilities as digital citizens).

<sup>53</sup> See Citron, *supra* note 52, at 1149–50.

<sup>54</sup> *Id.*

<sup>55</sup> See POWELL & HENRY, *supra* note 25, at 272–85.

<sup>56</sup> Clare McGlynn & Nicole Westmarland, *Kaleidoscopic Justice: Sexual Violence and Victim-Survivors’ Perceptions of Justice*, 28 SOC. LEG. STUD. 179, 180 (2019).

endure such violence should be leading the discussion.<sup>57</sup> McGlynn & Westmarland outline key themes for justice, including whether remedies account for **recognition, dignity, voice, consequence, and prevention**.<sup>58</sup> Each of these principles will be briefly defined to evaluate victim justice in the context of DCC.

**Recognition** manifests as the “perception of something as existing or true: [that victims] have been harmed and victimized,” while encapsulating a desire for belief and support.<sup>59</sup> This includes not only acknowledgment of the harm a victim endured, but also recognition that the victim is as a stakeholder in the process.<sup>60</sup> In DCC, recognition is particularly important for acknowledging the “moral injury” of pain and humiliation within digital spaces that may not be captured through formal legal definitions in conventional criminal justice systems.<sup>61</sup> Recognition as justice addresses the symbolic devaluation of a DCC victim’s denial of digital citizenship and “the context of collective and systematic wrongs” perpetrated against an individual in digital society.<sup>62</sup>

**Dignity** builds upon recognition by seeing a victim as someone of worth.<sup>63</sup> This principle is especially significant in the context of DCC because the digital world can remove a victim’s sense of control—virtual violence may seem far-away but also imminent through technology’s physical proximity.<sup>64</sup> Due to this disconnect, victims deserve to be treated as actual humans with dignity, not merely online avatars.<sup>65</sup> Dignity can be understood as victim being “treated as ends and not means,” by including an ability to “reaffirm [their] status as a subject—as an end in itself.”<sup>66</sup>

**Voice** involves the importance of dialogue between victims and other stakeholders.<sup>67</sup> To have a voice in the decision-making process includes the opportunity for a victim to explain their harm

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<sup>57</sup> *See id.* at 181.

<sup>58</sup> *Id.* at 188–93.

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

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*; see also Robyn Holder, *Satisfied? Exploring Victims’ Justice Judgments* (2014), reprinted in *CRIME, VICTIMS, AND POLICY* 184, 200 (Dean Wilson & Stuart Ross eds., 2015) (exploring lack of satisfaction with the criminal justice system for victims of gender-based violence as well as the impact these experiences have on trust within legal institutions at large).

<sup>62</sup> Frank Haldemann, *Another King of Justice: Transitional Justice as Recognition*, 41 *CORNELL INT’L L.J.* 675, 681 (2008).

<sup>63</sup> *See* McGlynn & Westmarland, *supra* note 56, at 189.

<sup>64</sup> *See* POWELL & HENRY, *supra* note 25, at 50.

<sup>65</sup> *Id.* at 50, 54–55.

<sup>66</sup> McGlynn & Westmarland, *supra* note 56, at 190–91.

<sup>67</sup> *See* POWELL & HENRY, *supra* note 25, at 55.

and reclaim ownership of their digital citizenship by reallocating power to make their own decisions.<sup>68</sup> Voice also includes being heard, which is especially important for victims who have been silenced by abusers or others discrediting their lived experiences.<sup>69</sup> Victims can be heard by being able speak out within justice processes, vocalize their harm, seek assistance, and “lift the burden of blame.”<sup>70</sup> Although not all victims may choose to use their voice for fears of revictimization, it is the option and ability to provide direct input that must be maintained as an element of justice.<sup>71</sup>

**Consequence** may comprise of punishment, but also includes meaningful redress from harm.<sup>72</sup> In DCC, consequence includes offenders and other stakeholders involved in perpetrating abuse taking accountability for their wrongful behavior.<sup>73</sup> Consequence with retributivist sentiments may involve a victim’s desire to harm their perpetrators as a retaliatory act.<sup>74</sup> However, admission of guilt and the ability to “underline, symbolically and empathetically, the significance and harm of the behavior” is also vitally important.<sup>75</sup> Consequence can ensure the system allocates responsibility to stakeholders, as will be discussed through platforms’ engagement in the justice process.

Finally, **prevention** as justice involves not only addressing harms done to individual victims, but also ensuring a larger transformation of society to reduce and ultimately eliminate DCC.<sup>76</sup> Addressing underlying root causes of gender-based violence is essential in a victim’s perception of justice through prevention.<sup>77</sup> Prevention includes education, rehabilitation, and deterrence from DCC harms, as well as proactive involvement on the part of stakeholders. Prevention as justice should not burden victims to handle their own deterrence of harm but rather engage those perpetuating DCC—the stakeholders that are either complicit bystanders or active participants driving the culture of DCC. With these principles of recognition, dignity, voice, consequence, and

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<sup>68</sup> See McGlynn & Westmarland, *supra* note 56, at 191.

<sup>69</sup> See POWELL & HENRY, *supra* note 25, at 273.

<sup>70</sup> McGlynn & Westmarland, *supra* note 56, at 192.

<sup>71</sup> *Id.* at 191.

<sup>72</sup> *Id.* at 186.

<sup>73</sup> *Id.* at 186–91.

<sup>74</sup> *Id.* at 187.

<sup>75</sup> *Id.*; see also Barbra Hudson, *Restorative Justice: The Challenge of Sexual and Racial Violence*, 25 J.L. SOC’Y 237, 241 (1998) (discussing the control and validation allotted in restorative justice practices and how these mechanisms allow victims of sexual violence to seek more personalized forms of justice).

<sup>76</sup> McGlynn & Westmarland, *supra* note 56, at 193.

<sup>77</sup> *See id.*

prevention as guides for DCC victims' justice, a few current options of recourse through formal and informal routes will briefly be evaluated to illustrate the need for DCC justice reform through platform involvement.

#### IV. CURRENT OPTIONS FOR DCC VICTIM JUSTICE

##### A. FORMAL OPTIONS

Theorists have long speculated the role, efficiency, and effectiveness of conventional criminal justice systems in securing justice for conventional gender-based violence victims.<sup>78</sup> One main consideration for DCC victims using formal justice processes involves a “double-edged sword:” where pursuing formal justice can provide legitimacy in procedure and outcome, but also create danger because sharing information from the technology perpetrators use to harm victims risks “extend[ing] the harm of the original crime.”<sup>79</sup> Routes of formal justice differ for DCC victims by jurisdiction; however, the use of criminal law is universally employed to respond to the needs of victims, along with copyright law, tort law, and occasionally state-specific statutes.<sup>80</sup>

Criminal law relating to gender-based violence is often challenging to apply to DCC because the requirement of bodily harm and/or substantial emotional harm can be difficult to prove in online spaces.<sup>81</sup> Though improvements have been made by many common law systems, classifications still fall short in encompassing the breadth and scope of harms in digital society for victims, especially given the trans-jurisdictional arena of DCC.<sup>82</sup> When systems employ criminal law, victims risk feeling like they are the “evidence” of a case rather than a human being, thereby taking away

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<sup>78</sup> See, e.g., Anastasia Powell, *Seeking Rape Justice: Formal and Informal Responses to Sexual Violence Through Technosocial Counter-Publics*, THEORETICAL CRIMINOLOGY 571, 571 (2015). Justice is typically associated with securing convictions of offenders with lengthy punitive sentences to ensure accountability, shame, and retribution. However, low conviction rates for gender-based violence across numerous jurisdictions suggests an urgent need for legal reform. Nonetheless, high rates of gender-based violence and DCC persist, along with setbacks in achieving victim justice. *Id.*

<sup>79</sup> *Id.* at 575.

