

# HUMAN TRAFFICKING INVESTIGATION

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## HEARING

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON

HOMELAND SECURITY AND

GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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# HUMAN TRAFFICKING INVESTIGATION

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THURSDAY, NOVEMBER 19, 2015

U.S. SENATE,  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,  
OF THE COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:01 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Rob Portman, Chairman of the Subcommittee, presiding.

Present: Senators Portman, McCain, Lankford, Ayotte, Sasse, McCaskill, Tester, and Heitkamp.

Staff present: Mark Angehr, Mel Beras, Eric Bursch, Brian Callanan, Mark Iaskowitz, John Cuaderes, Margaret Daum, Liam Forsythe, Stephanie Hall, Crystal Higgins, John Kashuba, Amanda Montee, Victoria Muth, Brandon Reavis, Brittney Sadler, Sarah Seitz, Molly Sherlock, Kelsey Stroud, Matt Owen, Andrew Polesovsky, Stuart Varvel, Thomas Caballero, Myles Matteson, Samantha Roberts, and Chris Barkley.

## OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. OK. Thank you all for being here this morning. We were waiting until all the documents were circulated. This hearing will now come to order.

Senator McCaskill and I have called this hearing to address the difficult but really important subject of sex trafficking. Over the past 7 months, this Subcommittee has conducted a bipartisan investigation into how sex traffickers increasingly use the Internet to advance their trade and to evade detection. The aim of this investigation is very straightforward. We want to understand how lawmakers, law enforcement, even private businesses can more effectively combat this serious crime that thrives on this online black market.

As Co-Chair of the Senate Caucus to End Human Trafficking and, maybe more importantly, as someone who represents a State that has experienced some abhorrent sex-trafficking networks, and, maybe most importantly, as a father, this is an issue that I feel strongly about and have worked on over a number of years.

I have spent time with those dedicated to fighting this crime and those victimized by it. For victims, the toll of sex trafficking is measured in stolen childhoods and long-lasting trauma. For traffickers, it is measured in dollars, often a lot of dollars. It is a problem that I believe Congress should pay more attention to.

Precise data is hard to come by because this market exists in the shadows. But experts tell us that there were as many as 27 million victims of human trafficking last year, including 4.5 million people trapped in sexual exploitation. In the United States, about 8 of every 10 suspected incidents of human trafficking involve sex trafficking—80 percent—that is, the sale of minors or forced sale of adults for commercial sex.

Sex traffickers prey on the vulnerable. The Department of Justice (DOJ) has reported that more than half of sex-trafficking victims are minors, and the problem appears to be getting worse. Over the last 5 years, the leading authority on child exploitation, the National Center for Missing and Exploited Children (NCMEC), whom we will hear from later today, reported an 846-percent increase in reports of suspected child sex trafficking. NCMEC says that increase is “directly correlated to the increased use of the Internet to sell children for sex.” That is what this hearing is all about.

Traffickers have found refuge in new customers through websites that specialize in advertising so-called ordinary prostitution and lawful escort businesses. A business called “Backpage.com” is the market leader in that industry, with annual revenues in excess of \$130 million last year. With a look and layout similar to the better known Craigslist.com, Backpage has a special niche. According to one industry analysis in 2013, \$8 out of every \$10 spent on online commercial sex advertising in the United States goes to Backpage. Some of that advertising is legal work. Much of it is illegal. A Federal court in Chicago noted this year, from that Backpage’s “adult services section overwhelmingly contains advertisements for prostitution, including the prostitution of minors.”

The public record indicates that Backpage sits at the center of this online black market for sex trafficking. The National Center tells us that Backpage is linked to 71 percent of all suspected child sex-trafficking reports it receives from the general public through its CyberTipline. So think about that: 71 percent of all the suspected child sex-trafficking reports that the center gets are related to Backpage.

According to a leading anti-trafficking organization called Shared Hope International, “Service providers working with sex-trafficking victims have reported that between 80 percent and 100 percent of their clients have been bought and sold on Backpage.com.” It is easy to see why the National Association of Attorneys General (NAAG) describe Backpage as a “hub of human trafficking, especially the trafficking of minors.” And we will hear more about that today.

A recent study of press accounts reveals that scores of serious crimes are linked to Backpage. Shared Hope International has catalogued more than 400 reported cases of children being trafficked using Backpage.com across 47 States, and the Permanent Subcommittee on Investigations (PSI) staff has identified at least 13 reported cases of child sex trafficking in my home State of Ohio alone linked to Backpage over the past 4 years.

On this record, PSI saw a compelling need to better understand the business practices of Backpage.com, especially the efforts it takes to prevent the use of its site by sex traffickers. That seems

very reasonable. We thought it might be simple enough because Backpage holds itself out as a “critical ally” against human trafficking. The company has stated that is “leads the industry in its review and screening of advertisements for illegal activity,” a process it calls “moderation.”

Backpage’s top lawyer has described its moderation process as “the key tool for disrupting and eventually ending human trafficking via the World Wide Web.” But Backpage has refused to turn over documents about this key moderation process that it touts, as well as other relevant aspects of its business.

Specifically, the company refused to comply with an initial subpoena issued by the Subcommittee on July 7, saying that it was overbroad. Senator McCaskill and I then agreed to withdraw that subpoena and issue a new, more targeted subpoena designed to accommodate some of Backpage’s concerns, but the company again refused to comply.

Defiance of a Congressional subpoena is rare and it is serious. Backpage has tried to excuse its noncompliance based on its sweeping claim of constitutional privilege. The company’s argument is vague, but it can be summed up this way: Backpage says that the First Amendment to the Constitution shields it from this investigation of advertising by sex traffickers because it also publishes some lawful advertisements that are protected speech.

It is an interesting argument. It has no support in law or logic. In a detailed ruling on behalf of the Subcommittee, Senator McCaskill and I explained why Backpage’s legal argument is without merit. We also explained the great care that PSI has taken to protect any potential First Amendment interest at stake here. We have made that ruling publicly available today on PSI’s website, and I encourage you to take a look at it.

After overruling Backpage’s objections, Senator McCaskill and I ordered the company and its Chief Executive Officer (CEO) to produce the documents we asked for by last Thursday, November 12. That day came and went with no response. The next day, Backpage again informed PSI that it would not comply. But at the same time, Backpage made quite a show of producing certain cherry-picked documents favorable to the company, along with a 16,000-page pile of material and documents that the Subcommittee does not need and is not seeking.

We do not think Backpage’s response to the subpoena has been in good faith. It is fine for parties to have legal disagreements with us about constitutional privileges or the appropriateness of particular requests. We treat these objections very seriously. But Backpage has done more than just raise a legal objection to producing certain documents. Just last week, Backpage’s lawyers told PSI that the company had not even bothered to look for the documents responsive to the subpoena which means Backpage does not even know what all it is refusing to produce, much less why these documents should be protected by the First Amendment.

PSI was disappointed with Backpage’s noncompliance, but we were not deterred. Through other sources, including a contractor that Backpage outsourced its ad screening process to, we sought to learn more about the issues under investigation. In a bipartisan staff report released today, we have outlined some preliminary

findings and further questions that need answers. The report reveals that Backpage has had a practice of editing some advertisements by deleting words and images before publication. This is important because changing the appearance of a published ad obviously does not change the advertised transaction.

The staff report finds that in some cases these editing practices likely serve to conceal evidence of the illegality of the underlying transaction. That finding raises some very serious questions. We want to know more about the purpose and effect of these editing practices, which is why we issued a subpoena to Backpage for documents that could tell us whether and how Backpage deletes text or images that could alert law enforcement about a crime being advertised. When that failed, the Subcommittee tried to take the testimony of two Backpage employees in charge of its moderation practices, but they refused to testify on the grounds that it might incriminate them. Nevertheless, we continue to seek documents from Backpage that would allow us to understand this and other aspects of its screening process.

In a moment, Senator McCaskill is going to describe our other findings in greater detail. At the close of today's hearing, we will address the next steps the Subcommittee plans to take to enforce the subpoena that Backpage has violated.

I am grateful to our Ranking Member, Senator McCaskill, and her staff for their shoulder-to-shoulder work with us on this bipartisan investigation. I would now like to turn to her for her opening statement.

#### **OPENING STATEMENT OF SENATOR MCCASKILL**

Senator MCCASKILL. Thank you, Chairman Portman, for holding this hearing, and thank you for the strong working relationship we have on this Committee.

Four months ago, a 15-year-old girl walked into Cardinal Glennon Children's Hospital in St. Louis, Missouri, and asked for help. Along with four other girls between the ages of 12 and 18, she had been sold for sex at truck stops across Missouri, Florida, Texas, and New Mexico for almost 2 months. She was lucky to be alive. According to her police report, another girl traveling with her during those months had died in her arms.

The 15-year-old girl who walked into Cardinal Glennon, like the majority of children who are sold for sex in the United States today, was trafficked using Backpage.com. Throughout the Subcommittee's investigation, we have received information indicating that Backpage has built a hugely successful business in part by posting advertisements of children and other victims of human trafficking on its website. And despite knowing that its website has hosted advertisements of children being sold for sex, Backpage has apparently signaled to its moderators that those ads should remain on the site.

In April 2012, for example, Backpage initially told its outside moderators that they should "fail" or remove ads containing references to certain sex acts and words, including "school girl," "teen," "human trafficking," and "yung."

Two days later, Backpage reversed that policy. The employee responsible for moderation issued clarifications regarding the banned



words. He instructed that moderators should no longer delete ads that use “young” or misspellings of “young.” Those deletions were capturing too much volume, he explained, because there were too many legitimate uses of the word to warrant a removal every time. Instead of deleting advertisements for services with “young,” the Backpage employee instructed moderators to send the ads to him for additional review.

We do not know how many, if any, ads were removed following that additional review. We do know that Backpage instructed its moderators to be very cautious about deleting ads. According to the manager of the moderators, “The definition of underage is anyone under the age of 18. But for the purposes of making reports, we err on the side of caution and try to report anyone that looks under the age of 21.” Importantly, guidance from Backpage emphasized, in all capital letters, “IF IN DOUBT ABOUT UNDERAGE: the process for now should be to accept the ad,” and “ONLY DELETE IF YOU REALLY VERY SURE PERSON IS UNDERAGE.” That was in all caps.

The result of Backpage’s guidance of course, is the site contains innumerable advertisements for sexual transactions with children. The National Center for Mission and Exploited Children, for example, reports that 71 percent of the child sex-trafficking reports it receives involve ads posted on Backpage. And according to Shared Hope International, service providers working with child sex-trafficking victims have reported that between 80 percent and 100 percent of their clients have been bought and sold on Backpage.com.

We have also learned that Backpage has failed to preserve information that would help law enforcement and other entities locate victims and put pimps and traffickers in jail. Backpage has also failed to implement other free, widely available technologies that have helped law enforcement build cases against suspected sex traffickers. Moreover, Backpage representatives and third-party consultants have informed the Subcommittee that Backpage moderators edit and delete content in ads in ways that may conceal evidence of illegal activity from law enforcement.

The Subcommittee has also found that Backpage’s business model has been highly profitable. Based on information obtained by the Subcommittee, Backpage had net revenue of \$135 million in 2014 and is expected to net more than \$153 million this year—nearly all of it profit. The company’s fair market value, taking into account its lack of marketability, is approximately \$430 million. As a former sex crimes prosecutor, I know that behind these cold financial statistics are survivors traumatized from abuse and degradation and families suffering through years of terror and uncertainty concerning the fate of their loved ones.

Today I hope to hear from our first witnesses about the impact of Backpage on the efforts of law enforcement officials and advocacy groups to curb sex trafficking in the United States. I am confident that their testimony will make clear the importance of Subcommittee efforts to press Backpage for information on its operations and procedures.

I also hope that we will at some future date finally have the opportunity to question Backpage CEO Carl Ferrer who received a

subpoena to appear before the Subcommittee today but has refused to attend. I have many questions for him.

I thank the witnesses for being here today, and I look forward to their testimony.

Senator PORTMAN. Thank you, Senator McCaskill, and thank you for your partnership in this investigation.

Senator McCaskill mentioned the report. Without objection, the staff report<sup>1</sup> and some associated correspondence are ordered to become part of the record.

Senator PORTMAN. With this, we are going to turn to our first panel of witnesses and then have the opportunity for Members to ask questions.

We are pleased to be joined by Yiota Souras. Yiota is Senior Vice President and General Counsel (GC) of the National Center for Missing and Exploited Children, the group we have been talking about, the Nation's leading authority and resource on issues related to missing and sexually exploited children. For over 30 years, NCMEC has provided valuable services to law enforcement and the criminal justice community with the goal of eliminating child sexual exploitation and reuniting families. It has assisted law enforcement in recovering over 200,000 missing children, including assisting with the rescue of a missing child in Cleveland, Ohio, just earlier this month. We appreciate what you do.

I am also honored to have with us today the founder of NCMEC. Many of you know John Walsh, who is here with us in the room this morning, who has been a good adviser to me and to this Subcommittee.

We are also pleased to be joined by Darwin Roberts. Darwin is the Deputy Attorney General with the Washington State Attorney General's Office where he supervises the Criminal Justice Division, among other units, and is the office's lead attorney for human-trafficking issues. The State of Washington has been recognized as a leader in its efforts to combat human trafficking due in large part to the work of the State AG's Office. The Polaris Project, a highly regarded national anti-trafficking organization, gave Washington the highest ranking for its anti-trafficking efforts last year. From 2005 to 2013, Mr. Roberts also served as an Assistant U.S. Attorney.

We appreciate both of you being here this morning. We look forward to your testimony.

Without objection, we are also going to make part of the record the written testimony submitted by Brant Cook,<sup>2</sup> who is the Director of Ohio Attorney General Mike DeWine's Crimes Against Children Initiative. Ohio has also been at the forefront of this issue under the leadership of former Senator Mike DeWine.

Senator PORTMAN. We are also going to, without objection, make part of the record the testimony of the Chief Assistant District Attorney for Manhattan<sup>3</sup>, who has also been engaged and involved in this issue with us and the Subcommittee.

Senator PORTMAN. To the witnesses, it is the custom of this Subcommittee to swear in all witnesses, so at this time I would ask

<sup>1</sup> The Majority Staff Report appears in the Appendix on page 53.

<sup>2</sup> The prepared statement of Mr. Cook appears in the Appendix on page 249.

<sup>3</sup> The prepared statement of Ms. Friedman-Agnifilo appears in the Appendix on page 253.

you both to please stand and raise your right hand. Do you swear that the testimony you are about to give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. SOURAS. I do.

Mr. ROBERTS. I do.

Senator PORTMAN. Let the record reflect the witnesses answered in the affirmative. All of your written testimony will be printed in the record in its entirety. We ask that you try to limit your oral testimony to 5 minutes.

Ms. Souras, we will hear from you first.

**TESTIMONY OF YIOTA G. SOURAS,<sup>1</sup> SENIOR VICE PRESIDENT  
AND GENERAL COUNSEL, THE NATIONAL CENTER FOR MISS-  
ING AND EXPLOITED CHILDREN**

Ms. SOURAS. Thank you. Chairman Portman, Ranking Member McCaskill, and Members of the Subcommittee, I am pleased to be here this morning on behalf of the National Center for Missing and Exploited Children.

Let me take a moment to thank you for your efforts to investigate the crime of child sex trafficking and potential solutions to combat this horrible crime. I am joined today by NCMEC's co-founder, John Walsh, and our incoming CEO, John Clark, former Director of the U.S. Marshals, who are here with me to underscore NCMEC's support for the Committee's work and our dedication to preventing child sex trafficking and assisting survivors and their families.

We are here to talk about the online lucrative sale of America's children for sex, which in our experience occurs most prominently on the website Backpage.com. Every year in the United States, thousands of children are sold for sex and repeatedly raped. Child sex trafficking victims are boys, transgender children, and girls. We see victims as young as 11 years old, with an average age of 15. Many of these children are moved constantly from city to city, sold for sex up to 10 times a day, and tattooed by their traffickers, literally branded for life.

Child sex trafficking is the rape of a child in exchange for something of value. Buying, selling, or facilitating the sale of a child for sex is always illegal. Child sex trafficking is not prostitution, and it has no relation to legal sexual activities between consenting adults. When NCMEC talks about child sex trafficking, we are talking about illegal activity that is not protected by the First Amendment.

Technology has fundamentally changed how children are trafficked. Today an adult can shop from their home, office, or hotel room, even on a cell phone, to buy a child for sex. There are advertising websites, notably Backpage, that are online marketplaces to buy and sell sexual experiences. Some may be legal, but most are not.

NCMEC operates the CyberTipline, the Nation's reporting mechanism for suspected child sexual exploitation. Since 1998, we have

<sup>1</sup> The prepared statement of Ms. Souras appears in the Appendix on page 38

received over 45,000 reports relating to suspected child sex trafficking. A majority of these reports involve ads posted on Backpage.

In our experience, child sex trafficking often begins with a missing child. So far this year, more than 1,800 missing child cases reported to NCMEC have involved possible child sex trafficking. Because there are so many child sex-trafficking ads on Backpage, our staff search Backpage first when a missing child is at risk for being trafficked.

At NCMEC, we routinely work with online companies to help them make sure their websites are not misused to harm children. We met with Backpage at their request after they started voluntarily reporting some ads to us in 2010. During this time, Backpage publicly represented that it wanted to do everything possible to stop child sexual exploitation on its website.

At our last meeting, in 2013, Backpage was frustrated with NCMEC for not promoting their asserted efforts to curb child sex trafficking. We have not met with Backpage again because it seemed they were more interested in trying to publicly claim a partnership with NCMEC on these issues rather than reducing the sale of children on their website.

During our meetings with Backpage, we recommended many steps they could take to reduce the possibility children would be sold for sex on their website. Backpage declined to adopt most of these recommended measures. Here are just two examples.

Backpage does not consistently remove ads it has reported to NCMEC, even when the ad is reported by a family member of the child, begging for assistance. Here is a report and what one Mom and Dad wrote to Backpage: "Your website has ads featuring our 16-year-old daughter . . . posing as an escort. She is being pimped out by her old boyfriend, and she is underage. I have emailed the ad multiple times using your website, but have gotten no response. . . . For God's sake, she is only 16."

We raised this issue repeatedly during our meetings with Backpage, but were never told why some ads remained live on the site after being reported.

Backpage also has more stringent rules to post an ad to sell a pet, a motorcycle, or a boat. For these ads, you are required to provide a verified phone number. Even though Backpage knows its site is used for child sex trafficking and after our repeated recommendations, Backpage still has not implemented any form of verification to post an escort ad.

Today Backpage still voluntarily reports some child sex-trafficking to NCMEC, but they have not taken basic measures to disrupt the online marketplace of sex trafficking they have created.

There is no reason to believe suspected child sex-trafficking ads on Backpage have decreased. However, Backpage's number of reports this year has shrunk to less than half the number of reports in 2013, the same year we had our last meeting and the same year NCMEC filed an amicus brief in support of child victims in the lawsuit against Backpage.

Before I close, I would like to acknowledge the tremendous efforts of many other advocacy groups, many of whom are here in the room today, and the attorneys who are working on civil court cases

in Massachusetts and Washington to end the devastating online business of selling children for sex on websites like Backpage.

Mr. Chairman and other Members, I thank you for the chance to share this information regarding child sex trafficking and Backpage, and I am happy to answer any questions you may have.

Senator PORTMAN. Thank you, Ms. Souras.

Mr. Roberts, we would now like to hear from you.

**TESTIMONY OF DARWIN P. ROBERTS,<sup>1</sup> DEPUTY ATTORNEY GENERAL, THE WASHINGTON STATE ATTORNEY GENERAL'S OFFICE**

Mr. ROBERTS. Good morning, Chairman Portman, Ranking Member McCaskill, and Members of the Subcommittee. Thank you for the opportunity to appear here today. I am appearing on behalf of Attorney General Bob Ferguson, who appreciates the invitation and regrets that he was not able to come here in person.

I am proud to be here representing Washington State, which has been recognized as a leader among the States in fighting human trafficking at the State level. We were the first State to make it a crime to commit human trafficking at the State level, and, of course, our State definition of "human trafficking" matches the Federal in that the use of force, fraud, or coercion for forced labor, involuntary servitude, or commercial sex acts is classified as human trafficking. And, of course, the commercial sexual abuse of a minor is any use of a minor in a commercial sex act, because minors are recognized as not being able to consent legally to engage in any sort of sex act with an adult, much less a commercial one.

While we appreciate the Chairman's credit to the Attorney General's office for the work we have done, I think I would be remiss if I did not emphasize that we have an entire community of folks doing really good work in Washington State, and if it were not for all of our partners in law enforcement, the nonprofit community, and other government agencies, we would not be close to where we are today.

Washington has had the experience of becoming involved in litigation with Backpage.com in the course of our efforts to prevent the use of the Internet for human trafficking and the commercial sexual exploitation of children. In 2012, the State of Washington passed a law that aimed to criminally punish any person who, using the Internet, "knowingly publishes, disseminates, or displays, or causes directly or indirectly to be published, disseminated, or displayed any advertisement for a commercial sex act which is to take place in the State of Washington, and that includes the depiction of a minor."

Backpage.com led a challenge to this law before it could be implemented. The Attorney General's office attempted to defend the law in court, but the U.S. District Court in Seattle ruled that the law would be enjoined on the grounds that it was unconstitutionally vague under the First Amendment and also likely preempted by the Communications Decency Act (CDA).

Almost simultaneously with this ruling by the U.S. District Court, though, a lawsuit was filed in Washington Superior Court

<sup>1</sup> The prepared statement of Mr. Roberts appears in the Appendix on page 48.

in Pierce County Tacoma alleging that Backpage, in fact, had done more than just be a site that hosted the posting of ads, as they claimed in order to invoke their immunity under the Communications Decency Act. In that case, several minors who alleged that they were, in fact, prostituted using Backpage.com sued, alleging that Backpage had essentially, by several means, including making themselves a market leader—in other words, the go-to site for on-line prostitution ads—by using terms like “escorts,” euphemisms widely recognized as telling consumers that prostitution is the kind of service that they could purchase on this website, and by using what the plaintiffs terms “sham efforts at self-policing” to allegedly try to keep ads for underage individuals off the site, that by doing this Backpage.com had moved beyond the mere facilitation or posting of the ads and, in fact, itself was materially contributing to the use of its site to sell minors for sex.

Our Attorney General’s office filed an amicus brief in support of these plaintiffs when their case went to the Washington Supreme Court, and on the posture of the Backpage’s initial motion to dismiss, we argued that, in fact, the plaintiffs should be allowed to conduct discovery to determine whether Backpage was materially contributing as the plaintiffs alleged. The Washington Supreme Court this fall ruled in favor of the plaintiffs, and that case is now proceeding to discovery.

We are aware that in the court of this litigation and others, Backpage.com has repeatedly asserted that law enforcement is best helped if Backpage remains open as a website for the posting of adult services-type ads and works with law enforcement, as they put it, to try to prevent minors from being trafficked using their site. These commitments sound positive as stated by Backpage, but the Washington State Attorney General’s office and others is not at all certain whether these commitments are at all sufficient to do the kind of work necessary to prevent individuals from being trafficked on the site.

During this entire period, even as Backpage has said this, there have been repeated, numerous instances of children being trafficked on Backpage, as Ms. Souras just cited. So the question for the Attorney General’s office is: What is Backpage doing? What are their goals? How effective are their techniques? Are they doing everything they can? Is there more they could be doing? What are the costs of their compliance to them internally relative to the significant revenues, as the Subcommittee cited, that they are making off these ads?

So for all of those reasons, the Washington State Attorney General’s office hopes that Backpage.com will respond to the Subcommittee’s subpoena and will shed more light on how exactly it claims to be working to prevent the sex trafficking of minors.

Thank you, and I would be happy to answer any questions as well.

Senator PORTMAN. Thank you, Mr. Roberts. I appreciate both of you for your testimony. Your perspective is really valuable to the Subcommittee, and I think we are going to have some very interesting dialogue now.

We are going to begin with 5-minute question rounds so that every member has got an opportunity, and we will go as many rounds as necessary to get the questions answered.

I would like to start with just making the statement that it appears from what both of you have said that technology has fundamentally changed the way children can be victimized through sex trafficking. That is the fundamental truth that we are hearing here, and it is something the Subcommittee certainly found, and you can see that in our report.

Ms. Souras, let me start with you. I, as you know, have deep concerns about this notion of editing advertisements, and we have had in our report, as you will see, some evidence of that. Let me ask you first, how prevalent are advertisements for sexual exploitation of minors on Backpage.com in your experience?

Ms. SOURAS. Mr. Chairman, as I testified to a few moments ago, Backpage actually is the first place that NCMEC searches when we have a missing child case where there is suspicion that the child is being trafficked. That is because even though the child may also have a trafficking ad on another site, they will always have a trafficking ad on Backpage if they are being trafficked. So between that and then the numbers of reports that we have received, as I mentioned, over 45,000 reports of child sex trafficking, with a predominant number of those either from the public or otherwise being reported on Backpage ads, it is clear to NCMEC that Backpage really is the primary marketplace online for these ads.

Senator PORTMAN. You said over 70 percent of all suspected child sex-trafficking reports that you receive on your CyberTipline are related to Backpage?

Ms. SOURAS. From the public, that is correct.

Senator PORTMAN. Amazing. On the subject of underage victims, I want to turn your attention now to one of the many emails our investigation has uncovered. This email is from the company that Backpage used to outsource the job of screening its advertisements. It is a process, as I said earlier, that Backpage calls "moderation." In the email, that company instructs moderators who had the job of reviewing and editing the ads, including how to handle ads for victims that look underage, the ad instructs moderators—and I have got this here. You can find it, by the way, if you want to look in the appendix to the report on page 122.

The email instructs moderators that if they are in doubt about underage, the process should be to accept the ad. The process should be to accept the ad if you are in doubt.

It also cautions moderators that they should "only delete [ads] if you [are] really sure [the] person is underage." It seems to me there is a bias there, but let me ask you, Ms. Souras: Does it sound like instructions a company would give if it was really concerned about everything it could do to keep kids off the Internet?

Ms. SOURAS. No, absolutely not. If a company really has a sincere interest in trying to deter and remove child sexual exploitation, including child sex-trafficking content, from its website, then it will undertake a number of preventative measures early on, and it also will deal with ads such as that likely will be picturing children or minors. It will not allow that content up, and it will re-

port that content as well. It will not take a half measure such as noted here.

I will add, just glancing at this email, this is very similar to what Backpage had told NCMEC was part of its moderation process regarding children that, quote-unquote, might appear to be young.

Senator PORTMAN. As we talked about, Backpage has a practice of editing images and text out of certain ads before they publish them. One of the obvious concerns I see here is that when you edit an ad and change its wording, of course, you are not changing the underlying transaction. You do not change the potential for the underlying crime that is being committed.

I have a few questions for you. To start, were you aware that Backpage moderators edited ads in this manner?

Ms. SOURAS. We had had previous conversations with Backpage regarding the editing of ads as it pertained to photographs. We do not recall any discussions with Backpage about moderators actually editing text of the ads. We had been told by Backpage that when an ad came in, often with multiple photographs, if there was a photograph that they deemed to be a violation of their terms of service, containing nudity, for instance, or graphic sexual activity, that photograph would be pulled, and then the ad would move forward into the posting process.

Senator PORTMAN. So let us assume that the evidence that we have uncovered is accurate and there is this kind of editing. What concern does that practice give you?

Ms. SOURAS. It is incredibly troubling, Mr. Chairman, as you noted, on a number of grounds. One is that it definitely obfuscates the illegal activity that is the intent of that ad. If somebody is posting an ad and saying this is a 15-year-old or providing other information that it is a minor who is being sold for a sex act and Backpage merely strips the age component out or whatever the other indicia of youth might be, or being a child, that is definitely, as you noted, hiding the crime before it goes public.

To me, also, from a legal standpoint, it could very much create concerns about whether Backpage is still in its publisher category or is it shifting now into becoming a creator in some ways of these ads as well.

Senator PORTMAN. I would just say my time is coming to an end, but I also think it makes it harder for you to find these kids. It is harder to rescue children, because when you do not have the full ad, when they are giving you this edited version rather than the complete record of the ad, including the photo and all the original text that might have existed prior to the editing which would help you, it makes it more difficult for you to rescue these kids. Isn't that accurate?

Ms. SOURAS. That is absolutely correct. If we are able to receive all the photographs and all the text, the additional information, whether it is a photo that might include the face of the child, which could obviously benefit greatly the identification of that child, or other information such as a phone number or an email address that is in the original ad that might have gotten stripped by the Backpage moderator, that sort of information is crucial for law enforcement to rescue that child and also to pursue the individual that is selling that child for sex.



Senator PORTMAN. Thank you, Ms. Souras. Senator McCaskill.

Senator MCCASKILL. Can you explain, Ms. Souras, your testimony that there are more stringent posting rules for selling a motorcycle than selling a 12-year-old?

Ms. SOURAS. I really have no explanation for that, Senator. It is what we were told when we met with Backpage. It is what is the reality of how you go about posting an ad currently. During our meetings between 2010 and 2013 with Backpage, we constantly asked there to be some form of Know Your Customer, at least know who the individual is in that ad, knowing the high incidence of child sex-trafficking ads on that website. We pointed out the fact that they are able to do this on other ad sections, such as pets and motor vehicles. And we did ask why they could not incorporate that element into their escort ads as well. We never received a satisfactory answer.

Senator MCCASKILL. What was their answer? What excuse did they have?

Ms. SOURAS. They often would say they would look into it, they would discuss it at the next meeting, it would be re-raised at the next meeting, and it would be as if it was the first time we were raising the issue. There was never a satisfactory response.

Senator MCCASKILL. So the sex ads are the only place where they do not require verification?

Ms. SOURAS. I have not looked at all the other ad categories. We have done, obviously, a lot of deep-dive research on the escort ads themselves, and we have noted variations between ads. But there are many categories of items for sale—apartments for rent, jobs, et cetera. So I cannot answer that with specificity.

Senator MCCASKILL. That brings me to my next question. Have you all done the math? And maybe the staff is busy working on this. What percentage of the ads on Backpage are sex-related versus the other kinds of advertisements that they pretend they are interested in?

Ms. SOURAS. NCMEC has not. I know other groups have done research on the ads that are on Backpage. NCMEC is really responsive to our cases, so when we receive a child sex-trafficking report, an exploitation report, we go to Backpage on that report. Similarly, when we have a missing child case where the child may be trafficked, we go to Backpage for that child.

Senator MCCASKILL. It appears that they are engaging—and, of course, we are trying to find out. That is what this is about. We are trying to find out the facts. It appears that this is a very important part of their business model because I do not think anyone could say this is not high risk. So if you are engaging in high-risk activity, it is usually because it has a great deal of impact on the bottom line.

Let me ask you, Mr. Roberts, as I said, this hearing is not about reaching conclusions about Backpage, about what they have or have not done. Instead, it is about affirming the legitimacy of this investigation and the legitimacy of the questions that we are asking and that we demand answers to as the U.S. Senate.

In fact, in your amicus brief that you filed with the Supreme Court of Washington—both in your amicus brief and the NCMEC amicus brief—you explain the importance of receiving much of the

same information that we are seeking. You stress the records of Backpage's ad screeners and its protocols for creating an ad, screening for and rejecting ads offering children, and flagging and banning repeat offenders.

Can you explain why it is so critical for anti-trafficking efforts for Backpage to produce this kind of material and why our efforts to get this material is so essential and why we should spare no procedural effort to get at these facts?

Mr. ROBERTS. Absolutely, Senator, and thank you again for making this effort. Without understanding what is going on, we cannot understand whether they are putting in sufficient effort to solve the problem. And, again, because Backpage continually invokes their own efforts to block children from being advertised on their site as the reason that they should be allowed to continue operating freely in this area, even as they litigate vigorously to protect themselves from laws and lawsuits that might hold them accountable, that attempt to hold them accountable for having trafficked children on their website they invoke these protections. So we need to know precisely what these protections are. What are they doing? How significant are they relative to the overall volume of Backpage's business?

I think it is important for regulators and members of the public to assess how much is Backpage putting into compliance. I mean, if this is a tremendously profitable business for them, what is an appropriate amount for them to spend trying to keep children from being sold for sex?

Senator MCCASKILL. They are claiming protection under the law while refusing to give the people who represent the law the facts that would, in fact, support their claim.

Mr. ROBERTS. Right, and that is obviously——

Senator MCCASKILL. They are basically saying, "You should trust us. We are not going to give you any information." Has Backpage ever produced the documents the National Association of Attorneys General requested of them in 2011 and 2012? Has that information ever been produced?

Mr. ROBERTS. I do not believe so, Senator.

Senator MCCASKILL. Thank you, Mr. Chairman.

Senator PORTMAN. Senator McCain.

#### **OPENING STATEMENT OF SENATOR MCCAIN**

Senator MCCAIN. Thank you, Mr. Chairman. And I want to thank all Members for their involvement in this really distasteful issue but one of transcendent importance. I would like to especially thank Senator Heitkamp for her significant involvement and advocacy for the children on this really unsavory, unpleasant aspect of America that seems to have grown over time with the ability to use technology.

Mr. Chairman, I have been a Member of this Subcommittee for many years. I have never known of a witness to refuse a subpoena, and I am sure that you will take the necessary action to ensure that that is not done with impunity. And I applaud you for your actions.

This is all about money, isn't it, Mr. Roberts? Eighty percent of their revenue for Backpage can be directly derived from their commercial sex advertising? We are talking about money, aren't we?

Mr. ROBERTS. It appears so, Senator.

Senator MCCAIN. And this is the most egregious example of that, but it goes on with other websites around the country. This just happened to be the most egregious. In fact, two Federal courts have reached the conclusion that they are in violation of law.

What do we need to do about the whole situation, which is to some degree the result of increased technology and means of communication? What do we need to do?

Mr. ROBERTS. It is a very complicated question, sir. I can tell you about some of the efforts that are taking place. The King County prosecuting attorney's office, which is the prosecuting attorney for Seattle, the largest office in the State of Washington, is doing some real cutting-edge work in this area.

Senator MCCAIN. What about the U.S. Attorney General?

Mr. ROBERTS. It has been a couple years since I was with the Justice Department, sir. I know that at least in Washington State the Department of Justice—

Senator MCCAIN. So you do not know of any Federal active engagement? Do you, Ms. Souras? Do you know of any?

Ms. SOURAS. No, sir, I do not.

Senator MCCAIN. So you do not know of any priority with the Attorney General of the United States?

Ms. SOURAS. I am not aware of any at this time.

Senator MCCAIN. Mr. Chairman, maybe one of the results of this hearing could be to increase the priority of this issue with—since it is a national issue.

Please proceed, Mr. Roberts.

Mr. ROBERTS. Senator, I was just going to mention that our local prosecuting attorney's office is working on a project that seeks to inhibit the online demand for persons seeking sex, particularly with minors, by placing targeted advertisements online. In the same way that Backpage apparently seeks to become the first search result when someone searches for an adult services-type ad online, the prosecuting attorney's office is placing ads that ask people, "Do you really want to be buying sex?" and try to expose them to some of the negative effects that take place when they participate in the commercial sex economy, describing that women often are not there willingly, that there is a great deal of exploitation, violence, harm, trauma that comes from these efforts. And that has been supported in part by grants from private sources, and we believe it has some potential to hopefully make some impact.

Senator MCCAIN. So the fact that this has such a devastating effect is the hook, really, that should lead to every attempt being made to stop this evil.

Mr. ROBERTS. Yes, sir.

Senator MCCAIN. I thank you, Mr. Chairman, and I hope that maybe we could, all of us on this Committee, maybe send a message to the United States Attorney General that we need some priority on this issue.

Thank you, Mr. Chairman. I thank the witnesses.

Senator PORTMAN. Thank you, Senator McCain, and good point. Senator Heitkamp.

#### **OPENING STATEMENT OF SENATOR HEITKAMP**

Senator HEITKAMP. Thank you, Mr. Chairman and Ranking Member, for this very important hearing. In the halls of Congress, we frequently represent and talk about some of the most powerful people in America, what we are going to do with the large banks, what we are going to do, and today we are talking about the most vulnerable people in America, small children, basically being exploited, being captured, and being sold as sex slaves. What could be more horrific than that?

And we are told by an organization like Backpage.com that they are doing everything, they are trying as hard as they can to prevent this horrible thing from happening to children. I think today we are saying, "You need to try harder. And if you were truly trying as hard as what you could, if you truly cared, you would be in this room with us talking about how we could, in fact, attack this problem."

They are not in this room because they are not in this fight with the rest of us. They are not here to protect children. They are here to make money, as Senator McCain talked about.

And I want to just kind of tell you what we are seeing in North Dakota, because a lot of people think that this is something that is removed, it is a city issue, it is something that big cities experience. But in North Dakota, this issue has hit us, and it has hit us hard, because Backpage.com allows it to be invisible. There is nobody walking the street corners. It is invisible.

And so just yesterday, to give you a sense of where we are, just yesterday 69 new ads for "escorts"—and I put that in quotes—posted on Backpage in North Dakota alone. Sixty-nine.

And I want to tell you a story. Earlier this year, a 14-year-old Las Vegas runaway was rescued from traffickers in Minot, after her mother saw emails in her inbox, her email inbox, basically advertising her, answering an ad that had been posted on Backpage.com.

Last summer, right across from Fargo, North Dakota, in Moorhead, Minnesota, the local law enforcement officials responded to a posting on Backpage.com and found a 13-year-old runaway from Minneapolis who had been trafficked for sex.

Now, are we to assume that these are the only minors who ever appeared in North Dakota on Backpage.com? Well, you would have to be quite naive and foolish to assume that is the fact. And you would have to be quite naive and foolish to believe that we really have a partner in solving this problem at Backpage.com. We do not have a partner there. We have somebody who is, I believe, not participating in solving this problem but, in fact, capitalizing and becoming filthy rich—and I use the word "filthy" honestly—filthy rich on Backpage.com.

So one of the issues that I want to explore in the time that I have left is basically the issue of metadata, because we have talked a little bit about, scrubbing the ads, rewriting the ads. But it is my understanding that metadata is also being scrubbed off these ads, which then eliminates some opportunity for actually tracing back

to the source where these ads are. And this is a question for either one of you to explain how metadata is being treated on Backpage.com as it relates to escort advertising.

Ms. SOURAS. Senator, your understanding is correct. When NCMEC receives a Backpage ad that has been reported, there is not metadata in back of that ad. Metadata, like an Internet Protocol (IP) address or other types of electronic data information, is incredibly relevant and important as far as identifying location, geographic location, and other types of information that may be pertinent to connecting the individual who took that photograph with the actual photograph and the location of that individual. Without that information, it is often very difficult for NCMEC, certainly for law enforcement, to start to connect that child to that photo.

Senator HEITKAMP. Do you see metadata being removed from an advertisement for a car or anything else on Backpage? Do they take the metadata off those ads?

Ms. SOURAS. We do not see those ad photos in the same way, so that would be a difficult question for me to answer.

Senator HEITKAMP. OK. Mr. Roberts.

Mr. ROBERTS. In response to the Senator's question, I would just add metadata can be especially important in trafficking prosecutions because what a lot of people do not realize—

Senator HEITKAMP. I think we all understand how important it is. Would there be any legitimate business purpose for removing metadata from the advertisement? Commercial purpose?

Ms. SOURAS. It is storage intensive, so there is an investment that might be required of servers and—

Senator HEITKAMP. And storage is so expensive these days, right?

Ms. SOURAS. It is getting cheaper.

Senator HEITKAMP. Yes, it is very cheap. And so let us not pretend that this is about storage, quite honestly.

I know I am out of time, but I want to give a shout-out to a great partner who has put her reputation and has been a great partner to the National Center for Missing and Exploited People, and that is Senator McCain's wife, Cindy McCain, who has been absolutely a champion and I think has done more to raise the issue of Backpage than almost anyone else in this country. And so she is a great partner to have and a fierce champion for children in this country. And so we are grateful that even though she is not at this dais, she is definitely here with us today as we address this issue.

Senator PORTMAN. Thank you, Senator. She was here in the form of her husband, and when I asked Senator McCain whether he could come by today, he immediately said, "Of course I am going to come because of Cindy." And she has been great in raising awareness for this issue. I have spoken with her at conferences, and she has spent a lot of time and effort internationally as well as here in this country on this issue. Senator Lankford.

#### **OPENING STATEMENT OF SENATOR LANKFORD**

Senator LANKFORD. Well, thanks for the work. Thanks for all you are doing. As a Dad of two daughters, this is important to me, as it is important to everyone else on this dais, as it is important to the Nation. This is an issue that has to be confronted. This is a

dark spot in our country that we have to be able to both shine light on and to be able to deal with in the days ahead. So I appreciate what you are doing because I can only imagine it is very difficult, hard work, and it is painful to be able to see the images and be able to walk this through with a lot of families. So just from us to you, thank you for what you are doing for a lot of families around the country.

What is the cost of one of these ads on Backpage? How much is a child worth nowadays to run on an ad?

Ms. SOURAS. Senator, Backpage rigorously calibrates its ads according to the geographic location. So in some large cities, like Manhattan, in New York, an ad can go for upwards of \$18 or more—Boston, Miami, et cetera. In a smaller town, they will calibrate lower to satisfy the customer demand there to a few dollars.

Senator LANKFORD. So a child ad could be a few dollars, or it could be \$18 or \$20?

Ms. SOURAS. To purchase the ad, yes.

Senator LANKFORD. To purchase the ad, right, to be able to put this up, to be able to get this service online.

Ms. SOURAS. That is correct.

Senator LANKFORD. So Backpage is obviously not the first that has dealt with this. Other locations have, other websites have. Give me an example of other websites and how they have dealt with this and how they have responded once they learn that child sex trafficking is happening on their site. How have other entities responded?

Ms. SOURAS. Most entities deal with this issue, and as we know, almost anything can go up on the Internet.

Senator LANKFORD. Correct.

Ms. SOURAS. So everyone is subjected to this threat. However, what a responsible corporate entity does is it takes tremendous preventative measures. So it has real moderation, it has real review of its ads.

Senator LANKFORD. So give me an example of that. What does real moderation look like? What have other sites done to say, “We want to make sure this does not happen here, so we are going to do this”? What are they doing?

Ms. SOURAS. They often use hashing technologies or other types of technologies such as PhotoDNA, which is a Microsoft product. It enables someone to take basically a digital fingerprint of an image so that they, as they get new ads, can screen new photographs. If they get a hit off an ad that they know is a trafficked child, it immediately comes out. It does not get posted. It reduces the moderation cost as well. It is much faster, more efficient.

They also have well-trained moderation staffs. The sort of instructions that were being provided to the moderators that the Chairman went over are not the type of instructions that, again, responsible companies with professional moderators utilize.

Senator LANKFORD. So how expensive is that software? Is that millions of dollars to be able to purchase software like that?

Ms. SOURAS. No, it is not.

Senator LANKFORD. So give me a ballpark figure.

Ms. SOURAS. Hashing technology generally is a very low cost to no cost. There are some costs to implement, of course, into a company's systems. The PhotoDNA product is provided at no cost.

Senator LANKFORD. OK.

Mr. ROBERTS. Senator, in response to your question about the relative cost, you might be interested to know our local law enforcement has been involved in placing sting ads onsite, including Backpage, that appear to be advertisements for young persons who could be bought for sex. And in response to one of these ads that might cost \$18 or so, law enforcement sees literally hundreds of potential responses within a few hours of it being posted, which should give you some impression of why it is so lucrative for the traffickers.

Senator LANKFORD. So knowing all that and what you are trying to do in Washington State—you all have been at this for a while—how do you measure success? How do you measure progress, that we are achieving progress because we are seeing this? What metrics are you looking for?

Mr. ROBERTS. Well, it is difficult to measure in part because we do not have great statistics as to what is going on, and that is one of the things that we as a State have been emphasizing, is that we need to better study what the scope of the trafficking problem is.

Our indication based on our most recent study from about 2008 locally was that we believed we had something in the neighborhood of 300 to 500 minors being trafficked for sex on an annual basis in the Greater Seattle area. So if we could improve upon those numbers the next time we took a survey, we would know we were making progress. In the meantime, we just have to intercept as many child victims as law enforcement has the resources to do. We wish we had more resources.

Senator LANKFORD. So you are bailing water at this point on a ship that is taking on a lot of water, and you are bailing basically for staying afloat. That becomes the key. So I assume, as you mentioned before, you have a lot of partners working on this, nonprofits, churches, other agencies. The question from Senator McCain about the U.S. Attorney and the Department of Justice, I would hope that they are stepping in full force on this as well, though it sounded like it was unknown what role they are playing at this point. We can ask them, and obviously they can tell us what they are doing on this. But are there partners that are missing? Industry obviously has to be one of those partners. We are asking Backpage to actually be a responsible corporate citizen, to actually take on something that is clearly illegal away from their business model. What partners are you missing?

Mr. ROBERTS. Industry is improving quite a bit, sir. There have been efforts in the hospitality industry to train staff members on recognition of trafficking situations. We definitely would like to see better responses from organizations like Backpage.

I would say in the Seattle area there is a very strong presence led by the local U.S. Attorney's office, and there has been grant funding by the Department of Justice for that effort. The Washington Coalition Against Trafficking and the Washington Anti-Trafficking Response Network both have significant Federal funding and significant participation from Federal law enforcement, includ-

ing the Federal Bureau of Investigation (FBI) and Homeland Security Investigations (HSI). So we feel that the Federal Government and the Justice Department are a valuable partner in the State of Washington.

Senator LANKFORD. Good, as they should be in this area especially.

Mr. Chairman, I yield back.

Senator PORTMAN. Senator Ayotte.

#### OPENING STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. Thank you, Chairman.

I wanted to ask, Ms. Souras, about the Communications Decency Act, and as I understand it, Backpage is trying to hide behind this act, and I want to understand, as I look at—as we—and I am very glad, by the way, that the Chairman and Ranking Member are doing this investigation because I think it is incredibly important. But I want to understand how under that particular act Backpage can rely on that act to shield itself from the activities that, in my view, seem to be very clearly facilitating trafficking in children and other illegal activities. So you are lawyer.

Ms. SOURAS. Yes.

Senator AYOTTE. I wanted to get your thoughts on this.

Ms. SOURAS. Thank you, Senator. You are correct. Backpage has really used the CDA as a flag, as a shield against the current lawsuits and threats of prosecution that may have arisen from time to time. Their basic argument under the CDA is that they are a mere publisher, so a bulletin board that someone might put up in a supermarket; they are not responsible for the note cards that people put on that bulletin board selling certain items.

That seems very unrealistic when we are thinking that the item for sale here is a human being and potentially a child. But that is the basic component under the language of the CDA, which is a fairly old statute, was created really to engender growth and encourage growth of the Internet, and it serves a tremendously important purpose in that regard, but did seek to protect Internet providers from, let us say, rampant defamation suits and things of that sort because there was so much public content going on to some of these sites. So Backpage takes advantage of that and says, "We are a mere publisher. We just provide the mechanism. We are not responsible for what people put on." That is why some of this information that I understand is coming out of the Committee's investigation regarding the editing of ads is crucial and I think will be an area that many attorneys and prosecutors will be focusing on after this hearing.

Senator AYOTTE. In other words, information that they themselves may be editing ads so, therefore, are quite aware of the content of the fact that what they are posting is involving the illegal solicitation and horrific solicitation of children and other illegal activities, other trafficking activities that are against the law.

Ms. SOURAS. Absolutely, and are also crossing that boundary between a mere publisher and participating in the creation of that ad through their editing.

Senator AYOTTE. So you mentioned the CDA, and they are using it as a shield. Obviously, we have talked today, as I understand



your testimony, that other providers certainly are not using the CDA in the way that Backpage is and are taking more affirmative steps to make sure that there are not these times of horrific, illegal ads on their sites. Isn't that true?

Ms. SOURAS. That is correct.

Senator AYOTTE. So there is a huge contrast there. Do you think that we as a Committee, as we look at this issue, need to revisit or look at the CDA and how it is being used in light of the current State of the Internet given that it is an older statute and given that we have this Backpage using this statute in a way, obviously, they are posting these ads of trafficking of children, which is just appalling?

Ms. SOURAS. I know there has been tremendous discussion on the Hill, in the Senate and the House, regarding the CDA, especially with a focus on anti-trafficking measures. NCMEC has been very involved in speaking with a number of members and their staffs regarding the CDA and how is it that it could be, let us say, brought up to date a little bit or altered a bit so that unique sites like Backpage who are not going to undertake the usual corporate protections could not see that as a defense for them.

Senator AYOTTE. I am a strong proponent of obviously all the Internet and the entrepreneurship and great things we have seen from it. But I cannot believe that when the CDA was enacted, the lawmakers who passed it could have envisioned a website like Backpage and really they are using this as a shield for disgusting types of illegal activity being posted there. So I hope that we will look at that issue as well as a Committee to make sure that they cannot use this statute in an improper way as a shield.

Thank you.

Senator PORTMAN. Thank you, Senator Ayotte.

We will go another round, if that is OK. I know that there are Members who are still here who have questions, and I certainly do. Again, we appreciate your testimony so far, and it has been troubling in the sense that you have made it clear that this technology is increasing the risk to our kids and that you are not getting the cooperation that you certainly sought, which is unfortunately what the experience has been with this Subcommittee in lack of cooperation.

You did testify that over the course of 3 years, Ms. Souras, you worked with Backpage regarding child sex trafficking on its website and provided them with a number of specific recommendations of how they could utilize their available technology but do it in a way that would reduce child sexual exploitation. I think you have mentioned a couple of those today, but I would like you to tell us specifically what recommendations did you make that Backpage chose not to adopt.

Ms. SOURAS. Certainly the most egregious one is the one I mentioned, which is that they do not remove an ad even after they have reported it for child sex trafficking, and even if a parent has written in and said, "This is my child in this ad." So that certainly is the most egregious.

Also, their failure to really introduce any one of a variety of, again, the Know Your Customer or the verification models. We are all on the Internet, and we know if we go to even a cooking site

for a recipe or to make a purchase, we often will be required to authenticate ourselves in some way, put in an email or a mobile number and get a text to verify back that we are who we are and then we can proceed to use that content on the Internet—very simple mechanisms used for very innocuous content. As the Senator mentioned, this is very high risk content when you are talking about escort ads and its proclivity for misuse in trafficking and especially in child sex trafficking.

So one thing we recommended was validation of a telephone number, a mobile number, an email address of some sort. They have not done that to our knowledge.

Also, the capture and reporting through the CyberTipline of the IP address, again, when you do not have the metadata, an IP address is crucial to try to locate the geographic location of that ad. Especially for a trafficking crime when a child is moved from city to city, IP addresses could enable you to better track where that child is being trafficked.

Again, as I mentioned before, the use of a variety of different types of hashing technologies, PhotoDNA or other commercial hashing technologies, but really utilizing it, not simply hashing your photographs and keeping the hashes dormant. You must utilize those hashes if you are really going to have a successful prevention mechanism to screen your ads, to try to prevent content that you know has been reported as child sex trafficking from ever going up, so a moderator is never seeing that ad and making the call, is it really too young or not, in the words of the Backpage managers.

Also, again, just flagging the various identifiers in an ad. An ad can have a cell phone, a location, a pet name of some sort, an email address—these are important identifiers. Traffickers often are marketing various girls or boys on the website for trafficking. By capturing that information from one ad and using it to screen through the other ads on the system, Backpage would be able to link ads that might all be connected to one trafficker—another suggestion that NCMEC made which Backpage to our knowledge has not adopted and told us that it would not adopt.

There are a few others. Those are some of the primary ones.

Senator PORTMAN. Well, thank you. And all those would go toward you being able to rescue these kids, all of us being able to rescue our children. They also go to law enforcement, though, and being able to prosecute these cases.

Ms. SOURAS. Absolutely.

Senator PORTMAN. The first example you used of them not pulling ads, earlier you said that a mother finally sent them an email saying, “For God’s sake, she is only 16.” So for all of us who are parents or grandparents, think about that. “For God’s sake, she is only 16.” And yet they refused to pull the ad.

And with regard to finding these children, again, you all have been very helpful to us in Ohio. We appreciate that, and we have worked with you on legislation to help finding exploited children and missing children. But think about that. Not being able to provide that information to law enforcement means you cannot find many children who otherwise could be able to be found. Again, the heartbreak of knowing that that information is out there some-

where, and yet a supposedly legitimate commercial concern will not provide you the information or provide it to law enforcement to be able to find your child, to me this is what this hearing is really all about. It is about these kids and about this practice that keeps you from doing your job at the National Center, but also keeps so many parents and grandparents from being able to save their children and rescue their children.

With that, Senator McCaskill.

Senator MCCASKILL. Mr. Roberts, could you briefly outline for the record why you believe Backpage operates outside the immunity of the Communications Decency Act?

Mr. ROBERTS. Well, Senator, I do not have enough information yet to definitively say one way or the other, but the concern that we expressed in our amicus brief is obviously that they are exceeding the bounds of the exemption. In other words, by actually participating in drafting the ads, by making themselves a go-to location for ads advertising prostitution among such sites, and by crafting essentially the message that is being sent to try to keep it so that it does not involve or does not appear to involve—

Senator MCCASKILL. Children.

Mr. ROBERTS [continuing]. Child trafficking. Exactly.

Senator MCCASKILL. So their engagement in editing and shaping the content is at this point—because we are all hitting walls in terms of getting good information from Backpage—is the reason.

So assuming that we eventually through legal processes get the information, I am assuming that this is the kind of factual scenario that could, in fact, lay an adequate foundation for the Racketeer Influenced Corrupt Organizations (RICO). Would you agree with that?

Mr. ROBERTS. I think that is a possibility.

Senator MCCASKILL. Because this is an enterprise. This is not one activity. This is an enterprise of activity.

I want to give a shout-out to you and your colleagues and the literally hundreds and hundreds of prosecutors across the country that are prosecuting these cases against traffickers, against pimps, and against customers. I appreciate the comments of Senator McCain, but I know for a fact that there are many U.S. Attorney's Offices that are actively engaged in a cooperative fashion with local law enforcement and bringing these cases. The case I referenced in my opening statement was, in fact, filed by a U.S. Attorney's Office against the two traffickers that were taking these young girls from truck stop to truck stop.

By the way, these pimps that take these girls from truck to truck call them "lot lizards," for the record, which is as distasteful as the underlying practice of pimping these young women out.

One of the things that is interesting to me is how many stings go on on Backpage. It is the go-to place for law enforcement to place sting ads, and there are literally thousands of cases moving through the criminal justice system right now where customers have been caught in stings.

Have you all tried at NCMEC ever to place an ad in the section of Backpage saying to people who are interested in escorts and sex, "You should know this site is a No. 1 location for sting activity, and you have a high likelihood of being prosecuted"? Has anybody ever

tried to place that ad? Because it seems to me that we have two problems here. We have the Backpage problem, we have the criminal element of traffickers problems, and then we have the demand problem, and the fact that too many people believe they can do this in anonymity, that they can try to access young children through the Internet.

What efforts have you been privy to, Ms. Souras, of the various organizations that are trying to do good in this area to inform would-be customers that the chances that they are responding to an ad that has a law enforcement officer on the other side go dramatically up when they think that they are going to be successful at being anonymous?

Ms. SOURAS. Thank you, Senator. I am certainly aware that some of my nonprofit colleagues at other organizations do engage in that kind of advocacy, or attempt to on Backpage. It is my understanding that some of the organizations that have tried to place messages such as you just detailed, those ads have been blocked from the escort section or removed at some point. So it is very difficult for a nonprofit organization to place an advocacy message or a public awareness message for a potential buyer on Backpage. That is my understanding.

Senator McCASKILL. Well, then we need to make sure that, as we try to get information from Backpage, we include that question: How many times have you blocked an ad informing would-be customers that there is a likelihood that the ad you may be responding to may, in fact, be law enforcement?

Ms. SOURAS. Absolutely, and I am happy to refer the Committee to some of those nonprofits.

Senator McCASKILL. That would be terrific because, factually, I think as a prosecutor, that would be very important to a case I was trying to bring.

Mr. ROBERTS. And, Senator, placing ads of that type is one of the efforts of the King County prosecuting attorney's office. However, I believe they have been focusing on purchasing ad results from search engines, like Google and Microsoft.

Senator McCASKILL. Right. I know there are lots of different avenues to try to get at this incredible problem. Well, thank you. I think you all have made a very powerful case as to why it is important that we be tenacious and refuse to give up. And let me just say for the record that I know how dedicated the Chairman is to this issue; I know how dedicated I am to this issue; I know how dedicated Senator Heitkamp is to this issue. And if Backpage thinks they are going to go quietly into the night, they are sadly mistaken.

Senator PORTMAN. Senator Heitkamp.

Senator HEITKAMP. Mr. Chairman, again, I want to maybe give another shout-out to an organization called Truckers Against Trafficking. They are working to deal with kind of a culture that needs to change within that subset, and they are doing terrific work in terms of educating and hopefully are making strides along with the rest of you in addressing the demand problem, because we know even as reprehensible as what all of this is, as long as there is a demand, we are going to find the next iteration, the next generation, and so we need to be on top of that as well.

Senator Ayotte and the Chairman and Ranking Member, as we look kind of going forward, we are looking at things that we can do today. We are going to continue to be as tenacious as what we possibly can on this investigation. But I want to talk about maybe a couple ideas that could add to the effort here legislatively. And I think, Ms. Souras, in your testimony you mentioned the fact that current Federal law requires entities defined as electronic service providers report apparent instances of child pornography that they are being made aware of. So that is Federal law. But the same requirement does not exist for apparent instances of child sex trafficking.

Why do you think that is? Do you think it would make a difference if that law were changed to include child sex trafficking? And has this issue ever been raised before Congress? And has there been a broader discussion? Is this an additional tool that we could be using and looking at?

Ms. SOURAS. At NCMEC we think this would be a tremendous additional tool. I think historically it was not in the initial statutory requirement that you reference, perhaps for a number of reasons. Perhaps the focus was not so much on instances of online trafficking as it was on child pornography at that time, and it has done wonders to address that problem.

I also think child-trafficking ads or content are somewhat inherently more difficult to identify than a child pornography image where you simply have a photo and you know if it is apparent child pornography or not. A child sex-trafficking ad or content will be a mixture often of text and ads, photographs as well.

That being said, we have had some anecdotal discussions with staff on the Hill regarding that gap, that small gap in the reporting statute. It is a change and a further discussion that NCMEC would welcome participating in. We believe if there is a requirement to report, again, only apparent or child sex-trafficking content that a server may become aware of—they have no obligation to search, of course, for any of this content. If they did start reporting that to NCMEC, it would not only increase our ability to provide that information through to law enforcement and assist families and victims in the process; it also, I think, would go very far to assisting in our prevention measures. We would see more ad content and be able to develop prevention measures that would address the content we are seeing.

Senator HEITKAMP. And legitimate actors would err on the side of advancing that kind of content. Correct?

Ms. SOURAS. Yes, correct.

Senator HEITKAMP. People who really cared about this problem would, in fact, welcome an opportunity to have someone who is a partner with them to stop this from happening. Correct?

Ms. SOURAS. Absolutely, yes.

Senator HEITKAMP. I want to, I think, really thank all the advocacy groups and all of you who have been on the front end of this, who have been toiling, and we know that this is not just a problem for our country. But as we work through these as a defender of the First Amendment and as we work through that balance, the work that we do here is work that will have repercussions not just in our country but across the world.

And so I really want to thank the Chairman and the Ranking Member for making this a priority for the Committee, and I want to thank you for your testimony. It has been great to see you all again, and if there is anything more that we can do or that you think of, I hope that you will reach out either to the Committee or individual Members who have been working on these issues.

Thank you, Mr. Chairman.

Senator PORTMAN. Thank you, Senator Heitkamp, and thank you for your leadership on this. And as you can see, all of my colleagues on this Subcommittee have a passion for this issue, an intense interest. I think what we have been able to find today are some very specific ways in which to deal with the online issue, and, Ms. Souras, in particular, your laundry list of things that you have asked Backpage to do that they have not done certainly would help both in terms of finding missing kids, as we say, prevention, as you say, and in terms of law enforcement and prosecutions. There are also other things that can and should be done with regard to sex trafficking. We did pass legislation, as you know, here in Congress that was signed into law earlier this year. You were very involved with that, and you worked with us particularly on some of the missing children issues who are the most vulnerable to trafficking, but also the demand side issue. We really ought to make some progress at the Federal level for the first time in 15 years. And then, finally, we were able to change some of the Federal—the bias in the legislation to say that these young women and men, girls, boys, who are involved in this are indeed victims and should not be treated as criminals but, rather, as victims so that we can deal with their trauma, which, as you said earlier, is long term, sometimes lifelong.

And so this is, I think, an opportunity for us not just to talk about Backpage and the obvious disappointment all of us have and their inability to be here today, but also their unwillingness to cooperate more generally with this issue. But it is also a chance to talk about efforts we can take going forward to combat sex trafficking and to try to put an end to sex trafficking in this country.

So we thank you very much, both of you, for your testimony this morning. Mr. Roberts, thank you for your hard work. I know you will keep it up nationally, working with all the Attorneys General.

And, Ms. Souras, and for John Walsh and John Clark, who are here from the National Center, thank you for your leadership on this, and to all the groups who are out there in the trenches working on this issue every day, and a particular shout-out to those who are embracing these victims and helping them to get through this trauma. Having met with victims in Ohio, some of whom are only recently going into a treatment and recovery process, others who have been at it for years, this is the most heartbreaking and difficult part of this whole process. And so thanks to all those groups that are involved, and individuals.

We would excuse you, and we are now going to call the second panel.

[Pause.]

I would like to call the CEO of Backpage, Carl Ferrer.

[No response.]

We had hoped Mr. Ferrer would be here, but he has refused to come. And we have talked a lot about the underlying sex-trafficking issue here this morning, a horrific practice. It goes on, sadly, here in the 21st Century, really one of the great human rights causes of our century.

We have also talked about the fact that we have not received cooperation from Backpage in looking into some very legitimate questions that have been raised, and our report lays out enough evidence to make it clear why we need the information.

At this point in the hearing, we had planned to hear testimony from Backpage's CEO, Mr. Carl Ferrer. Mr. Ferrer has been under a legal obligation to appear before the Subcommittee since October 1, and the Subcommittee notified him by letter on November 3 that his appearance was scheduled for this morning.

The same day we sent the letter, the Subcommittee staff called Mr. Ferrer's lawyers to confirm that Mr. Ferrer should plan to appear and that we could not accept logistical excuses for not showing up. Mr. Ferrer's lawyers did not mention any conflict of interest.

Last Friday, less than a week ago, Mr. Ferrer's lawyers asked us to excuse his appearance because he was traveling and that, if called to testify, he would plead the Fifth Amendment. They did not say it would be impossible for Mr. Ferrer to appear. The Subcommittee denied that request on Monday.

A witness has the right to refuse to answer questions that may incriminate him, but that right belongs to the witness, not his lawyers. It is appropriate to require a witness himself to appear, hear the questions put to him, and to exercise his constitutional right not to answer any questions he believes in good faith may tend to incriminate him. Again, as I said earlier, this Subcommittee would respect any valid assertion of the Fifth Amendment privilege. But there is no privilege not to show up.

Yesterday, around noon, however, Mr. Ferrer's lawyers wrote to Senator McCaskill and myself informing us that Mr. Ferrer would not appear today because he is on an international business trip. This is truly extraordinary. You heard from Senator McCain earlier who said that, in his many years on this Subcommittee, he has never seen a situation where a witness simply refused to appear. It is not acceptable for a witness under subpoena to wait until the day before his appearance to announce unilaterally that he will be out of the country and refuse to appear.

Senator McCaskill and I, of course, are conferring about next steps, but we both consider Mr. Ferrer's refusal to appear here a clear act of contempt.

I would now like to turn to Senator McCaskill if she would like to add a few words on this point.

Senator McCASKILL. Well, the laws of this country should apply to everyone, and we should take all steps necessary to make sure that we fulfill our obligations under the law. And under the law, the Senate is entitled to ask witnesses to appear before it and for them to answer questions and provide information.

So I think it is important that we be steadfast in our resolve to get the information that we need in order to make sure that the public policy in this country is effective when it comes to children being victims. This is not an exercise in having a hearing. This is

an exercise in making sure that we have done everything in the law to protect children. It is not any more complicated than that. And any witness who refuses to answer the lawful requirement of testimony and providing information must be held accountable for that.

And so we will be careful and cautious about using the procedures available to us, but we will use them to ensure that this effort is robust and informed and that ultimately the result is that more children and more families feel the comfort that their government is doing everything it can under the law to protect them.

Senator PORTMAN. I thank the Ranking Member. And as you see, we are partners in this effort, and we will not be deterred.

I would also like to thank the Chairman of this Committee, the full Committee on Homeland Security and Governmental Affairs (HSGAC) Chair and Ranking Member for their help. Senator Johnson and Senator Carper have not just supported our efforts this morning. They have released a joint statement which commends PSI efforts in this regard, and I would now like that statement to be made part of the record. They are supporting us not just on the important work we are doing to combat human trafficking, but also with regard to any actions we might take with regard to Backpage and their unwillingness to cooperate.

Senator PORTMAN. We began this bipartisan investigation with a very simple goal: better informing Congress about the issue of sex trafficking, how to combat it through smart reforms, including legislative actions. We will not be deterred from that inquiry. If Backpage fails to change course and comply with the Subcommittee's subpoena, the appropriate next step is to pursue contempt proceedings. This is a step the Senate has not taken in 20 years—as I said earlier, this is extraordinary—and PSI has not taken for more than 30 years. But, regrettably, Backpage's conduct has invited this very unusual action.

When dealing with a party acting in good faith, we would be inclined to pursue what is known as civil contempt. That involves a resolution authorizing the Senate Legal Counsel to bring a civil lawsuit to compel Backpage to comply. But I think I speak for Senator McCaskill and myself when I say this case appears to be more serious than a good-faith disagreement. It is not about questions of privilege.

As I noted, Backpage's lawyers have told PSI that the company has not even bothered to search for and identify the documents responsive to the subpoena. And with no lawful excuse, the company's CEO has defaulted on his obligation to appear before the Subcommittee today.

These are not actions of a party acting in good faith. He could have come. He could have pleaded the Fifth. He chose not even to come. Rather, it is evidence of willful defiance of the Senate's process.

For those reasons, after consulting with our staff and Senate Legal Counsel, Senator McCaskill and I believe this case may justify a referral to the Department of Justice for criminal contempt. We will consider the appropriate course in the next few days.

Again, I would like to thank the witnesses and my colleagues for their participation today in this very important hearing. The hear-



ing record will remain open for 15 days for any additional comments or questions from any of the Subcommittee members.

And, with that, this hearing is adjourned.

[Whereupon, at 11:35 a.m., the Subcommittee was adjourned.]



# A P P E N D I X

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STATEMENT OF CHAIRMAN ROB PORTMAN  
U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
HEARING: SEX TRAFFICKING  
NOVEMBER 19, 2015

This hearing will come to order. [gavel]

Senator McCaskill and I called this hearing to address the difficult but important subject of sex trafficking. Over the past seven months, the Subcommittee has conducted a bipartisan investigation into how sex traffickers increasingly use the Internet to advance their trade and evade detection. The aim of this investigation is straightforward: We want to understand how lawmakers, law enforcement, and even private businesses can more effectively combat this serious crime that thrives on an online black market.

As the Co-Chair of the Senate Caucus to End Human Trafficking, this is an issue that I have worked on for a number of years. I have spent many hours with those dedicated to fighting this crime and those victimized by it. For victims, the toll of sex trafficking is measured in stolen childhoods and long-lasting trauma. For traffickers, it's measured in dollars—and often a lot of dollars. It's a problem that I believe should command attention in Congress.

## **Sex Trafficking On The Internet**

Precise data is hard to come by because this market exists in the shadows. But experts tell us that there were as many as 27 million victims of human trafficking in 2013, including 4.5 million people trapped in sexual exploitation. In the United States, about 8 in every 10 suspected incidents of human trafficking involve *sex* trafficking—that is, the sale of minors or forced sale of adults for commercial sex.

Sex traffickers prey on the vulnerable. The Department of Justice has reported that more than half of sex-trafficking victims are minors. And the problem appears to be getting worse. Over the last five years, the leading authority on child exploitation, the National Center for Missing and Exploited Children (known as NCMEC), reported an 846% increase in reports of suspected child sex trafficking. NCMEC says that increase is “directly correlated to the increased use of the Internet to sell children for sex.”

Traffickers have found refuge and new customers through websites that specialize in advertising “ordinary” prostitution and lawful escort services. A business called Backpage.com is a market leader in that industry, with annual revenues in excess of \$130 million last year. With a look and layout similar to the better known Craigslist.com, Backpage has a special niche: According to one industry analysis in 2013, eight out of every ten dollars spent on online commercial sex advertising in the United States goes to Backpage. Some of that advertising is for legal work. Much of it is illegal. A federal court in Chicago noted this year, for example, that Backpage’s “adult services section *overwhelmingly* contains advertisements for prostitution, *including* the prostitution of minors.”

The public record indicates that Backpage sits at the center of the online black market for sex trafficking. NCMEC tells us that Backpage is linked to 71% of all suspected child sex trafficking reports that it receives from the general public through its “CyberTipline.” According to a leading anti-trafficking organization called Shared Hope International, “[s]ervice providers working with child sex trafficking victims have reported that between 80% and 100% of their clients have been bought and sold on Backpage.com.” It is easy to see why the National Association of Attorneys General described Backpage as a “hub” of “human trafficking, especially the trafficking of minors.”

A study of recent press accounts reveals scores of serious crimes linked to Backpage. Shared Hope International has catalogued more than 400 reported cases of children being trafficked using Backpage.com across 47 states. And PSI staff have identified at least 13 reported cases of child sex trafficking in my home state of Ohio linked to Backpage over the past four years.

### **Our Subpoena**

On this record, PSI saw a compelling need to better understand the business practices of Backpage.com, especially the efforts it takes to prevent use of its site by sex traffickers.

We thought that might be simple enough because Backpage holds itself out as a “critical ally” against human trafficking. The company has stated that it “leads the industry” in its review and screening of advertisements for illegal activity—a process it calls “moderation.” Backpage’s top lawyer has described its moderation

process as the “key” tool for “disrupting and eventually ending human trafficking via the World Wide Web.”

But Backpage has refused to turn over documents about the key “moderation” process that it touts, as well as other relevant aspects of its business. Specifically, the company refused to comply with an initial subpoena issued by the Subcommittee on July 7. Sen. McCaskill and I then agreed to withdraw that subpoena and issue a new, more targeted subpoena designed to accommodate some of Backpage’s concerns, but the company again refused to comply.

Defiance of a Congressional subpoena is rare and serious. Backpage has tried to excuse its noncompliance based on a sweeping claim of constitutional privilege. The company’s argument is vague, but it can be summed up this way: Backpage says that the First Amendment to the Constitution shields it from this investigation of advertising by sex traffickers, because it *also* publishes some lawful advertisements that are protected speech. That argument has no support in law or logic.

In a detailed ruling issued on behalf of the Subcommittee, Senator McCaskill and I explained why Backpage’s legal argument is meritless. We also explained the great care that PSI has taken to protect any potential First Amendment interests at stake here. We have made that ruling publicly available today on PSI’s website.

After overruling Backpage’s objections, Senator McCaskill and I ordered the company and its CEO to produce the documents we asked for by last Thursday, November 12. That day came and went with no response. The next day Backpage again informed PSI that it would not comply. But at the same time, Backpage made quite a show of producing certain cherry-picked documents favorable to the company, along with a 16,000-page pile of material the Subcommittee does not need and was not seeking.

We don’t think Backpage’s response to the subpoena has been in good faith. It’s fine for parties to have legal disagreements with us about constitutional privileges or the appropriateness of particular requests. We treat those objections seriously. But Backpage has done more than just raise a legal objection to producing certain documents: Just this week, Backpage’s lawyers told PSI that the company had not even bothered to *look* for the documents responsive to the subpoena—which means

Backpage does not even *know* what all it is refusing to produce, much less why those documents are protected by the First Amendment.

### **Our Investigation**

PSI was disappointed with Backpage's noncompliance, but we were not deterred. Through other sources, including a contractor that Backpage outsourced its ad-screening process to, we sought to learn more about the issues under investigation. In a bipartisan staff report released today, we have outlined some preliminary findings and further questions that need answers.

***Without objection, that report will be made part of the record.***

The report reveals that Backpage has had a practice of editing some advertisements by deleting words and images *before publication*. This is important because changing the appearance of a published ad obviously does not change the advertised transaction. The staff report finds that in some cases these editing practices likely served to conceal evidence of the illegality of the underlying transaction. That finding raises some very serious questions.

We want to know more about the purpose and effect of those editing practices—which is why we issued a subpoena to Backpage for documents that could tell us whether and how Backpage deletes text or images that could alert law enforcement about a crime being advertised. When that failed, the Subcommittee tried to take the testimony of two Backpage employees in charge of its moderation practices, but they refused to testify on the grounds that it might incriminate them. Nevertheless, we continue to seek documents from Backpage that would allow us to understand this and other aspects of its screening practices.

In a moment, Senator McCaskill is going to describe our other findings in greater detail.

And at the close of today's hearing, we will address the next steps that the Subcommittee plans to take to enforce the subpoena that Backpage has violated.

I am grateful to our Ranking Member, Senator McCaskill, and her staff for their shoulder-to-shoulder work with us on this bipartisan investigation, and I would like to turn to her from an opening statement.

**Human Trafficking Investigation**

November 19, 2015

Senator Claire McCaskill

Opening Statement

Thank you, Chairman Portman, for holding this hearing.

Four months ago, a 15-year-old girl walked into Cardinal Glennon Children's Hospital in St. Louis, Missouri, and asked for help. Along with four other girls between the ages of 12 and 18, she had been sold for sex at truck stops across Missouri, Florida, Texas, and New Mexico for almost two months. She was lucky to be alive. According to her police report, another girl traveling with her during those months had died in her arms.

The 15-year-old girl who walked into Cardinal Glennon, like the majority of children who are sold for sex in the United States today, was trafficked using Backpage.com. Throughout the Subcommittee's investigation, we have received information indicating that Backpage has built a hugely successful business in part by posting advertisements of children and other victims of human trafficking on its website.

And despite knowing that its website has hosted advertisements of children being sold for sex, Backpage has apparently signaled to its moderators that those ads should remain on the site. In April 2012, for example, Backpage initially told its outside moderators that they should "fail," or remove, ads containing references to certain sex acts or words, including "schoolgirl," "teen," "human trafficking," and "Y-U-N-G" (a misspelling of "young"). Two days later, Backpage reversed that policy. The employee responsible for moderation issued "clarifications" regarding

the banned words. He instructed that moderators should no longer delete ads that “use ‘young’ or misspellings of ‘young.’” Those deletions were capturing too much volume, he explained, because “there are too many legitimate uses of the word to warrant a removal every time.” Instead of deleting advertisements for services with “young,” the Backpage employee instructed moderators to send the ads to him for additional review.

We don’t know how many, if any, ads were removed following that additional review. We do know that Backpage instructed its moderators to be very cautious about deleting ads. According to the manager of the moderators, “The definition of underage is anyone under the age of 18. But for the purposes of making reports, we err on the side of caution and try to report anyone that looks under the age of 21.” Importantly, guidance from Backpage emphasized, in all capital letters: “IF IN DOUBT ABOUT UNDERAGE: the process for now should be to accept the ad ...” and “ONLY DELETE IF YOU REALLY VERY SURE PERSON IS UNDERAGE.”