<sup>80</sup> See Amanda L. Cecil, *Taking Back the Internet: Imposing Civil Liability on Interactive Computer Services in an Attempt to Provide an Adequate Remedy to Victims of Nonconsensual Pornography*, 71 WASH. & LEE L. REV. 2514, 2533 (2014).

<sup>81</sup> *Id.* at 2533–34.

<sup>82</sup> See POWELL & HENRY, *supra* note 25, at 208.

a victim's recognition and dignity.<sup>83</sup> The limited scope of conventional remedies resulting from criminal justice can leave victims without assurance in preventing future harms. Additionally, there is potential for a displaced responsibility solely on abusers as stakeholders while leaving out other crucial actors, including platforms.

Though criminal law is predominant, other formal options include copyright law, tort law, and state-specific legislation. Victims can pursue copyright infringement for acts of DCC involving personal, self-authored images or posting.<sup>84</sup> However, "proving ownership" can be difficult within digital society,<sup>85</sup> and these processes present potential for a very detached experience for victims seeking sexual autonomy.<sup>86</sup> DCC victims may also pursue civil remedies for harmful actions that courts deem as intentional inflictions of emotional distress, illustrating an abuser's engagement in extreme and outrageous conduct.<sup>87</sup> However, in these cases, a victim's rights to privacy are often juxtaposed with an abuser's rights to free speech and expression, resulting in a victim's lack of recognition as the actor who endured the harm in the first place.<sup>88</sup> Additionally, "damages" from DCC go well beyond what can be financially provided to a victim for redress, as the prevention of reoccurrence is often more relevant than monetary recompense for harm in digital society.<sup>89</sup>

Finally, through state-specific-legislation, DCC can be remedied through specific statutes such as those on "revenge porn"<sup>90</sup> or "upskirting."<sup>91</sup> However, legal definitions can fall short in

<sup>83</sup> See McGlynn & Westmarland, *supra* note 56, at 190.

<sup>84</sup> See, e.g., Elizabeth Farries & Tristan Sturm, *Feminist Legal Geographies of Intimate-Image Sexual Abuse: Using Copyright Logic to Combat the Unauthorized Distribution of Celebrity Intimate Images in Cyberspaces*, 51 ENV'T & PLAN.: ECON. & SPACE 1145, 1145 (2019).

<sup>85</sup> See Cecil, *supra* note 80, at 2527; see also Meghan Sali, *Intimate Images and Authors' Rights: Non-Consensual Disclosure and the Copyright Disconnect*, 19 CAN. J. L. & TECH. 333 (2022).

<sup>86</sup> See POWELL & HENRY, *supra* note 25, at 216.

<sup>87</sup> See Cecil, *supra* note 80, at 2529–30.

<sup>88</sup> *Id.*

<sup>89</sup> See *id.* at 2531.

<sup>90</sup> See McGlynn et al., *supra* note 27, at 31. Revenge porn involves the dissemination of sexual images or graphic videos without an individual's consent, often as a form of retaliation. *Id.*; see also Asia A. Easton & Clare McGlynn, *The Psychology of Nonconsensual Porn: Understanding and Addressing a Growing Form of Sexual Violence*, 7 POL'Y INSIGHTS FROM THE BEHAV. & BRAIN SCI. 190 (2020) (exploring lack of federal and state protections in the U.S. for victims of image-based sexual abuse).

<sup>91</sup> See Matthew Hall et al., "Upskirting," *Homosexuality, and Craftmanship: A Thematic Analysis of Perpetrator and Viewer*

obtaining victim justice as they often focus on defining conduct from a perpetrator's perspective, with narrowly construed classifications of harm, thereby failing to incorporate the voice of DCC victims.<sup>92</sup> Although formal options do not adequately meet the principles of justice, the legitimacy of law nonetheless plays an important role in acknowledging harms through its legal prohibition.<sup>93</sup> For formal justice options to be beneficial for DCC victim justice, classifications and definitions must continue to be reformed, and should represent the continuum of harms victims endure in digital society. Justice from a victim-centered perspective therefore requires collaboration beyond formal criminal justice.

## B. INFORMAL OPTIONS

Victims have developed informal justice mechanisms by deciding when, where, and how their experiences are shared online in an attempt to reclaim their participation in digital society as equal citizens.<sup>94</sup> Although there are a multitude of ways DCC victims can seek justice informally in digital society (and these ways are developing and growing daily),<sup>95</sup> this analysis will present counter-publics and activist projects as two predominant approaches for victim-led mobilization in digital society. DCC often victims select counter-publics and activist projects because these methods allow victims to reclaim power through techno-social mechanisms, capturing their role as leaders of their own justice by expanding their participation, formatting personal testimonials, gathering recognition, and receiving acknowledgement through massive support communities.<sup>96</sup>

Social media provides victims the opportunity to circumvent the inadequacies of formal legal processes by allowing victims to choose how and when to disseminate their stories of DCC harms,

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*Interactions*, 28 VIOLENCE AGAINST WOMEN 532 (2022). “Upskirting” involves taking sexually explicit images of another without their consent. *Id.* at 533.

<sup>92</sup> See McGlynn et al., *supra* note 27, at 31.

<sup>93</sup> See POWELL & HENRY, *supra* note 25, at 209.

<sup>94</sup> See generally Victoria Nagy, *Narrative Construction of Sexual Violence and Rape Online*, 6 INT’L. J. CRIME JUST. SOC. DEMOCRACY 95 (2017).

<sup>95</sup> See, e.g., *Technology Safety & Privacy: A Toolkit for Survivors*, NAT’L NETWORK TO END DOMESTIC VIOLENCE, <https://www.techsafety.org/resources-survivors> (last visited Feb. 4, 2023). The Safety Net Project is just one of the multitudes of online “toolkits” for survivors to develop technology safety plans, assess for technology abuse, and learn how to develop online privacy and safety. *Id.*

<sup>96</sup> See POWELL & HENRY, *supra* note 25, at 303.

often on the very platforms in which those harms occurred.<sup>97</sup> Counter-publics emerged in direct protest to conventional social and legal norms by engaging other victims in online spaces to “reinvent” their digital selves and circulate “counter discourses” on typical victimology that traditionally excluded victims from speaking in “dominant public sphere[s].”<sup>98</sup> However, issues to consider with informal processes include victims “outing” DCC perpetrators online, privacy concerns for both victims and offenders, the potential for due process violations, and the right to the presumption of innocence if pursuing formal legal processes.<sup>99</sup> Although, in considering the principles of justice, victims are able to receive recognition among friends, family, and other victims, and in using their voice, some victims have employed counter-publics as a form of prevention—warning others of dangerous predators.<sup>100</sup> Counter-publics may be empowering for a victim of DCC, but these forms of activism lack legitimacy and need further development or additional pairing alongside formal processes to be effective.<sup>101</sup>

Activists have also developed projects through social media platforms to offer potential for far-reaching justice movements on behalf of victims.<sup>102</sup> Movements originating from victims themselves, such as the “#MeToo” movement,<sup>103</sup> subsequently seized media attention when activists sought justice through enlisting journalism outlets to use their voice to share stories, gaining recognition by exposing injustices, seeking consequence through public apologies, and garnering public outcry for legal action.<sup>104</sup> Activist projects also include collective action by hacking

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<sup>97</sup> See Nagy, *supra* note 94, at 96; see also Laura Vitis & Fairleigh Gilmour, *Dick Pics on Blast: A Woman’s Resistance to Online Sexual Harassment Using Humour, Art and Instagram*, 13 CRIME, MEDIA & CULTURE 335 (2017) (shedding light on creative resistance techniques by a victim-artist on Instagram).