The result of Backpage’s guidance, of course, is that the site contains innumerable advertisements for sexual transactions with children. The National Center for Missing and Exploited Children (or NICK-MICK), for example, reports that 71% of the child sex trafficking reports it receives involve ads posted on Backpage. And according to Shared Hope International, “[s]ervice providers working with child sex trafficking victims have reported that between 80% and 100% of their clients have been bought and sold on Backpage.com.”

We have also learned that Backpage has failed to preserve information that would help law enforcement and other entities locate victims and put pimps and traffickers in jail. Backpage has also failed to implement other free, widely available technologies that would help law enforcement build cases against suspected sex traffickers. Moreover, Backpage representatives



and third-party consultants have informed the Subcommittee that Backpage moderators edit and delete content in ads in ways that may conceal evidence of illegal activity from law enforcement.

The Subcommittee has also found that Backpage's business model has been highly profitable. Based on information obtained by the Subcommittee, Backpage had net revenue of \$135 million in 2014 and is expected to net more than \$153 million this year—nearly all of it profit. The company's fair-market value, taking into account its lack of marketability, is approximately \$430 million. As a former sex crimes prosecutor, I know that behind these cold financial statistics are survivors traumatized from abuse and degradation—and families suffering through years of terror and uncertainty concerning the fate of their loved ones.

Today, I hope to hear from our first witnesses about the impact of Backpage on the efforts of law enforcement officials and advocacy groups to curb sex trafficking in the United States. I am confident that their testimony will make clear the importance of Subcommittee efforts to press Backpage for information on its operations and procedures. I also hope that we will, at some future date, have the opportunity to question Backpage CEO Carl Ferrer, who received a subpoena to appear before the Subcommittee today but has refused to attend. I have many questions for him.

I thank the witnesses for being here today, and I look forward to their testimony.



**Statement by  
Yiota G. Souras, Senior Vice President and General Counsel  
The National Center for Missing and Exploited Children**

**Human Trafficking Investigation Hearing  
November 19, 2015**

**Permanent Subcommittee on Investigations  
Committee on Homeland Security and Governmental Affairs  
United States Senate**

Chairman Portman, Ranking Member McCaskill and Members of the Subcommittee, I am pleased to be here on behalf of The National Center for Missing and Exploited Children (NCMEC).

At NCMEC, we are reminded daily of the devastating impact of child sexual exploitation. We commend you for holding this hearing regarding your investigation of businesses that facilitate criminal sex trafficking, particularly those businesses that are responsible for trafficking underage children for sex online.

NCMEC was created in 1984 as a private, non-profit organization and designated by Congress to serve as the national clearinghouse on issues relating to missing and exploited children. NCMEC provides resources, services, and technical assistance to families, private industry, law enforcement, victims, and the general public to assist in preventing child abductions, recovering missing children, and providing services to combat child sexual exploitation. NCMEC performs 22 core functions, including serving as a clearinghouse for reports relating to child sex trafficking and providing technical assistance to law enforcement and first responders relating to the identification, location and recovery of child sex trafficking victims.

**Child Sex Trafficking**

Child sex trafficking is a pervasive, destructive, and underreported crime. Every year, thousands of children from across the United States are trafficked, sold for sex, repeatedly raped, and suffer traumatic physical, sexual, and emotional abuse. The federal Trafficking Victims Protection Reauthorization Act (TVPRA) recognizes the particular vulnerability of children to trafficking by imposing severe penalties on anyone who knowingly recruits, harbors, transports, provides, advertises or obtains a child for the purpose of a commercial sex act or who benefits financially from such an act.

Traffickers, which include “pimps” as well as buyers under the TVPRA, often use psychological manipulation, pressure, violence, threats, and intimidation to compel a child to exchange sex for something of value, whether that is money, food or shelter. Child sex trafficking victims are boys, transgender children, and girls. Federal law recognizes that child sex trafficking victims may be

under the control of a third party, such as a trafficker, or may be victimized by commercial sex trafficking even when no third party trafficker is identified. Buyers encompass all racial, socioeconomic, and cultural backgrounds.

Child sex trafficking involves the rape or other sexual abuse of a child in exchange for something of value. There is no legal protection for selling, facilitating the sale of, or benefiting financially from the sale of a child for rape or sexual abuse. A child cannot legally consent to being trafficked, and there is no situation in which child sex trafficking can be considered legal sexual activity between consenting adults. Child sex trafficking does not encompass and is not similar to adult prostitution, phone sex, or other types of legal sexual activities between consenting adults.

#### **Online Child Sex Trafficking**

Technology has fundamentally changed how children are victimized through sex trafficking. An adult can now shop from the privacy of his home or hotel room, even via a cell phone, to buy a child to rape. Traffickers can lure and recruit children on social networking websites. Pimps and predatory offenders are aware that certain online advertising sites have created virtual marketplaces at which they can peruse a variety of sexual experiences being offered for sale, and complete their purchase online. Based on NCMEC's experience, most child sex trafficking today is facilitated by online classified advertising websites.

Online classified ad sites such as Backpage.com provide traffickers with a quick, easy, user-friendly platform and allows them to remain anonymous, test out new markets, attempt to evade public or law enforcement detection, and easily locate customers to consummate their sale of children for sex. Online child sex trafficking also enables traffickers to easily update an existing ad with a new location and quickly move a child to another geographic location where there are more customers seeking to purchase a child for rape or sexual abuse.

#### **NCMEC's Unique Role in Providing Assistance on Child Sex Trafficking Cases**

##### **CyberTipline**

As the national clearinghouse on missing and exploited children issues, NCMEC has learned a great deal about child sex trafficking. NCMEC launched the CyberTipline in 1998 to provide the general public and electronic service providers (ESPs) with an efficient method of reporting incidents of suspected child sexual exploitation, including child sex trafficking. Since its creation, the CyberTipline has received over 7 million reports, including more than 45,000 reports relating to suspected child sex trafficking. So far in 2015, NCMEC has received more than 3.5 million CyberTipline reports, including more than 7,700 reports of suspected child sex trafficking. Based on reports NCMEC receives from families of child victims, NCMEC's experience in helping to locate missing children who are being sold for sex online, and anecdotal and news reports regarding law enforcement actions, we believe NCMEC receives reports on only a small fraction of the children being trafficked online. Over the past five years, NCMEC has seen an 846% increase in reports of suspected child sex trafficking to the CyberTipline.

Federal law (18 U.S.C. § 2258A) requires entities defined as ESPs to report apparent child pornography that they become aware of on their systems to NCMEC's CyberTipline. No federal or state law imposes a comparable requirement to report child sex trafficking, however several

ESPs, other online companies, and members of the public voluntarily submit reports of suspected child sex trafficking to the CyberTipline. Backpage has voluntarily made reports of suspected child sex trafficking ads to NCMEC's CyberTipline since October 2010.

An integral part of NCMEC's role as a national clearinghouse and resource center is engaging in voluntary initiatives with the Internet industry to deter the online sexual exploitation of children. NCMEC regularly communicates with online companies to help efforts to reduce the proliferation of child pornography and sexual exploitation online and to assist online entities who seek to take proactive steps to limit the accessibility of child pornography on the Internet, reduce child sexual exploitation and prevent future victimization of children. These efforts include providing recommendations and working together to utilize technology and sound business practices to reduce the dissemination of child sexual exploitation, including the online sale of children for sex, and to deter the misuse of websites by predatory offenders and traffickers.

#### **Child Sex Trafficking Team**

As the central U.S. repository on reports of child sexual exploitation and missing children, NCMEC has witnessed an increase in recent years in missing and exploited child cases that involved the sexual trafficking of children. In October 2011, NCMEC created its Child Sex Trafficking Team to respond to the increased need for specialized technical assistance, case management, analysis and recovery services on cases involving child sex trafficking. NCMEC's Child Sex Trafficking Team reviews CyberTipline reports relating to child sex trafficking; assists on cases of missing children involved in, or at risk of, trafficking; and provides technical assistance and training to help with the identification, location and provision of recovery planning to victims of child sex trafficking.

When NCMEC receives a report of suspected child sex trafficking, it uses publicly-available search engines to try to identify information relating to the victim and alleged trafficker, as well as a potential geographic location where the child is being trafficked. Each report of suspected child sex trafficking received by NCMEC is made available to the federal, state or local law enforcement in the identified geographic location for their independent review and potential investigation.

A majority of the child sex trafficking cases reported to NCMEC involve ads posted on Backpage.com. Of all the child sex trafficking reports submitted by members of the public to the CyberTipline, more than seventy-one percent (71%) relate to Backpage ads.

#### **Correlation Between Missing Children and Sex Trafficking**

NCMEC knows that child sex trafficking most often begins with a missing child, particularly the nation's most vulnerable children. In 2014, one in six endangered runaways reported to NCMEC was likely a child sex trafficking victim. So far in 2015, more than 1,800 missing child cases that involve suspected or confirmed child sex trafficking have been reported to NCMEC.

Many child sex trafficking victims are runaways who are exploited by traffickers and buyers. NCMEC works to link cases of possible child sex trafficking to missing child cases where a child is suspected of, or at risk for, being trafficked. Because of the frequency of these connections and the prevalence of child sex trafficking ads on Backpage.com, NCMEC staff often search

Backpage.com first when trying to help locate a missing child suspected of being trafficked. NCMEC has built specialized tools to search Backpage.com because experience has taught us that the most likely place to locate a missing child who may be trafficked is in an escort ad on Backpage.com.

#### **Backpage and Online Child Sex Trafficking**

Backpage has an “escorts” section that hosts ads composed of a headline, a stated age, photographs and/or videos, and brief text describing the services for sale. The photographs and videos are often sexually suggestive and feature partially-clad individuals, at times with their faces obscured, and their breasts, buttocks, and/or genital areas prominently featured. Ads reported to NCMEC by concerned members of the public, and by Backpage moderators, often feature highly suggestive, graphic photographs of what appear to be children. Invariably, the ad contains text that unambiguously and luridly describes the sexual experience being offered for sale.

Law enforcement has confirmed to NCMEC that each of the following Backpage ads advertised a child for sex:<sup>1</sup>

- “♥♥♥♥Exotic Young and Inexperienced ♥♥♥♥I dont know no better♥♥♥♥Soo i might just do it♥♥♥♥ - 18 you didn't get to see HERE'S YOUR CHANCE.. REAL PIC, NO RUSH PLUS I LIKE. WHAT I DO EVEN THOUGH I JUST STARTED”
- “sweet –sexy blond young and ready; Im sweet and fun and really young. Im 19 and 130 ib's 5'5 with hazel eyes. Let me melt all your stress away w/my outgoing personality and my cute smile.”
- “Wild Out wit . . . --\*Up all night long- 24hrs . . . YOUR REAL ROCK STAR!!! VERY WILD, AND READY FOR WHATEVA!!! BRING IT TO THE TABLE!!! ALL MY PICTURES ARE 100% REAL, SO IF YOUR LOOKING 4 A REAL RUDE GIRL, CALL THE BEST IN. I HAVE FRIENDS ALSO, SO IF THERES ANYTHING YOU NEED I CAN HELP YOU MAKE IT HAPPEN. DOWN 4 WHATEVA (SEE YOU SOON)”
- “3 juicy wet kitties ready to be played with as we rotate around as we please you with warming attitudes and open minded decisions were everything you been looking for”
- “LETS PARTY!\* I LOVE TO MAKE . . . -THOSE TOES CURL-----!!\* -----INDULGE \* THESE.SOFT-.-.-THICK THIGHS, PULL THIS LONG RED HAIR & SLAP THIS FATT JUGGLEY AZZ!”

#### **NCMEC Recommended Sound Practices to Backpage to Reduce Child Sex Trafficking**

Between 2010 and 2013, NCMEC engaged in numerous discussions and meetings with Backpage regarding child sex trafficking on its website and sound practices Backpage could adopt to reduce and deter child sex trafficking in its escort ads. These meetings included Backpage’s owners and operational and legal executives. Backpage publicly represented during this time that it wanted to do everything possible to impede child exploitation on its site and wanted to be the “sheriff”

<sup>1</sup> Ad text has been reproduced verbatim except to remove personally identifying information.

regarding these efforts. Backpage representatives repeatedly professed to being committed to substantially reducing child sex trafficking on its website.

During our meetings with Backpage, NCMEC repeatedly recommended preventative measures that Backpage could take to reduce the likelihood that children would be trafficked on its website. These recommendations were in response to Backpage's requests and representations that they wanted to do more to prevent children from being trafficked on Backpage.com. After more than a dozen meetings with Backpage, NCMEC memorialized these recommended preventative measures and sound practices in writing and provided them to Backpage.

NCMEC's recommended sound practices were:

- A. At the time an ad is created and submitted by a user, but prior to the ad being posted online:
  - i. Take steps internally to verify the identity and age of the user who submitted the ad
  - ii. Take steps internally to verify the identify and age of any individual depicted in the ad
    - 1. For example, develop an internal process to compare visual characteristics of an individual depicted in an ad with their photo in a government-issued identification that they provide
  - iii. Prohibit the use of gift cards, pre-paid credit cards or other anonymous purchasing tools as a form of payment for ads
  - iv. Require and validate a user's email address when they are creating/submitting an ad
  - v. Require and validate a phone number when a user is creating/submitting an ad
  - vi. Capture the user's IP address at the time an ad is created and/or submitted
  - vii. Ensure the ad is compliant with established Terms of Service
  - viii. Enforce a no nudity policy for images contained within ads
  - ix. Implement a moderator review system to examine all submitted ads for possible child sex exploitation
  - x. If a user changes an existing ad, prior to the ad being re-posted, capture the updated IP address and conduct an additional moderator review for Terms of Service violations
- B. Prior to the ad being posted, if a possible minor is believed to be featured within a submitted ad or an ad is believed to involve possible child sexual exploitation:
  - i. Not post the ad or allow it to go "live" on the site
  - ii. Conduct searches of internal systems to identify and review all other ads that may be associated by phone number, email address, credit card information, images depicted within the ad, or any other identifiers
  - iii. Report the possible child sex exploitation to law enforcement and/or the CyberTipline ([www.cybertipline.com](http://www.cybertipline.com))
  - iv. Retain the relevant material related to possible child sexual exploitation to provide to law enforcement upon the receipt of legal process

- v. Digitally hash the photos that were submitted within the ad to allow for comparison with other ads for review and possible removal. Those hashes can be utilized to prevent future Terms of Service violations
  - vi. Flag identifiers associated with the ad such as phone number, email address, credit card information, photos, identify of the user or person depicted within the ad, etc. to prevent future Terms of Service violations
- C. Once an ad has been posted publicly, if there is suspected child sexual exploitation within the ad:
- i. Remove the ad from public view
  - ii. Conduct searches of internal systems to identify and review all other ads that may be associated by phone number, email address, credit card information, images depicted within the ad, or any other identifiers
  - iii. Report the possible child sexual exploitation to law enforcement and/or the CyberTipline ([www.cybertipline.com](http://www.cybertipline.com))
  - iv. Retain the relevant material related to the possible child sexual exploitation to provide to law enforcement upon the receipt of legal process
  - v. Digitally hash the photos that were submitted within the ad to allow for comparison with other ads for review and possible removal. These hashes can be utilized to prevent future Terms of Service violations
  - vi. Flag identifiers associated with the ad such as phone number, email address, credit card information, photos, identity of the user or person depicted within the ad, etc. to prevent future Terms of Service violations

Backpage could adopt sound practices and update its current practices to make it more difficult for traffickers and predatory offenders to participate in an online marketplace that facilitates the sale and purchase of children for rape and sexual abuse. NCMEC believes each of these sound practices would help online classified ad websites deter child sex trafficking ads online; discourage traffickers from attempting to post online ads selling children from sex; and disrupt the current online classified ad marketplace for child sex trafficking.

The following are examples of Backpage practices that are inconsistent with NCMEC recommendations:

1. Backpage Does Not Consistently Take Down All Ads Reported for Child Sex Trafficking

Backpage does not consistently or uniformly take down ads from its site when the ad is reported for potential child sex trafficking whether the report is by their own moderators, a family member or the general public. By keeping the ad live, a child could continue to be purchased and raped multiple times a day. NCMEC does not know why Backpage makes the decision to keep some ads live and remove others. Despite this being a common topic of discussion during meetings with Backpage, it was never fully explained to NCMEC.

Backpage has represented that the site's "Report Ad" button is an effective means to "remove ads when they are brought to our attention by other users as being possibly illegal." But NCMEC is aware that these user reported ads are not always removed, even when reported for

suspected child sex trafficking. Until recently, when a user clicked on the “Report Ad” button, Backpage delivered the following message: “If you accidentally reported this ad, do not worry. It takes multiple reports from multiple people for an ad to be removed.” After the “Report Ad” message was referenced in various court filings in which Backpage is a defendant, Backpage revised this message to the following: “Ad Reported. Thank you, your report has been received.”

Further, NCMEC has no information about whether Backpage reports all ads flagged by its moderators or all ads reported by a child’s family, or what leads a moderator to flag an ad. NCMEC has confirmed that a significant number of the ads Backpage reports were initially reported by family or friends of children featured in the ads. These are some of the many comments submitted by family members when reporting escort ads to Backpage because the ads contain images of their child being sold for sex:<sup>2</sup>

- “No the girl in the is 16 shes my cousin she ra[n] away from home two months ago . . . The cops r trying to get her and her pimp She is a runaway She got tattoos of her pimp on her lower stomach and upper right eyebrow.”
- “My daughter is on the escort site and she is 13 n mental ill. I want the damn picture’s removed now.”
- “This ad has photos of my 16 year old sister who currently being trafficked and we are trying to get home. We have an active investigation going on and am trying to get her away from her pimp and bring her home. Please stop allowing whoever it is to post her. She only a minor and we want her home.”

Even when an escort ad is reported by families as containing images of their child, Backpage often does not remove the ad from public view. Instead, the reported ad remains live on Backpage.com where potential customers can continue to purchase the child for rape or other sexual abuse, even though Backpage is now on notice that the ad potentially involves a child. Comments from family members who report ads of their children make clear they are painfully aware that their pleas to Backpage do not necessarily result in ads of their children being taken down:<sup>3</sup>

- “My name is [ ] and my wife is [ ]. Your website has ads featuring our 16 year old daughter [ ], posing as an escort. – She is being pimped out by her old bf, and she is underage. – I have emailed the ad multiple times using your website, but have gotten no response. . . . – For God’s sake, she’s only 16. Her bf is having her use a prepaid card. You need better means of age verification. Stuff like this shouldn’t be allowed to happen.”
- THIS CHILD IS 16 AND MY DAUGHTER I am demanding that you remove this ad and deactivate her account. Her name is not Ashley and she is not 18. I am contacting the local authorities. This kind of trash is really unnecessary whether it be my daughter or someone

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<sup>2</sup> Ad text has been reproduced verbatim except to remove personally identifying information.

<sup>3</sup> Ad text has been reproduced verbatim except to remove personally identifying information.



else's. I get carded for cigarettes and am 44 years old, and you allow teens to post any age on something far more dangerous. . . ."

- "im reporting this because my little sister is.t old enough to be escort she's 15 ,years old I tried flagging her post down nothing happen can u guys plz removed her posting before police get in it I never want to see her she's only 15,#!#!#!"

## 2. Backpage Does Not Prevent Previously Reported Child Sex Trafficking Content from Being Reposted

Backpage does not appear to search and does not report ads linked by a name, photograph, email address, telephone number or credit card to a previously reported child sex trafficking ad. Other online companies that NCMEC works with engage in such efforts to link and report content and activity on their sites in this way to protect child victims from further abuse. Despite NCMEC's urging, Backpage also does not appear to utilize free browser add-ons or hashing technology to match images in ads of known children. In NCMEC's experience, other online companies commonly use these techniques to prevent the posting of, remove online child sexual exploitation on their sites, and prevent its further proliferation. Though Backpage declined to adopt certain technology recommendations that could assist in deterring child sex trafficking on its website, it has adopted other complex technologies, including processing Bitcoin and other online currency payment mechanisms.

Even if Backpage removes an ad reported to NCMEC, it does not appear to implement measures to block traffickers from using the same payment method to create new or additional ads with the same email address, telephone number, or even the same photographs of the child. Backpage has stated that it can easily search ads based on "snippets of ads, specific pieces of texts, telephone numbers, [or] any type of pertinent specific information that's been listed in an advertisement," but does not undertake this process to protect children from being repeatedly trafficked for sex on its website.

## 3. Backpage Has More Stringent Posting Rules Exist for Pet, Motorcycle and Boat Ads Than for Escort Ads

Backpage imposes less stringent posting rules for sex trafficking ads than it does for other ad categories. A user wanting to post an ad to sell a boat, motorcycle, or pet must provide a phone number to "prevent scam ads from being posted." Yet, Backpage does not require a phone number for escort ads. Instead, it facilitates communications on escort ads by enabling traffickers and buyers to communicate by email, while it disables email on ads for pets, boats and motorcycles to deter scams. Backpage requires less information to post an escort ad than it does to post a pet, motorcycle or boat ad, and it maintains this position even though it knows its site is used for child sex trafficking.

## 4. Backpage's Escort Pricing Does Not Deter Children from Being Sold on Backpage.com and Has Created Tremendous Revenue for Backpage

Until recent changes affected by Backpage's payment processors, Backpage had set its pricing model to maximize revenue for escort ads. While it has always been free to post an ad on Backpage.com to sell items or services in non-adult/dating categories, until recently there

always was a fee to post an escort ad. Backpage has stated that it “charge[s] for adult ads to help insure that the content is legal.” If Backpage’s goal in charging a fee for escort ads was to deter child sex trafficking ads on its website or capture credit card information to assist law enforcement, then it would seem unnecessary to rigorously calibrate its escort ad prices depending on the geographic market and other situational factors such as day of the week, time of year, or the timing of specific events and Backpage would not have accepted prepaid and anonymous payment sources. Even when Backpage does report an ad to NCMEC, it still collects and keeps the ad fee.

5. Backpage Has No Age Verification Process for Escort Ads

Backpage ads require a person posting an ad to enter their age. Backpage does not take steps that some other online advertising sites take to verify a submitted age. Instead, when an individual posting an ad enters an age under 18 years old, an error message is generated that reads “Oops! Sorry, the ad poster must be over 18 years of age.” Even after Backpage is put on notice that an individual was attempting to post an escort ad, Backpage permits the poster to simply update the age field, as Backpage has directed, with an age over 18 years old and post the ad with the same escort text, photographs and/or videos that the poster entered. That postings exist for escort ads with the age of “99” years old further demonstrates that the requirement to enter an age to post an escort ad is not meant to serve as an accurate age verification tool.

6. Backpage Does Not Appear to Report All Suspected Child Sex Trafficking Ads

The number of Backpage ads reported to NCMEC appears to be only a small fraction of the true child victims on Backpage.com. In 2012, Backpage told the National Association of Attorneys General that Backpage identifies more than 400 “adult entertainment” posts each month that may involve a child. In 2014, Backpage reported that the website “removes or blocks about a million ads a month, notably those that appear to involve minors or sex for money.” Despite Backpage’s admissions and acknowledgement of the heavy volume of ads selling children for sex on its site, based on the number of limited number of reports received by NCMEC, Backpage does not report all of these ads to NCMEC.

**Backpage’s Publicized Efforts to Reduce Child Sex Trafficking are Ineffective and Have Failed to Deter Child Sex Trafficking on its Website**

Though Backpage repeatedly represented that it was committed to substantially reducing child sex trafficking on its website, it made largely ineffectual adjustments to its practices and refused to adopt most of NCMEC’s recommended measures, citing its customers’ First Amendment concerns. It soon became apparent to NCMEC that despite Backpage’s assertions, it was adopting and publicizing only carefully selected sound practices, while resisting recommended substantive measures that would protect more children from being sold for sex in escort ads on Backpage.com.

NCMEC’s last meeting with Backpage occurred in August 2013. During this meeting, Backpage expressed frustration that NCMEC was not publicly endorsing Backpage’s claimed efforts to curb child sex trafficking on its site. Backpage also informed NCMEC that it had decided not to implement most of NCMEC’s recommendations and that changing Backpage’s practices would

drive advertisers to other sites. NCMEC ended its meetings with Backpage at this time as it was apparent Backpage was not engaging in good faith efforts to deter the selling and buying of children for sex on its website.

Backpage continues to voluntarily report selective information to NCMEC regarding certain suspected child sex trafficking ads, but Backpage's relationship with NCMEC has changed since the August 2013 meeting when Backpage raised concerns that NCMEC was not sufficiently publicly supportive. Since then, Backpage's reports of suspected child sex trafficking ads to NCMEC have decreased dramatically. Although there is no reason to believe suspected child sex trafficking on Backpage has decreased since 2013, Backpage's average number of reports per month in 2015 has dropped by over 50% from the average number of reports Backpage made each month to NCMEC in 2013.

#### **Conclusion**

NCMEC is aware that children continue to be offered for sale and bought for rape and other sexual abuse on Backpage.com. We continue to believe that the good faith adoption and enactment of sound practices, the use of technology solutions, and a substantive and authentic effort to moderate its site – tools and efforts adopted by many online companies for whom the reduction of online child sexual exploitation is a true goal – would deter and substantially reduce the possibility that children would be victimized on Backpage's escort ads. We are hopeful that continued public discussion and the attention of Congress and this Committee will lead to new hope for children who are at risk for or being actively trafficked online and their families.

Thank you for the opportunity to provide you and the Committee with information on NCMEC's role in combatting child sex trafficking and background on our interactions with businesses such as Backpage, which we hope will be useful for your investigation. We look forward to continuing to work with you on this very important issue.

**Statement by  
Darwin P. Roberts, Deputy Attorney General, State of Washington**

**Human Trafficking Investigation Hearing  
November 19, 2015**

**Permanent Subcommittee on Investigations  
Committee on Homeland Security and Governmental Affairs  
United States Senate**

Members of the Subcommittee:

Thank you for the opportunity to testify today regarding human trafficking and the use of the Internet in the commercial sexual exploitation of children. My name is Darwin Roberts. I am a Deputy Attorney General for the Office of the Attorney General of the State of Washington. My responsibilities include supervising our office's Criminal Justice Division and coordinating our efforts against human trafficking. For the last two years I have helped lead Washington's Statewide Coordinating Committee on the Commercial Sexual Exploitation of Children. Before joining the Attorney General's Office I served for eight years as a federal prosecutor in Seattle.

**Background on Washington's Anti-Trafficking Efforts**

Washington has been a leader among the states in the fight against human trafficking. In 2003, Washington became the first state to enact state-level legislation criminalizing human trafficking. That initial legislation criminalized trafficking for purposes of forced labor, involuntary servitude, or commercial sex acts, using force, fraud, or coercion. In 2007, Washington passed several additional laws significantly strengthening penalties for the commercial sexual abuse of minors, which is defined under both state and federal law as a form of human trafficking. Further improvements have been made in the years since.<sup>1</sup>

Combating human trafficking has been a bipartisan priority for the Washington Attorney General's Office, under both current Attorney General Bob Ferguson and previous Attorney General Rob McKenna. There is strong cooperation among state, federal, and local law enforcement, government agencies, and nonprofit groups on anti-trafficking efforts.

Washington has promoted the use of a "victim-centered" approach to the commercial sexual exploitation of children. This approach recognizes that children are legally incapable of consenting to sexual activity with adults and that trafficked children should be viewed and treated not as criminals, but as victims. With partners including the Center for Children and

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<sup>1</sup> Washington Statewide Coordinating Committee on the Commercial Sexual Exploitation of Children, 2014 Initial Report to the Legislature ("Washington CSEC Committee Report, 2014"), at 21-23, 35-36.

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Youth Justice, a local nonprofit, Washington is implementing a statewide Model Protocol so that agencies and organizations that encounter child sex trafficking victims can identify those victims and use identified best practices to assist them. Task forces have been set up in several locations around the state to help ensure the consistent implementation of the Model Protocol.<sup>2</sup>

As a result of all these efforts, Washington has received the highest ranking for its anti-trafficking efforts from the Polaris Project, a leading national anti-trafficking organization.<sup>3</sup>

### **The Role of the Internet in Human Trafficking and the Commercial Sexual Exploitation of Children**

Washington's anti-trafficking community is well aware that the Internet plays a significant role in many incidents of trafficking, particularly the commercial sexual exploitation of children. In numerous cases, both locally and nationally, Internet websites have been used to advertise and facilitate the exploitation of trafficked children.<sup>4</sup> In part, this is because there is a significant and growing demand for sexual services on the Internet.

A 2014 report by the Urban Institute studied the "underground commercial sex economy" in major United States cities, including Seattle.<sup>5</sup> It found that "Seattle, like many cities, has seen increases in Internet-based prostitution over the last decade. Stakeholders attribute this increase to the ease of using sites like Backpage and Craigslist, in addition to Seattle-specific sites [that focus on sexual services]." Part of the increase in Internet prostitution is due to "a concerted effort by law enforcement to crack down on visible street prostitution," according to the report, and an associated perception that prostitution via the Internet is less risky. This migration, combined with the additional presence of "new entrants to the market," has resulted in "an overall increase in the amount of prostitution" in Seattle and other cities in the region.<sup>6</sup>

The Urban Institute's findings are consistent with a 2013 study by the Office of Sex Trafficking Intervention Research at the Arizona State University School of Social Work, which attempted to estimate the population of "active customers of online sex ads" in 15 cities in the United States. This study estimated that, on average, 5% of all males over the age of 18 living in large American cities were involved in searching and responding to online sex ads.<sup>7</sup> Similarly, a 2013 report by the Institute of Medicine found that "the Internet and other digital networked

<sup>2</sup> *Id.* at 13-16.

<sup>3</sup> *Id.* at 35; see also [www.polarisproject.org](http://www.polarisproject.org)

<sup>4</sup> See, e.g., Washington CSEC Committee Report, 2014, at 3-4; Martha Irvine, "Backpage ad site: Aider of traffickers, or way to stop them?" Associated Press, August 16, 2015.

<sup>5</sup> Meredith Dank *et al.*, "Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major U.S. Cities," The Urban Institute, March 2014.

<sup>6</sup> *Id.* at 114.

<sup>7</sup> Dominique Roe-Sepowitz *et al.*, "Invisible Offenders: A Study Estimating Online Sex Customers," Arizona State University School of Social Work, Office of Sex Trafficking Intervention Research, August 2013.

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techniques are being used to facilitate the commercial sexual exploitation and sex trafficking of minors in the United States,” through “recruiting, grooming, and advertising victims[.]”<sup>8</sup>

In Seattle, the King County Prosecuting Attorney’s Office and several police departments have been working to combat the online commercial sexual exploitation of children. Their work indicates that large numbers of local individuals are would-be customers of online sexual services, including unfortunately high numbers interested in purchasing sex with children.<sup>9</sup>

Although there is unquestionably a problem with the commercial sexual exploitation of children, including via the Internet, there remains a great deal of uncertainty about the exact scope of that problem. Certain statistics that used to be widely cited in assessing that scope now have been criticized as inaccurate.<sup>10</sup> Washington’s best information comes from a local 2008 study estimating that, as of eight years ago, 300-500 youth annually were involved in prostitution in the Seattle/King County area.<sup>11</sup> We do not believe that the problem has come close to being solved during that time, as the Internet-based demand for the sexual exploitation of children appears to have increased. There is widespread consensus that more information and research are needed in order to accurately understand the total incidence of sex trafficking of minors in Washington and the United States, the ways in which that trafficking interacts with the burgeoning demand on the Internet, and the optimal strategies for combating it.<sup>12</sup>

#### **The Role of Backpage.com in the Advertising of Trafficked Minors and Washington’s Related Litigation**

Although there are many websites that host “escort”/prostitution advertising, Backpage.com appears to play an especially significant role in the sector. According to various media reports, Backpage.com became a market leader for “adult services”-type advertisements in the wake of Craigslist’s 2009 decision to end its adult services advertising. A significant portion of Craigslist’s advertising, then estimated to generate tens of millions of dollars a year, is believed to have migrated from Craigslist to Backpage.com.<sup>13</sup> Backpage.com also seems to consistently appear as one of the top results when Internet search engines are used to find “adult services”-type advertisements.

<sup>8</sup> Institute of Medicine and National Research Council of the National Academies, “Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States,” 2013, at 106-07.

<sup>9</sup> Sara Jean Green, “County’s ‘Buyer Beware’ program aims to reduce demand for prostitution,” *Seattle Times*, October 15, 2014; Washington CSEC Committee Report, 2014, at 26.

<sup>10</sup> See, e.g., Glenn Kessler, “Fact Checker,” “The bogus claim that 300,000 U.S. children are ‘at risk’ of sexual exploitation,” *The Washington Post*, May 28, 2015; Washington CSEC Committee Report, 2014, at 24 (noting issues with the “300,000” statistic).

<sup>11</sup> Washington CSEC Committee Report, 2014, at 25.

<sup>12</sup> *Id.* at 23-29.

<sup>13</sup> See, e.g., David Carr, “Fighting Over Online Sex Ads,” *The New York Times*, October 30, 2011.

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Washington's efforts to combat Internet-facilitated human trafficking have led it to be involved in litigation with Backpage.com. In 2012, Washington's Legislature passed a law that aimed to criminally punish "any person" who, using the Internet, "knowingly publishes, disseminates, or displays, or causes directly or indirectly, to be published, disseminated, or displayed, any advertisement for a commercial sex act, which is to take place in the state of Washington and that includes the depiction of a minor."<sup>14</sup> Backpage.com led a challenge to this law before it could be implemented. While the Attorney General's Office attempted to defend the law, the law's enforcement was enjoined by the U.S. District Court in Seattle on grounds including that it was likely preempted by the Communications Decency Act as well as unconstitutionally vague under the First Amendment.<sup>15</sup>

Shortly after that federal court decision, three individual minors filed a lawsuit against Backpage.com in Pierce County Superior Court in Tacoma, Washington. The plaintiffs alleged that they had been subjected to sex trafficking by a trafficker who advertised them for sale on Backpage.com. Backpage.com, they said, facilitated their exploitation through several means, including by "materially contributing" to the content that was posted on the website and used to exploit them.<sup>16</sup> Backpage.com moved to dismiss their action, but that motion was denied. Backpage.com sought appellate review. Our Attorney General's Office filed an amicus brief in support of the plaintiffs' lawsuit.<sup>17</sup> In September of 2015, the Washington Supreme Court ruled in favor of the plaintiffs, holding that they had alleged facts that, if proven, could prevail against Backpage.com's claim of immunity.<sup>18</sup> Washington is aware that other states, including Massachusetts and Illinois, also have been involved in litigation with Backpage.com relating to the use of the site to advertise commercially sexually exploited minors.<sup>19</sup>

We note that as Backpage.com has engaged in this litigation—opposing regulatory and legal efforts to combat the trafficking of children that might impact its business model and market share—Backpage.com has repeatedly argued that the community at large will be best protected if Backpage's "adult services" section remains open for business but cooperates with law enforcement to fight the sex trafficking of minors. In 2015, the Associated Press reported that an attorney for Backpage.com described the site as "one of the most valuable tools there is on the Internet" to fight sex trafficking, citing a "four-step monitoring process" screening ads for

<sup>14</sup> State of Washington, "Commercial Sex Abuse of a Minor-Advertising," Chapter 138, Laws of 2012 (Engrossed Substitute Senate Bill 6251).

<sup>15</sup> *Backpage.com, L.L.C., et al. v. McKenna, et al.*, No. CV12-0954-RSM, U.S. District Court, W.D. Wash., Dkt #69 (July 27, 2012 Order Granting Plaintiffs' Motions for Preliminary Injunction). The Attorney General's Office concluded that it would be futile to further litigate the viability of the statute under the current state of the law. See Washington CSEC Committee Report, 2014, at 26-27.

<sup>16</sup> *J.S. et al. v. Village Voice Media Holdings, L.L.C., d/b/a Backpage.com*, No. 12-2-11362-4, Pierce County Superior Court (First Amended Complaint, filed September 5, 2012).

<sup>17</sup> *Village Voice Media Holdings, L.L.C., d/b/a Backpage.com v. J.S. et al.*, No. 90510-0, Supreme Court of Washington (Amicus Brief of the State of Washington in Support of Respondents, filed September 5, 2014).

<sup>18</sup> *Id.*, September 3, 2015 Order of the Court (remanding case for further proceedings).

<sup>19</sup> See, e.g., *Jane Doe No. 1 et al. v. Backpage.com, L.L.C.*, No. 14-13870-RGS, U.S. District Court, D. Mass, Dkt #53 (May 25, 2015 Memorandum and Order on Defendants' Motion to Dismiss)

*Darwin P. Roberts Statement, November 19, 2015*  
*Senate Permanent Subcommittee on Investigations*

trafficking.<sup>20</sup> In 2012, in response to the filing of the Pierce County lawsuit, an attorney for Backpage.com stated that “the commercial sex exploitation of children is an extremely complex problem on the streets and online, and it must be fought intelligently... Backpage.com is at the forefront of fighting it intelligently online with a triple-tier prevention system and an unparalleled law enforcement support system.”<sup>21</sup> Another Backpage.com statement asserted that “Backpage... does not want to make a single penny off this abhorrent activity [of human trafficking]. In fact, it is investing substantial money, time and personnel in monitoring the site, cooperating with law enforcement, and collaborating with anti-trafficking and child protection groups to find effective, workable solutions.”<sup>22</sup>

While these commitments sound positive, the Attorney General’s Office does not understand precisely what Backpage.com is doing to fight trafficking on its site or how “successful” its efforts are. It is not clear to us exactly what techniques Backpage.com purports to be using to combat the posting on its site of ads for persons who are actually trafficked children; how effective its techniques are; how effective Backpage.com is attempting to make its techniques (in other words, what its internal compliance goals are); and exactly what resources Backpage.com is willing to expend to meet those internal compliance goals.