<sup>98</sup> Nagy, *supra* note 94, at 97; see also Michael Salter, *Justice and Revenge in Online Counter-Publics: Emerging Responses to Sexual Violence in the Age of Social Media*, 13 CRIME, MEDIA & CULTURE 225, 227 (2013) (assessing methods of victims publicly exposing abusers online by circumventing traditional legal avenues).

<sup>99</sup> See POWELL & HENRY, *supra* note 25, at 578.

<sup>100</sup> *Id.* at 581.

<sup>101</sup> *Id.* at 582.

<sup>102</sup> See Nagy, *supra* note 94, at 102.

<sup>103</sup> See, e.g., Ramona Alaggia & Susan Wang, “I Never Told Anyone Until the #MeToo Movement”: What Can We Learn from Sexual Abuse and Sexual Assault Discourses Made Through Social Media?, 103 CHILD ABUSE & NEGLECT 104 (2020).

<sup>104</sup> See, e.g., Karina Schumann & Geoffrey Wetherell, *Apologies as Signals for Change? Implicit Theories of Personality and Reactions to Apologies During the #MeToo Movement*, 14 PLOS ONE 1 (2019)



groups like “Anonymous” which releases identities of abusers online.<sup>105</sup> Though these groups have potential to bring national and international attention, victims risk being removed from justice processes when hackers disseminate their stories across platforms without their voice or in some cases, even permission.<sup>106</sup> Therefore, although informal justice may provide the most victim-focused options currently available, victims and other activists should consider hybrid processes that promote justice principles of recognition, dignity, and voice, and enlist key stakeholders of platforms to address justice as consequence and prevention.

### C. TOWARDS A PREVENTION & RESPONSE MODEL FOR DCC VICTIM JUSTICE

Recognizing the continuum of DCC harms, the guiding principles of recognition, dignity, voice, consequence, and prevention should be used to conceptualize a new hybrid model of DCC justice. The role of law as a discourse in providing justice is clearly essential,<sup>107</sup> however, if formal processes of law are to be victim-conscious, a reimagination of how to best respond to DCC is needed—particularly given the lack of proactively preventing future acts.<sup>108</sup> Therefore, for the principles to be most effective for DCC victims, consideration is due to stakeholders’ role.<sup>109</sup>

Stakeholders—those who participate and contribute to justice processes and have a “stake” in its response—typically include victims and offenders in both formal and informal responses to gender-based violence.<sup>110</sup> While abusers directly target and abuse victims of DCC, designers and facilitators of technological systems within digital society—those who control the platforms where DCC occurs—are often completely remised from gender-based violence reform strategies. Therefore, it is critical to evaluate how these actors not only drive DCC and encourage abusers to harm victims, but also hold far-reaching immunity from DCC in digital society.

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<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0226047>; Elizabeth C. Tippet, *The Legal Implications of the MeToo Movement*, 103 MINN. L. REV. 229, 233, 271 (2018).

<sup>105</sup> See Nagy, *supra* note 94, at 101–02.

<sup>106</sup> See Salter, *supra* note 98, at 4–5.

<sup>107</sup> See Powell, *supra* note 78, at 573.

<sup>108</sup> See McGlynn & Westmarland, *supra* note 56, at 186–87.

<sup>109</sup> See POWELL & HENRY, *supra* note 25, at 226.

<sup>110</sup> See *id.*

## V. PLATFORMS AS STAKEHOLDERS IN DCC JUSTICE

In recent years, the public has scrutinized technological platforms that develop, serve, and exploit users' behaviors and interactions in digital society for their instrumental power in "surveillance capitalism."<sup>111</sup> Surveillance capitalism describes the monetization of human behavior online where parties sell personal information, predictive behavior, and data to advertisers for profit.<sup>112</sup> Massive conglomerate technological corporations, with their platforms that deliver free services to users, are the surveillance capitalists that run this digital economy and society at large.<sup>113</sup> Platforms' business models that profit from our engagement online impact every facet of our lives without any liability or regulation.<sup>114</sup> Technological platforms' software designs and services are not neutral because "our values and assumptions are baked into what [platforms] build", and, by effect, shape and influence our interactions with others online.<sup>115</sup> As a result, platforms' economic pressures to increase profits at the expense of human decency and democratic values have normalized the violence and discord we endure in digital spaces.<sup>116</sup> Platforms' predictive programming increasingly endangers DCC victims because "hate online triggers traffic to online content and interaction about it, which translates

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<sup>111</sup> See ZUBOFF, *supra* note 10, at 15 (coining the term "surveillance capitalism" as the "unilateral claim[ing] of human experience as free raw material for translation into behavioral data").

<sup>112</sup> *Id.* at 74.

<sup>113</sup> *Id.* at 17. Google initially spearheaded this movement with later corporations of Meta, Microsoft, Amazon, and Apple joining in the search for technological power as well. *Id.* These empires own and operate hundreds of sub-services and applications, acquiring additional platforms and technological groups regularly as part of their business model. *Id.* Twitter and Tik-Tok are also becoming increasingly influential in their role of shaping and encouraging human behavior through social media. *Id.* at 16.

<sup>114</sup> *Id.* at 63; see also David M. Wood & Torin Monahan, *Platform Surveillance*, 171 SURVEILLANCE & SOC'Y, 1 (2019).

<sup>115</sup> *Principles of Humane Technology*, CTR. FOR HUMANE TECH., <https://www.humanetech.com/policy-principles> (last visited May 20, 2024).

<sup>116</sup> See ZUBOFF, *supra* note 10, at 41–52. Unlike previous technological advances with the start of the Internet, platforms have dramatically and exponentially developed since the 1990s with computer processing and AI now held directly in the hands of corporations. *Id.* This development challenges notions of "adaption" as human physiology has not matched the sophisticated evolution necessary to keep up with platforms' machine-driven power. See also THE SOCIAL DILEMMA (Netflix 2020).

into economic revenue for platforms.”<sup>117</sup> To understand platforms’ capitalization on the market for DCC, this section will explore the abundance of abusers seeking to coercively control victims online. This note will then assess platforms who profit from this abusive process, looking at the authoritarian role these technology corporations play in the digital economy. Finally, platforms’ lack of liability and accountability will be evaluated to prepare for a reimagination of DCC justice.

### A. THE MARKET FOR DIGITAL COERCIVE CONTROL

Because DV is a global epidemic it is unsurprising that human behaviors from in-person interactions replicate in digital spaces.<sup>118</sup> Digital spaces “exacerbate existing patterns of gendered violence and introduce new modes of abuse,” creating difficulties for victim safety.<sup>119</sup> This duplication illustrates how new technologies intensify and ease the ability at which platforms in a market that profits from people’s behaviors encourage and aid abusers to identify an easy and predictable target.<sup>120</sup>

The market for DCC is illustrated through the rise and reliance on online communication that demands “services that facilitate, obscure and discover intimate and adulterous behaviors.”<sup>121</sup> One prevailing way this flourishes is through technologies designed to “spouse-bust.”<sup>122</sup> Platforms developed a way to profit from omnipresent DCC tactics by encouraging “spouse monitoring software . . . [to] provide the means for ‘making sure’” of a partner’s loyalty and location.<sup>123</sup> In this way, the internet has (re)produced privacy by making something that was once a right a currency that users must give up to experience the benefits of digital

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<sup>117</sup> See Dragiewicz et al., *supra* note 18, at 617.

<sup>118</sup> See Corinne Mason & Shoshana Magnet, *Surveillance Studies and Violence Against Women*, 10 SURVEILLANCE & SOC’Y 105, 106 (2012).

<sup>119</sup> See Dragiewicz et al., *supra* note 18, at 609.