If Backpage.com’s techniques truly are “one of the most valuable tools... on the Internet” for stopping trafficking, they may have immediate applicability in other contexts to help prevent children from being trafficked. And in light of the significant presence of Backpage.com in “adult services” markets throughout the United States, any statistics compiled by Backpage.com concerning the incidence of human trafficking on its site could inform and assist a wide variety of anti-trafficking efforts.

### **Conclusion**

It appears that Backpage.com intends to try to maintain its position as one of the preeminent online sites for advertising “adult services,” litigating vigorously to protect that position while arguing that its own monitoring systems and contacts with law enforcement are the best way to prevent the commercial sexual exploitation of children. Nevertheless, despite these efforts, children who are the victims of sex trafficking continue to be advertised on Backpage.com. Given that fact, the State of Washington would be interested to understand Backpage.com’s methods and strategies and what Backpage.com’s own statistics reveal about its systems’ effectiveness. For all of these reasons, the Washington Attorney General’s Office hopes that Backpage.com will deliver a full and helpful response to the Subcommittee’s subpoena.

<sup>20</sup> Martha Irvine, “Backpage ad site: Aider of traffickers, or way to stop them?” Associated Press, August 16, 2015.

<sup>21</sup> “3 Washington teenagers sue Backpage.com,” Associated Press, July 29, 2012.

<sup>22</sup> Statement of L. McDougall, General Counsel to Village Voice Media Holdings (undated)



*United States Senate*

***PERMANENT SUBCOMMITTEE ON  
INVESTIGATIONS***

***Committee on Homeland Security and Governmental Affairs***

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*Rob Portman, Chairman*

*Claire McCaskill, Ranking Member*

**RECOMMENDATION TO ENFORCE A  
SUBPOENA ISSUED TO THE CEO OF  
BACKPAGE.COM, LLC**

**STAFF REPORT**

**PERMANENT SUBCOMMITTEE ON  
INVESTIGATIONS**

**UNITED STATES SENATE**

**SENATOR ROB PORTMAN**  
Chairman

**SENATOR CLAIRE McCASKILL**  
Ranking Minority Member

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**RECOMMENDATION TO ENFORCE A SUBPOENA ISSUED TO THE CEO  
OF BACKPAGE.COM, LLC**

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## I. EXECUTIVE SUMMARY

Backpage.com and its Chief Executive Officer, Carl Ferrer, have failed to comply with a lawful subpoena issued by the Permanent Subcommittee on Investigations. This report recommends enforcement of that subpoena.

The Subcommittee is investigating the problem of human trafficking on the Internet — selling the sexual services of minors or coerced adults online. As part of that investigation, the Subcommittee has conducted interviews with a large number of interested parties who have cooperated with our investigation, including some websites used for commercial sex advertising. The most important player in this market is Backpage.com. Public records reveal hundreds of reported cases of underage sex trafficking connected to Backpage. As a federal court recently observed, Backpage's "adult section is the leading forum for unlawful sexual commerce on the internet \* \* \* including the prostitution of minors."<sup>1</sup>

Backpage claims to be a market-leader in combatting human trafficking online. The company touts its "moderation" practices — the process of reviewing advertisements to screen them for evidence of violations of its terms of use and possible illegality. Its general counsel and chief spokeswoman, Elizabeth McDougall, has written that the widespread adoption of similar practices are the "key to disrupting and eventually ending human trafficking via the World Wide Web."<sup>2</sup> To better understand these procedures, their efficacy, and their costs, the Subcommittee served a subpoena on Backpage requiring the production of documents concerning Backpage's moderation and ad-review procedures, basic financial information, and other topics.

Backpage refuses to comply with the subpoena. It claims that the First Amendment's protection for free speech entitles it to ignore the Subcommittee's compulsory process on the ground that it is a publisher of commercial advertising. That is wrong. The First Amendment does, in rare circumstances, forbid the government from using subpoenas as a tool for deterring or investigating disfavored speech. The Supreme Court has, for example, invalidated subpoenas designed to discover the identity of NAACP members or those with Communist sympathies.<sup>3</sup> The Subcommittee's subpoena, by contrast, raises no similar concerns. It is expressly designed to shield Backpage's users by instructing the company to redact any personally identifying information of those who post advertisements on the site. And the Supreme Court has made clear that a business is not immune from legitimate investigations into unlawful activity on its property — here, sex trafficking — just

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<sup>1</sup> *Backpage.com, LLC v. Dart*, 2015 WL 5174008, at \*2 (N.D. Ill. Sept. 2, 2015). This case is currently pending on appeal in the U.S. Court of Appeals for the Seventh Circuit.

<sup>2</sup> Liz McDougall, *Backpage.com is an Ally in the Fight Against Human Trafficking*, Seattle Times (May 6, 2012), available at <http://www.seattletimes.com/opinion/backpagecom-is-an-ally-in-the-fight-against-human-trafficking/>.

<sup>3</sup> *E.g. NAACP v. Alabama*, 357 U.S. 449, 451 (1958); *Watkins v. United States*, 354 U.S. 178, 184-85 (1957).

because it is also engaged in protected speech.<sup>4</sup> In any event, even when a subpoena does touch on First Amendment interests, it is valid if it seeks information closely related to an important investigatory purpose; here, the Subcommittee's objective is to develop the robust factual record necessary to inform potential legislation concerning human trafficking, *without* threatening Internet freedom. The Subcommittee's subpoena serves that interest through targeted document requests designed to capture the most important information about Backpage's business practices. Under those circumstances, Backpage has no privilege to refuse to cooperate with the Subcommittee's subpoena.

Undeterred by Backpage's noncompliance with its process, the Subcommittee has pursued its fact-finding through other means. In this report, we detail our preliminary findings. In our view, they only underscore the importance of the issues the Subcommittee is probing and the need for enforcement of the subpoena.

*First*, we find substantial evidence that Backpage *edits* the content of some ads, including by deleting words and images, before publication. The record indicates that in some cases, these deletions likely served to remove evidence of the illegality of the underlying transaction. Specifically, as part of its moderation process, it appears that Backpage will delete particular words or images from an advertisement before posting it to the web, if those words or images violate its terms of service. Ms. McDougall told the Subcommittee of this practice in a staff interview, but the company has so far refused to provide additional documents about it. The Subcommittee attempted to take the testimony of two Backpage employees in charge of its moderation practices, but they refused to testify on the grounds that it might incriminate them. The Subcommittee, however, obtained evidence demonstrating that, from 2010 to 2012, when Backpage outsourced its moderation work to India, it did delete certain images, words, or phrases from "adult" advertisements. The Subcommittee's subpoena seeks to understand whether Backpage's *current* practices have the purpose or effect of removing images or text that could alert law enforcement to the nature and extent of the transaction being offered. Backpage refuses to produce that information.

*Second*, the Subcommittee has additional concerns about the steps Backpage takes to ensure that it can be helpful when called upon to cooperate with law enforcement investigations of potential human trafficking. Backpage, for example, does not retain the "metadata" associated with images posted to its site, which would be helpful to law enforcement in identifying victims of human trafficking. In addition, the record is unclear about what steps Backpage takes to "hash" images — *i.e.*, to assign them a unique identifier. Backpage claims that it does hash images,

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<sup>4</sup> See *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 (1986) (holding that statute regulating establishments hosting prostitution did not trigger First Amendment concerns merely because books were also sold on the premises).

but at least one credible report disputes that.<sup>5</sup> The Subcommittee therefore requested documents related to Backpage's data retention and hashing practices, but Backpage has not produced them.

*Third*, the Subcommittee has attempted to learn more about Backpage's corporate structure and finances. Earlier this year, Backpage's corporate group was assessed by an independent appraiser at a fair market value of between \$618.4 million and \$625.8 million. More striking, the company's EBITDA margin (a common measurement of a company's operating profitability) was a staggering 82.4% in 2014. If true, that suggests Backpage has the resources for additional action against human trafficking on its website, but perhaps lacks the financial incentives to reject an increased number of ads, thereby reducing its revenue from advertisements.

*Finally*, the Subcommittee has learned that, at least in one case, Backpage customers were able to evade limits placed on its access to credit card networks by a major financial institution. That institution attempted to block its card holders from completing transactions with Backpage.com, out of concern that the site was potentially facilitating human trafficking. Despite this block, Backpage modified its merchant code, allowing cardholders to continue completing transactions. Importantly, merchants may change their merchant code, and financial institutions cannot prevent them from doing so.

\* \* \*

In short, the Subcommittee's investigation to date demonstrates the substantial value of further information about Backpage's business practices, which would inform thoughtful policymaking in this area. The investigation has been conducted with scrupulous regard for First Amendment rights. The fact that Backpage is a publisher of commercial advertisements protected by the First Amendment does not entitle it to refuse to produce documents about its response to what it admits is criminal activity on its website.

It is the recommendation of the Subcommittee staff that the October 1, 2015, subpoena to Mr. Ferrer and Backpage.com should be enforced. The purpose of this report, and its accompanying findings, is to explain the need for such enforcement and the value of the information sought by the Subcommittee. For that reason, the report is necessarily focused on Backpage, but that should not be mistaken for an indication that the Subcommittee's broader investigation is similarly limited. To the contrary, the Subcommittee is conducting a wider inquiry into the problem of sex trafficking on the Internet, by gathering information from a range of relevant

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<sup>5</sup> Testimony of Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children, before Permanent Subcommittee on Investigations, at 8 (Nov. 19, 2015).

actors, including more than ten other online entities. The subject is of considerable legislative interest to the Congress.

## II. BACKGROUND

### A. Sex Trafficking on the Internet.

Human trafficking is a crime generating billions of dollars each year in illegal proceeds, making it more profitable than any transnational crime except drug trafficking.<sup>6</sup> Under U.S. law, human trafficking includes, among other things, the unlawful practice of selling, soliciting, or advertising the sexual services of minors or of adults who have been coerced into participating in commercial sex.<sup>7</sup> Precise empirical data concerning this black-market trade are scarce. But, in 2013, social scientists estimated that there were as many as 27 million victims of human trafficking worldwide,<sup>8</sup> including 4.5 million people trapped in sexual exploitation.<sup>9</sup> In the United States, over eight in ten suspected incidents of human trafficking involve sex trafficking.<sup>10</sup>

Too often, the victims of sex trafficking are minors. The Department of Justice has reported that more than half of sex-trafficking victims are 17 years old or younger.<sup>11</sup> In the last five years, the National Center for Missing and Exploited Children (NCMEC) reported an 846% increase in reports of suspected child sex trafficking — an increase the organization has found to be “directly correlated to the increased use of the Internet to sell children for sex.”<sup>12</sup> Children who run away from home are particularly vulnerable to this crime; “[i]n 2014, one in six

<sup>6</sup> U.S. Dep’t of Homeland Security, *Blue Campaign: What is Human Trafficking?* (Sept. 14, 2015), <http://www.dhs.gov/blue-campaign/what-human-trafficking>.

<sup>7</sup> See 18 U.S.C. § 1591(a); 27 U.S.C. § 7102(10).

<sup>8</sup> U.S. Dep’t of State, *Trafficking in Persons Report 2013*, at 7 (June 2013), <http://www.state.gov/documents/organization/210737.pdf>.

<sup>9</sup> Polaris Project, *Sex Trafficking*, <http://www.polarisproject.org/sex-trafficking>.

<sup>10</sup> U.S. Dep’t of Justice, Bureau of Justice Statistics, *Characteristics of Suspected Human Trafficking Incidents, 2008-2010*, at 1 (Apr. 2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/cshti0810.pdf>.

<sup>11</sup> U.S. Dep’t of Justice, Office of Juvenile Justice & Delinquency Prevention, *Literature Review: Commercial Sexual Exploitation of Children / Sex Trafficking*, at 3 (2014) (citing Bureau of Justice Statistics data), <http://www.ojjdp.gov/mpg/litreviews/CSECSexTrafficking.pdf>.

<sup>12</sup> Testimony of Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children, before Permanent Subcommittee on Investigations, at 2 (Nov. 19, 2015); Br. of National Center for Missing & Exploited Children, *J.S. v. Village Voice Media Holdings, LLC*, No. 4492-02-II, at 3 (Wash. Sup. Ct. Sept. 15, 2014). Congress designated NCMEC to be the “official national resource center and information clearinghouse for missing and exploited children.” 42 U.S.C. § 5773(b)(1)(B). Among its 22 statutorily authorized duties, NCMEC assists law enforcement in identifying and locating victims of sex trafficking and operates a “cyber tipline,” which collects reports of Internet-related child sexual exploitation, including suspected child sex trafficking. *Id.* §§ 5773(b)(1)(P)(3), (b)(1)(V).

endangered runaways reported to NCMEC was likely a child sex trafficking victim.”<sup>13</sup>

Online advertising has transformed the commercial sex trade and in the process has contributed to the explosion of domestic sex trafficking.<sup>14</sup> Sex trafficking previously took place “on the streets, at casinos and truck stops, and in other physical locations”; now it appears that “most child sex trafficking currently occurs online.”<sup>15</sup> Sex trafficking has thrived on the Internet in part because of the high profitability and relatively low risk associated with advertising trafficking victims’ services online in multiple locations.<sup>16</sup> With the help of online advertising, traffickers can maximize profits, evade law enforcement detection, and maintain control of victims by transporting them quickly within and between states.

## **B. Commerical Sex Advertising and Backpage.com.**

Sex traffickers have made extensive use of websites that serve as marketplaces for ordinary commercial sex and escort services. These sites may facilitate the sex trade by providing an easily accessible forum that matches buyers of sex with traffickers selling minors and adults.

One such site, Backpage.com, is similar in look and layout to the online marketplace Craigslist.com, and contains links to advertisements in sections such as “community,” “buy/sell/trade,” “jobs,” as well as “adult.” Advertisements in the “adult” section typically consist of a headline, a photo or photos, video, and a brief

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<sup>13</sup> Testimony of Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children, before Permanent Subcommittee on Investigations, at 3 (Nov. 19, 2015).

<sup>14</sup> Urban Institute, *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities*, at 234 (March 2014) (“The overall sex market has expanded . . . and law enforcement detection has been reduced.”), <http://www.urban.org/uploadedpdf/413047-underground-commercialsex-economy.pdf>; *id.* at 237-38 (“The results presented here corroborate[previous] findings that the use of the Internet is not necessarily displacing street-based sex work, but is likely helping to expand the underground commercial sex market by providing a new venue to solicit sex work.”).

<sup>15</sup> *Backpage.com, LLC v. Dart*, No. 15-cv-6340, Doc. 88-4, at 3 (N.D. Ill. Oct. 6, 2015).

<sup>16</sup> Urban Institute, *supra* n.14, at 218 (reporting on multiple studies concluding Internet-facilitated commercial sex transactions are “not as easily detected by law enforcement”); U.S. Dep’t of Justice, *National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress*, at 33 (Aug. 2010) (noting the increase in profitability of trafficking children with the aid of the Internet and explaining how the movement of sex trafficking victims from city to city, with the help of online advertisements, makes building criminal cases more difficult), <http://www.justice.gov/psd/docs/natstrategyreport.pdf>; Michael Latonero, *Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds*, at 13 (Sept. 2011) (quoting former NCMEC president and CEO Ernie Allen as stating, “[o]nline classified ads make it possible to pimp these kids to prospective customers with little risk”), [https://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking\\_FINAL.pdf](https://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking_FINAL.pdf).



description of the services being offered. Backpage's classified listings are localized by city or region; as of November 2015, Backpage had sites in 431 cities in the United States and 444 other cities around the world.<sup>17</sup>

Backpage is a market leader: In 2013, it reportedly net more than 80% of all revenue from online commercial sex advertising in the United States.<sup>18</sup> NCMEC has reported that of the suspected child trafficking reports it receives from the public, 71% involve Backpage.<sup>19</sup> According to the Massachusetts Attorney General, "[t]he vast majority of prosecutions for sex trafficking now involve online advertising, and most of those advertisements appear on Backpage."<sup>20</sup>

Two federal courts have reached the same conclusion. Just two months ago, a federal court in Chicago found that Backpage's "adult section is the leading forum for unlawful sexual commerce on the Internet" and that "the majority of the advertisements there are for sex."<sup>21</sup> The court found that Backpage's "adult services section overwhelmingly contains advertisements for prostitution, including the prostitution of minors," and that, notwithstanding Backpage's review and editing procedures, "many of the advertisements \* \* \* clearly solicit payments for sex."<sup>22</sup> These observations echo the 2012 findings of a federal court in Seattle, which concluded that "[m]any child prostitutes are advertised through online escort advertisements displayed on Backpage.com and similar websites."<sup>23</sup>

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<sup>17</sup> Backpage's predecessor company was an alternative news weekly, *The New Times*, founded in 1970 in Phoenix by James Larkin and Michael Lacey. In 2005, New Times Media acquired *The Village Voice*, based in New York, and the new entity, still owned by Mr. Larkin and Mr. Lacey, renamed itself Village Voice Media. Richard Siklos, *The Village Voice, Pushing 50, Prepares to Be Sold to a Chain of Weeklies*, *The New York Times* (Oct. 24, 2005), available at [http://www.nytimes.com/2005/10/24/business/the-village-voice-pushing-50-prepares-to-be-sold-to-a-chain-of-weeklies.html?\\_r=0](http://www.nytimes.com/2005/10/24/business/the-village-voice-pushing-50-prepares-to-be-sold-to-a-chain-of-weeklies.html?_r=0). In response to public pressure regarding its adult advertisements and the alleged connection to sex trafficking, Village Voice Media is reported to have spun off its media holdings into Voice Media Group. In the wake of that spinoff, Village Voice Media, and its owners Mr. Larkin and Mr. Lacey, retained ownership of Backpage. Mallory Russell, *Village Voice Management Buyout Leaves Backpage.com Behind*, *Advertising Age* (Sept. 24, 2012), available at <http://adage.com/article/media/village-voice-management-buyout-leaves-backpage/237371/>.

<sup>18</sup> Advanced Interactive Media Group, *Prostitution-ad revenue up 9.8 percent from year ago* (Mar. 22, 2013), <http://aimgroup.com/2012/03/22/prostitution-ad-revenue-up-9-8-percent-from-year-ago/>.

<sup>19</sup> Testimony of Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children, before Permanent Subcommittee on Investigations, at 3 (Nov. 19, 2015). This 71% figure does not include reports to the cyber tipline made by Backpage itself.

<sup>20</sup> Br. of Commonwealth of Massachusetts, *Doe ex rel. Roe v. Backpage.com, LLC et al.*, No. 14-13870, Dkt. No. 30, at 7 (D. Mass. Feb. 20, 2015) ("In Massachusetts, seventy-five percent of the cases that the Attorney General has prosecuted under our state human trafficking law, plus a number of additional investigations, involve advertising on Backpage.").

<sup>21</sup> *Dart*, 2015 WL 5174008, at \*2.

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

<sup>23</sup> *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1267 (W.D. Wash. 2012).

Both courts also examined data from the jurisdictions involved in the cases — Cook County, Illinois and Seattle, Washington — and found that a substantial number of sex trafficking cases in those jurisdictions had links to Backpage. The Chicago court observed that Cook County had conducted over 800 sting operations responding to Backpage advertisements between 2009 and 2015 and that officers “made arrests for prostitution, child trafficking, or a related crime 100% of the time.”<sup>24</sup> Similarly, the Seattle court reported that, between 2010 and 2012, the Seattle Police Department recovered at least 22 children advertised online for commercial sex.<sup>25</sup>

The National Association of Attorneys General has sounded similar alarms concerning Backpage’s facilitation of sex trafficking. On August 31, 2011, 45 state attorneys general sent a letter in which they described Backpage as a “hub” of “human trafficking, especially the trafficking of minors.” Pointing to more than 50 cases over the previous three years involving individuals trafficking or attempting to traffic minors on Backpage, the attorneys general argued that Backpage’s screening efforts were “ineffective.” They requested documents from Backpage concerning the company’s public claims that it screens and removes advertisements linked to sex trafficking. Backpage provided no substantive response to that request.<sup>26</sup>

### C. Crimes Associated with Backpage.

Open-source research gives credence to these widely held concerns about the proliferation of sex trafficking using Backpage. Shared Hope International, a leading non-profit combatting sex trafficking, has documented more than 400 cases in 47 states of children being sex trafficked through Backpage.com through media reports.<sup>27</sup> In addition, the Subcommittee’s own open-source research found more than 40 murders linked to Backpage — in some instances as a result of a commercial sex transaction turned violent.<sup>28</sup>

The details of many reported cases linked to Backpage are deeply disturbing. In one Pennsylvania case, for example, the defendant forced a minor “to have sex with approximately 15 different men in one encounter where she was threatened with a handgun.”<sup>29</sup> In a Florida case, a trafficker “drugged and threatened to kill a

<sup>24</sup> *Dart*, 2015 WL 5174008, at \*2.

<sup>25</sup> *McKenna*, 881 F. Supp. 2d at 1267.

<sup>26</sup> Letter from the Nat’l Ass’n of Attorneys General to Samuel Fifer, Esq., Counsel for Backpage.com LLC (Aug. 31, 2011), [http://www.ct.gov/ag/lib/ag/press\\_releases/2011/083111backpageletter.pdf](http://www.ct.gov/ag/lib/ag/press_releases/2011/083111backpageletter.pdf).

<sup>27</sup> Research on file with the Subcommittee.

<sup>28</sup> Research on file with the Subcommittee.

<sup>29</sup> Tim Logue, *Chester Man Gets Life In Jail For Sex Trafficking*, Delaware County Times (Dec. 19, 2014), available at <http://www.delcotimes.com/general-news/20141219/chester-man-gets-life-in-jail-for-sex-trafficking>.

14-year old” girl so that he “could sell her sexual services online.”<sup>30</sup> In a California case, a trafficker forced two women to work as his prostitutes through “regular beatings and threats.”<sup>31</sup> These are but a few examples among countless cases.<sup>32</sup>

#### **D. Public Scrutiny and Victim Lawsuits.**

##### **1. Actions by the Financial Payments Industry.**

In 2015, all three major credit card companies in the United States stopped doing business with Backpage. First, in April 2015, American Express announced that it would no longer process payments to Backpage.<sup>33</sup> MasterCard and Visa followed suit later in the year. In announcing its decision, MasterCard stated that it “has rules that prohibit our cards from being used for illegal or brand-damaging activities. When the activity is confirmed, we work with the merchant’s bank to resolve the situation.”<sup>34</sup> Similarly, Visa noted that company “rules prohibit our

<sup>30</sup> Susan Jacobson, *Cops: Man Forced 14-Year Old Runaway Into Prostitution*, The Orlando Sentinel (Sept. 18, 2012), available at [http://articles.orlandosentinel.com/2012-09-18/news/os-sex-trafficking-arrest-20120914\\_1\\_prostitution-international-drive-investigators](http://articles.orlandosentinel.com/2012-09-18/news/os-sex-trafficking-arrest-20120914_1_prostitution-international-drive-investigators).

<sup>31</sup> Brandon Macz, *Auburn Man Indicted On Sex Trafficking Charges: BPD Investigation Alleges Victims Forced Into Prostitution Through Violence, Threats*, The Bellevue Reporter (July 31, 2014) (explaining that the defendant “forced two women to work as prostitutes through regular beatings and threats, keeping all of their earnings. These services were posted on online ad sites like Backpage.com.”), available at <http://www.bellevuereporter.com/news/269457301.html>.

<sup>32</sup> See, e.g., Press Release, U.S. Attorney’s Office, Eastern District of Virginia, *Nevada Man Pleads Guilty to Sex Trafficking a 15-year old Girl* (Jan. 8, 2015) (“Haskins encountered two juveniles at a hotel around Sacramento, California. One was 15 years old and the other was 17 years old. Both were runaways from foster care. Haskins provided marijuana and eventually recruited them to prostitute for him. Once he recruited them, Haskins performed sex acts with the victims.”), <http://www.justice.gov/usao-edva/pr/press-release-53>; Press Release, U.S. Immigration and Customs Enforcement, *Atlanta Man, Accomplice Sentenced For Sex Trafficking Minor In Georgia*, (Sept. 29, 2014) (“These defendants exploited a 17-year-old girl from West Africa who desperately needed a place to live,” said United States Attorney Sally Quillian Yates.”), <https://www.ice.gov/news/releases/atlanta-man-accomplice-sentenced-sex-trafficking-minor-georgia>; Jon Vanderlaan, *Couple Charged With Transportation Of A Minor To Engage In Sexual Activity*, The Odessa American Online (April 24, 2013) (“There was evidence of sexual intercourse and bruises on the 16-year-old girl’s arms and legs consistent with sexual intercourse, according to the complaint.”), available at [http://www.oaoa.com/news/crime\\_justice/courts/article\\_28ce8972-ad30-11e2-997b-001a4bcf6878.html](http://www.oaoa.com/news/crime_justice/courts/article_28ce8972-ad30-11e2-997b-001a4bcf6878.html).

<sup>33</sup> *Hold the Backpage*, The Economist (July 18, 2015), available at <http://www.economist.com/news/united-states/21657872-sheriff-takes-biggest-marketplace-prostitution-hold-backpage>. After the actions by credit card networks to terminate services for Backpage, users could only purchase advertisements using virtual currencies such as Bitcoin, or by using “credits” purchased with checks, cash, or money orders.

<sup>34</sup> *MasterCard, Visa Stop Escort Ad Payments*, Chicago Sun-Times (July 1, 2015), available at <http://chicago.suntimes.com/mary-mitchell/7/71/737561/tom-dart-backpage-mastercard-visa>.

network from being used for illegal activity.”<sup>35</sup> (Backpage claims that MasterCard and Visa stopped doing business with Backpage because they were threatened by Sheriff Thomas J. Dart of Cook County, Illinois;<sup>36</sup> both Visa and MasterCard have said that they took action voluntarily.<sup>37</sup> The Subcommittee has no position on this dispute.)

## 2. *Victims’ Lawsuits Against Backpage.*

Backpage has also faced a number of civil lawsuits brought by trafficking victims. In September 2010, Backpage faced its first civil lawsuit, brought in the Eastern District of Missouri by a minor who was sold for sex and advertised on Backpage by her trafficker.<sup>38</sup> She alleged that Backpage “had a strong suspicion” that the crimes of facilitating prostitution, exploitation of children, and child pornography were being committed on its site “yet was so indifferent that it failed to investigate for fear of what it would learn.”<sup>39</sup> She further alleged that Backpage “had a desire that [the] posters would accomplish their nefarious illegal prostitution activities so that the posters would return to the website and pay for more posting.”<sup>40</sup> The plaintiff sought a civil remedy pursuant to 18 U.S.C. § 2255, which creates a private right of action for child victims of sexual exploitation. Backpage persuaded the district court to dismiss the case on the ground that it was entitled to immunity under Section 230 of Communications Decency Act (CDA), which shields web publishers from civil liability for content to which they do not materially contribute.<sup>41</sup>

Backpage also faces an ongoing civil suit by minor sex trafficking victims in Massachusetts.<sup>42</sup> Unlike the plaintiff in the Missouri case, the Massachusetts plaintiffs allege that Backpage’s platform, categories, and filters actually “assist[ed]

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

<sup>36</sup> See Complaint, *Backpage.com, LLC v. Dart*, No. 15-cv-06340, Dkt. No. 1, ¶¶ 37-40 (N.D. Ill. July 21, 2015).

<sup>37</sup> See Declaration of Martin Elliott, Senior Director of Visa U.S.A., Inc., *Backpage.com, LLC v. Dart*, No. 15-cv-06340, Dkt. No. 47-19, ¶ 4 (N.D. Ill. Aug. 14, 2015) (“At no point did Visa perceive Sheriff Dart to be threatening Visa with prosecution or any other official state action, nor did Visa base its decision on any such threat.”); Br. of Sheriff Thomas J. Dart, *Backpage.com, LLC v. Dart*, No. 15-3047, Dkt. No. 28, at 24 (7th Cir. Oct. 26, 2015) (“Sheriff Dart offered internal communications from MasterCard to establish that prior to receiving Sheriff Dart’s letter, MasterCard had taken steps to terminate services with Backpage due to the illegal or brand damaging activity present in the adult section of Backpage.com.”).

<sup>38</sup> Complaint, *M.A. ex rel. P.K. v. Village Voice Media Holdings, LLC.*, No. 10-cv-01740, Dkt. No. 1, ¶ 9 (E.D. Mo. Sept. 16, 2010).

<sup>39</sup> *Id.* at ¶ 12.

<sup>40</sup> *Id.*

<sup>41</sup> *M.A. ex rel. P.K. v. Village Voice Media Holdings*, 809 F.Supp.2d 1041, 1052, 1058 (E.D. Mo. 2011).

<sup>42</sup> *Doe ex rel. Roe v. Backpage.com, LLC*, 2015 WL 2340771 (D. Mass. Oct. 16 2014).

in the crafting, placement, and promotion of illegal advertisements offering plaintiffs for sale.”<sup>43</sup> But again, Backpage prevailed. The district court held that Backpage.com was immune from civil liability under the CDA.<sup>44</sup>

The Supreme Court of Washington State, however, has reached a contrary conclusion. That court held, in a suit brought by underage sex trafficking victims, that Backpage would not be immune from suit if, as the plaintiffs alleged, Backpage “helped develop the content of [the offending] advertisements.”<sup>45</sup> The Washington plaintiffs allege that Backpage helped with ad-content creation through its posting rules, screening process, and content requirements.<sup>46</sup> The court held these allegations warrant additional factual development, explaining that “[i]t is important to ascertain whether in fact Backpage designed its posting rules to induce sex trafficking to determine whether Backpage is subject to suit under the CDA because ‘a website helps to develop unlawful content, and thus falls within the exception to [CDA immunity], if it contributes materially to the alleged illegality of the conduct.’”<sup>47</sup> The Washington case is now entering civil discovery.

### III. INVESTIGATION TO DATE AND INTERIM FINDINGS

The Subcommittee began its inquiry into online sex trafficking in April 2015. As part of that investigation, the Subcommittee has conducted interviews and briefings with many relevant parties, including victims’ rights groups, nonprofit organizations, technology companies, financial institutions, academic researchers, federal, state, and local law enforcement officials, and several other advertising websites similar to Backpage. The Subcommittee’s investigation is designed to serve Congress’s interest in well-informed legislation to combat sex trafficking via the Internet, including the sale of minors for sexual services through online marketplaces.

Our inquiry eventually turned to Backpage, the market leader in online commercial sex advertising due in part to Backpage’s linkage to an alarming number of sex trafficking cases.<sup>48</sup> According to Shared Hope International, “[s]ervice providers working with child sex trafficking victims have reported that between 80% and 100% of their clients have been bought and sold on

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<sup>43</sup> Amended Complaint, *Doe ex rel. Roe v. Backpage.com, LLC*, No. 14-cv-13870, Dkt. No. 9, ¶ 4 (D. Mass. Nov. 6, 2014).

<sup>44</sup> *See Doe ex rel. Roe*, 2015 WL 2340771, at \*7-\*11.

<sup>45</sup> *J.S. v. Village Voice Media Holdings*, 2015 WL 5164599, at \*2 (Wash. Sup. Ct. Sept. 3, 2015).

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

<sup>47</sup> *Id.* at \*3.

<sup>48</sup> *See supra* Part I.C.

Backpage.com.”<sup>49</sup> The Subcommittee approached Backpage to better understand its role in the industry and its efforts to combat trafficking throughout its moderation and screening procedures.

Backpage maintains that it is a “critical ally” in the fight against human trafficking.<sup>50</sup> The Subcommittee’s investigation to date, however, raises significant questions about that claim. *First*, the Subcommittee has attempted to examine the details of Backpage’s advertisement-review practices. Among the most significant unanswered questions is the extent to which Backpage moderators *edit* the text of advertisements before they are posted. Such editing bears on the effectiveness of Backpage’s purported efforts to combat illegal activity on its site. It also raises questions about whether Backpage’s moderation activities may have the effect of concealing the underlying illegality of some transactions being advertised. *Second*, we have attempted to learn more about how Backpage’s practices enable it to cooperate with law enforcement agencies in its efforts to identify trafficking victims sold on the Internet. *Third*, we have examined Backpage’s financial and corporate structure in order to better evaluate the company’s resources and incentives (or disincentives) to police human trafficking on its site. The Subcommittee’s investigation has revealed that the company has a number of websites in the escort advertising market besides Backpage.com, and possesses substantially greater assets than previously known. *Fourth*, we have found evidence that Backpage has taken steps to evade limitations on its access to credit card payments.

It is important to note that the Subcommittee’s interests in Backpage’s editing of online advertisements, data retention practices, and financial information are described here in connection with a recommendation to enforce the subpoena at issue. Those interests, however, apply more broadly; indeed, similar fact-finding interests have guided and continue to guide the Subcommittee’s investigation of other entities.

#### **A. Backpage’s Efforts to Screen and Edit Commercial Sex Advertisements.**

Backpage’s putative efforts to combat illegal activity on its website center on its so-called “moderation” practices. Moderation is Backpage’s term of art for screening and reviewing advertisements for violations of its internal policies and illegal activity, including human trafficking. The Subcommittee has learned that moderation also entails editing and deleting content *within* advertisements.

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<sup>49</sup> Shared Hope International, *White Paper: Online Facilitation of Domestic Minor Sex Trafficking*, at 1 (Aug. 2014), <http://sharedhope.org/wp-content/uploads/2014/09/Online-Facilitator-White-Paper-August-2014.pdf>.

<sup>50</sup> McDougall, *supra* n.2.

Backpage has publicly touted these procedures as robust and effective. The company's general counsel, Elizabeth McDougall, has testified that "Backpage leads the industry in" its moderation methods,<sup>51</sup> which the company says are an effective way to exclude illegal activity from its site.<sup>52</sup> Ms. McDougall has also said that "[w]e monitor these ads and do everything we can to help law enforcement trace traffickers."<sup>53</sup> The company has gone so far as to describe its moderation practices as the key countermeasure *against* human trafficking. In an op-ed for the *Seattle Times*, Ms. McDougall asserted the company's view that the "key to disrupting and eventually ending human trafficking via the World Wide Web is . . . an online-service-provider community — of businesses including Backpage — that aggressively monitors for and traces potential trafficking cases, and promptly reports to and cooperates with law enforcement."<sup>54</sup>

As part of its broader investigation, the Subcommittee has attempted to assess these claims — to learn what procedures Backpage uses to combat human trafficking, whether they are effective, and how they might be improved. In particular, the Subcommittee has sought to understand the extent to which Backpage edits and strips out certain content before publishing — including content that could potentially help distinguish legitimate ads from potential sex trafficking transactions. Backpage has repeatedly refused to provide documents to the Subcommittee concerning these important issues.

# **1. The Subcommittee's Interest in Backpage's Moderation Practices.**

It is useful to begin with how users create advertisements on Backpage.com. To post an ad, a user clicks a "post ad" button located on the homepage and then selects the appropriate category for the ad, such as automotive, community, jobs, local places, real estate for sale, rentals, services, and adult entertainment. Posting an advertisement is free — except in the adult entertainment section. The adult section has several subcategories, shown below.

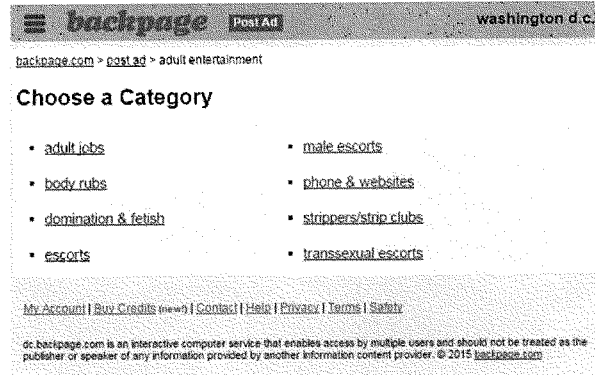
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<sup>51</sup> App. 33; see Committee on Women's Issues, City Council of New York, Tr. 91-92 (Apr. 25, 2012), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1078130&GUID=D1C2D58A-C5A2-48A1-BB64-7AF44AFDC030&Options=&Search>.

<sup>52</sup> McDougall, *supra* n.2.

<sup>53</sup> Liz McDougall, *Liz McDougall on Defending Classified Ads for Erotic Services*, Bloomberg Business, (May 17, 2012), <http://www.bloomberg.com/bw/articles/2012-05-17/liz-mcdougall-on-defending-classified-ads-for-erotic-services>.

<sup>54</sup> McDougall, *supra* n.2.



At this stage, the user enters the details of his ad into an online form — including a title for the ad, a description of it, the advertiser’s age, his e-mail address, and any photos or videos the advertiser wishes to post. Backpage does not verify the user’s age. If the user records his or her age as less than 18, the ad will be rejected with the message, “Oops! Sorry, the ad poster must be over 18 years of age.” The user can then immediately enter a new age greater than 18 without submitting any additional information and proceed with the submission. Users are then offered a variety of upgrades including moving an ad to the top of the listings, adding nearby cities to the posting, and highlighting the ad with thumbnails. Once a user finalizes the ad and pays for any upgrades, the ad will enter Backpage’s moderation process before it can be published.<sup>55</sup>

<sup>55</sup> As of July 2015 the major credit card companies terminated services for Backpage, see Part I.D.1, and since that time Backpage has allowed users to post ads for free in the adult section. Payment options still exist for upgrades giving ads better visibility and placement. Users may pay for these upgrades using Bitcoin or by buying “credits” purchased with checks, cash, or money orders. See Aamer Madhani, Backpage.com Thumbs Nose At Sheriff After Visa, MasterCard Cut Ties, USA Today (July 9, 2015), available at <http://www.usatoday.com/story/money/2015/07/09/backpage-free-adult-services-ads-mastercard-visa/29931651/>.