<sup>120</sup> See Mason & Magnet, *supra* note 118, at 108.

<sup>121</sup> Melissa Gregg, *Spousebusting: Intimacy, Adultery, and Surveillance Technology*, 11 SURVEILLANCE & SOC’Y 301, 301 (2013).

<sup>122</sup> *Id.* Spouse-busting involves the use of tracking technology to surveil disloyal spouses. *Id.*

<sup>123</sup> *Id.* These technologies are embedded within an “in-person” and “virtual” reality where intimacy and modern relationships are characterized by desires to constantly know the whereabouts and activities of partners. See Karen E. Levy, *Intimate Surveillance*, 51 IDAHO L. REV. 679, 686 (2019).

information and connection, while simultaneously incurring the expense of potential harm.<sup>124</sup>

The reliance on a platform's services creates a formidable pitfall for victims where dependency on technology and participation as digital citizens demands certain techno-social norms (like revealing identity or personal information) that perpetrators can use which in turn allows platforms to increase user participation and profit.<sup>125</sup> Platforms' authoritarian position in digital society also impacts the market for DCC and the larger surveillance capitalist economy that exchanges users' behavior for data to keep technological corporations in power.<sup>126</sup>

### **B. THE ROLE OF PLATFORMS IN THE DIGITAL ECONOMY: PROFITING FROM ABUSE**

Platforms have an uncontested, leading role as the dominant authority in digital society.<sup>127</sup> Business, legal, and computer engineering experts characterize technological corporations' rise to power through surveillance capitalism as "the Fourth Industrial Revolution" because of digital platforms' velocity, breadth, depth, and systems of impact.<sup>128</sup> Unlike previous industrial revolutions, the Fourth Industrial Revolution is unique in its artificial, machine-learning sophistication that creates modes of commerce unlike ever before.<sup>129</sup> Though this comment lacks the space to fully discuss this digital revolution, implications of this development on the issue of DCC is important. Unlike previous industrial revolutions, which led to increased responsibility and liability for corporations, current legal attempts to regulate technological platforms' have been "inadequate at best, and at worst, absent altogether."<sup>130</sup>

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<sup>124</sup> See STEPHANE LEMAN-LANGLOIS, *Privacy as a Currency: Crime, Information and Control in Cyberspace*, in *TECHNOCRIME* 112, 112–14 (2008).

<sup>125</sup> DANIELLE CITRON, *HATE CRIMES IN CYBERSPACE* 5 (2014).

<sup>126</sup> See generally ZUBOFF, *supra* note 10.

<sup>127</sup> *Id.*; see also David S. Evans & Richard Schmalense, *What Platforms Do Differently than Traditional Businesses*, *HARV. BUS. REV.* (May 11, 2016), <https://hbr.org/2016/05/what-platforms-do-differently-than-traditional-businesses>.

<sup>128</sup> See Klaus Schwab, *The Fourth Industrial Revolution*, *WORLD ECON. FORUM* (2017), <https://www.weforum.org/about/the-fourth-industrial-revolution-by-klaus-schwab>.

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

<sup>130</sup> *Id.* at 10.

Platforms have become “state-like” in the digital world with their unlimited power and knowledge over individual subjects.<sup>131</sup> Governance functions, once carried out almost entirely by nation-states, are now allocated to technology corporations with little to no legal checks, balances, or regulations.<sup>132</sup> By signing up for a platform’s sites and social networking, we are inherently “click[ing] ‘agree’ to the terms of services . . . giv[ing] platforms false and uninformed consent to operate as they like.”<sup>133</sup> In this way, platforms have turned into a form of “networked authoritarianism,” with their abilities to dictate their users’ rights, discern community “standards” or social practices, and subordinate other institutions and modes of governance that threaten their existence.<sup>134</sup>

Individual nation-states attempt to keep pace with the growing power and control platforms assume by developing laws that place restrictions on providers of Internet services.<sup>135</sup> However, as in the case of DCC, the law struggles to keep up with the changing nature and proliferation of violence in digital society, leaving platforms virtually unchecked in designing digital spaces where harms persist.<sup>136</sup> Without any checks on their business models, technological corporations have circumvented the law by creating a new “platform economy” where they can maintain dominance in governance by creating “one colossal data market” to “shape our desires, to manipulate us politically, to watch, surveil, detect, predict and punish.”<sup>137</sup> In this way, the digital economy that platforms run has fundamentally transformed human social relations, practices, and capitalism by treating our behaviors as monetary “surveillant exchanges.”<sup>138</sup>

The core goals of platforms’ business models are engagement, growth, and advertising.<sup>139</sup> In this model, advertisers are the customers, human individuals are the users, and the product is human behavior.<sup>140</sup> For platforms to make a profit, they must

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<sup>131</sup> REBECCA MACKINNON, *CONSENT OF THE NETWORKED: THE WORLDWIDE STRUGGLE FOR INTERNET FREEDOM* xviv (2013).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at xxvi; *see also* CITRON, *supra* note 125, at 160–65.

<sup>135</sup> BERNARD E. HARCOURT, *EXPOSED: DESIRE AND DISOBEDIENCE IN THE DIGITAL AGE* 188 (2015).

<sup>136</sup> *See* CITRON, *supra* note 125, at 173; *see also* Herbert J. Hovenkamp, *Antitrust and Platform Monopoly*, 130 *YALE L. J.* 1932, 1984 (2020) (critiquing technological corporations as “digital monopolies”).

<sup>137</sup> HARCOURT, *supra* note 135, at 188.

<sup>138</sup> Wood & Monahan, *supra* note 114, at 1–2; *see also* ZUBOFF, *supra* note 10, at 9.

<sup>139</sup> ZUBOFF, *supra* note 10, at 8.

<sup>140</sup> *Id.*

keep users engaged through their services.<sup>141</sup> To secure optimal engagement, platforms track human behaviors on their services, turn this behavior into data, and then use this data to make predictions for enticing future user engagement, ideally through user addiction, to sell to advertisers.<sup>142</sup> This behavior–profit model makes platforms the richest corporations in the history of humanity.<sup>143</sup> With the ability to harness human behavior to make predictions and sales, it is particularly alarming to consider how these business models profit from domestic abusers in digital society.<sup>144</sup>

Perpetrators of DCC are typified by the dangerous tactics and behaviors that subjugate power and control over their victims.<sup>145</sup> Therefore, considering platforms’ potential to encourage and profit from abusers’ tactics of omnipresence, isolation, and threats to safety, these platforms become increasingly sinister given their business model’s lack of accountability. While the addiction and persuasion techniques studied by psychologists suggest platforms’ tactics of control are deeply embedded in machine-processing, technology designers are aware of the digital environment’s circumstances that make it “more conducive to addiction than anything humans have ever experienced in our history.”<sup>146</sup> Crafting highly addictive digital spaces is key in this profit–driven model of producing and administering services, as platforms’ definitions of “success” reflect cost–benefit human calculations to determine “whether an act will be performed once, twice, a hundred times, or not at all.”<sup>147</sup> These platforms mastered the formula by using users’ data to run “thousands of tests, with millions of users to learn which tweaks work and which ones don’t,” retaining the prime engagement tactics necessary to encourage action in digital society for its profit.<sup>148</sup>

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<sup>141</sup> *Id.* at 10.

<sup>142</sup> *Id.* at 97; *see also* Rahul Chatterjee et al., *The Spyware Used in Intimate Partner Violence*, IEEE Symposium on Security and Privacy 441, 450 (2018) (“The makers of applications [are] not only aware of abuse but also actively supporting [Intimate Partner Surveillance] use through advertisement.”).

<sup>143</sup> ZUBOFF, *supra* note 10, at 96.

<sup>144</sup> *Id.* at 93.