Backpage already employs a triple-tiered policing system to prohibit and report attempts at human exploitation. Backpage.com operates an automated filter system to preclude ads with suspect words, phrases, codes and data. On top of this filter, Backpage.com conducts two levels of human, i.e., *manual*, review of all content submitted by users for the adult and personal categories to identify suspect content. The first level of review is conducted BEFORE content is allowed to be posted on the website to prevent exposure to public view. Backpage.com also performs post-publication manual review of adult and personal ads as a triple check for possible exploitation or other illegal activity.<sup>56</sup>

In an interview with Subcommittee staff, Ms. McDougall explained that every adult ad went through its moderation process. She further explained that, as of June 2015, 120 of Backpage's 180 employees were dedicated to filtering and editing ads. Most of the employees work full-time out of Backpage offices in Phoenix and Dallas, and they are divided into sections that review ads from various geographic areas that Backpage serves.

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According to Ms. McDougall, moderators receive no formal training but rather learn the job through a “hands-on” apprenticeship system. Initially, the new trainees shadow an experienced moderator at work, and then the experienced moderator monitors the new trainee for a period of time as a quality control measure. Ms. McDougall stated that Backpage does not currently use a written manual or guidance on how moderators should distinguish acceptable from unacceptable content. Changes to moderation practices are communicated informally to Backpage personnel. Ms. McDougall explained that supervisors call meetings when necessary to discuss changes to moderating practices and disseminate them by word of mouth.

Ms. McDougall told the Subcommittee that moderators have the ability either to “fail” (that is, decline to publish) an offending ad *or* to revise the ad in various ways. In particular, Ms. McDougall explained that moderators can edit or delete words and images that violate Backpage’s standards and then publish the revised ad. Ms. McDougall stated that Backpage keeps a record regarding edits that moderators make to an ad. Ms. McDougall was unable to answer the Subcommittee’s questions regarding exactly how and to what extent moderators edit ads — whether by deleting or adding text.

The Subcommittee employed a number of investigative tools in an attempt to gather more information about Backpage’s review, editing, and filtering process. First, as explained in Part IV below, the Subcommittee issued a subpoena to Backpage for the production of documents related to these issues, but Backpage has refused to comply in a substantive way. Second, unable to secure responsive documents, the Subcommittee attempted to advance its fact-finding by issuing subpoenas for the depositions of two Backpage employees to discuss their job duties: Andrew Padilla, the head of Backpage’s moderation department, and Backpage Employee A,<sup>57</sup> who is in charge of training moderators. Both Mr. Padilla and Backpage Employee A retained individual counsel and, invoking their Fifth Amendment privilege, declined to testify on the ground that it might tend to incriminate them.

Finally, the Subcommittee sought information from third parties with knowledge of Backpage’s business practices. In Part II.A.2, we describe several interim findings based on that investigation. Due to Backpage’s failure to cooperate, however, the Subcommittee’s information is necessarily preliminary.

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<sup>57</sup> We have chosen to redact the name of Backpage Employee A, who does not appear to be in Backpage’s upper management.

**2. Backpage’s Outsourced Moderation Practices From 2010–2012.**

**a. Backpage’s Relationship with Company A.**

Backpage has not always had an entirely in-house staff of moderators. Instead, from October 2010 until September 2012, Backpage outsourced this work to a California-based company, identified here as Company A to protect its identity, that employed moderators based in India. Company A markets itself as a full-service data services company specializing in the review of websites containing user-uploaded content, such as photos, text, messages, and chats. Company A moderates websites by removing inappropriate or offensive content from its clients’ websites, according to the guidelines established by each client. Person X, the owner of Company A, explained that his company provides services at a significant cost savings because the moderators performing the labor-intensive and repetitive tasks associated with reviewing online content reside in India.<sup>58</sup> Backpage was Company A’s first contract involving the review of online escort advertisements, and since the termination of the contract in late 2012, Company A has had no client similar to Backpage.

Backpage’s relationship with Company A expanded quickly. Initially, Backpage requested a staffing level of six Company A moderators. By December 2010, that number had risen to 50 or 60 full-time moderators. At a rate significantly lower than the U.S. minimum wage, Backpage paid Company A in the mid five-figures per month from December 2010 through the termination of the services in September 2012.<sup>59</sup>

During the course of their relationship, speedy processing of ads was important to both Company A and to Backpage. In order to provide 24-hour services, three sets of moderators — along with two or three supervisors — worked staggered 8-hour shifts reviewing content posted on Backpage.com. The volume of Backpage advertisements reviewed by Company A’s moderators varied, but in September 2012, the daily volume of advertisements averaged over 14,000 — or approximately 320 per moderator.<sup>60</sup>

Backpage provided Company A with logins that permitted employees to access Backpage.com with administrative privileges from computers in India. Company A’s moderators were then asked to review advertisements for compliance with guidelines provided by Backpage. Each moderator viewed one ad at a time in “queues.” The moderator had the ability to fail, approve, or edit the advertisement.

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<sup>58</sup> Interview with Person X (Oct. 16, 2015).

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

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

Approving an ad would publish the ad on the website. Failing an ad would send the ad to the “fail” queue for additional review, where U.S.-based Backpage moderators would take a second look at the “failed” ad to make a final publication decision.<sup>61</sup>

Over the course of its contract with Company A, Backpage issued specific content guidelines and instructions to the moderators and continuously updated those instructions. In turn, Company A used that guidance to train and evaluate its staff and determine the types of content Backpage considered acceptable.<sup>62</sup> Content guidance from Backpage typically took one of three forms: First, Backpage provided descriptions of images it would accept, decline, or edit, including specific examples. Second, Backpage’s guidance included lists of words that should prompt moderators to either fail or edit an ad. Finally, as described in more detail below, Backpage, often through Mr. Padilla or Mr. Ferrer, would, in some instances, answer questions from Company A’s moderators about failing, approving, or editing specific content in specific ads.<sup>63</sup>

Mr. Ferrer, Mr. Padilla, and Backpage Employee A were also in regular email contact with Person X and his associate, Person Y, about the speed of the moderation process. Backpage had the ability to monitor the number of advertisements awaiting review in each queue, including whether certain advertisements had exceeded a certain amount of time from posting to approval.<sup>64</sup> Automatic email alerts notified Backpage managers when advertisements were waiting in the queue for longer than the target wait time. On occasion, Mr. Padilla or Backpage Employee A emailed Person X or Person Y when advertisements sat too long in the queue to urge them to process the ad.<sup>65</sup> The Process of Editing Advertisements Before Posting.

**b. The Process of Editing Advertisements Before Posting.**

Records from Company A confirm Ms. McDougall’s statement that Backpage moderators edit certain questionable ads before publication rather than simply fail the ad. E-mail correspondence reviewed by the Subcommittee reflects Backpage executives’ concern that declining to publish advertisements could frustrate the site’s customers and threaten its revenue.<sup>66</sup> Accordingly, moderators were instructed to *not* remove ads for certain violations; instead, as noted above,

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<sup>61</sup> App. 95.

<sup>62</sup> App. 96.

<sup>63</sup> App. 104.

<sup>64</sup> App. 107.

<sup>65</sup> App. 75.

<sup>66</sup> App. 111.

Backpage policy held that “ads should be edited” before publishing.<sup>67</sup> Company A’s moderators working for Backpage clearly had the ability to edit an ad by deleting particular words or images. It is less clear whether moderators were also able to add text.

The editing process worked as follows: A moderator would use the reviewing platform, shown below, to screen and edit an ad. If the moderator wanted to edit the *text* of the ad, he would click the “Edit this Ad (Backpage form)” link. The moderator would then enter a reviewing platform through which he could delete specific words or phrases identified by Backpage as problematic. If he needed to delete specific *photos* submitted by a user, the moderator would click “Edit this ad (object editor).” According to the managing moderator, moderators needed to “unobtrusively” edit out problematic content while “maintain[ing] the essence of the ad” — and, by extension, the essence of the transaction advertised.<sup>68</sup>

<b>Administrative Data:</b>	
Publisher: [REDACTED] Ad Type: Unknown Ad Paid Ad: Yes Ad Price: \$100 Whitelisted: Yes	Name: [REDACTED] Phone: Unknown Email: [REDACTED] [s@BAMz] User Created: Friday, July 1, 2011 08:49 AM EDT Settings: Bypass Fraud Alerts, Bypass Moderation, Whitelist Ad, Has Account
<a href="#">View all ads by this user (30,301,308 (3))</a> <a href="#">View Account</a> <a href="#">View Contact Number</a>	<b>Ad Analysis</b> Referrer: Unknown IP: [REDACTED] Ad Created: Monday, August 29, 2011 04:10 PM EDT
<a href="#">Edit this Ad (Backpage form)</a> <a href="#">Edit this ad (object editor)</a> <a href="#">Report this ad to the NCMEC</a> <a href="#">Delete this Ad (usual delete)</a> <a href="#">Moderate this Ad (no)</a> <a href="#">Edit or Delete this User (no)</a> <a href="#">Bypass Moderation (external setting)</a> <b>Invoices for this Ad:</b> \$100 on 08/29/2011 - <a href="#">View</a>	

Backpage managers, including Mr. Ferrer and Mr. Padilla, were intimately involved in communicating the content policies Company A was to apply, and they encouraged moderators to edit rather than fail ads with problematic language. For example, guidelines in October 2010 flagged for scrutiny not only certain sexual images, but also text that conveyed an offer of sex for money (“no pricing for services less than an hour”).<sup>69</sup> With respect to these particular changes in guidance, Mr. Ferrer wrote, “Better to edit by removing bad text or removing bad language. We will do this for a few weeks to give users a chance to adjust.”<sup>70</sup> (The Subcommittee has been unable to determine whether Mr. Ferrer’s expectation that users would “adjust” reflects a view that Backpage policies could guide advertisers to write ads

<sup>67</sup> App. 103.

<sup>68</sup> App. 102.

<sup>69</sup> App. 103.

<sup>70</sup> App. 90.

with fewer red flags for illegal conduct.) In one email, for example, Mr. Ferrer communicated with Company A about how to deal with ads that offer services based on time increments — *e.g.*, 15 or 30 minutes — that are standard in the illegal sex trade.<sup>71</sup> Mr. Ferrer explained: “Removing bad pics and removing bad text like 15 min 1/2hour is critical. I think [the moderators] will be busy.”<sup>72</sup>

Company A operated under instructions from Backpage concerning two categories of problematic terms and phrases that appear in ads — those that should prompt moderators to fail the entire ad, and those that should prompt moderators to edit the ad before publication. Those terms and phrases were put in writing in an excel document that Company A sent to Backpage in July 2012. The document had two tabs.<sup>73</sup> The first tab, “Backpage Banned Code Words,” listed 120 terms that, if present, should prompt the failure of an ad, either by operation of automatic ad-filtering software or through manual failure of the ad by a moderator. The second tab, “Editable Code Words,” was a list of additional problematic terms, including phrases explicitly referring to sexual acts. The instructions required moderators to delete those words from the text of an ad, but then publish the revised ad.<sup>74</sup>

The “banned term” list comprised 120 words that Backpage considered “egregious violations” of its terms of use — including certain sexual acts and words and phrases used by sex workers to refer to sexual acts. Padilla instructed moderators to fail ads that attempted to get around the automatic filter by using variations of those words. Included in that list were words including “schoolgirl,” “teen,” “human trafficking,” and “yung” (a misspelling of “young”). Mr. Padilla further stated that “for term violations **not on this list**, [the moderators] can remove the term or phrase and update the ad.”<sup>75</sup>

Two days later, however, Mr. Padilla issued “clarifications” regarding the banned word list described above. He instructed that moderators should no longer delete ads that “use ‘young’ or misspellings of ‘young.’”<sup>76</sup> Those deletions were

<sup>71</sup> See Meredith Dank, et al., *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities*, Urban Institute, at 201 (Mar. 2014) (table listing prostitution rates in the standard increments of 15 minutes, 30 minutes, and one hour), <http://www.urban.org/uploadedpdf/413047-underground-commercialsex-economy.pdf>; see *id.* at 7 (online prostitution advertisements charge by time increment, as opposed to charges based on sex act).

<sup>72</sup> App. 92. Less than two years later, Backpage changed its guidelines to permit services for less than an hour without providing any explanation.

<sup>73</sup> App. 82.

<sup>74</sup> These terms include words and phrases such as “I will take rough,” “rimming,” and “69.” In addition, two phrases on the “Editable Code Words” list had additional instructions. If an ad using “nail me” or “shag me” included a reference to “money,” the instruction was to fail the ad entirely.

<sup>75</sup> App. 84 (emphasis in original).

<sup>76</sup> App. 83.

capturing too much volume, he explained, because “there are too many legitimate uses of the word to warrant a removal every time.”<sup>77</sup> Instead of deleting advertisements for services with “young,” Mr. Padilla instructed moderators to send the ads to him for additional review.<sup>78</sup> Because Backpage has refused to produce documents directly to the Subcommittee, however, details of that additional review are not available. Yet, Backpage today contains innumerable advertisements for sexual transactions with “girls” described as “young,” “babies,” “fresh,” and the record of Backpage-linked sex trafficking involving underage victims is well-established.<sup>79</sup>

In June 2012, according to internal Company A emails, a tracking document was created to collect “suspicious underage ad links” for further review.<sup>80</sup> According to Company A’s moderator manager, “The definition of underage is anyone under the age of 18. But for the purposes of making reports, we err on the side of caution and try to report anyone that looks under the age of 21.” The guidance continued, “**IF IN DOUBT ABOUT UNDERAGE:** the process for now should be to accept the ad and note the link. However, if you ever find anything that you feel **IS UNDERAGE AND** is more than just suspicious, you can delete the ad, note the link and notify in **IN ONLINE DOC.**” The moderators were urged to be cautious and “**ONLY DELETE IF YOU REALLY VERY SURE PERSON IS UNDERAGE.**”<sup>81</sup>

In addition to words and images, moderators were instructed to delete hyperlinks in ads that directed readers to certain other websites, including *The Erotic Review*, which is best known for hosting customer reviews of prostitutes. Review websites are often explicit and overtly sexual in nature, and provide details such as the nature and quality of specific sex acts.<sup>82</sup> *The Erotic Review* assigns a unique six or seven digit number to what it calls “providers and escorts.” That number, when searched in conjunction with the term “TER” — *The Erotic Review*’s abbreviation — will often display the provider or escorts’ review page (e.g., “TER #123456”). On February 2, 2011, Mr. Padilla issued guidance banning any reference to “TER” or “*The Erotic Review*.”<sup>83</sup> According to Mr. Padilla, Backpage issued the new guidance because the company sought “to distance [itself] from the

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<sup>77</sup> *Id.*

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

<sup>79</sup> See *supra* Part II.C.

<sup>80</sup> App. 122.

<sup>81</sup> *Id.* (emphasis in original).

<sup>82</sup> *The Erotic Review* website states, “[t]his is the section where the guys get to review providers who advertise on the web. You can now know exactly what to expect before you make the call and spend your hard earned money.” *The Erotic Review*, <http://www.theeroticreview.com/reviews/index.asp>.

<sup>83</sup> App. 81.

types of reviews found there.”<sup>84</sup> But Backpage designed this guidance to be easily circumvented. Mr. Padilla, for example, wrote that if a moderator found a “string of numbers without a direct reference to TER, it’s allowed. Examples: ‘Well Reviewed #666666,’ ‘Google my reviews #12011201.’”<sup>85</sup>

As a result, a Backpage user could, in language clear to any savvy buyer of sex services, refer potential buyers to his or her TER review — just so long as the letters “TER” were not used immediately before his or her review number. Of course, the underlying transactions remained what they were. As a result, it appears that Backpage’s moderation process operated to remove explicit references to the likely illegality of the underlying transaction — not to prevent illegal conduct from taking place on its site.

### c. Quality Control Measures.

Quality control for the screening and editing process was an important concern for Backpage during its contract with Company A. Backpage encouraged Company A’s moderators to review ads quickly, but not to “cut[] corners.”<sup>86</sup> Backpage attempted to monitor the moderators to provide “constructive feedback” when a moderator failed an ad that should have been approved or vice versa.<sup>87</sup> But at least as of 2010, the editing platform did not provide Backpage the ability to monitor the specific edits a moderator made to a post; Backpage could only see the final product.<sup>88</sup>

In some instances, Backpage took corrective action after ads containing violations of Backpage content policies were published even after going through the screening and editing process. In these cases, Backpage sent the violation to Company A with the ID number of the moderator who “missed” the particular violation.<sup>89</sup> Company A would then retrain the moderator and explain why the particular item needed editing.<sup>90</sup>

Quality control was important to Backpage not only to ensure compliance with its policies, but also to ensure customer satisfaction. Backpage’s revenue depends on users’ willingness to pay to post advertisements, the cost of which can range from a few dollars to more than one hundred dollars as users buy upgrades to promote or sponsor ads to receive more views. In some instances, users complained

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

<sup>85</sup> App. 88.

<sup>86</sup> App. 113.

<sup>87</sup> App. 106.

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

<sup>89</sup> App. 101.

<sup>90</sup> App. 112.



to Backpage's customer service department when images were deleted that the user believed should have been approved. Mr. Ferrer reacted to that personally. In one email, Mr. Ferrer noted "an increase in users complaining about false positives" and urged the moderators to "exercise care when removing images."<sup>91</sup> In at least one instance, Mr. Ferrer offered a customer \$1,000 in "freebies" when an ad was erroneously edited.<sup>92</sup>

#### **B. Backpage's Data Retention Policies.**

The Subcommittee has also examined Backpage's data-retention practices. Electronic files, such as documents and images, contain basic information known as "metadata" that may include author, date and time created, date modified, and file size. Image metadata may also include geographic coordinates for location at the time the image was created. In Subcommittee interviews, law enforcement officials and relevant nonprofit entities indicated that the preservation of "metadata" associated with advertisements in Backpage's adult section would aid law enforcement in locating victims, identifying pimps and sex traffickers, and preventing child exploitation. Ms. McDougall's 2012 testimony before the New York City Council details the value of this information. In a section of her written testimony entitled "Backpage.com's Combat of Online Trafficking," Ms. McDougall stated, "When traffickers use the Internet, especially in a financial transaction, they leave forensic footprints that create unprecedented tools and evidence that law enforcement can use to locate and rescue victims of exploitation and to investigate, arrest and convict pimps and their criminal networks."<sup>93</sup> "Forensic footprints" described by Ms. McDougall in her testimony include the metadata that law enforcement and investigators use to conduct investigations into sex trafficking.

Despite the potential advantages to law enforcement and other entities engaged in preventing the trafficking of minors, Backpage does not retain the metadata associated with images posted in its adult advertisements. Ms. McDougall stated in her Subcommittee interview that Backpage loses the metadata of photos uploaded to Backpage when the website "resizes" them before publishing. As for other data created by Backpage users, the Subcommittee's investigation has revealed that Backpage's data retention practices, including the length of time that data is stored on Backpage's servers and produced pursuant to law enforcement requests, have changed over time. In a Subcommittee interview, Ms. McDougall stated that Backpage's data retention policy called for a six-month retention window and had been recently changed.

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<sup>91</sup> App. 85.

<sup>92</sup> App. 110.

<sup>93</sup> App. 33.

Image hashing is another important tool available to law enforcement. “Hashing” gives photos a unique fingerprint that enables one to search for identical photos in other places, including on different web pages. In an interview with the Subcommittee, Ms. McDougall claimed that Backpage has implemented hashing, although NCMEC, in testimony submitted to the Subcommittee, states that Backpage “does not appear to utilize free browser add-ons or hashing technology to match images in ads of known children.”<sup>94</sup>

As a result of Backpage’s failure to retain data, outside groups, non-profits, and academic organizations collect, analyze, and retain some of Backpage’s data for use by law enforcement. For example, a group interviewed by the Subcommittee maintains a largescale analytical database, designed specifically for law enforcement, with more than tens of million Backpage ads.<sup>95</sup> Another group, Traffic Jam, developed by Marinus Analytics, allows law enforcement investigators to search Internet classified sites by phone number and identifies “where and when that number has been used, displays trails of ad movement, and pinpoints interstate tracks to which a victim or number can be linked.”<sup>96</sup> Traffic Jam can also identify different victims being advertised with the same phone number. In addition, to address instances in which phone numbers are changed, the system applies techniques that identify alternate numbers used by the same person. This group provides law enforcement tools to build cases specifically against suspected sex traffickers and pimps — using data that Backpage fails to retain. The Subcommittee wishes to examine Backpage’s retention practices to learn what additional valuable information could be preserved that is now lost.

### C. Backpage’s Corporate Structure and Finances.

The Subcommittee has attempted to learn more about Backpage’s corporate structure and finances, in an effort to assess the resources available for, and the costs of undertaking, anti-trafficking measures. We have also attempted to assess the size and profitability of the online marketplace for commercial sex and sex trafficking, and the role Backpage plays in that market. Backpage has refused to comply with the Subcommittee’s subpoena for information on these topics. Despite that, the Subcommittee has continued its fact-finding by gathering information from other sources.

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<sup>94</sup> Testimony of Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children, before Permanent Subcommittee on Investigations, at 8 (Nov. 19, 2015); Interview with Elizabeth McDougall (June 19, 2015).

<sup>95</sup> Interview with Group A (Oct. 9, 2015); Interview with Group B (Nov. 10, 2015).

<sup>96</sup> Larry Alvarez & Jocelyn Cañas-Moreira, *A Victim-Centered Approach to Sex Trafficking Cases*, FBI Law Enforcement Bulletin (Nov. 9, 2015), <https://leb.fbi.gov/2015/november/a-victim-centered-approach-to-sex-trafficking-cases>.

Backpage itself has publicly disclosed very little about these topics, and what it has disclosed has been cryptic. For example, a report surfaced in December 2014 that Backpage had been sold to an undisclosed Dutch company. No further details were provided, and the announcement resulted in widespread concern that Backpage would eventually cease to comply with U.S. law enforcement subpoenas on the ground that it would no longer be under U.S. jurisdiction. Ms. McDougall has argued that were U.S. authorities to somehow shut down domestic escort advertising websites, the industry would simply move abroad, outside the reach of U.S. law enforcement.

The Subcommittee's preliminary findings regarding these matters are discussed below.

### **1. *Ownership and Corporate Structure.***

Backpage and its corporate affiliates are privately held businesses, and no publicly traded company holds any financial interest in Backpage entities. For that reason, details of Backpage's ownership and corporate structure have remained largely hidden from public view.

In her June 19 interview with the Subcommittee, Ms. McDougall stated that Backpage was a Delaware corporation with its principal place of business in Texas.<sup>97</sup> When asked about the sale of Backpage to a Dutch entity, Ms. McDougall represented that she knew none of the details of the transaction, including the name of the new Dutch holding company. As for the company's new ownership, Ms. McDougall said that she did not know whether Michael Lacey and James Larkin — who owned Backpage's former parent, Village Voice Media — had any continued ownership interest in the company. Ms. McDougall told the Subcommittee that all of Backpage's operational activities remained in the United States, and that the company's Dallas headquarters was responsible for operating all Backpage.com websites devoted to foreign locations. According to Ms. McDougall, no operational activities took place in the Netherlands, although she stated that Backpage anticipated that future growth would occur abroad as the company expanded its international presence.<sup>98</sup>

The Subcommittee's investigation has since revealed that Backpage and its related entities have substantial financial assets and a broad corporate umbrella. Under this corporate umbrella, Backpage controls a number of websites and other businesses spanning the commercial sex and online classified advertising industries. Backpage's corporate parent until May 2015 was Medalist Holdings, Inc. ("Medalist"). Medalist is a closely-held company whose principal owners are Michael Lacey and James Larkin. As of February 2015 Medalist owned 100% of

<sup>97</sup> Interview with Elizabeth McDougall (June 19, 2015).

<sup>98</sup> Interview with Elizabeth McDougall (June 19, 2015).

Camarillo Holdings, LLC, which in turn owned Dartmoor Holdings, LLC (“Dartmoor”). Dartmoor owned a raft of limited liability companies, including Backpage.com, LLC; Website Technologies, LLC; and IC Holdings, LLC.

As of February 2015, Medalist was negotiating a transaction in which an unnamed employee would acquire a 100% interest in Dartmoor, and therefore a 100% interest in Backpage.com, LLC.<sup>99</sup> According to the non-binding letter of intent, the anticipated purchase price of this transaction was \$600 million, which Medalist or an affiliate would finance by giving the employee a six-year loan.<sup>100</sup>

## 2. *Revenue and Appraised Value.*

Backpage has guarded the details of its total revenue and the revenue it generates from online escort advertising. In an interview with ABC News that aired in April 2012, Ms. McDougall repeatedly refused to answer questions about the revenue Backpage makes from adult advertisements.<sup>101</sup> Similarly, Backpage has refused the Subcommittee’s repeated attempts to obtain profit and revenue information.<sup>102</sup>

Based on the Subcommittee’s investigation to date, however, Backpage’s corporate group had the following net yearly revenue:

Year	Net Revenue
2012	\$71.2M
2013	\$112.7M
2014	\$135M <sup>103</sup>

<sup>99</sup> App. 150.

<sup>100</sup> *Id.* Mr. Ferrer, the CEO of Backpage.com, LLC, acquired Dartmoor’s wholly-owned affiliate Website Technologies, LLC, in April 2015. App. 160. Website Technologies, LLC, shares an address in Dallas with Backpage.

<sup>101</sup> Katie Hinman & Melia Patria, *Girls Sold for Sex Online, Backpage Defends Decision to Keep Ads Up*, ABC News, <http://abcnews.go.com/US/girls-sold-sex-online-backpage-defends-decision-ads/story?id=16193220>.

<sup>102</sup> Interview with Elizabeth McDougall (June 19, 2015); App. 5 (Subcommittee Subpoena, Schedule A (Oct. 1, 2015)).

<sup>103</sup> App. 156. Net revenue totals for 2013 and 2014 are based on an appraisal of Medalist in contemplation of a potential sale.

In February 2015, Medalist asked an independent financial firm to conduct an appraisal for tax-planning purposes. That appraisal, which was conducted before the major credit card companies took action to terminate services for Backpage, showed that the future revenue of Backpage's corporate group in the coming fiscal years was expected to grow. The firm forecast that revenue as follows:

Year	Net Revenue
2015	\$153.9M
2016	\$173.7M
2017	\$196.1M
2018	\$221.3M
2019	\$249.8M <sup>104</sup>

The appraisal also estimated the total fair-market value of Backpage and its affiliates to be between \$618.4M and \$625.8M.<sup>105</sup> The appraisal firm discounted the above valuations to take into account the company's lack of marketability and reflect the reduced value of a minority, non-controlling interest. With these discounts in place, the fair market value of the common equity of Backpage on a non-controlling and non-marketable basis was calculated to be \$430.7M.<sup>106</sup>

In addition, the calculated EBITDA margin (a common measurement of a company's operating profitability) for the previous twelve months was a staggering 82.4% in 2014 — a product of the company's low operating costs.<sup>107</sup> The average EBITDA margin in 2014 of firms in the online services industry was 9.3%.<sup>108</sup>

### 3. *Other Websites Affiliated with Backpage or Mr. Ferrer.*

To the Subcommittee's knowledge, Backpage has not publicly acknowledged that it manages or operates, or is otherwise affiliated with, other websites besides Backpage.com. In a Subcommittee interview, Ms. McDougall declined to discuss the subject.

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<sup>104</sup> App. 156.

<sup>105</sup> App. 151-153.

<sup>106</sup> App. 155.

<sup>107</sup> App. 157.

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

Our investigation has revealed, however, that Backpage owns or operates several websites that are solely devoted to commercial sex advertising — that is, websites that do not have ten separate classified advertising categories, but instead only one category: “escort” advertisements. Those websites include BigCity.com, EvilEmpire.com, and NakedCity.com. All three of these websites contain graphic male and female nudity, which Backpage purports not to allow on Backpage.com.

BigCity.com’s<sup>109</sup> tagline is “Chat. Share Pictures,” and users can search for persons advertised according to preference, location, and age. The method by which users contact those advertised on BigCity differs markedly from the method employed on Backpage.com. Users interested in arranging encounters with individuals advertised on BigCity can either call the phone number in the ad (if listed) or click on an icon to chat in real time.<sup>110</sup> This chat then occurs directly on BigCity.com.<sup>111</sup>

EvilEmpire.com,<sup>112</sup> which is described as an “escort phone number directory,” shares content with both BigCity.com and Backpage.com.<sup>113</sup> Users may search pictorial profiles of escorts by keyword or location; users interested in purchasing services on EvilEmpire.com may contact the individuals advertised by telephone or linking to ads on Backpage.com or BigCity.com that are purportedly connected to the same individual.<sup>114</sup>

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<sup>109</sup> There are several indications that Backpage and / or its affiliated entities own or manage BigCity.com: BigCity.com’s service provider IC Holdings, LLC, is a parent holding company of Backpage.com, LLC. *Backpage.com LLC v. Dart*, Circuit Rule 26.1 Disclosure Statement, No. 15-30, Dkt. 48, at 2 (7th Cir. Nov. 16, 2015). In addition, Carl Ferrer is BigCity.com’s designated agent, and the listed address is the same as Backpage’s Dallas headquarters. See App. 138 (Interim Designation of Agent to Receive Notification of Claimed Infringement) (May 14, 2013).

<sup>110</sup> App. 128.

<sup>111</sup> App. 132.

<sup>112</sup> Like BigCity.com, EvilEmpire.com appears for all intents and purposes to be a Backpage-affiliated entity controlled by Mr. Ferrer. Carl Ferrer is listed as designated agent; Ad. Tech B.V. (a company of which Carl Ferrer is the CEO, see App. 145) is listed as a service provider, and Backpage’s Dallas address is listed as the address of the designated agent. See App. 137 (Interim Designation of Agent to Receive Notification of Claimed Infringement (Apr. 8, 2015)); App. 148 (Interim Designation of Agent to Receive Notification of Claimed Infringement (May 13, 2013)); App. 140-41.

<sup>113</sup> App. 125, 129, 142.

<sup>114</sup> From at least 2005 until 2014, Backpage.com managed and hosted a discussion board called Backpage Forums at the web address “Forums.Backpage.com.” Sometime in early 2013, the name of the site changed from “Backpage Forums” to “Evil Empire Forums,” which as noted above is a sister website linked to Backpage that exclusively hosts escort advertisements. “Evil Empire Forums” was dismantled and became inaccessible by the end of 2014. The discussion board was organized into topical categories and threads; of fifteen categories, by far the most active was “Sex / Obituaries.” Of the over 500,000 posts found in that category, the topics of discussion included, among other things, escorts and prostitution. See App. 149.

Like EvilEmpire.com, NakedCity.com<sup>115</sup> consists solely of escort ads containing photos, videos, and text, and also like Evil Empire, the site shares content with BigCity.com and Backpage.com.<sup>116</sup> Users may contact the person advertised on NakedCity.com with the listed phone number or click on profiles that link to ads on BigCity.com or Backpage.com.<sup>117</sup>

None of these websites is a forum for non-adult services. That is striking because Backpage officials have stressed publicly, and emphasized to the Subcommittee, that Backpage.com itself has ten separate categories, only one of which involves “adult” entertainment and services. In a Subcommittee interview, for example, Ms. McDougall noted that the adult category made up only 12% of advertisements on Backpage.com. She also distinguished Backpage.com from other websites devoted exclusively to illegal content.

#### **D. Credit Card Processing.**

The Subcommittee’s investigation has revealed steps taken by Backpage to circumvent restrictions on its access to credit card networks. Major credit card companies have attempted to terminate credit card services for customers buying advertisements on Backpage. Visa and MasterCard did so in July 2015, while American Express had done the same earlier in the year.<sup>118</sup> Mr. Ferrer has since stated in a sworn affidavit that the “practical effect” of the termination of credit cards services “has been to cut off nearly all revenue to Backpage.com.”<sup>119</sup> Backpage’s primary income since that time appears to have been derived from advertisers purchasing ads with virtual currencies, or buying “credits” with checks, cash, or money orders.

The card networks’ termination of services for Backpage in July 2015 was not the first effort by the financial community to sever ties with Backpage. In August 2013, one large financial institution that issues credit cards (what is known as an “issuing bank”) prevented its cardholders from making purchases at the merchant Backpage.com due to concerns that Backpage could possibly be facilitating human trafficking.

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<sup>115</sup> NakedCity.com is also controlled by Carl Ferrer’s entity Ad Tech B.V. See App. 137 (Interim Designation of Agent to Receive Notification of Claimed Infringement (Apr. 8, 2015)).

<sup>116</sup> App. 127, 131, 143.

<sup>117</sup> App. 143.

<sup>118</sup> Mary Mitchell, *MasterCard, Visa Stop Escort Ad Payments*, Chicago Sun-Times (July 1, 2015), available at <http://chicago.suntimes.com/mary-mitchell/7/71/737561/tom-dart-backpage-mastercard-visa>.

<sup>119</sup> Declaration of Carl Ferrer, *Backpage.com, LLC v. Dart*, No. 15-cv-06340, Dkt. No. 88-31, at 11 (N.D. Ill. Oct. 6, 2015).

The block was successful; however, the financial institution identified additional purchases with Backpage.com via alternative names such as “‘B\*pageclassifiedad’ and ‘b\*cksolutions.’” The financial institution told the Subcommittee that while there may be legitimate reasons for a merchant using multiple merchant names, a merchant could theoretically engage in such behavior to subvert restrictions on access to a bank’s credit network.

#### IV. THE SUBCOMMITTEE’S SUBPOENA TO BACKPAGE

The Subcommittee’s investigation has raised a number of important questions about Backpage’s efforts to combat human trafficking on its website.<sup>120</sup> As explained below, the Subcommittee has attempted several times to obtain information from Backpage about its moderation practices, data retention, basic revenue, and other important topics. Backpage, however, has refused to comply with the Subcommittee’s fact-finding, including its documentary subpoenas.

##### A. Initial Fact-Finding Attempts.

PSI first contacted Backpage on April 15, 2015, to request an interview to discuss Backpage’s business practices. On June 19, 2015, after nearly two months of extensive communication with Backpage’s outside counsel regarding the specific topics that the Subcommittee wished to discuss, the Subcommittee conducted an interview with Backpage general counsel Liz McDougall. During that interview, Ms. McDougall would not answer several critical questions about the Subcommittee’s main area of interests, including basic questions about Backpage’s ownership and the details of its much-touted procedures for screening advertisements for illegality.

On July 7, 2015, the Subcommittee issued a subpoena to Backpage requesting documents related to Backpage’s basic corporate structure, the steps it takes to review advertisements for illegal activity, its interaction with law enforcement, and its data retention policies, among other relevant subjects.<sup>121</sup> The subpoena was returnable August 7, 2015. On August 6, Backpage informed the Subcommittee by letter that it would not produce *any* documents in response to the subpoena. It contended that the subpoena violated the First Amendment, on the ground that it is a publisher of protected speech (*i.e.*, commercial advertising).<sup>122</sup> After carefully considering Backpage’s position, the Chairman and Ranking Member sent a letter to Backpage explaining that the First Amendment cases on which Backpage relied were not

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<sup>120</sup> We emphasize again that those questions, and the accompanying findings, necessarily focus on Backpage only because that company has failed to comply with our subpoena. This recommendation seeks to inform the Senate about Backpage’s non-compliance as well as the importance of the Subcommittee’s fact-finding endeavor.

<sup>121</sup> See Letter and Subpoena from PSI to Backpage (July 7, 2015).

<sup>122</sup> See Letter from Backpage to PSI at 5 (Aug. 6, 2015).



applicable. The Subcommittee asked Backpage to submit a further explanation of its position.

Meanwhile, in an attempt to continue its fact-finding, the Subcommittee issued subpoenas for the depositions of two Backpage employees to discuss their job duties. The two employees — Andrew Padilla (the head of Backpage’s moderation department) and another employee in charge of training Backpage’s roughly 80 moderators (“Backpage Employee A”) — retained individual counsel and, invoking their Fifth Amendment privilege, declined to testify on the ground that it might tend to incriminate them.<sup>123</sup> Mr. Ferrer also declined to be voluntarily interviewed by Subcommittee staff.

#### **B. The October 1 Subpoena and Backpage’s Objection.**

On October 1, 2015, the Subcommittee withdrew its original subpoena and issued a new, more targeted subpoena focused on its areas of principal interest.<sup>124</sup> This subpoena requested, among other items, documents concerning Backpage’s moderation efforts, including information related to editing or modifying ads before publishing. The subpoena also requested documents concerning metadata, document retention, basic corporate information, and revenue derived from adult advertisements.

The subpoena required Mr. Ferrer to produce the documents named in the subpoena schedule by October 23, 2015, or else to appear personally on that date.<sup>125</sup> In a letter accompanying the subpoena, the Chairman and Ranking Member notified Mr. Ferrer that he was required to assert any privilege or right to withhold documents by the October 23 return date along with a complete explanation of the privilege or other right to withhold documents.<sup>126</sup> After counsel for Backpage committed to do this,<sup>127</sup> the Subcommittee continued Mr. Ferrer’s personal appearance “to permit the Subcommittee to consider any objection [he] wish[ed] to submit.”<sup>128</sup>

On the return date, Backpage produced twenty-one pages of publicly available documents and submitted a letter objecting to certain document requests

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<sup>123</sup> Letter from Steven Ross to PSI (Sept. 3, 2015).

<sup>124</sup> In the letter accompanying the October 1 subpoena, PSI explained that “we continue to see no legal merit in Backpage’s explanation for its categorical refusal to comply with the Subcommittee’s subpoena” and that withdrawal of the earlier subpoena “does not reflect, in any way, our agreement with the merits of Backpage’s expansive claim of privilege; rather, it represents a good-faith effort to address Backpage’s expressed concerns.” Letter from PSI to Backpage at 2 (Oct. 1, 2015).

<sup>125</sup> Subpoena, Oct. 1, 2015.

<sup>126</sup> Letter from PSI to Backpage at 3 (Oct. 1, 2015).

<sup>127</sup> E-mail from Steven Ross to PSI (Oct. 15, 2015).

<sup>128</sup> Letter from PSI to Backpage at 1 (Oct. 20, 2015).

in the subpoena (Requests One, Two, Three, Five, and Eight) on the grounds that they violated the First Amendment and were not pertinent to a proper legislative investigation. In particular, Backpage objected that “First Amendment tensions” inherent in requesting information from a “publisher” counseled in favor of reading the Subcommittee’s authorizing resolution not to encompass the power to issue this subpoena. In its letter, Backpage cited a number of cases in which courts had invalidated investigatory demands seeking information about disfavored political dissenters — for example, a Southern State in the 1950s seeking the identities of NAACP members, *NAACP v. Alabama*, 357 U.S. 449 (1958), or a House committee trying to discover who is reading “books of a particular political tendentiousness,” *United States v. Rumely*, 345 U.S. 41, 42 (1953).

On November 3, on behalf of the Subcommittee, the Chairman and Ranking Member overruled Backpage’s objections.<sup>129</sup> They explained that Backpage’s vague and undeveloped First Amendment arguments lacked merit. Unlike the cases cited by Backpage, in which subpoenas or other investigatory tools were used to further the official suppression of ideas, the Subcommittee’s subpoena infringed no one’s First Amendment rights. Unlike the demands for membership lists 60 years ago, the October 1 subpoena instructs Backpage to *redact* any personally identifying information of its users. And the mere fact that Backpage is a publisher of commercial speech does not immunize it from legitimate investigations into the unprotected, unlawful activity that undisputedly *also* occurs on its facilities. *Cf. Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 (1986) (“[T]he First Amendment is not implicated by the enforcement of a public health regulation of general application against the physical premises in which respondents happen to sell books”).

In any event, contrary to Backpage’s contentions, there is no doubt that the Subcommittee’s authorizing resolution encompasses this investigation. The Subcommittee is authorized to investigate “all \* \* \* aspects of crime” within the United States that affect the “national health, welfare, safety,” S. Res. 73 § 12(e)(1)(D), 114th Cong., and is specifically tasked with examining “organized criminal activity which may operate in or otherwise utilize the facilities of interstate or international commerce,” *id.* § 12(e)(1)(C). Human trafficking is a federal crime. *See* 18 U.S.C. §§ 1581–1592. Importantly, Congress has specifically recognized human trafficking as an activity of *organized* crime; the Trafficking Victims Protection Reauthorization Act of 2003 declared that human trafficking offenses are predicates to liability under the Racketeer Influenced Corrupt Organizations (RICO) Act. *See* Pub. L. 108-193, 117 Stat. 2875, 2879, § 5(b); 18 U.S.C. § 1961(1). And the Internet, an important facility of interstate commerce, has become an increasingly central marketplace for human trafficking in the United States.<sup>130</sup> The Subcommittee is empowered to investigate how individuals are

<sup>129</sup> *See* App. 39.

<sup>130</sup> *See generally* Mark Latonero, *supra* n.16.

utilizing the Internet, including commercial sex advertising websites like Backpage.com, to further their illicit trafficking schemes, as well as what mechanisms websites can use to prevent such abuse of interstate facilities.

Senators Portman and McCaskill further rejected Backpage's entirely unexplained contention that the document requests in the October 1 subpoena were not pertinent to a proper investigation. The Subcommittee's ruling articulated in detail why each request relates to PSI's efforts to understand online sex trafficking, what companies like Backpage can do to prevent it, and what further steps the government might take to further combat it.<sup>131</sup>

Backpage was ordered and directed to comply with the subpoena by November 12, 2015. Mr. Ferrer's personal appearance was continued until the hearing date of November 19, 2015 at 10:00 a.m.

### **C. Backpage's Continued Noncompliance with the Subpoena.**

Despite the order to finally comply with the subpoena by November 12, Backpage did not file any response until the following day, November 13. Backpage neither sought an extension of the deadline nor has it furnished any excuse for its tardy submission. By letter, counsel for Backpage reiterated the company's First Amendment and pertinence objections to the subpoena but explained that, "as a gesture of good faith," the company would produce some documents in response to some of the subpoena's eight document requests.

In particular, Backpage's November 13 production consisted of 16,838 pages of documents, more than 16,000 of which, or some 96%, consist of the en masse production of Backpage's responses to other government subpoenas. For example, just one file produced in this category contained more than 750 pages of documents — including hundreds of pages of ads and photos from 2013 and 2014 — responsive to a single government subpoena requesting information relevant to one Backpage user. Although Backpage explained that it had "five million" additional pages of this material to produce,<sup>132</sup> Subcommittee staff informed Backpage it had no need to review that material. Backpage also produced an additional 350 pages of emails from law enforcement officials thanking Backpage employees for responding to police inquiries. The rest of the production consisted of public letters, public testimony, and screenshots of the Backpage website and its platform.

Backpage has declined to produce the many internal documents it possesses that are responsive to the subpoena's requests for information about its moderation procedures, data-retention policies, financial information, and so on. For example, Backpage has failed to produce any internal emails concerning the moderation of

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<sup>131</sup> See App. 39.

<sup>132</sup> Email from Steven Ross to PSI (Nov. 13, 2015).

ads — the subject of Request One in the subpoena (“[a]ny documents concerning Backpage’s reviewing, blocking, deleting, editing, or modifying advertisements in Adult Sections, either by Backpage personnel or by automated software processes \* \*”). As the Subcommittee’s report demonstrates, many such emails have been exchanged between Backpage employees during the time period covered by the subpoena; some of them, obtained from third parties, are exhibits to the report. Nevertheless, Backpage has neither produced these documents nor described them in a privilege log that would enable the Subcommittee to adjudicate individualized objections to producing them (a privilege log is required by the subpoena’s terms).

In order to clarify the state of Backpage’s production, on November 14, 2015, Subcommittee staff asked Backpage’s lawyers to clarify the following:

- With which of the subpoena’s eight requests would Backpage comply?
- Are there any documents responsive to the subpoena that Backpage is withholding on First Amendment grounds or because of a claim that the subpoena does not pertain to a valid investigation?
  - If so, what are the categories of those documents?
  - Which of the subpoena’s requests do they pertain to?
  - What is the approximate volume of withheld documents?
- What custodians have been searched for responsive documents?<sup>133</sup>

In response, Backpage clarified by letter that it was standing by its First Amendment, overbreadth, and pertinence objections to the subpoena. The company’s lawyers wrote that they “have not represented, and do not now represent, that the company’s submissions of information and documents to date constitute either the fruits of complete search of every bit of data possessed by Backpage.com or by all of its employees over the full (nearly six year) time period covered by the Subpoena.” Instead, Backpage took the position that even “to be required to conduct such a search of review” would be “constitutionally inappropriate.” Backpage encouraged the Subcommittee to “present[] this issue to the courts for resolution” by invoking the statutory mechanism for civil enforcement of Senate subpoenas.

## V. CONCLUSION

The October 1, 2015, subpoena issued to Mr. Ferrer and Backpage.com should be enforced.

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<sup>133</sup> PSI Email to Steven Ross (Nov. 14, 2015).

# APPENDIX

RON JOHNSON, WISCONSIN, CHAIRMAN  
 JOHN M. LADD, ARIZONA  
 ROBERT PORTMAN, OHIO  
 RAND PAUL, KENTUCKY  
 JAMES L. HARTFORD, OKLAHOMA  
 MICHAEL B. ENZI, WYOMING  
 KELLY AYOTTE, NEW HAMPSHIRE  
 JONI ERNST, IOWA  
 BEN SASSER, NEBRASKA  
 THOMAS R. CARPER, DELAWARE  
 CLAIRE McCASKILL, MISSOURI  
 JON TESTER, MONTANA  
 TERRY GARCIA, WISCONSIN  
 HEIDI HEUTLAMP, NORTH DAKOTA  
 CORY A. BOOKER, NEW JERSEY  
 GARY L. PETERS, MICHIGAN

KETH B. ASHDOWN, STAFF DIRECTOR  
 GABRIELLE A. BATTON, MINORITY STAFF DIRECTOR

**United States Senate**  
 COMMITTEE ON  
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
 WASHINGTON, DC 20510-6250  
 October 1, 2015

**VIA U.S. MAIL AND EMAIL (sross@akingump.com)**

Carl Ferrer, CEO  
 Backpage.com, LLC  
 2501 Oak Lawn Ave.  
 Dallas, TX 75219

c/o Steve Ross, Esq.  
 Akin Gump Strauss Hauer & Feld, LLC  
 1333 New Hampshire Ave., NW  
 Washington, DC 20036

Dear Mr. Ferrer:

Pursuant to its authority under Senate Resolution 73, Section 12(e), 114th Congress, the U.S. Senate Permanent Subcommittee on Investigations is currently investigating matters related to human trafficking. We write regarding the Subcommittee's attempts to advance its legitimate legislative fact-finding on that issue by better understanding the business practices of Backpage.com, LLC.

As you know, on July 7, 2015, the Subcommittee issued a subpoena for documents to Backpage. In response, your company asserted a sweeping claim of First Amendment privilege and on that basis refused to produce any documents. The company declined, however, to identify any particular request for information in the subpoena that it considered constitutionally problematic. Indeed, Backpage conceded at a September 14 meeting with Subcommittee staff that the subpoena did not request any of the types of information that trigger scrutiny under well-established First Amendment doctrine concerning informational demands.<sup>1</sup> Instead, Backpage's constitutional argument is that the subpoena is overly broad and allegedly reflects an attempt by the Subcommittee to "harass" and "damage" Backpage rather than conduct bona fide fact-finding.

To date, Backpage has provided neither factual support nor plausible legal authority for its novel claim of constitutional privilege. The company points chiefly to the "breadth" of the July 7 subpoena as its evidence of an alleged motive of harassment. We find that contention to be meritless. The Subcommittee has given Backpage a number of opportunities to engage in

<sup>1</sup> See generally *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963) (witness could not be compelled to produce membership list); *NAACP v. Alabama*, 357 U.S. 449 (1958) (same); *Watkins v. United States*, 354 U.S. 178 (1957) (witness could not be compelled to disclose whether his associates were members of the Communist Party).

discussions to narrow the subpoena, but the company has declined to negotiate.<sup>2</sup> Backpage has similarly rebuffed the Subcommittee's repeated invitation to negotiate appropriate search terms, custodians, and data sources to limit the request in a reasonable manner to mitigate any potential burden on Backpage.<sup>3</sup> Not only has the company failed to identify specific burdensome or problematic items, counsel for Backpage has also declined to tell the Subcommittee whether the company made *any* attempt to determine the extent of the burden it alleges by searching its files for responsive documents.<sup>4</sup> Finally, Backpage has suggested that the Subcommittee's investigation is part of a concerted effort, with other unrelated governmental actors, to engage in harassment.<sup>5</sup> That suggestion is false; our investigation is our own.

For these reasons and for those described in the Subcommittee's August 26, 2015, letter, we continue to see no legal merit in Backpage's explanation for its categorical refusal to comply with the Subcommittee's subpoena. Nevertheless, in the hope of overcoming the current impasse, we are withdrawing the Subcommittee's July 7 subpoena and issuing the attached subpoena seeking a narrower subset of documents. The withdrawal of the July 7 subpoena does not reflect, in any way, our agreement with the merits of Backpage's expansive claim of privilege; rather, it represents a good-faith effort to address Backpage's expressed concerns. As always, the Subcommittee remains willing to discuss data sources, custodians, and search terms to facilitate the production of documents in a timely and efficient manner. Please note, as previously stated, that in its production Backpage should redact any personally identifying information of users.

The attached subpoena contains requests for information that are at the core of the Subcommittee's investigation—namely, Backpage's business practices as the premier online purveyor of escort advertisements, which have been linked to sex trafficking.<sup>6</sup> We believe that gaining a complete understanding of Backpage's anti-trafficking measures, including its screening and verification procedures for advertisements posted in its "adult" section, will aid Congress as it considers additional legislation in this area. More specifically, robust fact-finding will potentially aid Congress in crafting legislation that combats human trafficking in a focused way while also respecting First Amendment rights.

Given the seriousness of Backpage's refusal to comply with the previous subpoena, we request that the company advise the Subcommittee, no later than October 13, 2015, if it intends

<sup>2</sup> See, e.g., Letter from Backpage to Permanent Subcommittee on Investigations (Aug. 6, 2015) ("even attempting to revise the subpoena in its current form would be a fruitless endeavor").

<sup>3</sup> See, e.g., Letter from Permanent Subcommittee on Investigations to Backpage (Aug. 26, 2015) ("the Subcommittee remains willing to discuss options for minimizing that burden (e.g., through selecting search terms and covered custodians)").

<sup>4</sup> Despite repeated requests, Backpage has also failed to provide a privilege log, as the subpoena instructions and longstanding Subcommittee custom require.

<sup>5</sup> Meeting between Steven Ross, Robert Corn-Revere, and Stanley Brand and Permanent Subcommittee on Investigations Staff (Sept. 14, 2015).

<sup>6</sup> See, e.g., *Backpage.com, LLC v. Dart*, No. 15-cv-06340, slip op. at 3 (N.D. Ill. Aug. 24, 2015) ("Backpage's adult services section overwhelmingly contains advertisements for prostitution, including the prostitution of minors."); *Backpage.com LLC v. McKenna*, 881 F.Supp.2d 1262, 1267 (W.D. Wash. 2012) ("Many child prostitutes are advertised through online escort advertisements displayed on Backpage.com and similar websites.").

not to produce any documents in response to the attached subpoena. In addition, Backpage must assert any claim of privilege or other right to withhold documents from the Subcommittee by October 23, 2015, the return date of the subpoena, along with a complete explanation of the basis of the privilege or other right to withhold documents—whether constitutional or otherwise, and whether general or specific to particular documents or types of documents. The Subcommittee will rule on any objections to the subpoena, including any claim of privilege, based on submissions in the record at that time. We caution you that failure to comply with the attached subpoena or raise a legitimate privilege for withholding documents may cause the Subcommittee to consider further enforcement actions, including civil enforcement and referral for criminal contempt.<sup>7</sup>

Due to security concerns, the Senate Sergeant at Arms requires special treatment for materials delivered to Senate offices. To avoid any unnecessary delays in connection with the production, therefore, we ask that you carefully review the attached *Procedures for Transmitting Documents to the Permanent Subcommittee on Investigations*. Please contact Mark Angehr (Senator Portman) or Brandon Reavis (Senator McCaskill) at 202.224.3721 if you have any questions about this matter. Thank you for your assistance.

Sincerely,



Rob Portman  
Chairman  
Permanent Subcommittee on Investigations



Claire McCaskill  
Ranking Member  
Permanent Subcommittee on Investigations

Attachments

<sup>7</sup> 2 U.S.C. § 192 (criminal refusal of witness to testify or produce papers); 2 U.S.C. §§ 288b, 288d (civil action to enforce subpoena).



UNITED STATES OF AMERICA  
*Congress of the United States*

To Carl Ferrer, CEO  
Backpage.com, LLC  
2501 Oak Lawn Ave.  
Dallas, TX 75219

*Greeting:*

*Pursuant to lawful authority, YOU ARE HEREBY  
COMMANDED to appear before the SENATE PERMANENT  
SUBCOMMITTEE ON INVESTIGATIONS OF THE  
COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS of the Senate of the United States, on  
October 23, 2015, at 10:00 o'clock a.m., in Russell Senate Office Building  
199, then and there to testify what you may know relative to the subject  
matters under consideration by said Subcommittee, and produce all  
materials as set forth in Schedule A, attached hereto and made a part  
thereof.*

*Hereof fail not, as you will answer your default under the pains and  
penalties in such cases made and provided.*

To \_\_\_\_\_  
*to serve and return.*

Personal appearance in  
Washington, D.C., waived if  
subpoenaed materials are produced  
to the Subcommittee on or before  
the herein appointed date and time.

*Given under my hand, by authority vested  
in me by the Committee, on this 1st  
day of October, 2015.*



*Chairman, Senate Permanent Subcommittee  
on Investigations of the Committee on  
Homeland Security & Governmental Affairs*

App. 000004

Carl Ferrer, CEO  
Backpage.com, LLC  
2501 Oak Lawn Ave.  
Dallas, TX 75219

**SCHEDULE A**

Please provide the following documents by October 23, 2015:

1. Any documents concerning Backpage's reviewing, blocking, deleting, editing, or modifying advertisements in Adult Sections, either by Backpage personnel or by automated software processes, including but not limited to policies, manuals, memoranda, and guidelines.
2. Any documents concerning advertising posting limitations, including but not limited to the "Banned Terms List," the "Grey List," and error messages, prompts, or other messages conveyed to users during the advertisement drafting or creation process.
3. Any documents concerning reviewing, verifying, blocking, deleting, disabling, or flagging user accounts or user account information, including but not limited to the verification of name, age, phone number, payment information, email address, photo, and IP address. *This request does not include the personally identifying information of any Backpage user or account holder.*
4. Any documents concerning human trafficking, sex trafficking, human smuggling, prostitution, or the facilitation or investigation thereof, including but not limited to policies, manuals, memoranda, and guidelines.
5. Any documents concerning Backpage policies regarding the following: (a) data retention; (b) retention or removal of metadata of images; and (c) hashing of images in Adult Sections.
6. Documents sufficient to show, for each of the past three years, the number of advertisements: (a) posted in Adult Sections on a monthly and yearly basis; (b) posted in all other sections, not including Adult Sections, on a monthly and yearly basis; and (c) directly reported by Backpage to local, state, or federal law enforcement agencies. In lieu of producing documents, you may state the numbers for (a), (b), and (c) by month for each of the past three years.
7. Documents sufficient to show, for each of the past three years, the number of advertisements in Adult Sections deleted or blocked by: (a) automated review; (b) Tier I review; and (c) Tier II review. In lieu of producing documents, you may state the number of advertisements in Adult Sections deleted or blocked by each such process by year for each of the past three years.
8. Documents sufficient to show, for each of the past five years, Backpage's: (a) annual revenue and profit; (b) annual revenue and profit derived from Adult Sections; and (c) annual revenue and profit derived from all other sections, not including Adult Sections. In lieu of producing documents, you may provide the financial information described in (a), (b), and (c) for each of the past five years.

Except where indicated otherwise, the time period covered by this subpoena is from January 1, 2010 to the present.

The documents subpoenaed include all those that are in the custody, control or possession, or within the right of custody, control, or possession, of Backpage, or its agents, employees, or representatives. The documents subpoenaed included work-related communications transmitted via non-work email addresses and non-work email systems.

Documents should be produced in their entirety, without abbreviation, modification, or redaction, including all attachments and materials affixed thereto. The only permissible redaction is of personally identifying information of users posting advertisements or accessing advertisements.

All documents should be produced in the same order as they are kept or maintained in the ordinary course, or the documents should be organized and labeled to correspond to the categories of the documents requested below. Parties subject to this subpoena are subject to a duty to supplement with respect to each request. Each category of documents subpoenaed shall be construed independently, and no category shall be viewed as limiting the scope of any other category.

If the subpoena cannot be complied with in full, it shall be complied with to the extent possible, with an explanation of why full compliance is not possible. Any document withheld on the basis of privilege shall be identified on a privilege log submitted with response to this subpoena. The log shall state the date of the document, its author, his or her occupation and employer, all recipients, the title and/or subject matter, the privilege claimed and a brief explanation of the basis of the claim of privilege. If any document responsive to this subpoena was, but no longer is, in your custody, control, or possession, identify the document and explain the circumstances by which it ceased to be in your custody, control, or possession.

Documents shall be delivered as delimited text with images and native files in accordance with the attached Data Delivery Standards.

Other than native files produced along with TIF images in accordance with the attached Data Delivery Standards, every page of material produced to the Subcommittee must contain a unique Bates number. All files produced shall be named according the Bates range that file contains (e.g. YourCo-00001-YourCo-00035).

Documents produced on paper (those from paper files that you choose to produce as such) shall not contain any permanent fasteners (i.e. staples), but shall be separated based on the divisions between documents as it is maintained in the custodian's files by non-permanent fasteners (e.g. paper clips, binder clips, rubber bands) or a non-white flip sheet.

**Definitions:**

For purposes of this subpoena:

1. "Backpage" includes, but is not limited to, Backpage.com LLC, Camarillo Holdings LLC, New Times Media LLC, or any other predecessors, successors, or other entity administering, owning, operating, or controlling the website or suite of websites comprising Backpage.com and its affiliated websites from January 1, 2010 to the present day.
2. "Adult Sections" includes, but is not limited to all subsections in the "adult" section of Backpage ("escorts," "body rubs," "strippers and strip clubs," "dom & fetish," "ts," "male escorts," "phone & websites," and "adult jobs") and the subsection "massages" in the "services" section of Backpage.
3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meeting, by telephone, mail telex, facsimile, computer, discussions, releases, delivery, or otherwise. It includes work-related communications transmitted via non-work email address or non-work email system.
4. The term "document" includes any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: agreements; papers; memoranda; correspondence; reports; studies; reviews; analyses; graphs; marketing materials; brochures; diagrams; photographs; charts; tabulations; presentations; working papers; records; records of interviews; desk files; notes; letters; notices; confirmations; telegrams; faxes; telexes; receipts; appraisals; interoffice and intra office communications; electronic mail (e-mail); contracts; cables; recordings; notations or logs of any type of conversation, telephone call, meeting or other communication; bulletins; printed matter; computer printouts; teletype; invoices; transcripts; audio or video recordings; statistical or informational accumulations; data processing cards or worksheets; computer stored and generated documents; computer databases; computer disks and formats; machine readable electronic files or records maintained on a computer; diaries; questionnaires and responses; data sheets; summaries; minutes; bills; accounts; estimates; projections; comparisons; messages; correspondence; electronically stored information and similar or related materials. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
5. The term "concerning" means relating to, referring to, describing, evidencing, or constituting.
6. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information that might otherwise be construed to be outside its scope. The term "any" means both any and all. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders. The use of a verb in any tense, mood, or voice shall be construed as the use of the verb in all other tenses, moods, or voices, as necessary to

bring within the scope of this subpoena any information that might otherwise be construed to be outside its scope.

RON JOHNSON, WISCONSIN, CHAIRMAN  
 JOHN MCGAIN, ARIZONA  
 ROB PORTMAN, OHIO  
 RAND PAUL, KENTUCKY  
 JAMES LANKFORD, OKLAHOMA  
 MICHAEL B. ENZI, WYOMING  
 KELLY AYOTTE, NEW HAMPSHIRE  
 JON HIRST, IOWA  
 BEN SASSER, NEBRASKA  
 THOMAS R. CARPIS, DELAWARE  
 CLAIRE McCASKILL, MISSOURI  
 JON TESTER, MONTANA  
 TAMMY BALOW, WISCONSIN  
 HEIDI HEITKAMP, NORTH DAKOTA  
 CORY A. BOOKER, NEW JERSEY  
 GARY C. PETERS, KANSAS

KEITH B. ASHENDINE, STAFF DIRECTOR  
 GABRIELLE A. BATON, MINORITY STAFF DIRECTOR

## United States Senate

COMMITTEE ON  
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
 WASHINGTON, DC 20510-6250

October 20, 2015

**VIA U.S. MAIL AND EMAIL (sross@akingump.com)**

Carl Ferrer, CEO  
 Backpage.com, LLC  
 2501 Oak Lawn Ave.  
 Dallas, TX 75219

c/o Steve Ross, Esq.  
 Akin Gump Strauss Hauer & Feld, LLC  
 1333 New Hampshire Ave., NW  
 Washington, DC 20036

Dear Mr. Ferrer:

As part of its investigation of matters related to human trafficking, the U.S. Senate Permanent Subcommittee on Investigations issued to you a subpoena on October 1, 2015, requiring the production of documents. As you know, the subpoena commands your personal appearance, which is waived if the documents named in the attached schedule are produced on or before the return date of October 23, 2015.

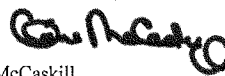
We understand from your attorneys that you will file and explain any objections to the documentary subpoena by the return date of October 23. Your personal appearance is therefore continued to a date to be determined later to permit the Subcommittee to consider any objection you wish to submit. The requested documents along with any objections remain due on the return date at 10:00AM.

Please contact Mark Angehr (Senator Portman) or Brandon Reavis (Senator McCaskill) at (202) 224-3721 if you have any questions about this matter. Thank you for your assistance.

Sincerely,



Rob Portman  
 Chairman  
 Permanent Subcommittee on Investigations



Claire McCaskill  
 Ranking Member  
 Permanent Subcommittee on Investigations

# Akin Gump

STRAUSS HAUER & FELD LLP

STEVEN R. ROSS  
202.887.4343/fax: 202.887.4288  
sross@akingump.com

October 23, 2015

**VIA ELECTRONIC & HAND DELIVERY**

The Honorable Rob Portman, Chairman  
The Honorable Claire McCaskill, Ranking Member  
Permanent Subcommittee on Investigations  
Committee on Homeland Security & Governmental Affairs  
United States Senate  
Russell Senate Office Building, SR-199  
Washington, DC 20510

*Re: October 1, 2015 Subpoena Issued to Backpage.com*

Dear Chairman Portman and Ranking Member McCaskill:

On behalf of Backpage.com, LLC ("Backpage.com"), we write in regard to the subpoena for documents issued by the Permanent Subcommittee on Investigations (the "Subcommittee") on October 1, 2015 (the "Subpoena").

As a preliminary matter, Backpage.com appreciates that the Subcommittee chose to withdraw its prior July 7, 2015 subpoena seeking 41 categories of documents and to issue instead the Subpoena on October 1, 2015 for what it describes as "a narrower subset of documents" comprised of eight categories. As we outlined in our August 6, 2015 and August 26, 2015 letters, we believe the Subcommittee's investigation of Backpage.com raises fundamental and overarching constitutional concerns. Nonetheless, Backpage.com is endeavoring to provide documents sufficient to respond to most of these more targeted requests based on the understanding that "[w]hen First Amendment interests are at stake, the Government must use a scalpel, not an ax." *Bursey v. United States*, 466 F.2d 1059 (9th Cir. 1972). As described in more detail below, however, certain requests still raise First Amendment and other concerns, and are therefore objectionable.

Previous correspondence with the Subcommittee reflects a significant difference of opinion on how First Amendment considerations limit the extent to which the Subcommittee may compel information from Backpage.com regarding its internal operations and finances. The Subcommittee points to the various cases that have invalidated state-level prohibitions of certain online classified advertising practices and suggests that, contrary to a ban, "[t]he Subcommittee

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merely *seeks information* regarding Backpage's business practices." Letter from Chairman Rob Portman to Steven R. Ross, Aug. 26, 2015, at 3 ("August 26 Letter"). And with respect to Supreme Court cases cited by Backpage.com illustrating First Amendment limits to congressional inquiries, the Subcommittee responded that its demands for documents do not pose a First Amendment problem because it is not seeking sensitive information such as membership lists of political organizations, and therefore "avoided seeking *any* documents that identify Backpage users." *Id.* at 4.

In order to establish common ground for discussing First Amendment limits on the government's ability to investigate members of the press, it is important to understand that seeking information can itself exceed the government's constitutional authority, and this is not just limited to inquiries seeking disclosure of a publication's readers or a website's users. The Supreme Court made this clear in *United States v. Rumely*, 345 U.S. 41 (1953), when it held that the Committee for Constitutional Government could not be compelled by subpoena to produce information on the buyers of its books and financial records, including information on receipts from the sale of books, pamphlets, and other literature. It is basic law that investigations alone can violate the First Amendment where "no legal sanction is involved" and even though "Congress has imposed no tax, established no board of censors, instituted no licensing system." *Id.* at 57 (Douglas, J., concurring). Merely "seek[ing] information" (as the Subcommittee puts it) can impose a restriction that is "equally severe" as direct legal sanctions. "Through the harassment of hearings, investigations, reports, and subpoenas government will hold a club over speech and over the press. Congress could not do this by law. The power of investigation is also limited." *Id.* at 58. As the Court held in *Watkins v. United States*, 354 U.S. 178, 188 (1957), "[t]he Bill of Rights is applicable to investigations as to all forms of governmental action." *See also Sweezy v. New Hampshire*, 354 U.S. 234, 245 (1957) ("There is no doubt that legislative investigations, whether on a federal or state level, are capable of encroaching upon the constitutional liberties of individuals.").

To understand the constitutional limits on a congressional investigation, it is first necessary to examine the scope of the committee's authorization and then to analyze the nature of the information being sought. In this case, the cover letter for the October 1, 2015 subpoena explains that the Subcommittee is investigating matters "related to human trafficking" pursuant to Senate Resolution 73, Section 12(e), 114<sup>th</sup> Congress, and that the Subcommittee is seeking a "better understanding [of] the business practices of Backpage.com, LLC." However, the broad, general terms of the authorizing resolution fail to provide the necessary authority where the specific subpoena demands threaten to encroach on constitutionally-protected activity.

Specifically, Section 12(e) authorizes the Subcommittee to study or investigate, in relevant part:



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(C) organized criminal activity which may operate in or otherwise utilize the facilities of interstate or international commerce in furtherance of any transactions and the manner and extent to which, and the identity of the persons, firms, or corporations, or other entities by whom such utilization is being made, and further, to study and investigate the manner in which and the extent to which persons engaged in organized criminal activity have infiltrated lawful business enterprise, and to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce, and to determine whether any changes are required in the laws of the United States in order to protect the public against such practices or activities.

(D) all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety, including investment fraud schemes, commodity and security fraud, computer fraud, and the use of offshore banking and corporate facilities to carry out criminal objectives.

S. Res. 73, Sec. 12(e), 114<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2015). While the committee's investigatory authority unquestionably is broad, that does not necessarily vest it with blanket authority to probe the details of a business that provides a platform for online speech.

Where such First Amendment activities are implicated, the Subcommittee's authority must be construed narrowly. *Sweezy*, 354 U.S. at 245 ("It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech and press, freedom of political association, and freedom of communication of ideas . . ."). Indeed, the broader and more general the authorizing resolution, the greater is the constitutional obligation to establish the pertinence and compelling need for the information being sought. This is because "the mere semblance of legislative purpose would not justify an inquiry in the face of the Bill of Rights," and "when First Amendment rights are threatened, the delegation of power to the committee must be clearly revealed in its charter." *Watkins*, 354 U.S. at 198. See *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 545 (1963) ("The fact that the general scope of the inquiry is authorized and permissible does not compel the conclusion that the investigatory body is free to inquire into or demand all forms of information."). Where the delegation of authority is expansive, "[n]o one could reasonably deduce from the charter the kind of investigation that the Committee was directed to make." In these circumstances, reviewing courts will not defer to a committee's interpretation of its mandate because "such deference cannot yield to an unnecessary and unreasonable dissipation of constitutional freedoms." *Watkins*, 354 U.S. at 204.

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Based on these principles, the courts have employed the doctrine of constitutional avoidance to limit the scope of congressional investigations. In *Rumely*, for example, the Supreme Court held that a congressional resolution authorizing the Select Committee on Lobbying Activities to study and investigate (1) all lobbying activities intended to influence, encourage, promote, or retard legislation; and (2) all activities of agencies of the Federal Government intended to influence, encourage, promote, or retard legislation did not empower it to “inquire into all efforts of private individuals to influence public opinion through books and periodicals.” *Rumely*, 345 U.S. at 45-46. The Court interpreted the mandate to investigate “lobbying activities” narrowly to include only “representations made directly to the Congress, its members, or its committees” in order to accommodate “contending principles – the one underlying the power of Congress to investigate, the other at the basis of the limitation imposed by the First Amendment.” *Id.* See also *Russell v. United States*, 369 U.S. 749, 758 (1962); *Deutch v. United States*, 367 U.S. 456, 471 (1961); *Shelton v. United States*, 327 F.2d 601, 605 (D.C. Cir. 1963) (using doctrine of constitutional avoidance to invalidate subpoena to NEW YORK TIMES copy editor).

These principles apply more broadly than just to subpoenas seeking disclosure of readers’ names or membership lists for political organizations. *E.g.*, *Gibson*, 372 U.S. at 550-551; *NAACP v. Alabama*, 357 U.S. 449 (1958). In *Rumely*, for example, the committee sought “pertinent financial records” to determine whether lobbying laws were being circumvented, but the Court held that the First Amendment did not permit the investigatory mandate to be read so expansively. *Rumely*, 345 U.S. at 47. When it comes to the press, any investigation seeking information of an organization’s internal operations inherently raises constitutional concerns. See, e.g., *Bursey*, 466 F.2d at 1088 (“If Bursey and Presley can be required to disclose the identity of all persons who worked on the paper and the pamphlets, to describe each of their jobs, to give the details of financing the newspaper, any editor, reporter, typesetter, or cameraman could be compelled to reveal the same information about his paper or television station, if his paper or station carried the story. The First Amendment forbids that result.”).

The Subcommittee cannot legitimately expand its jurisdiction or avoid constitutional limits by framing its investigation a general inquiry into “the Internet as a marketplace for interstate sex trafficking, including trafficking in children.” August 26 Letter, at 1. Indeed, the fact that Backpage.com provides an online platform for communication does nothing to diminish the First Amendment tensions in this matter, and may well magnify them. The D.C. Circuit long ago anticipated such issues in *Rumely*, and found that the development of new technologies does nothing to diminish these time-tested constitutional principles:

The new features are new mechanics of communication and new mass interest in the minutiae of congressional activities. But speech and press by these new

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means – on the radio, on television, and in the movies – are freedoms protected by the First Amendment. And the public policy which prohibits any current congressional membership from abridging the impact of public opinion upon the Congress is as sound today as it was when it was first formulated. . . . If we ever agree that modern mechanical devices and modern mass interest in public affairs have destroyed the validity of these principles, we will have lost parts of the foundation of the Constitution.

*Rumely v. United States*, 197 F.2d 166, 177 (D.C. Cir. 1952), *aff'd*, 345 U.S. 41 (1953). Notwithstanding the power of new communications technologies, the court held that the First Amendment was crucial to ensuring the congressional power to investigate stayed within its constitutional boundaries.

And so it is with the Internet. The Supreme Court recognized that the Internet constitutes a new, unprecedented global medium the content on which is “as diverse as human thought.” Accordingly, it held that “our cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium.” *Reno v. ACLU*, 521 U.S. 844, 870 (1997). Backpage.com operates on this medium by providing a platform for third-party speech. Since 2004, it has operated an online classified advertising service where its users post ads in a number of categories (e.g., local places, community, buy/sell/trade, automotive, musician, rentals, real estate, jobs, dating, adult and services) and subcategories. Backpage.com does not dictate any content, although it does screen, block and remove ads that may violate its terms of use to guard against any form of human trafficking or child exploitation and reports suspected user-submitted posts to authorities. This is the role Congress envisioned for online intermediaries when it adopted the Good Samaritan provisions of the Communications Decency Act. It sought to “encourage the unfettered and unregulated development of free speech on the Internet” and “to encourage interactive computer services . . . to self-police the Internet for obscenity and other offensive material.” *Batzel v. Smith*, 333 F.3d 1018, 1027-28 (9th Cir. 2003); *see* 47 U.S.C. §§ 230(a), 230(b).

Given these First Amendment considerations, the Subcommittee cannot legitimately expand its authority to investigate by inappropriately trying to conflate online advertising with illegal activity. Various state laws and other regulatory efforts predicated on this misconception have been invalidated as violating the First Amendment, Section 230, or both. *See, e.g., Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961, 968 (N.D. Ill. 2009) (“The phrase ‘adult,’ even in conjunction with ‘services,’ is not unlawful in itself nor does it necessarily call for unlawful content.”); *Backpage.com, LLC v. Cooper*, 939 F. Supp. 2d 805, 830-32 (M.D. Tenn. 2013) (same); *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1279 (W.D. Wash. 2012) (same); *Backpage.com, LLC v. Hoffman*, No. 13-CV-03952 DMC JAD, 2013 WL 4502097, at

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\*8-10 (D.N.J. Aug. 20, 2013), (same). Just as the Select Committee on Lobbying Activities was not permitted to expand the scope of its investigation beyond First Amendment boundaries despite innovations in lobbying methods, *Rumely*, 345 U.S. at 45-46, this Subcommittee cannot demand information on all aspects of Backpage.com's business practices—despite constitutional limits—by claiming to be investigating an Internet problem.

In addition to the First Amendment issues outlined above, the Subcommittee's efforts to compel information from Backpage.com present significant concerns regarding the pertinence of this information to any valid inquiry. As this Subcommittee should be well aware, while the authority of the Congress to investigate is broad, it is not unbounded. The Senate's investigative power may only be invoked in aid of its legislative function, and it is inappropriate for it to be used to "expose for the sake of exposure." *See Watkins*, 354 U.S. at 200. This constitutional caution is particularly meaningful when the target of an investigation is a person engaged in a sphere of activities that are afforded specific constitutional protections and for which Congress's power to legislate is circumscribed.

In such circumstances the Subcommittee's authority must be clearly enunciated; a general reliance on the Senate's interest in potentially criminal activity is not sufficient. It is not the job of the Subcommittee to conduct law enforcement inquiries—that task is constitutionally the province of others in government. This Subcommittee should not, and indeed cannot, exercise the authority to compel information to either substitute for or to assist those engaged in that law enforcement function.