<sup>145</sup> *See* POWELL & HENRY, *supra* note 25; Woodlock et al., *supra* note 1; Harris & Woodlock, *supra* note 20; Dragiewicz et al., *supra* note 18.

<sup>146</sup> ADAM ATLER, *IRRESISTIBLE: THE RISE OF ADDICTIVE TECHNOLOGY AND THE BUSINESS OF KEEPING US HOOKED* 10 (2017).

<sup>147</sup> *Id.* at 4–5.

<sup>148</sup> *Id.* Even when compared to addictions of gambling, shopping, and drugs, digital dependence is in a class of its own given platforms’ alluring designs that make usage almost impossible to resist. *Id.*

Platforms' business models rely on obsession ("thoughts that a person can't stop having"), and compulsion ("behaviors a person can't stop enacting"), to keep people virtually and emotionally connected while urging contact to create a predictable cycle.<sup>149</sup> Making this sequence particularly pernicious is an individual's frequent inability to reduce activity in digital society which can "eventually take disproportionate space in the person's identity and cause conflict with other activities in the person's life."<sup>150</sup> Obsession and compulsion behaviors' impact on gender-based violence abusers in digital society is currently under researched. However, implications from available literature on sexual and domestic violence show potential for the behavioral model to further the harmful tactics of DCC given abusers already deviant, addictive personalities for power and control.<sup>151</sup> Considering this profit model, platforms' role and current lack of liability and accountability for facilitating DCC must be critiqued to illustrate the need for an alternative model for DCC justice.

### C. PLATFORMS' CURRENT LACK OF LIABILITY & ACCOUNTABILITY IN DIGITAL COERCIVE CONTROL

Platforms' position as third parties in digital society provides a colossal shield of legal protection from the egregious behaviors and associated actions taking place on their online services and associated products.<sup>152</sup> Technology corporations strategically frame their digital platforms as mere distributors of information online, rather than creators or developers, thereby evading legal liability.<sup>153</sup> The scope of this protection is vast.<sup>154</sup> Platforms are safeguarded from lawsuits involving user-generated DCC content because "what users do is on them."<sup>155</sup> Further solidifying this shield of immunity is Section 230 of the 1995 Communications Decency Act (CDA)

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<sup>149</sup> *Id.* at 20–23.

<sup>150</sup> *Id.* at 21.

<sup>151</sup> See POWELL & HENRY, *supra* note 25; Woodlock et al., *supra* note 1; Harris & Woodlock, *supra* note 20.

<sup>152</sup> See CITRON, *supra* note 125, at 173.

<sup>153</sup> *Id.* at 168; see also *Herrick v. Grindr, L.L.C.*, 306 F. Supp.3d 579, 588 (S.D.N.Y. 2018) (discussing Section 230 where Internet providers are not liable for content produced on their interactive services if they have no part in "developing" the unlawful content).

<sup>154</sup> For example, in the case of revenge porn where abusers upload and/or distribute sexually explicit images and videos of their current or former partners without consent. See CITRON, *supra* note 125, at 173.

<sup>155</sup> *Id.* at 169.

which Congress originally proposed to encourage platforms to “block offensive material.”<sup>156</sup>

However, the CDA only strengthened corporate protection after courts allocated sweeping protection in the interest of “promoting unfettered speech on the internet”<sup>157</sup> and avoiding placing blame on platforms because stringent liability would “inhibit [platforms’] growth.”<sup>158</sup> Many politicians, academics, and survivors of digital violence have continually called for amending the CDA to better redress harms like harassment, trafficking, and child pornography.<sup>159</sup> Definitional changes have also been highlighted in these proposals to more accurately depict the role of “distributors” as the ones who “principally host” dangerous actors perpetuating crimes online.<sup>160</sup> Although it is necessary to incorporate legal definitions and standards to redress harms and prevent platforms from asserting blanket immunity, it is not

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<sup>156</sup> *Id.* at 170.

<sup>157</sup> See 47 U.S.C. § 230 (2018); see also Mary Graw Leary, *The Indecency and Injustice of Section 230 of the Communications Decency Act*, 41 HARV. J. L. & PUB. POL’Y 553 (2018) (illustrating how Section 230 has created “de facto immunity” by allowing Internet companies to advertise sex trafficking as a global, criminal digital enterprise at the expense of free speech); Kira M. Geary, *Section 230 of the Communications Decency Act, Product Liability, and a Proposal for Preventing Dating-App Harassment*, 125 PENN ST. L. REV. 501 (2021) (showing the broad scope of Section 230’s protection in plaintiffs bringing a product liability claim for lack of safety features in dating applications).

<sup>158</sup> CITRON, *supra* note 125, at 171.

<sup>159</sup> See, e.g., Tim Hwang, *Dealing with Disinformation: Evaluating the Case for Amendment of Section 230 of the Communications Decency Act*, in SOCIAL MEDIA AND DEMOCRACY: THE STATE OF THE FIELD, PROSPECTS FOR REFORM 232 (Nathaniel Persily & Joshua A. Tucker eds., 2020).

<sup>160</sup> See CITRON, *supra* note 125, at 167; see also Danielle Citron & Benjamin Wittes, *The Problem Isn’t Just Backpage: Revising Section 230 Immunity*, 2 GEO. L. TECH. REV. 453, 458 (2018) (proposing an approach to Section 230 that “establish[es] a reasonable standard of care that will reduce opportunities for abuses without interfering with the further development of a vibrant Internet or unintentionally turning innocent platforms into involuntary insurers for those injured through their site”); Christopher J. Robinette & Shannon N. Costa, *Incorporating an Actual Malice Exception to Section 230 of the Communications Decency Act*, 49 SW. L. REV. 462 (2021) (critiquing the self-regulation imposed on platforms by Section 230 and why an actual malice standard for the conduct of platforms is needed). For additional information regarding the latest Section 230 demands and responses by the U.S. Department of Justice, see *Section 230: An Overview*, CONG. RSCH. SERV. (Feb. 2, 2024), <https://crsreports.congress.gov/product/pdf/IF/IF12584>.



enough.<sup>161</sup> For DCC victims to receive adequate justice, platforms must be actively involved in the process by preventing harms and being held accountable through their response to such harms to ensure victims' needs are met in digital society.

Given platforms' behavioral profit model and the ability to track and trace every action a user makes, corporations have an immense role "in proactively enabling the exercise of digital citizenship by their users."<sup>162</sup> Currently, platforms act as organizational bystanders by engaging in "safety work" whereby victims are responsabilized for their own harm.<sup>163</sup> By providing victims with "tools" to prevent and redress their own violence, platforms revictimize individuals through self-blame for experiencing DCC.<sup>164</sup> This safety work ignores principles of recognition, voice, and dignity by not acknowledging the severity of crimes, blaming victims for participating in digital spaces, or putting burdens on victims to enlist digital tools to prevent harms from reoccurring.<sup>165</sup>

Corporations such as Meta, Google, and Microsoft try to strengthen their image as DCC-victim-conscious platforms through performative accountability—publicly taking a stance against DCC and gender-based harms in digital society by designing and instituting what is at its core, safety work for victims.<sup>166</sup> For example, Facebook, a leading Meta platform in the digital economy, attempts to categorize and censor hate speech among other offensive material online by ensuring users follow the "community standards."<sup>167</sup> However, in practice, Facebook merely provides blanket language for images and speech at risk of content removal, which is additionally limited by the algorithm's input.<sup>168</sup> Other

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<sup>161</sup> See *supra* Part IV(A).

<sup>162</sup> See POWELL & HENRY, *supra* note 25, at 256; see also *supra* Part III.