Accordingly, Backpage.com's responses and/or objections to the Subcommittee's eight requests are as follows:

In response to Subpoena Requests One through Three, Backpage.com submits the following documents: the Terms of Use by which Backpage.com's users are bound, which expressly prohibit the posting of any material "that in any way constitutes or assists in human trafficking," enclosed at BP-PSI-000001 to BP-PSI-000009; Backpage.com's Posting Rules for its "Adult" section, which also expressly prohibit the posting of any material "that in any way constitutes or assists in human trafficking," enclosed at BP-PSI-000010; and the agreement to report "suspected exploitation of minors and/or human trafficking" that a Backpage.com user must affirmatively accept before entering the "Adult" section of the website, enclosed at BP-PSI-000011.

Although Backpage.com does not maintain policies or procedures regarding its moderation process, this process was detailed for the Subcommittee in the briefing provided by

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General Counsel Liz McDougall on June 19, 2015 and in prior sworn testimony (enclosed at BP-PSI-000012 to BP-PSI-000021).

It is important to note, however, the challenges that arose in July 2015 when Cook County Sheriff Thomas J. Dart pressured the major credit card companies to cut off use of their cards for purchases on Backpage.com, with the aim of eliminating the website's ability to do business altogether. First and foremost, the credit card information was a valuable tool to identify and verify the identity of Backpage.com users. In addition, without credit card charges and verification, the volume of ads posted on Backpage.com has increased and, by extension, Backpage.com's ability to moderate those ads has decreased. Backpage.com continues to assess this situation.

To the extent that the Subcommittee seeks further documents in this regard, Backpage.com objects to the request on the basis that it violates the First Amendment, is overbroad, and is not pertinent to a proper legislative inquiry by this Subcommittee.

In response to Subpoena Request Four, Backpage.com is compiling its many records regarding its cooperation with law enforcement, including responses to subpoenas, testimony provided by Backpage.com personnel, voluntary investigations by Backpage.com, and communication with law enforcement commending Backpage.com for its work and support combatting human trafficking. Backpage.com expects to provide these documents to the Subcommittee as soon as it completes locating and redacting personally-identifying information from those documents.

Backpage.com objects to Subpoena Request Five on the basis that it violates the First Amendment and is not pertinent to a proper legislative inquiry by this Subcommittee.

In response to Subpoena Request Six, Backpage.com does not routinely maintain ad volume information as requested by the Subcommittee. However, Backpage.com will investigate whether compilation and production of such figures are possible. Backpage.com can state at this time that, since the July 2015 elimination of credit card services because of Sheriff Thomas Dart's actions, the ad volume has increased exponentially, and appears to continue to grow.

In response to Subpoena Request Seven, Backpage.com does not routinely maintain the statistical information requested by the Subcommittee. However, Backpage.com will investigate whether compilation and production of such data are possible.

**Akin Gump**  
STRAUSS HAUER & FELD LLP

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In response to Subpoena Request Eight, Backpage.com objects on the basis that it violates the First Amendment and is not pertinent to a proper legislative inquiry by this Subcommittee.

Finally, while Backpage.com has agreed to provide certain documents in response to certain of the Subpoena's requests, Backpage.com does not waive and expressly reaffirms its First Amendment and pertinence objections as to all requested documents and information. The production of this information is not intended, and should not be taken, as a waiver of these or any other privilege that might be asserted in any other forum or proceeding. The objections outlined in this letter, as well as our earlier letters, are specifically asserted as a basis for not producing documents or information called for by the Subpoena

Sincerely,



Steven R. Ross  
Stanley M. Brand  
Akin Gump Strauss Hauer & Feld  
Counsel for Backpage.com, LLC

Robert Corn-Revere  
Davis Wright Tremaine, LLP  
Counsel for Backpage.com, LLC

Encl.

new york, ny

free classifieds  
[backpage.com](http:// backpage.com)

## Terms

Updated Jun 1, 2015

### Objectives/Content:

Backpage.com is a web site (the "Site") that hosts classified advertising and related content created and developed by third-party users. Services and features of the Site are provided by Backpage.com, LLC and/or affiliates (including Classified Solutions, Ltd. and Payment Solutions B.V.). Your use of the Site, including all access, services and/or features, is governed by these Terms of Use and the [Privacy Policy](#) (collectively, "Terms"), and you should review both carefully. By using the Site in any way, you are agreeing to comply with these Terms.

The Site reserves the right to change the Terms at any time and for any reason. Updated versions of the Terms will be posted to the Site at [backpage.com](http://backpage.com) and you should visit this page periodically to keep apprised of any changes. By continuing to use the Site after any such change, you accept and agree to the modified Terms. The Site reserves the right to modify or discontinue, temporarily or permanently, the Site, any site features, benefits (including without limitation blocking or terminating your Account), rules or conditions, all without notice, even though such changes may affect the way you use the Site. You agree that the Site will not be liable to you or any third-party for any modification or discontinuance of the Site.

### User Conduct:

Without limitation, you agree to refrain from the following actions while using the Site:

1. Harassing, threatening, embarrassing or causing distress or discomfort upon another individual or entity or impersonating any other person or entity or otherwise restricting or inhibiting any other person from using or enjoying the Site;
2. Transmitting any information, data, text, files, links, software, chats, communication or other materials that is unlawful, false, misleading, harmful, threatening, abusive, invasive of another's privacy, harassing, defamatory, vulgar, obscene, hateful or racially or otherwise objectionable, including without limitation material of any kind or nature that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, provincial, national, or international law or regulation, or encourage the use of controlled substances;
3. Posting advertising or solicitation in categories that is not appropriate, or posting the same item or service in more than one category or more than once every 7 days, or posting the same ad in multiple cities on the Site;
4. (a) Posting adult content or explicit adult material unless: (i) such material is specifically permitted in designated adult categories and permitted under applicable federal, state, and local law; and (ii) you are

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- at least 18 years of age or older and not considered to be a minor in your state of residence;
  - (b) Posting, anywhere on the Site, obscene or lewd and lascivious graphics or photographs which depict genitalia or actual or simulated sexual acts, as determined in the sole discretion of backpage.com;
  - (c) Posting any solicitation directly or in "coded" fashion for any illegal service exchanging sexual favors for money or other valuable consideration;
  - (d) Posting any material on the Site that exploits minors in any way;
  - (e) Posting any material on the Site that in any way constitutes or assists in human trafficking.
5. Posting any ad for products or services, use or sale of which is prohibited by any law or regulation;
  6. Sending mail, e-mail, voice messages or faxes for solicitation of any other product, or service to a user of the Site unless the user has granted permission in their ad or otherwise allowed contact for solicitation;
  7. Deleting or revising any material posted by any other user;
  8. Interfering with or infringing the patents, copyrights, trademarks, service marks, logos, confidential information or intellectual property rights of others;
  9. Using any automated device, spider, robot, crawler, data mining tool, software or routine to access, copy, or download any part of the Site unless expressly permitted by the Site;
  10. Taking any action creating a disproportionately large usage load on the Site unless expressly permitted by the Site;
  11. Sending messages or engaging in disruptive or damaging activities online, including excessive use of scripts, sound waves, scrolling, or use of viruses, bots, worms, time bombs, Trojan horses or any other destructive element;
  12. Gaining or attempting to gain unauthorized access to non-public areas of the Site. In addition, if you have a password to a non-public area of the Site, you may not disclose to, or share your password, with any third parties and/or use your password for unauthorized purposes;
  13. Attempting to decipher, decompile, disassemble or reverse engineer any of the software comprising or in any way making up all or any part of the Site; modifying any meta data, copying or duplicating in any manner any of the content; framing of or linking to any of the Site, its content or information available from the Site without the express written consent of agents of the Site;
  14. Discriminating on the grounds of race, religion, national origin, gender, disability, age, marital status, sexual orientation, or refers to such matters in any manner prohibited by law;
  15. Posting any employment ads violating the anti-discrimination provisions of the Immigration and Nationality Act or messages which violate any law or regulation;
  16. Using the Site to engage in or assist another individual or entity to engage in fraudulent, abusive, manipulative or illegal activity.
  17. Posting free ads promoting links to commercial services or web sites except in areas of the Site where such ads are expressly permitted;



18. Posting any material advertising weapons the use, carrying, or advertising of which is prohibited by applicable federal, state, or local law. **You are solely responsible for complying with any and all laws and/or regulations applicable to the transfer of firearms under both applicable local, state and federal laws.** The transfer of firearms is heavily regulated and restricted, and failure to strictly comply with all such laws is a serious crime and may result in criminal prosecution. All transfers of firearms, whether by sale, lease or loan, including private transactions, must go through a **licensed firearms dealer**. Any exception to these laws, such as air guns, knives, accessories, certain antiques, and some gun parts that may not require transfer by a licensed dealer, should be first confirmed by you prior to purchase. It is your responsibility to comply with all such laws, including any and all city, county, state and Federal laws when accessing or using this site. It is also your responsibility to locate one or more licensed firearm dealers in your area and/or the area of any buyer or seller listing here who are able and willing to assist you with any such transfer. We do not offer any assistance with respect to locating a licensed dealer for your transaction or otherwise with respect to your transaction. By listing any firearm, you represent and warrant to us that you legally own and possess the item you wish to list here and have fully complied with and will continue to fully comply with all laws and regulations applicable to your listing, transfer and/or sale. By agreeing to purchase any firearm, you represent and warrant to us that you are of legal age, and are not otherwise prohibited by law from purchasing, transferring, owning, or possessing the firearm listed, and that you have fully complied with and will continue to fully comply with all laws and regulations applicable to your transfer or purchase;

Please report any violations of these Terms to: [abuse@backpage.com](mailto:abuse@backpage.com)

You agree to comply with all applicable laws, statutes, regulations, and ordinances concerning your use of the Site.

#### **Use of Materials:**

Any ads or messages that you post, transmit, or otherwise make available for viewing on public areas of the Site will be treated as non-confidential and non-proprietary to you. You understand and agree that any such ads and messages may be used by the Site or our affiliates, without review or approval by you, for any purpose whatsoever, and in any medium, including our print media, if any. You grant the Site (and our affiliates) the irrevocable right to use and/or edit your ads and messages, without review or approval by you, for any purpose whatsoever, including, without limitation, reproduction, disclosure, transmission, publication, broadcast, posting, and advertising in any media in perpetuity without notice or compensation to you.

#### **Fair Housing:**

All real estate advertising is subject to Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended. Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and handicap (disability). The Site will not knowingly accept any real estate advertising which is in violation of any applicable law. Users are hereby informed that all dwellings advertised on the Site are available on an equal opportunity basis. To complain of discrimination call HUD toll-free at 1-800-669-9777. The toll-free number for the hearing impaired is 1-800-927-9275.

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You acknowledge and agree that you will not submit or post any ad which discriminates based on race, color, national origin, religion, sex, sexual orientation, familial status and /or handicap/disability. If you see any ad or posting which discriminates based on any of the above factors, you are encouraged, in addition to contacting HUD, to report such ad or posting by clicking on the "Report this Ad" link located on the ad page. You understand that we shall have the right, but not the obligation, to remove, edit or delete any ad.

**Termination of Access:**

The Site has the right terminate your access for any reason if we believe you have violated these Terms in any manner. You agree not to hold the Site liable for such termination, and further agree not to attempt to use the Site after termination.

**No Third Party Beneficiaries:**

You agree that, except as otherwise provided in this Terms of Use, there shall be no third party beneficiaries to these Terms.

**Copyright and Trademarks:**

All materials on the Site, including without limitation, logos, images, text, illustrations, audio and video files are protected by copyrights, trademarks, service marks, or other proprietary rights which are either owned by or licensed to the Site or owned by other parties who have posted on the Site. Materials from the Site and from any other web site owned, operated, controlled, or licensed by the Site may not be copied, reproduced, republished, uploaded, posted, transmitted, or distributed in any way.

In posting content on the Site, you grant the Site, and its owners and licensees, the right to use, reproduce, distribute, translate, modify, adapt, publicly perform, publicly display, archive and create derivative works from the posted content.

**Notification of Infringement**

If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide the following information to the Site's Copyright Agent:

1. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
2. A description of the copyrighted work or other intellectual property that you claim has been infringed;
3. A description of where the material that you claim is infringing is located on the Site;
4. Your name, address, telephone number and e-mail address;
5. A signed statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
6. A statement by you, made under penalty of perjury, that the information provided in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright

or intellectual property owner's behalf.

Our copyright agent can be reached as follows:

Copyright Agent Backpage.com LLC  
PO Box 192307  
Dallas, TX USA 75219

International - not for correspondence  
Classified Solutions Ltd.  
The East Stable Thrales End Farm  
Harpenden, United Kingdom, AL5 3NS

Payment Solutions BV.  
Zuidplein 116 - 1077XV,  
Amsterdam, Netherlands

Fax: 214-757-8548

Email: [abuse@backpage.com](mailto:abuse@backpage.com) (Please put Copyright Infringement in the subject line)

The Site may, under appropriate circumstances and at our own discretion, disable and/or terminate the accounts of users who may be repeat infringers.

**Privacy Policy:**

The Site has created a Privacy Policy setting forth how information collected about you is collected, used and stored. Your use of the Site constitutes acknowledgment and agreement with our privacy policy. You further acknowledge and agree that The Site may use your personal information in the manner described in our [Privacy Policy](#).

**Posting of Ads:**

You understand that each time you post an ad on this Site or otherwise use the Site, you agree to these Terms. By agreeing to these Terms, you acknowledge that the Site may send you e-mail messages telling you about products and services offered by the Site (or its affiliates and partners) You understand and agree that such communications are part and parcel of your registration for and use of the Site; if you do not wish to receive further communications from the Site (or its affiliates and partners), you must cancel your registration by sending a cancellation notice to [support@backpage.com](mailto:support@backpage.com). If you choose to receive mobile notifications concerning any ad, you agree that we may send automated text messages to your mobile phone. If you do not wish to receive such text messages, you should not accept the mobile notifications option. We will not send you any marketing or advertising by text messages. Message and data rates may apply for mobile notifications.

**Fees:**

The Site may impose a fee on the posting of Content in certain areas of the Site. Users uploading Content to fee-based areas are responsible for such Content and for compliance with these Terms. Under no circumstances will the Site provide a refund in the event that Content is removed from fee-

based areas for violation of these Terms.

**Links:**

The Site has no control over and is not responsible for the content of or claims made on websites that may be linked to or from the Site, whether or not they may be affiliated with the Site. Any websites linked to or from the Site are for your convenience only, and you access them at your own risk.

**Release:**

The Site assumes no responsibility for the accuracy, currency, completeness or usefulness of information, views, opinions or advice in any material contained on the Site. In addition, it does not endorse any opinions or recommendations posted by others. Any information posted on the Site is the responsibility of the person or persons posting the message. Any user who violates the Terms may be permanently banned from posting ads or using the Site. You understand that all postings, ads, messages, advertisements, photos, sounds, images, text, files, video or other materials (collectively "Content") posted on, transmitted through, or linked from the Site, are solely the responsibility of the person from whom such Content originated. You understand that the Site does not control, and is not responsible for Content available on the Site. You agree that the Site does not pre-screen, monitor or approve any Content, but that the Site shall have the right, but not the obligation to remove, move (including moving an ad or posting to another section or category within the classifieds), refuse, edit or delete any Content for any reason whatsoever. The Site shall not be responsible for any interaction between you and the other users of the Site. Your dealings with others through the Site are solely between you and such other parties. Under no circumstances will the Site be liable for any goods, services, resources or content available through such third party dealings or communications, or for any harm related thereto. The Site is under no obligation to become involved in any disputes between you and other users of the Site or between you and any other third parties.

You agree that our service is a venue for posters and users of the Site. In the event that you have a dispute with any user of the Site, you agree that the Site is under no obligation to become involved. You further agree to release the Site from any and all claims, demands, and damages arising out of or in connection with such dispute.

You are entirely responsible and liable for any ad content you post or any ad that is posted through your Account.

The Site does not offer any refunds for the early cancellation of paid sponsor ads or paid print ads. We do not issue credits or refunds due to our extremely low rates and minimal administrative staff.

You acknowledge, consent and agree that the Site may access, preserve and disclose your account information and Content you upload, post, or otherwise make available on the Site if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary to: (i) comply with legal process; (ii) comply with legal requirements imposed by Federal, State or Local law or authorities (iii) enforce these Terms; (iv) respond to claims that any Content violates the rights of third parties; (v) respond to your requests for customer service; or (vi) protect the rights, property or personal safety of the Site, its users and the public.

**Disclaimer of Warranties for Site:**

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YOU EXPRESSLY AGREE THAT USE OF THE SITE IS AT YOUR OWN RISK. THE SITE SHALL NOT BE RESPONSIBLE FOR ANY CONTENT FOUND ON THESE CLASSIFIEDS. THE SITE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. THE SITE MAKES NO WARRANTY THAT ITS CLASSIFIEDS OR USE OF THE SITE WILL BE UNINTERRUPTED, TIMELY, SECURE, WITHOUT DEFECT OR ERROR FREE. THE SITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

YOU ACKNOWLEDGE AND AGREE THAT ANY MATERIAL, AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIS WEB SITE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

**Limitation of Liability:**

The information, services and products available to you on this Site may contain errors and are subject to periods of interruption. While the Site does its best to maintain the information, services and products it offers on the Site, it cannot be held responsible for any errors, defects, lost profits or other consequential damages arising from the use of the Site.

IN NO EVENT SHALL THE SITE OR ITS AFFILIATES, OWNERS, AGENTS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, SPONSORS, SUPPLIERS, OR PARTNERS (COLLECTIVELY "INDEMNIFIED PARTIES") BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY DAMAGES, OR ANY DAMAGES WHATSOEVER, ARISING FROM OR IN ANY WAY CONNECTED OR RELATING TO (i) THE USE OF (OR INABILITY TO USE), OR PERFORMANCE OF THIS SITE, (ii) ANY INFORMATION, SERVICES OR PRODUCTS PROVIDED THROUGH THIS SITE, OR (iii) ANY INTERACTION BETWEEN YOU AND OTHER PARTICIPANTS OF THE SITE, EVEN IF ANY OF THE INDEMNIFIED PARTIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ACCEPT ALL RESPONSIBILITY FOR, AND HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST, ANY ACTIONS TAKEN BY YOU OR BY ANY PERSON AUTHORIZED TO USE YOUR ACCOUNT, INCLUDING WITHOUT LIMITATION, DISCLOSURE OF PASSWORDS TO THIRD PARTIES. BY USING THE SITE, YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM ANY AND ALL LIABILITY REGARDING YOUR USE OF THE SITE OR PARTICIPATION IN ANY SITE'S ACTIVITIES.

IF YOU ARE DISSATISFIED WITH THE SITE, OR ANY PORTION THEREOF, OR DO NOT AGREE WITH THESE TERMS, YOUR ONLY RECOURSE AND EXCLUSIVE REMEDY SHALL BE TO STOP USING THE SITE.

If you are a California resident, you waive any rights you may have under California Civil Code § 1542,

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which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

**Indemnity:**

You agree to indemnify and hold harmless the Indemnified Parties from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Site, the violation of these Terms by you, or the infringement by you, or other users of the Site using your computer, of any intellectual property or other right of any person or entity. The Site reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

**Jurisdiction and Choice of Law:**

These Terms shall be governed by, construed and enforced in accordance with the laws of the State of Arizona without regard to its choice of law provisions. Any action you or any third party may bring to enforce these Terms, or in connection with any matters related to the Site, shall be brought only in either the state or Federal courts located in Arizona, and you expressly consent to the jurisdiction of said courts. You also agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Site or the Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**General:**

These Terms constitute the entire agreement between you and the Site and govern your use of the Site, superseding any prior agreements between you and the Site. You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content or third-party software, or visit another site linked to by this Site. The section titles in these Terms are for convenience only and have no legal or contractual effect.

**Violations:**

Please report any violations of these Terms to: [abuse@backpage.com](mailto:abuse@backpage.com)

**Severance and Waiver:**

You acknowledge and agree that if any provision of these Terms shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions. Furthermore, if any provision of these Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision.

The Site's failure to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by the Site.

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**washington d.c.**

free classifieds

[backpage.com](#) > [post ad](#) > adult entertainment > adult jobs

## Posting Rules

You agree to the following when posting in this category:

- I will not post obscene or lewd and lascivious graphics or photographs which depict genitalia, actual or simulated sexual acts or naked images;
- I will not post any solicitation directly or in "coded" fashion for any illegal service, including exchanging sexual favors for money or other valuable consideration;
- I will not post any material on the Site that exploits minors in any way;
- I will not post any material on the Site that in any way constitutes or assists in human trafficking;
- I am at least 18 years of age or older and not considered to be a minor in my state of residence.

**Any post exploiting a minor in any way will be subject to criminal prosecution and will be reported to the [Cybertipline](#) for law enforcement.**

Postings violating these rules and our Terms of Use are subject to removal without refund.



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## Disclaimer

This section contains sexual content, including pictorial nudity and adult language. It is to be accessed only by persons who are 18 years of age or older (and is not considered to be a minor in his/her state of residence) and who live in a community or local jurisdiction where nude pictures and explicit adult materials are not prohibited by law. By accessing this website, you are representing to us that you meet the above qualifications. A false representation may be a criminal offense.

I confirm and represent that I am 18 years of age or older (and am not considered to be a minor in my state of residence) and that I am not located in a community or local jurisdiction where nude pictures or explicit adult materials are prohibited by any law. I agree to report any illegal services or activities which violate the Terms of Use. I also agree to report suspected exploitation of minors and/or human trafficking to the appropriate authorities.

☐ I have read and agree to this disclaimer as well as the Terms of Use.

☐ I agree

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**TESTIMONY OF ELIZABETH L. McDOUGALL  
GENERAL COUNSEL, VILLAGE VOICE MEDIA HOLDINGS, LLC  
BEFORE NEW YORK CITY COUNCIL COMMITTEE ON WOMEN'S ISSUES  
HEARING RE: PROPOSED RESOLUTION NO. 1226-A**

**APRIL 25, 2012**

### **Introduction**

My name is Elizabeth L. McDougall and I am General Counsel for Village Voice Media Holdings, LLC, which owns Backpage.com, LLC. Thank you for the invitation and opportunity to testify regarding the grave social issue of domestic sex trafficking.

My testimony before the Council is based on my knowledge, research and experience over more than a decade of counseling and litigating online service provider Internet, e-commerce and cyber-crime issues; nearly two decades of pro bono work defending victims of abuse, exploitation and civil rights violations; and nearly five years of research, legal counseling and pro bono contributions in the domestic anti-human trafficking movement.

I earned my law degree from New York University School of Law in 1993. I practiced law in New York City for over two years, then provided volunteer services at Legal Services of the Blue Ridge in rural North Carolina for two years (including creating a domestic violence representation program). My young family subsequently settled in Seattle, where I ultimately joined the preeminent technology firm and developed clients and legal expertise throughout the computer and wireless technology sectors from 1999 to 2012.

On February 15, 2012, I joined Village Voice Media with the mandate and grant of authority to find and implement the best measures to fight the abuse of Backpage.com for human trafficking and other illegal activity and to challenge the rest of the online service provider industry to meet the same high standards. That brings me here.

The accusations against Craigslist, Inc. and then Backpage.com that providing an “adult” category on a generic classified advertising website is tantamount to pimping out exploited woman and children were effective for a time to drive long-overdue attention to the sexual exploitation of children and women (and sometimes men) in the United States. But now that this social atrocity has political and public attention, it is time to stop the rhetoric and to develop intelligent, effective strategies to stop human trafficking online and to focus on the root causes and desperately needed resources and services to also, with the Grace of God, eventually stop the trafficking of humans everywhere.

### **Background on Human Trafficking Online in the United States**

Sex and labor trafficking have existed throughout human history. But, until recently, they dwelled underground and in back alleys, largely unrecognized within U.S. borders. Now, the same Internet that allows us to chat with friends and instantly research any subject has brought this abomination out of the shadows in America. Traffickers have seized on this technology in hopes of increasing their payoffs – despite the heightened risk of detection, identification and prosecution.

Traffickers soliciting and advertising their victims are now commonplace on social networking sites, search engines, generalized classified services and specialized adult websites throughout the Internet. For example, social networking sites are increasingly popular sources of adult service advertising by agencies and individuals. Dr. Sudhir

Venkatesh of Columbia University has insightful research on this issue, including a comparison of the sources of clientele for sex trades.<sup>1</sup> Pursuant to this research, as early as 2008, a single social network website provided 25% of clients in the New York City sex trade compared to only 3% from an online classified website.<sup>2</sup> Dr. Venkatesh expected the social network percentage to grow by 2011.<sup>3</sup>

As a practical matter, the Internet has unquestionably made trafficking and exploitation more visible, but visibility should not beget misguided policy. As Dr. danah boyd of Harvard's Berkman Center for Internet and Society has stated, "Heightened visibility can easily prompt fear, as we become concerned about the things that we see that we don't like. But the least productive thing that we can do with visibility is use it to generate fear. While fear and outrage can propel us to act, driving policy by fear can easily backfire and harm those that we're trying to help."<sup>4</sup>

To be sure, more empirical data regarding the role of the Internet in human trafficking and child sex exploitation is desperately needed. A literature review on human trafficking conducted for the U.S. Department of Justice emphasized: "[T]he most important arena which needs urgent exploration is the way the knowledge upon which the public debate about trafficking for sexual and labor exploitation is based is generated."<sup>5</sup> In the interim, "in no area of the social sciences has ideology contaminated knowledge more pervasively than in writings on the sex industry," and "[t]oo often in this area, the canons of scientific inquiry are suspended and research deliberately skewed to serve a particular political agenda."<sup>6</sup>

For example, anti-prostitution advocates often cite *Men Who Buy Sex with Adolescent Girls: A Scientific Research Study*, which was prepared by a marketing company hired by an anti-prostitution organization. Although the study purported to assess men's propensity to sexually exploit minors online, its methodology and conclusions were

<sup>1</sup> Dr. Sudhir Venkatesh, *How Tech Tools Transformed New York's Sex Trade*, Wired Magazine (January 31, 2011), available at [http://www.wired.com/magazine/2011/01/ff\\_sextrade/all/1](http://www.wired.com/magazine/2011/01/ff_sextrade/all/1).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Dr. danah boyd, *Combating Sexual Exploitation Online: Focus on the Networks of People, not the Technology*, Statement to Massachusetts Attorney General Martha Coakley as part of the Hearing on Sexual Exploitation Online, at 1 (October 19, 2010), available at <http://www.zephorie.org/thoughts/archives/2010/10/19/combating-sexual-exploitation-online.html>.

<sup>5</sup> Dr. Mark Latonero, *Human Trafficking Online – The Role of Social Networking Sites and Online Classifieds*, U.S.C. Annenberg School for Communications & Journalism (Sept. 2011), available at <http://technologyandtrafficking.usc.edu/report>, at 11 (quoting Elzbieta M. Gozdzik and Micah N. Bump, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*, Georgetown University Institute for the Study of International Migration, Oct. 2008, at 45.).

<sup>6</sup> *Id.* (quoting Sheld Zhang, *Beyond the 'Natasha' story—a review and critique of current research on sex trafficking*, GLOBAL CRIME vol. 10, no. 3, at 179 (Aug. 2009)).

soundly refuted by The Urban Institute in its report to the House Judiciary Committee's Subcommittee on Crime, Terrorism and Homeland Security.<sup>7</sup>

Yet, even while further data is pending, scholars and law enforcement officials recognize that online service providers are in a unique position to combat human trafficking and exploitation. Through online technology, we have more people watching for and reporting potential victims or signs of trafficking or exploitation, and enhanced means of detecting and prosecuting these practices.

Internet traffickers leave digital trails that can lead to their capture and provide valuable insights into their behavior, techniques and patterns.<sup>8</sup> As found in the recent study by Dr. Mark Latonero at the U.S.C. Annenberg School for Communications & Journalism, entitled *Human Trafficking Online – The Role of Social Networking Sites and Online Classifieds*, “Trafficking online thus presents the anti-trafficking community with an unprecedented window to observe, track, and monitor the conduct of both the supply and demand sides of the trafficking trade.”<sup>9</sup> An Immigration and Customs Enforcement agent involved in trafficking investigations and arrests explained succinctly: “Some child predators mistakenly believe the anonymity of cyberspace shields them from scrutiny. In fact, their use of the Internet gives us new tools in our efforts to investigate this insidious behavior.”<sup>10</sup>

In recognition of this principle, several programs dedicated to studying the role of communications technologies in the fight against human trafficking have recently been launched, including the Annenberg Center's Technology & Trafficking Initiative<sup>11</sup> and a program sponsored by Microsoft Research and the Microsoft Digital Crimes Unit.<sup>12</sup>

Backpage.com is an online classifieds service that includes a category for “adult” advertising. Since craigslist, Inc. closed its “adult” category in September 2010 with a symbol simply stating “censored,” Backpage.com has become the target of predominantly political and other non-victim-centric accusations that this category facilitates human trafficking.

<sup>7</sup> Colleen E. Owens and William Adams, *Feedback on Men Who Buy Sex with Adolescent Girls: A Scientific Research Study*, The Urban Institute (September 2010).

<sup>8</sup> See *Human Trafficking Online*, at 34-37 (“As people turn to technology to negotiate exchanges, new data becomes available and new interactions become traceable. If everyone is willing and engaged, it becomes possible to track the flow of information around an exploitative trade in entirely new ways.”); *Combating Sexual Exploitation Online*, at 2 (“Historically, human trafficking has occurred underground, making it extremely difficult for law enforcement and rescue organizations to identify and act to capture perpetrators and save victims.”).

<sup>9</sup> *Human Trafficking Online*, at 9.

<sup>10</sup> *Id.* at 20, notes 112-113.

<sup>11</sup> Adam Powell, *CCLP forum explores new technological tools to combat human trafficking*, USC Annenberg Center on Communication Leadership & Policy, (Nov. 7, 2011), available at [http://communicationleadership.usc.edu/blog/cclp\\_forum\\_explores\\_new\\_technological\\_tools\\_to\\_combat\\_human\\_trafficking.html](http://communicationleadership.usc.edu/blog/cclp_forum_explores_new_technological_tools_to_combat_human_trafficking.html).

<sup>12</sup> *The Role of Technology in Human Trafficking—RFP*, available at <http://research.microsoft.com/en-us/collaboration/focus/education/human-trafficking-rfp.aspx>.

However, as acknowledged by Congresswoman Blackburn in recent public comments regarding her letter with Congresswoman Maloney to another online service provider regarding adult advertising that she alleged contributed to human trafficking, the abuse of online services is a problem for *all* online service providers and the online service provider industry needs to “take the lead” in the solution.<sup>13</sup> In other words, the exploitation of the World Wide Web by criminals to exploit human beings is an Internet-wide problem. Backpage.com has already voluntarily taken the lead in fighting back against these criminals and embraces the challenge to set the bar for all socially responsible online service providers even higher.

#### **Backpage.com’s Combat of Online Trafficking**

When traffickers use the Internet, especially in a financial transaction, they leave forensic footprints that create unprecedented tools and evidence that law enforcement can use to locate and rescue victims of exploitation and to investigate, arrest and convict pimps and their criminal networks. A key to disrupting and eventually ending human trafficking via the World Wide Web is therefore an online service provider community—of businesses including Backpage.com—that aggressively monitor for and trace potential trafficking cases and promptly report to and cooperate with frontline law enforcement.

As stated, Backpage.com leads the industry in these measures. Backpage.com already employs a triple-tiered policing system to prohibit and report attempts at human exploitation. Backpage.com operates an automated filter system to preclude ads with suspect words, phrases, codes and data. On top of this filter, Backpage.com conducts two levels of human, i.e., *manual*, review of all content submitted by users for the adult and personal categories to identify suspect content. The first level of review is conducted BEFORE content is allowed to be posted on the website to prevent exposure to public view. Backpage.com also performs post-publication manual review of adult and personal ads as a triple check for possible exploitation or other illegal activity. Backpage.com has additionally explored age-verification technologies and procedures. However, none to date provide practical options that could not be easily thwarted by the criminals they are designed to block.

When content is identified as potentially involving sexual exploitation of a minor (trafficking or otherwise), Backpage.com immediately reports it to the National Center for Missing and Exploited Children (NCMEC). NCMEC acts as a clearinghouse for child exploitation reporting and directs reports to appropriate law enforcement authorities for action or investigation. Backpage.com has in fact established a special “expedited” reporting system to NCMEC for cases where there appears to be an imminent possibility of rescue. Backpage.com also meets regularly with NCMEC staff to discuss procedures and developments and to ensure that it is providing the best possible support to combat child sexual exploitation.

Backpage.com also responds to law enforcement subpoenas within 24 hours or less in

<sup>13</sup> [http://www.foxnews.com/on-air/justice-jeanine/index.html#v/1574568847001/lawmakers-question-googles-role-in-burton-trafficking/?playlist\\_id=163706](http://www.foxnews.com/on-air/justice-jeanine/index.html#v/1574568847001/lawmakers-question-googles-role-in-burton-trafficking/?playlist_id=163706) (last visited April 23, 2012).

almost all cases. Moreover, Backpage.com uses its own technological tools and data to voluntarily locate and collect additional evidence from across the Internet to assist law enforcement investigations and prosecutions. This additional voluntary research and reporting to law enforcement is unique and such independent cooperation and assistance is unparalleled by other online service providers.

Backpage.com has only recently begun to track victim rescues and criminal arrests, prosecutions and convictions due to its exceptional cooperation. And law enforcement efforts for these cases are so grossly under-resourced that they have little time for our follow-up inquiries about status and outcomes. However, we know that our prompt and thorough reports to NCMEC and our quick and complete law enforcement responses have resulted in at least dozens of rescued victims. Only dozens? Let me reiterate that this is a gross underestimate. Not the least of which is due to the desire not to pester law enforcement that suffers already from a gross shortage of resources. But let me also reiterate Rev. Dr. Henderson's words that "one is one too many."<sup>14</sup> We agree. We have not saved them all yet, but that is no excuse for not saving the ones that we can.

#### **Why Not Terminate An "Adult" Category? Because It Would Be Wrong.**

Critics who demand Backpage.com eliminate an "adult" category fail to understand the significance of Backpage.com's assistance in the rescue of victims and conviction of trafficking perpetrators. Indeed, they expressly misunderstand it.

First, critics point to references to Backpage.com in media reports of rescues and arrests in trafficking cases. Why do these media reports reference Backpage.com? Because Backpage.com is the fastest and most thorough online service provider to respond to law enforcement subpoena and legal information requests so law enforcement comes to Backpage.com first and Backpage.com provides the digital data that allows the rescue and the bust. Subsequent information collected and provided by Backpage.com to law enforcement has shown the same victims advertised on over a dozen other websites. Such evidence is valuable in the prosecution of traffickers and pimps but such detailed evidence rarely makes it into media reports even of convictions because it is old news at that time.

Second, critics, such as the Auburn Seminary, the Church of Scientology's Freedom Magazine and even well-meaning elected officials, acknowledge that a gesture by Backpage.com in eliminating an "adult" category would not stop human trafficking or the exploitation of children, but argue that "it is a start."<sup>15</sup> But a start to what? Such nondirectional, indeterminate, unsubstantiated, morality-based opinions<sup>16</sup> do not provide

<sup>14</sup> <http://www.msnbc.msn.com/id/46979745/vp/47049927#47049927> (last accessed April 23, 2012).

<sup>15</sup> For example, see *id.*; see also <http://www.msnbc.msn.com/id/46979745/vp/47049927#47049927> (last visited April 23, 2012).

<sup>16</sup> <http://www.msnbc.msn.com/id/46979745/vp/47049927#47049927> (last visited April 23, 2012) (references by Auburn Seminary spokesperson to "moral" obligations and citations to Bible, Jesus and other religious dictates as justification for termination of "adult" category from single cooperative online service).

grounds for critical policy decisions that impact the life and welfare of exploited children or any other human being.

In fact, this unsupported stance ignores the proven reality that such measures have on online crime -- it drives it elsewhere. Specifically, shutting down cooperative U.S. online services drives criminal traffic to websites operating in the Internet underground and offshore (of which there are thousands). There, traffickers and pimps can continue to advertise and sell their victims in the U.S., but the online service providers are beyond care and frequently beyond legal jurisdiction to cooperate voluntarily or by mandate with U.S. law enforcement. The traffickers and their valuable online footprints become invisible again, and the victims remain lost on the Web and in the world -- our world. It should be unthinkable.

Is there proof of that this will be the outcome of continuing to vilify rather than cooperate with willing U.S. online service providers?

Yes. Proof positive is the outcome of the demands and eventual submission of Craigslist, Inc. to terminate an "adult" category. Did this end human trafficking and child sexual exploitation, at least on the Internet? No. The criminals just shifted online -- within a few hours for the most part. They scattered across the same websites and across the Internet, including to Backpage.com and innumerable other websites.<sup>17</sup> The same children and other victims remained available for sale in the U.S., but to which of the 4,999 other potential websites did they go? Law enforcement, rescue groups and families had to start their searches for lost children and victims anew in a sea, not just a haystack.

The realities and complexity of human trafficking and sexual exploitation are such that to announce that a single website -- Backpage.com or other -- is the primary source of the scourge and therefore holds the cure to this horrendous problem is not only unsupported but also irresponsible. This is not merely Backpage.com's position -- which the general media discounts as financially motivated despite the fact that Backpage.com is composed of people who are mothers, fathers, sisters, brothers, aunts, uncles, cousins, and other relations and friends of women, children and men who are susceptible or may themselves already have been victimized by exploitation. This position has been articulated and advocated through research, studies, conclusions and opinions by experts around the country and world.

To truly understand the landscape and challenges of technology in human trafficking, policy makers should look to the conclusions of **Dr. danah boyd** at Harvard's Berkman Center for Internet and Society, who is currently immersed in the study of this issue (Dr. boyd's statement, entitled *Combating Sexual Exploitation Online: Focus on the Networks of People, not the Technology*, submitted to Massachusetts Attorney General Martha

<sup>17</sup> According to an estimate by Shared Hope International ("SHI"), an international anti-trafficking non-governmental organization, there are over 5,000 websites currently directly or indirectly involved in sex trafficking or sex tourism. See Dr. Mark Latonero, *Human Trafficking Online -- The Role of Social Networking Sites and Online Classifieds*, U.S.C. Annenberg School for Communications & Journalism (Sept. 2011), available at <http://technologyandtrafficking.usc.edu/report>, at 14 (citing SHI study).