<sup>163</sup> See POWELL & HENRY, *supra* note 25, at 240. Powell & Henry provide an example of how prevention and education resources reorientate blame on the victim (instead of blaming the perpetrator or distributor) by noting how younger women whose sexually explicit images are circulated online are often viewed as "stupid" or "naïve" for creating such content in the first place. *Id.*

<sup>164</sup> See Harris & Woodlock, *supra* note 20, at 539.

<sup>165</sup> *Id.*

<sup>166</sup> See CITRON, *supra* note 125, at 171.

<sup>167</sup> *Id.*; see also POWELL & HENRY, *supra* note 25, at 259–60 (asking the question, "whose community standards?" in assessing corporate intentions).

<sup>168</sup> See FREDERIK STJERNFELT & ANNE METTE LAURITZEN, *Facebook's Handbook of Content Removal*, in YOUR POST HAS BEEN REMOVED: TECH GIANTS AND FREE SPEECH, 115–16 (2020) (critiquing Facebook's removal guidelines and lack of transparency in process).

platforms publicly note efforts to remove explicit images, videos, or prompted search results of gender-based violence, including Google and Microsoft who control a vast majority of platforms' search engines in digital society.<sup>169</sup> These platforms have online forums where victims can request removal of harmful content uploaded or shared without their consent.<sup>170</sup> Options like moderation tools also allow users to "enter words that they find offensive or inappropriate" and remove such content from the user's account.<sup>171</sup> Although some domestic violence practitioners and safety advocates note the usefulness of such technological prevention tactics to "put some power back into individual users' hands," simply removing DCC from the eyes of one individual in digital society does not ensure this harmful content is actually gone.<sup>172</sup>

Performative accountability shifts the focus away from platforms' own development and control of digital spaces to the victim's duty to protect themselves online. Practically, when users utilize these reporting procedures, digital service provider staff will review the flagged content alongside computers.<sup>173</sup> However, a victim receiving concrete recognition or protection through consequential removal is seldom provided as platforms cite lengthy delays given the copious amount of complaints received and difficulty with staff not having "the adequate training to deal with cyber harassment or stalking."<sup>174</sup> Considering the lack of victim-focused accountability for DCC, platform response must be reformed to move away from these performative, safety work tactics and instead explicitly collaborate with victims to ensure DCC justice.

## VI. ENGAGING PLATFORMS IN PROACTIVE PREVENTION & RESPONSE THROUGH ODR

For victims of DCC to receive justice through the principles of recognition, dignity, voice, consequence, and prevention, platforms must be included in a proactive prevention and response model. Given platforms' ability to influence and monitor behavior in digital society, their potential to prevent, or at least minimize DCC harm, should be evaluated. Additionally, considering

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<sup>169</sup> See POWELL & HENRY, *supra* note 25, at 258–59.

<sup>170</sup> *Id.* at 257–58.

<sup>171</sup> *Id.* at 258.

<sup>172</sup> *Id.*; see also Duerksen & Woodin, *supra* note 17; Jerry Finn & Teresa Atkinson, *Promoting the Safe and Strategic Use of Technology for Victims of Intimate Partner Violence: Evaluation of the Technology Safety Project*, 54 J. FAM. VIOLENCE 53 (2009).

<sup>173</sup> See CITRON, *supra* note 125, at 232.

<sup>174</sup> *Id.* at 233.

corporations' behavioral profit model that rests on financial incentives, platform response must be re-envisioned. Using the principles of recognition, dignity, voice, consequence, and prevention, an alternative method of resolution for DCC victims will be explored through ODR given its specialized ability to redress injustice within the very digital spaces where DCC harms occur. By incorporating platforms, victims, abusers, and advocates into a collaborative model for prevention and response, ODR offers unique potential for ensuring lasting, transformative justice.

### A. PLATFORMS' ROLE IN PREVENTION

Artificial Intelligence (AI), the machine behind platforms' design, production, and deliverance of digital services, rely on algorithms to predict users' behaviors online.<sup>175</sup> These algorithms carefully curate and present content and information to their users to drive engagement through compulsion and addiction—even those that support toxic behaviors—as they can be programmed to “incentivize[] certain activities” that gain more traction.<sup>176</sup> However, because humans are the authors of these formulas plugged into the machines to encourage user engagement, these formulas possess the potential to be “rewritten,” to detect violence and ensure that harmful behavior is both prevented and redressed.<sup>177</sup> This potential is especially promising for engaging platforms in prevention by designing and directing digital spaces to intercept an abuser's ability to facilitate DCC, while also ensuring that platform systems are constructed in a way for individuals to partake freely and safely as equal digital citizens.<sup>178</sup> Removing detected abusers and threatening removal from digital spaces is certainly a step that platforms should entertain to prevent DCC, however prevention must go further to use their algorithmic abilities to stop harms from flourishing in their designed society. Additionally, if platforms are to be treated as proactive stakeholders in ensuring justice,

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<sup>175</sup> See Sameer Hinduja, *How Machine Learning Can Help Us Combat Online Abuse: A Primer*, CYBERBULLYING RSCH. CTR. (2018), <https://cyberbullying.org/machine-learning-can-help-us-combat-online-abuse-primer>.

<sup>176</sup> Adrienne Massanari, *#Gamergate and The Fappening: How Reddit's Algorithm, Governance, and Culture Support Toxic Technocultures*, 19 NEW MEDIA & SOC'Y 329, 337 (2015); see also THE SOCIAL DILEMMA, note 119.

<sup>177</sup> Hinduja, *supra* note 175.

<sup>178</sup> *Id.*; see also Diana Freed et al., “Is my phone hacked?” *Analyzing Clinical Computer Security Interventions with Survivors of Intimate Partner Violence*, 3 PROC. ACM HUM.-COMPUT. INTERACT. 17–18 (2019).

corporations must be called into action by being part of DCC justice processes through a larger reform model, as will be discussed through ODR.

## B. PLATFORMS' ROLE IN CONSEQUENCE

The current system, where technological corporations protect their own interests over the rights of their users, undermines freedom, democracy, and any potential for equal digital citizenship. Propositions to prevent abusers from using services by threatening to take down accounts or permanently eliminate users from engaging in sites remains insufficient as corporations “lack obligation to entertain [any] objections to their enforcement decisions.”<sup>179</sup> Additionally, while financial threats may provide incentive for platforms to take action, these surface-level responses are used to merely maintain the social image of the corporation, rather than show a commitment to actual, substantial change.<sup>180</sup> Instead, in thinking of how the principle of consequence and platforms' accountability can be provided for DCC victims, the “systems of accountability” approach illustrates potential for platform engagement in an alternative dispute resolution context.

Within a system of accountability, institutions are expected to adhere to certain norms with the expectation that by being forthright in the process and design of its services, trust can be built and maintained for users.<sup>181</sup> By contrast, when systems are unaccountable, users can become “caught in a web of cascading mirrors” that have the potential to lead individuals “into relationships over which [they] have no control, no expectations,

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<sup>179</sup> CITRON, *supra* note 125, at 229. Merely removing accounts does not appreciate the incendiary safety implications for DCC victims, as abusers can still create fake identities through new accounts not detected by platforms, alter network servers to cloak their IP addresses from machine intelligence, and enlist other isolation tactics by hacking victims' own accounts to continue violence online. *Id.*

<sup>180</sup> *Id.* at 229–31. Citron provides an example of how Facebook's response to a 2011 pro-rape campaign page was incentivized after fifteen companies threatened to pull their advertisements unless Facebook “removed profiles that glorified or trivialized violence against women.” *Id.* However, it is important to note the platform initially refuted its liability, arguing the discussion and encouragement of sexual violence could be construed as “humor.” *Id.*

<sup>181</sup> See generally Mariarosaria Taddeo & Luciano Floridi, *The Debate on the Moral Responsibilities of Online Service Providers*, 6 SCI. ENG'G ETHICS 1575 (2015).

and no basis of trust.”<sup>182</sup> Currently, platforms are not acting as accountable systems, but rather as systems of performative accountability by maintaining a false public persona of care with little to no oversight or transparency. Platforms must be held accountable not only by improving their algorithmic systems, but also in their moral responsibility as gatekeepers of communication in the digital age.<sup>183</sup> Methods of ODR can provide opportunities for platforms to ensure such accountability through a proactive engagement in DCC justice—with potential for both macro-level concerns of prevention and consequence as well as micro-level needs where victims can be recognized, treated with dignity, and provided a voice in the justice process.

### C. BRINGING PLATFORMS INTO A SYSTEM OF ACCOUNTABILITY THROUGH ODR

Methods of Alternative Dispute Resolution (ADR) allow DCC victims to receive holistic justice outside the bounds of formal legal processes that have failed to meet their intersectional needs.<sup>184</sup> While ADR methods typically involve three stakeholders in the process—the parties to the dispute and a neutral third-party facilitator or decision-maker—Online Dispute Resolution (ODR) adds a fourth partner of technology.<sup>185</sup> ODR provides opportunity as a radical, “disruptive intervention” that “revolutionizes the court’s delivery of justice” to “recalibrate justice expectations” via party-driven involvement.<sup>186</sup> In the case of DCC, this addition allows platforms, as explicit stakeholders in the prevention and

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<sup>182</sup> Priscilla Regan & Deborah Johnson, *Privacy and Trust in Socio-technical Systems of Accountability*, in *MANAGING PRIVACY THROUGH ACCOUNTABILITY* 125, 125 (Carla Lten ed., 2012).

<sup>183</sup> See, e.g., *Digital Markets Act: Rules for Digital Gatekeepers to Ensure Open Markets Enter Into Force*, EUR. COMM’N (Oct. 31, 2022), [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_6423](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6423). The EU has taken this sentiment to a national scale by implementing the Digital Markets Act (DMA) which prohibits digital gatekeepers—online platforms who service the digital economy—from engaging in certain behaviors that compromise individuals’ personal information. *Id.*

<sup>184</sup> See Rachel Turner, *Alternative Dispute Resolution in Cyberspace: There is More on the Line, Than Just Getting Online*, 7 *ILSA J. INT’L & COMPAR. L.* 133 (2000); *supra* Part IV (describing how formal and informal legal options fail to meet needs of victims and overlook platforms as stakeholders in the process).

<sup>185</sup> See Dafna Lavi, *Three Is Not a Crowd: Online Mediation-Arbitration in Business to Consumer Internet Disputes*, 37 *U. PA. J. INT’L L.* 871, 879–80 (2016).

<sup>186</sup> Noam Ebner & Elayne Greenberg, *Strengthening Online Dispute Resolution Justice*, 63 *WASH. U. J. L. & POL’Y* 65, 67 (2020).

response to harms, to be proactively involved in the distribution of justice.

ODR uses critical communication and conflict resolution skills from conventional ADR models but applies such techniques via digital technologies to resolve disputes occurring online.<sup>187</sup> By extending typical processes like negotiation, mediation, and arbitration into online settings, ODR grants increased flexibility, creativity, and convenience in access to justice.<sup>188</sup> Additionally, conflicts that originate out of digital spaces, as in the case of DCC, pose unique suitability for ODR.<sup>189</sup> Increasing legitimacy in the process by combining aspects of both the “virtual” and “non-virtual” world, ODR allows for resolution options to be tailored to the unique needs of parties involved.<sup>190</sup> To date, ODR has been used in cases of e-commerce, domain name challenges, intellectual property, and monetary disputes.<sup>191</sup> However, the ability to provide recognition for harms through accountability in formalized agreements, as well as dignity and autonomy in process, shows potential for ODR to be used in administering DCC victim justice. While ODR may take many forms,<sup>192</sup> two methods—online arbitration and mediation—will be explored, illustrating the potential to incorporate a hybrid model of ODR for DCC victims to ensure principles of justice are met.

## 1. ONLINE ARBITRATION

Arbitration, a confidential procedure that uses a neutral third party to render a legally binding decision, can be beneficial for disputes involving trans-jurisdictional, complex issues.<sup>193</sup> Since victims of DCC experience harms across countries, platforms, and digital spaces, online arbitration lends itself to the inner workings of this form of abuse. By having a neutral third party (particularly one who understands digital society and functions) assess the merits of a claim of abuse and enforce a final decision, arbitration can provide

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<sup>187</sup> See Turner, *supra* note 184, at 141.

<sup>188</sup> Lavi, *supra* note 185, at 888.

<sup>189</sup> See Aashit Shah, *Using ADR to Resolve Online Disputes*, 10 RICH. J.L. & TCH. 25, 30 (2004).

<sup>190</sup> See Lan Hang, *Online Dispute Resolution Systems: The Future of Cyberspace Law*, 41 SANTA CLARA L. REV. 837, 855-56 (2001). Hang also notes legitimacy in ODR stems from the sentiment that “people are more likely to accept a system of law that evolves from the community it governs.” *Id.*

<sup>191</sup> *Id.* at 849.

<sup>192</sup> See, e.g., *Online Dispute Resolution*, NAT’L CTR. FOR STATE CTS. <https://www.ncsc.org/odr> (last visited May 20, 2024).

<sup>193</sup> See Turner, *supra* note 184, at 135.

a sense of formality in administering justice for victims by recognizing harms in the form of consequential vindication.<sup>194</sup>

Notably, on an international scale, arbitration can be used to redress transnational, cybersecurity related disputes.<sup>195</sup> Formations like the Virtual Magistrate Project promote the usefulness of ODR in cyberspace by using arbitrators to assess whether cyber activity was “reasonable” within network norms and substantive law.<sup>196</sup> Even international internet tribunals have been theorized as potential venues for specialization in cyber law enforcement.<sup>197</sup> However, these forums and arbitral institutions often fail to incorporate the role of platforms’ by bringing these stakeholders into such accountability processes. Furthermore, these online arbitration efforts are largely unsuccessful due to platform service providers’ resistance—with corporations wanting to utilize their own internal complaint mechanisms to maintain control over alleged abuse, rather than relinquish power to third-party neutrals.<sup>198</sup> Additionally, victims’ autonomy in the process is diminished with large-scale, international arbitrations as parties become more distant and removed from the decision-making process.<sup>199</sup>

## 2. ONLINE MEDIATION

Mediation encourages dialogue and discussion between parties in conflict to mend harms by vocalizing interests to achieve resolution.<sup>200</sup> The most important aspect of mediation is the parties’ autonomy—from their willingness to join the process of reconciliation to their ability to voice concerns throughout the

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<sup>194</sup> See Lavi, *supra* note 185, at 886.

<sup>195</sup> See Hang, *supra* note 190, at 845. Arbitration can also be contractually required for international corporations with mandatory arbitration clauses, as commonly found in large-scale commercial and consumer online disputes. *Id.*

<sup>196</sup> Shah, *supra* note 189, at 26. While the Virtual Magistrate Project failed, it is still noted in ODR research as one of the first and formative examples of promoting ADR in cyberspace with many institutions following its original intentions in practice. *Id.*

<sup>197</sup> See, e.g., Ebner & Greenberg, *supra* note 186 (assessing several examples of other countries’ models of ODR Internet courts including Tribunal in British Columbia, Canada, the Online Court in the U.K., and the Internet Court in Hangzhou, China).

<sup>198</sup> See Henry Perritt, *Dispute Resolution in Cyberspace: Demand for New Forms of ADR*, 15 OHIO ST. J. DISP. RESOL. 675, 687 (2000).

<sup>199</sup> See Lavi, *supra* note 185, at 886.

<sup>200</sup> Samrat Bandopadhyay & Amar Mallick, *Victim-Offender Mediation: Challenges and Its Importance as ‘Alternative Dispute Resolution’ for Cyberspace Issues*, 5 INT’L J. L. MGMT. & HUMAN. 708 (2022).

process.<sup>201</sup> In this way, mediation offers potential for DCC victims to achieve principles of justice by bringing relevant stakeholders, like platforms and abusers, into a collaborative model to redress underlying issues driving harms online. Mediation can help “repair and restore” a victim by providing a chance to voice their experiences and express their needs, thereby reclaiming dignity in the process.<sup>202</sup>

While scholars and practitioners have long debated the effectiveness of using mediation in cases of domestic violence,<sup>203</sup> online mediation for DCC may pose unique benefits by affording non-confrontational mechanisms for victims to face stakeholders by “removing [the] physical presence of the opponent” and reducing power imbalances by having each stakeholder as an equally important party in the decision-making process.<sup>204</sup> Of course, a facilitator guiding an online mediation for DCC would need the “requisite level of training and knowledge to oversee online issues” including the ability to screen for any further revictimization.<sup>205</sup> However, unlike arbitration where a facilitator guiding the dispute can enforce binding agreements between the parties, the mediator has no power of enforcement.<sup>206</sup> Therefore, without any obligation or incentive on the part of platforms to enter such a model of justice for DCC, it seems unlikely that these digital service providers will feel compelled to listen to victims’ experiences let alone proactively work to prevent such harms from occurring.

### 3. A HYBRID MODEL OF ODR FOR DIGITAL COERCIVE CONTROL

For victims of DCC to receive the justice they deserve from the ODR process, a hybrid model of online mediation-arbitration (“med-arb”) should be considered to preserve principles of dignity

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<sup>201</sup> See Lavi, *supra* note 185, at 883.

<sup>202</sup> See Bandopadhyay & Mallick, *supra* note 200, at 711.

<sup>203</sup> See, e.g., Gabrielle Davis et al., *Intimate Partner Violence and Mediation: A framework for when and how mediation should be used*, AM. BAR ASS’N (Apr. 1, 2019), [https://www.americanbar.org/groups/dispute\\_resolution/publications/dispute\\_resolution\\_magazine/2019/spring-2019-family-matters/11-davis-et-al-safer/](https://www.americanbar.org/groups/dispute_resolution/publications/dispute_resolution_magazine/2019/spring-2019-family-matters/11-davis-et-al-safer/).

<sup>204</sup> Shah, *supra* note 189, at 31.

<sup>205</sup> See Turner, *supra* note 184, at 145; see also Alexandria Zylstra, *Mediation and Domestic Violence: A Practical Screening Method for Mediators and Mediation Program Administrators*, 2001 J. DISP. RESOL. 253 (2001) (arguing for more comprehensive screening practices to evaluate appropriateness for domestic violence mediation methods).

<sup>206</sup> See Lavi, *supra* note 185, at 883.



and voice in procedure and to ensure formal consequences for stakeholders. Joining processes of mediation and arbitration “puts parties’ autonomy at the forefront” by beginning with an open dialogue (mediation) while conditioning parties for lasting resolution by having a binding outcome (arbitration).<sup>207</sup> Being able to understand each stakeholders’ interests, positions, and relationship to the dispute is critical to understand how the digital abuse occurred and how changes can be made to rectify a victim’s experiences while preventing future harm.<sup>208</sup> Med-arb uniquely incentivizes parties, especially platform stakeholders, who may otherwise not be compelled to redress harms by maintaining the looming possibility that if the mediation is not successful, the facilitator will turn into an arbitrator and render a final binding decision as to unresolved issues.<sup>209</sup>

Given the immense power of the neutral in the hybrid online med-arb process, the facilitator should possess specialized knowledge from disciplines of law, cyber science, criminology, and women’s & gender studies, given the intersectionality of DCC. Currently, experts who have the knowledge on platforms’ algorithmic codes and machine learning lack the knowledge of experts on intricacies of coercive control and the tactics that abusers enlist to harm victims, and vice versa.<sup>210</sup> Therefore, the med-arb facilitator must have the capabilities and resources necessary to understand the intersection of these disciplines and issue-areas so that platforms can be held accountable through prevention and response to DCC.<sup>211</sup>

Enlisting digital service providers into a hybrid ODR model like med-arb provides an unprecedented opportunity to prevent DCC. By “[g]athering and analyzing data” from technological corporations and establishing patterns of the ways in which abuse occurs, justice can be streamlined while demonstrating “*why* conflicts occur,” which in turn will allow for “preemptive[] . . . conflict *prevention*.”<sup>212</sup> Engaging in ODR to resolve DCC will not only ensure victims receive individualized justice, but also help demonstrate to “court systems and policymakers, legislators, and

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<sup>207</sup> *Id.* at 919.

<sup>208</sup> See Bandopadhyay & Mallick, *supra* note 200, at 712.

<sup>209</sup> Lavi, *supra* note 185, at 912.

<sup>210</sup> See, e.g., Ethan Katsh, *The Online Ombuds Office: Adapting Dispute Resolution to Cyberspace*, U. MASS. (1996), <https://www.umass.edu/dispute/ncair/katsh.htm#fn1>.

<sup>211</sup> *Id.* Although organizational ombudsmen do not bring the same power of formal enforcement as arbitrators, their specialization and technical knowledge to work across and within technical disciplines offers potential to model for med-arb DCC disputes. *Id.*

<sup>212</sup> See Ebner & Greenberg, *supra* note 189, at 88.

administrative bodies” the insidious logic behind platforms’ market for abuse, how abusers exploit these capabilities, and what we can collectively do to bar its perpetuation.<sup>213</sup>

## VII. CONCLUSION

This analysis demonstrates the need to reconceptualize how justice is allotted to victims of DCC with proactive engagement on the part of platforms through prevention and consequential accountability. While remaining victim-focused, this comment illustrates how DCC in digital society requires a new model for victim justice. Focusing on DCC as a fully encompassing term to reflect the range of tactics used through coercive control by current or former intimate partners shows how victims are denied their ability to partake freely and safely as equal digital citizens online. By grounding DCC within the context of surveillance capitalism and the digital economy where platforms profit from encouraging and predicating harmful behavior to keep users engaged, this analysis demonstrates the need to bring such actors into DCC justice and reform corporate business models to stop benefiting from harms online.

Given platforms’ current lack of liability and accountability, as well as their reliance on safety work from victims themselves, platforms must be challenged to engage in a prevention and response model to appropriately deliver the necessary principles of justice to DCC victims. Potential exists for platforms to engage in prevention by changing their behavioral profit model for “good” given their abilities to reprogram algorithms and detect hate in digital spaces. This prevention should be further legitimized by enlisting checks and balances on their power by ensuring platforms are actively preventing harms before they occur and engaging these stakeholders in online dispute resolution.

Using a hybrid of med-arb, online dispute resolution illustrates potential for resolving DCC by maintaining trust and autonomy for victims while simultaneously ensuring a sense of legitimacy and confidence in redressing harms that conventional legal processes cannot provide. Having a specialized facilitator in this model who understands the digital market for DCC, tactics of coercive control, and how abuse transcends “virtual” and “in person” realities is integral in anticipating and preventing DCC from recurring. While raising awareness on the epidemic of DCC is imperative to establish preventive mechanisms and immediate response to harms in digital spaces, for DCC to be fully redressed and victims’ impacts from harms in digital society met with

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<sup>213</sup> *Id.*

principles of justice, platforms must be involved and treated as critical stakeholders.