Coakley as part of General Coakley's October 2010 Hearing on Sexual Exploitation Online is available at <http://www.zephoria.org/thoughts/archives/2010/10/19/combating-sexual-exploitation-online.html>), the work of Dr. Mark Latonero referenced above (available at <http://technologyandtrafficking.usc.edu/report>), and to the research of Dr. Venkatesh mentioned above (a sample of his work is available at [http://www.wired.com/magazine/2011/01/ff\\_sextrade/all/1](http://www.wired.com/magazine/2011/01/ff_sextrade/all/1)) and Dr. David Finkelhor of the University of New Hampshire's Crimes Against Children Research Center (recent research and a fact sheet by Dr. Finkelhor are available at <http://www.unh.edu/ccrc/pdf/CV186.pdf> and [http://www.unh.edu/ccrc/prostitution/Juvenile\\_Prostitution\\_factsheet.pdf](http://www.unh.edu/ccrc/prostitution/Juvenile_Prostitution_factsheet.pdf)), among others.

The Internet is not going away. As Dr. boyd has explained, if one portal is closed, criminals will find another and another and another: "You may be able to see transactions through Craigslist or Back Page [sic], but there are countless other technologies that are employed in exploitation. And every time that you try to make it disappear one place, it pops up on another. Increasingly, those sites are offshore and far out of jurisdiction."<sup>18</sup> Moreover, "[g]oing after specific sites where exploitation becomes visible and attempting to eradicate the visibility does nothing to address the networks of supply and demand—it simply pushes them to evolve and exploiters find new digital haunts and go further underground. . . . Eradicating visibility does not break the trade network itself but it does make it harder to get to the source of exploitation."<sup>19</sup> In other words, traffickers can and will migrate between any of 5,000 or more websites suspected of directly or indirectly facilitating sex trafficking and sex tourism.<sup>20</sup> "If you focus on the sites, you will be playing whack-a-mole and helping no one."<sup>21</sup>

In fact, where a service provider remains U.S. operated and cooperative with law enforcement — such as Backpage.com; it is counter productive to efforts to rescue trafficking victims and arrest the perpetrators to terminate this channel of investigation and evidence. While there is a readily acknowledged dearth of empirical data regarding human trafficking online, the research, evidence and conclusions of academics who have approached the issue without preconceived moral conclusions have uniformly declared that online service provider operations — be they social networking sites, online classified services or Internet search engines — have a powerful and valuable role to play in the combat of this global and domestic scourge. A recent New York Times article quotes law enforcement agents on this point. (A copy of the article is available at [http://www.nytimes.com/2012/03/16/us/online-sex-trade-flourishing-despite-efforts-to-curb-it.html?pagewanted=1&\\_r=1](http://www.nytimes.com/2012/03/16/us/online-sex-trade-flourishing-despite-efforts-to-curb-it.html?pagewanted=1&_r=1) (last accessed April 24, 2012)).

<sup>18</sup> *Combating Sexual Exploitation Online*, at 2. As merely one example, the Erotic Review website ([www.theeroticreview.com](http://www.theeroticreview.com)), transferred its ownership to Europe and has endeavored to conceal the location and trail of its online operations through a Washington State domain name privacy registration service.

<sup>19</sup> *Combating Sexual Exploitation Online*, at 2.

<sup>20</sup> This figure comes from a web analysis performed by the anti-trafficking organization, Shared Hope International. See *Human Trafficking Online*, at 14.

<sup>21</sup> *Combating Child Exploitation Online*, at 3.

Law Enforcement and Backpage.com

As noted above, Backpage.com is already the industry leader in cooperation with law enforcement. Commendations for Backpage.com's responsiveness and thoroughness with law enforcement investigations and stings are replete in our records. For your records, a few of our hundreds of examples follow:

From: [REDACTED] <[REDACTED]@ic.fbi.gov>

Date: [REDACTED], 2011 [REDACTED] AM MST

Mr. Ferrer,

You just made my day.

What is your official title. We want to submit your name for recognition of your assistance following this case.

Thanks

[REDACTED]

---

From: [REDACTED] <[REDACTED]@REDACTEDtexas.gov>

Date: [REDACTED], 2011, at [REDACTED] AM CST

Certainly Carl, your staff did a great job! We appreciate Backpage's vigilance to help protect kids. On our team over the weekend were the Secret Service, Department of Homeland Security, the United States Attorney's Office and several local law enforcement agencies and all commented on how effective Backpage was on getting the ads removed quickly and blocking future ads from the same poster's.

I'll give you a call shortly. Thanks.

---

From: [REDACTED] <[REDACTED]@ic.fbi.gov>

Date: [REDACTED], 2012 at [REDACTED] PM

Dear Backpage Staff,

As always, thank you for the exceptionally prompt response and for your research efforts. It is always a pleasure to deal with Backpage.

Sincerely,

[REDACTED]

From: [REDACTED] <[REDACTED]@state.ma.us>

Date: [REDACTED], 2011 [REDACTED] AM CST

. . . I can't thank you and your staff enough for being so responsive and supportive of my and other law enforcement efforts concerning these cases. Your company's level of cooperation is not the norm and makes a huge difference in our ability to target and ultimately arrest the offender.

Respectfully submitted,

[REDACTED]<sup>22</sup>

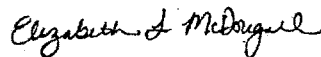
Similarly, the President and CEO of the National Center for Missing and Exploited Children (NCMEC) has lauded Backpage.com's genuine commitment to help stop sex trafficking and observed that its employees are "aggressively reviewing their ads" and had "reported 1,600 ads that they believe are suspicious."<sup>23</sup>

#### Conclusion

Backpage.com and Village Voice Media of course hear the outcry of protesters and feel the pressure of politicians. I hear and feel them. We all agree we need to do more to fight human trafficking. But symbolic demands are no substitute for pragmatic crime-fighting tactics. Human trafficking is a horrible and horribly complex problem and recognizing the complexity is essential to working to find and develop effective counter measures.

Despite its already extraordinary measures, Backpage.com stands ready and willing to do more and to challenge its online service provider peers to do more – particularly in cooperation with government, nongovernmental, public, private and all other interest groups sincerely dedicated to pragmatic approaches to addressing this scourge. We sincerely welcome your ideas, suggestions, questions and comments to this end.

Very truly yours,



Elizabeth L. McDougall  
General Counsel  
Village Voice Media Holdings, LLC

<sup>22</sup> We have redacted the names and personally identifying information of the agents and officers.

<sup>23</sup> Cornelius Frolik, *Sex trade thrives by exploiting Internet*, DAYTON DAILY NEWS (Sept. 27, 2011), available at <http://www.daytondailynews.com/news/crime/sex-trade-thrives-by-exploiting-internet-1260014.html>.

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**United States Senate**  
 COMMITTEE ON  
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
 WASHINGTON, DC 20510-6250

November 3, 2015

**VIA U.S. MAIL AND EMAIL (sross@akingump.com)**

Carl Ferrer, CEO  
 Backpage.com, LLC  
 2501 Oak Lawn Avenue  
 Dallas, TX 75219

c/o Steve Ross, Esq.  
 Akin Gump Strauss Hauer & Feld, LLC  
 1333 New Hampshire Avenue, NW  
 Washington, DC 20036

**Re: Ruling on Objections to Subcommittee Subpoena**

Dear Mr. Ferrer:

On October 1, 2015, the Permanent Subcommittee on Investigations issued a subpoena to you, as Chief Executive Officer of Backpage.com, LLC ("Backpage"), requiring Backpage to produce eight categories of documents to the Subcommittee. In response, Backpage produced twenty-one pages of publicly available documents and raised a number of objections to the subpoena. On behalf of the Subcommittee, we have reviewed those objections carefully and now overrule them. Backpage is ordered and directed to produce all responsive documents by November 12, 2015, at 10:00 a.m.

**BACKGROUND**

Pursuant to its authority under Senate Resolution 73, § 12(e), 114th Congress, the Subcommittee is currently investigating the problem of human trafficking.

1. Under federal law, human trafficking includes, *inter alia*, the unlawful practice of selling the sexual services of minors, or of adults who have been coerced into participating in the commercial sex trade.<sup>1</sup> Over eight in ten suspected incidents of human trafficking in the United States involve sex trafficking,<sup>2</sup> and reports have shown

<sup>1</sup> 18 U.S.C. § 1591.

<sup>2</sup> U.S. Dep't of Justice, Bureau of Justice Statistics, *Characteristics of Suspected Human Trafficking Incidents, 2008-2010*, at 1 (Apr. 2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/cshti0810.pdf>.

that more than half of sex-trafficking victims are 17 years old or younger.<sup>3</sup> In recent years, sex trafficking has migrated to the Internet,<sup>4</sup> where it has flourished in part because of the high profitability and relatively low risk associated with advertising trafficking victims' services online.<sup>5</sup>

Sex traffickers have made extensive use of websites that serve as marketplaces for ordinary commercial sex and escort services. Backpage.com is a market leader in that area: It reportedly nets more than 80% percent of all revenue from online commercial sex advertising in the United States, from nearly 400 cities throughout the country.<sup>6</sup> Unsurprisingly, then, Backpage has also been linked to an alarming number of sex trafficking cases. According to Shared Hope International, "[s]ervice providers working with child sex trafficking victims have reported that between 80% and 100% of their clients have been bought and sold on Backpage.com."<sup>7</sup>

To better understand this phenomenon, the Subcommittee is reviewing what measures commercial sex advertising sites, including Backpage, have taken to prevent the use of their websites for sex trafficking and whether those measures are effective. Careful fact-finding in this area is vital as Congress considers what action, if any, should be taken to protect exploited women and children from those making illicit use of the facilities of interstate commerce. To that end, the Subcommittee issued a subpoena to Backpage for the production of documents related to the Subcommittee's investigation. Backpage has failed to comply with that subpoena.

2. The Subcommittee initiated an inquiry into Internet sex trafficking in April 2015. As part of that investigation, the Subcommittee has conducted interviews and briefings with many relevant parties, including victims' rights groups, nonprofit organizations, technology companies, financial institutions, academic researchers, federal, state, and local law enforcement officials, and several other advertising websites similar to Backpage.

The Subcommittee first contacted Backpage on April 15, 2015, to request an interview to discuss Backpage's business practices. On June 19, 2015, after extensive communication with Backpage's outside counsel regarding the specific topics that the

<sup>3</sup> U.S. Dep't of Justice, Office of Juvenile Justice & Delinquency Prevention, *Literature Review: Commercial Sexual Exploitation of Children/Sex Trafficking*, at 3 (2014), <http://www.ojjdp.gov/mpg/litreviews/CSECSEXtrafficking.pdf>.

<sup>4</sup> See M. Dank, et al., Urban Institute Research Report, *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities*, at 234 (Mar. 2014), <http://www.urban.org/research/publication/estimating-size-and-structure-underground-commercial-sex-economy-eight-major-us-cities> ("[T]he Internet has transformed the street-based sex market.").

<sup>5</sup> U.S. Dep't of Justice, *National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress*, at 31 (Aug. 2010), <http://www.justice.gov/psd/docs/natstrategyreport.pdf>.

<sup>6</sup> Advanced Interactive Media Group, *Online Prostitution-ad Revenue Crosses Craigslist Benchmark* (July 2013), <http://aimgroup.com/2013/07/10/online-prostitution-ad-revenue-crosses-craigslist-benchmark/>.

<sup>7</sup> Shared Hope International, *White Paper: Online Facilitation of Domestic Minor Sex Trafficking*, at 1 (Aug. 2014), <http://sharedhope.org/wp-content/uploads/2014/09/Online-Facilitator-White-Paper-August-2014.pdf>.

Subcommittee wished to discuss, the Subcommittee interviewed Backpage's General Counsel, Elizabeth McDougall. During the interview, Ms. McDougall could not answer several critical questions about Backpage's ownership, statistics on reporting to law enforcement and to the National Center for Missing and Exploited Children ("NCMEC"), and the "moderation" procedures Backpage uses to review and screen advertisements. After the interview, on June 22, 2015, the Subcommittee sent Backpage follow-up questions and requests for information. Despite initially indicating that it would do so, Backpage failed to provide answers or documents.

3. The Subcommittee first issued a subpoena to Backpage on July 7, 2015, with a return date of August 7, 2015. The subpoena requested materials related to Backpage's basic corporate structure, the steps it takes to review advertisements for illegal activity, interaction with law enforcement, and data retention policies, among other relevant subjects. The subpoena sought no information about the identity of Backpage users and specifically provided for redaction of all personally identifying user information.<sup>8</sup>

On August 6, Backpage submitted a letter to the Subcommittee explaining that it would not produce any documents in response to the subpoena. Backpage contended that the subpoena was overbroad and violated the First Amendment. Backpage asked the Subcommittee to defer the subpoena so that Backpage could present "a more fulsome discussion of the constitutional infirmities and concerns regarding the Subcommittee's subpoena," and so that Backpage could seek leave of an unnamed federal court to produce a sealed judicial opinion that Backpage contended would be persuasive authority.<sup>9</sup>

In response, the Subcommittee sent a letter to Backpage explaining that the cases relied upon in Backpage's August 6 letter were inapposite: They concerned either state laws imposing content-based restrictions on advertisements<sup>10</sup> or investigational demands seeking personally identifying information about individual speakers' political beliefs (*e.g.*, their membership in the NAACP or sympathy with the Communist Party).<sup>11</sup> The Subcommittee's subpoena, by contrast, was scrupulously drawn to avoid such concerns.

The Subcommittee invited Backpage to better explain its constitutional objections.<sup>12</sup> On September 14, 2015, counsel for the Subcommittee and counsel for

<sup>8</sup> See Letter and Subpoena from PSI to Backpage (July 7, 2015).

<sup>9</sup> See Letter from Backpage to PSI at 5 (Aug. 6, 2015). Subcommittee staff responded immediately to encourage Backpage to seek leave to produce the opinion.

<sup>10</sup> *E.g.*, *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262 (W.D. Wash. 2012),

<sup>11</sup> See generally *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *NAACP v. Alabama*, 357 U.S. 449 (1958); *Watkins v. United States*, 354 U.S. 178 (1957).

<sup>12</sup> In an attempt to continue its fact-finding, the Subcommittee issued subpoenas for the depositions of two Backpage employees, Andrew Padilla and ██████████ to discuss their job duties. According to Ms. McDougall, Mr. Padilla is the head of Backpage's moderation department—the division of employees who, among other things, review advertisements to screen them for evidence of illegal activity—and ██████████ is in charge of training line moderators to perform those functions. Both Mr. Padilla and ██████████ retained individual counsel and, invoking their Fifth Amendment

Backpage met for the purpose of discussing the company's constitutional objections to the July 7 subpoena. During that meeting, counsel for Backpage conceded that the subpoena did not seek any type of information that triggered heightened First Amendment scrutiny in the cases cited in Backpage's August 6 letter. The company objected to no particular request in the subpoena schedule. Instead, Backpage objected to the entirety of the subpoena on First Amendment grounds based on two considerations: (i) the "breadth" of the subpoena as a whole; and (ii) the "context" in which Backpage received the Subcommittee's subpoena—*i.e.*, the fact that other governmental actors have recently taken an interest in Backpage. When Subcommittee counsel asked Backpage counsel for authorities to support that position, Backpage counsel demurred and committed to following up in writing. That response never arrived.

4. On October 1, 2015, the Subcommittee withdrew its original subpoena and issued a new, more targeted subpoena focused on its areas of principal interest. In the letter accompanying the subpoena, the Subcommittee explained that "we continue to see no legal merit in Backpage's explanation for its categorical refusal to comply with the Subcommittee's subpoena. Nevertheless, in the hope of overcoming the current impasse, we are withdrawing the Subcommittee's July 7 subpoena and issuing the attached subpoena seeking a narrower subset of documents."<sup>13</sup> We explained that the withdrawal of the earlier subpoena "does not reflect, in any way, our agreement with the merits of Backpage's expansive claim of privilege; rather, it represents a good-faith effort to address Backpage's expressed concerns."<sup>14</sup>

The October 1 subpoena required you to produce documents named in the schedule, or else appear personally, on October 23, 2015.<sup>15</sup> Specifically, the new subpoena seeks the production of eight categories of documents previously sought in the initial subpoena, including information about Backpage's review and moderation procedures; its practices with respect to verifying user accounts; documents concerning human trafficking and similar offenses; data-retention practices; and statistical information concerning its advertisements, review practices, and revenue.<sup>16</sup> The subpoena provides that the company should exclude any personally identifying information concerning Backpage users.

The Subcommittee notified Backpage that it must "assert any claim of privilege or other right to withhold documents from the Subcommittee by October 23, 2015, the return date of the subpoena, along with a complete explanation of the privilege or other right to withhold documents" and that "[t]he Subcommittee will rule on any objections to the subpoena, including any claim of privilege, based on submissions in the record at that time."<sup>17</sup> The Subcommittee cautioned you that failure to comply with the

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privilege, declined to testify on the ground that it might tend to incriminate them. On that basis, the Subcommittee released them from their obligation to personally appear for their depositions.

<sup>13</sup> Letter from PSI to Backpage at 2 (Oct. 1, 2015).

<sup>14</sup> *Id.*

<sup>15</sup> Subpoena, Oct. 1, 2015.

<sup>16</sup> Subpoena, Schedule A (Oct. 1, 2015).

<sup>17</sup> Letter from PSI to Backpage at 3 (Oct. 1, 2015) (emphasis added).

subpoena, or to raise a legitimate privilege, could lead to civil enforcement of the subpoena or criminal contempt.<sup>18</sup> Counsel for Backpage committed to submitting a complete explanation for any noncompliance by the return date.<sup>19</sup> In light of that, on October 20, the Subcommittee continued your personal appearance “to permit the Subcommittee to consider any objection you wish[ed] to submit.” The Subcommittee reminded you, however, that “[t]he requested documents along with any objections remain due on the return date.”<sup>20</sup>

5. On October 23, 2015, Backpage submitted a response to the subpoena, along with a production of twenty-one pages of publicly available documents. That response asserts (i) that the First Amendment constrains the Subcommittee’s jurisdiction to conduct this investigation<sup>21</sup> and (ii) that the subpoena is not pertinent to a proper investigation within the Subcommittee’s jurisdiction.<sup>22</sup> On those two bases, Backpage objected to five of the document requests in the subpoena: Requests One, Two, Three, Five, and Eight.<sup>23</sup>

Backpage did not specifically object to Requests Four, Six, or Seven. But neither did it produce any documents responsive to those Requests. Instead, as to Request Four—“documents concerning human trafficking, sex trafficking, human smuggling, prostitution, or the facilitation or investigation thereof”—Backpage explained that it would eventually produce certain items (“its many records regarding its *cooperation* with law enforcement, including responses to subpoenas \* \* \* and communication with law enforcement *commending* Backpage.com for its work and support on human trafficking”)<sup>24</sup> but made no commitment about any other responsive documents. As to Requests Six and Seven (seeking data about Backpage’s advertisement volume and law-enforcement reporting), Backpage represented that it does not regularly maintain the information requested by the Subcommittee, but that it will “investigate whether compilation and production of [the information] are possible.”<sup>25</sup> Despite the fact that the company has been on notice since the original July 7 subpoena of the Subcommittee’s interest in this information, Backpage offered no explanation for why it did not produce documents responsive to these three Requests before the return date of the subpoena; nor did it offer any excuse for its untimely compliance or its failure to seek an extension.<sup>26</sup>

<sup>18</sup> *Id.*; see 2 U.S.C. §§ 192, 194.

<sup>19</sup> E-mail from Steven Ross to PSI (Oct. 15, 2015).

<sup>20</sup> Letter from PSI to Backpage at 1 (Oct. 20, 2015).

<sup>21</sup> Letter from Backpage to PSI at 3 (Oct. 23, 2015).

<sup>22</sup> *Id.* at 6.

<sup>23</sup> *Id.* at 6–8.

<sup>24</sup> *Id.* at 7 (emphasis added).

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

<sup>26</sup> Backpage’s submission contained no additional information about a sealed judicial opinion discussed in its August 6 letter. At the September 14 conference between Subcommittee counsel and counsel for Backpage, Backpage explained that it had moved the relevant district court to unseal the opinion to permit the Subcommittee to review it, but that the motion was denied in part because either the court or the Department of Justice was unsure that the Subcommittee had a genuine



## DISCUSSION

In its October 23 submission, Backpage lodged objections to several of the document requests in the Subcommittee's subpoena. Those objections are not meritorious. First, Backpage asserts that several items in the subpoena violate the First Amendment, but it does not attempt to show either (i) that any request for documents seeks information that infringes recognized First Amendment interests; or (ii) that those requests are not supported by an adequate legislative interest. Instead, Backpage contends that First Amendment concerns counsel against construing the Subcommittee's authorizing resolution to encompass this investigation and the challenged subpoena. As we will explain, there are circumstances under which such an argument would be plausible—but this is not one of them. The Subcommittee's subpoena to Backpage, and its investigation of human trafficking on the Internet, is plainly encompassed by specific language in our authorizing resolution. *See* S. Res. 73, § 12(e), 114th Cong. The First Amendment cases cited by Backpage are inapposite and do not alter that result. Second, Backpage objects that some document requests in the subpoena are not pertinent to a proper investigation by this Subcommittee. That too lacks merit: Each category of requested information is directly related to the legitimate legislative inquiry authorized by Senate Resolution 73.

In the discussion that follows, we will first describe why the challenged subpoena is within the scope of the Subcommittee's investigative authority. We will then explain why Backpage has not demonstrated any constitutional infirmity in the subpoena or given any persuasive First Amendment reason to read our authorizing resolution not to encompass this investigation. Finally, we will address Backpage's response to each of the subpoena's specific document requests, and explain why those requests seek information directly related to the Subcommittee's valid investigative interests. Those interests would justify the requests even if they triggered heightened scrutiny under the First Amendment.

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interest in the opinion. Backpage therefore asked the Subcommittee to provide it with a letter in support of its unsealing request, so that it could file a motion to reconsider. After notifying the Department of Justice, we provided that letter to counsel for Backpage on September 18.

Counsel for Backpage, however, later informed the Subcommittee that they did not file the motion to reconsider until October 6, 2015—three weeks after we provided the requested letter, and nearly a week after we issued the new, October 1 subpoena. Backpage offered no explanation for the delay in filing.

## I. The Subpoena is Within the Subcommittee's Authority.

The Subcommittee is investigating the problem of human trafficking; how those who commit that crime have made use of the Internet and other facilities of interstate commerce to commit it; the role that private-sector enterprises play in facilitating, or should play in preventing, domestic and international sex trafficking; and the adequacy of existing federal laws and federal programs at combating the problem. That investigation, along with the subpoena we have issued to Backpage in furtherance of it, is within the Subcommittee's authority.

### A. Congress's Investigative Power.

"The power of the Congress to conduct investigations is inherent in the legislative process." *Watkins v. United States*, 354 U.S. 178, 187 (1957). Congress's investigatory power "is broad," *id.*, reaching "the whole range of national interests concerning which Congress might legislate or decide upon due investigation not to legislate." *Barenblatt v. United States*, 360 U.S. 109, 111 (1959). "It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes," as well as "surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them." *Watkins*, 354 U.S. at 187-88.

That authority includes the power of legal process. *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). "It is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action. It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees and to testify fully with respect to matters within the province of proper investigation." *Watkins*, 354 U.S. at 187-188. In that respect, "[a] legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress." *United States v. Orman*, 207 F.2d 148, 153 (3d Cir. 1953) (quotation marks and citation omitted). Unlike in a lawsuit, which "relates to a case, and [in which] the evidence to be admissible must be measured by the narrow limits of the pleadings \* \* \* [a] legislative inquiry anticipates all possible cases which may arise thereunder and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad." *Id.* (quoting *Townsend v. United States*, 95 F.2d 352, 361 (D.C. Cir. 1938)).

### B. The Subcommittee's Subpoena Is Proper.

1. The Senate has entrusted the Subcommittee with significant investigative power. Specifically, the Senate has authorized the Subcommittee to conduct investigations into a broad range of matters of potential legislative interest. Those subjects include:

- (A) the efficiency and economy of operations of all branches of the Government;

\* \* \* \* \*

(C) *organized criminal activity which may operate in or otherwise utilize the facilities of interstate or international commerce* in furtherance of any transactions and the manner and extent to which, and the identity of the persons, firms, or corporations, or other entities by whom such utilization is being made, and further, to study and investigate the manner in which and the extent to which persons engaged in organized criminal activity have infiltrated lawful business enterprise, and *to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce; and to determine whether any changes are required in the laws of the United States in order to protect the public against such practices or activities; [and]*

(D) *all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety; including but not limited to investment fraud schemes, commodity and security fraud, computer fraud, and the use of offshore banking and corporate facilities to carry out criminal objectives.*

S. Res.73, § 12(e)(1), 114th Cong. (emphasis added).

2. The Subcommittee's authority to investigate crime, its effects on public welfare and safety, and how the facilities of interstate commerce are used to commit it, places this investigation squarely within its jurisdiction. To repeat, the Subcommittee is authorized to investigate "all \* \* \* aspects of crime" within the United States that affect the "national health, welfare, safety," *id.* § 12(e)(1)(D), and is specifically tasked with examining "organized criminal activity which may operate in or otherwise utilize the facilities of interstate or international commerce," *id.* § 12(e)(1)(C). Human trafficking is a federal crime. *See* 18 U.S.C. §§ 1581–1592. Importantly, Congress has specifically recognized human trafficking as an activity of *organized* crime; the Trafficking Victims Protection Reauthorization Act of 2003 declared human trafficking offenses are predicates to liability under the Racketeer Influenced Corrupt Organizations (RICO) Act. *See* Pub. L. 108-193, 117 Stat. 2875, 2879, § 5(b); 18 U.S.C. § 1961(1). And the Internet, an important facility of interstate commerce, has become an increasingly central marketplace for human trafficking in the United States.<sup>27</sup> The Subcommittee seeks to understand how individuals are utilizing the Internet, including commercial sex advertising websites like Backpage.com, to further their illicit trafficking schemes, as well as what mechanisms websites can use to prevent such abuse of interstate facilities.

<sup>27</sup> *See generally*, Latonero, M., et al., USC Annenberg Ctr. on Comm'n Leadership & Policy, *Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds* (2011), [https://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking\\_FINAL.pdf](https://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking_FINAL.pdf).

Based on the available public record, Backpage, in particular, appears to be an epicenter of illegal sex trafficking. A federal district court recently observed that “Backpage’s adult services section overwhelmingly contains advertisements for prostitution, including the prostitution of minors.” *Backpage.com, LLC v. Dart*, No. 15-C-06340, 2015 WL 5174008, at \*2 (N.D. Ill. Aug. 24, 2015) (finding that Backpage is “the leading forum for unlawful sexual commerce on the Internet and that the majority of advertisements [on Backpage] are for sex”); *see also Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1267 (W.D. Wash. 2012) (“Many child prostitutes are advertised through online escort advertisements displayed on Backpage and similar websites.”). The Subcommittee’s own investigation and study of the public record support that conclusion. Indeed, Backpage forthrightly acknowledges that its website is used by sex traffickers; its General Counsel has lamented publicly, “we are being abused by these criminals.”<sup>28</sup> That criminal “abuse,” along with the strategies used by Backpage to combat it, is a subject of this investigation. Information regarding Backpage’s anti-trafficking measures, contact with law enforcement, and basic corporate revenue are all important to the Subcommittee’s understanding of how sex trafficking occurs on the Internet. That information will also enable the Subcommittee to evaluate the cost-effectiveness of mechanisms employed by websites to combat sex trafficking and whether legislative action is needed to incentivize or require more effective strategies.

Importantly, the Subcommittee’s investigative jurisdiction does not depend on whether Backpage *itself*, or its officers or employees, bear any criminal liability under existing federal law. Rather, the matter is straightforward: Criminal sex trafficking is happening on Backpage, and the Subcommittee is investigating the nature and quality of Backpage’s efforts to stop it, in order to better understand the role online marketplaces can play in facilitating or preventing this criminal activity.<sup>29</sup>

3. In addition to its authority to investigate crime, the Subcommittee’s power to examine “the efficiency and economy of operations of all branches of the Government,” S. Res. 73 § 12(e)(1)(A), supplies an independent basis for our jurisdiction to investigate human trafficking on the Internet. The federal government has an array of anti-

<sup>28</sup> Committee on Women’s Issues, City Council of New York, Tr. 92 (Apr. 25, 2012), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1078130&GUID=D1C2D58A-C5A2-48A1-BB64-7AF44AFDC030&Options=&Search>.

<sup>29</sup> Backpage suggests that the Subcommittee’s investigation is outside its jurisdiction because it is a “law enforcement inquir[y]” or because the Subcommittee’s findings may assist law enforcement agencies. Letter from Backpage to PSI at 6 (Oct. 23, 2015). Of course the Subcommittee has no authority to engage in “law enforcement inquiries.” The Subcommittee does, however, have authority to examine the problem of crime in order that Congress may better address it through legislation. This Subcommittee has a rich history of doing that through investigations of criminal activity, including money laundering, narcotics trafficking, child pornography, labor racketeering, and organized crime. *See, e.g.*, S. Hrg. 112-597 (July 17, 2012); S. Hrg. 109-25 (Mar. 16, 2005); S. Hrg. 104-604 (May 15, 1996); S. Hrg. 102-346 (Nov. 5-6, 1991); S. Hrg. 100-654 (Jan. 28, 1988); S. Hrg. 99-18 (Nov. 29-30, 1984). A full listing of Subcommittee hearings concerning organized crime and other types of crime or fraud is too voluminous to detail here, but can be found on the Subcommittee’s website. *See* U.S. Senate, PSI: Resources, List of Permanent Subcommittee on Investigations Hearings & Reports (1947-Present), <https://www.hsgac.senate.gov/subcommittees/investigations/resources>.

trafficking forces, including federal departments and agencies,<sup>30</sup> cross-agency task forces such as the Internet Crimes Against Children Task Force, and major public-private partnership such as the NCMEC. The federal anti-money laundering regime has taken recent steps to target proceeds of human trafficking.<sup>31</sup> And significant federal funds are devoted to serving victims of trafficking and providing grants for related academic research.<sup>32</sup> Congress has an interest in whether these authorities and resources are being effectively deployed. A better understanding of how sex trafficking has migrated to the Internet—and whether federal efforts are well-adapted to this new reality—unquestionably relates to the “efficiency and economy” of these interrelated government agencies and programs.

\* \* \*

In short, careful fact-finding about the problem of human trafficking on the Internet will assist Congress in its consideration of potential legislation in a number of legitimate areas of legislative interest, including interstate and international human trafficking and the federal law enforcement policies and resources devoted to combatting it. Because that is precisely what the Subcommittee’s authorizing resolution contemplates, the Subcommittee’s work is plainly within its jurisdiction. *See* S. Res. 73 § 12(e)(1)(C) (Subcommittee empowered to investigate crime in order to “determine whether any changes are required in the laws of the United States in order to protect the public against [illegal] practices or activities”).

## II. Backpage’s First Amendment Arguments Lack Merit.

Backpage’s response relies extensively on the First Amendment in defense of its noncompliance with the Subcommittee’s subpoena. But Backpage offers only a vague discussion of the First Amendment interests with which it believes the subpoena interferes—either those of its users or its own. We do not believe the subpoena threatens either. As to Backpage’s users, the subpoena is carefully drawn to avoid seeking any information about any individual engaged in commercial speech on Backpage.com.<sup>33</sup> As to Backpage itself, much of what the company publishes is indeed

<sup>30</sup> Federal departments and agencies involved in anti-trafficking efforts include the Departments of Justice, Homeland Security, Health and Human Services, State, Defense, Commerce, Education, and Agriculture, as well as the Federal Trade Commission, Federal Communications Commission, U.S. Postal Inspection Service, and NASA. *See generally* U.S. Dep’t of Justice, *National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress* (Aug. 2010), <http://www.justice.gov/psd/docs/natstrategyreport.pdf>.

<sup>31</sup> *See* U.S. Dep’t of Treasury, Financial Crimes Enforcement Network, Advisory, FIN-2014-A008, *Guidance on Recognizing Activity That May Be Associated with Human Smuggling or Human Trafficking –Financial Red Flags* (Sept. 11, 2014), [https://www.fincen.gov/statutes\\_regs/guidance/pdf/FIN-2014-A008.pdf](https://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2014-A008.pdf).

<sup>32</sup> *See, e.g.*, Federal Strategic Action Plan for Victims of Human Trafficking in the United States, 2013-2017, <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>.

<sup>33</sup> Backpage is a publisher of third-party commercial advertisements; commercial speech is protected by the First Amendment, even if it is validly subject to much more extensive restriction, than the core political speech at issue in the cases relied on by Backpage. *See Central Hudson Gas & Electric Corp. v. Pub. Serv. Comm’n of New York*, 447 U.S. 557, 564 (1980); *see also Florida Bar v. Went For*

the protected commercial speech of third parties; but that does not immunize Backpage from legitimate investigations into the *unlawful* activity marketed through its site, which enjoys no First Amendment protection. But in any case, as Part III explains, the information sought by the Subcommittee's subpoena bears a direct relationship to the Subcommittee's investigative needs, and the governmental interests served by the subpoena are adequate to justify any incidental burden on Backpage's commercial-speech rights. Backpage also invokes the First Amendment in support of a slightly different argument: that we should adopt a narrow construction of the Subcommittee's authorizing resolution so that it does not include the power to issue the subpoena to "a business that provides a platform for online speech."<sup>34</sup> That argument also fails.

1. Documentary subpoenas by government agencies can, in relatively rare circumstances, raise First Amendment concerns. See *NAACP v. Alabama*, 357 U.S. 449, 462–63 (1958); *Gibson v. Florida Legislative Investigative Committee*, 372 U.S. 539, 546 (1963). Under these cases, a subpoena will be subjected to First Amendment scrutiny if it creates a "likelihood of a substantial restraint upon the exercise" of First Amendment rights, and then should be sustained only if the demand for information is supported by governmental interests "sufficient to justify the deterrent effect" on speech." *NAACP*, 357 U.S. at 463; see *Gibson*, 372 U.S. at 546 (in case where subpoena sought information about identity of those engaged in political expression, government had to "convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest"). In other cases, the Court has avoided the need to conduct that balancing of interests because it construed a congressional investigative demand to be outside the scope of a valid authorizing resolution. See *Watkins*, 354 U.S. at 199–206; *United States v. Rumely*, 345 U.S. 41, 44–48 (1953).

But in *each* of these cases the investigative demand was aimed at discovering information about people who actually engaged in protected speech or associational activity—for example, southern States trying to find out the identity of NAACP members (*Gibson*, 372 U.S. at 540–41; *NAACP*, 357 U.S. at 451); the House Un-American Activities Committee trying to discover the identity of a witness's Communist associates (*Watkins*, 354 U.S. at 184–85); the House of Representatives trying to discover who is reading disfavored books (*Rumely*, 345 U.S. at 42); or prosecutors trying to obtain personally identifying information about individuals who worked on particular issues of a publication issued by the Black Panther Party (*Bursey v. United States*, 466 F.2d 1059, 1068–71 (9th Cir. 1972)). In those cases, compelling the disclosure of such information would risk chilling core political speech. In other words, the central First Amendment evil, the "official suppression of ideas[, was] afoot," *R.A.V. v. St. Paul*, 505 U.S. 377, 390 (1992).

Backpage makes no effort to explain how the Subcommittee's subpoena poses any similar danger to those of its users who are engaged in protected commercial speech. As we have reminded Backpage repeatedly, the Subcommittee's subpoena was

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*It, Inc.*, 515 U.S. 618, 623 (1995) ("[W]e engage in 'intermediate' scrutiny of restrictions on commercial speech.").

<sup>34</sup> Letter from Backpage to PSI at 3 (Oct. 23, 2015).

carefully drawn to avoid the possibility of deterring protected speech by excluding any information that could personally identify its advertisers.<sup>35</sup> This subpoena bears no resemblance to those used fifty years ago to investigate political dissenters: It seeks no information about individual users—what speech they engage in, what organizations they belong to, what books they read, or the like. A subpoena seeking information about the business practices of a company whose facilities are undisputedly being used for criminal activity is far afield from the kinds of investigative demands that courts have invalidated for trenching on core First Amendment protections.

Backpage also contends that its status as a publisher of commercial speech—along with, it appears, the simple fact that its activities take place on the Internet—means that the Subcommittee cannot investigate what occurs on its website. But the mere presence of protected speech on Backpage does not prevent the Subcommittee from investigating criminal activity that *also* occurs there. See *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 (1986) (holding that statute regulating establishments hosting prostitution did not trigger First Amendment concerns merely because books were also sold on the premises); cf. *Pittsburgh Press Co. v. Human Relations Comm’n*, 413 U.S. 376, 388 (1973) (“We have no doubt that a newspaper constitutionally could be forbidden to publish a want ad proposing a sale of narcotics or soliciting prostitutes.”).<sup>36</sup>

Relatedly, Backpage also argues that “the Subcommittee cannot legitimately expand its authority to investigate by inappropriately trying to conflate online advertising with illegal activity.”<sup>37</sup> Nor have we done so. The illegal activity we are investigating is not advertising; it is selling children, or coerced adults, online for sex.

In any event, “the First Amendment” is not a talismanic incantation. Even where subpoenas seek information raising First Amendment concerns, the question becomes whether the subpoena is supported by an adequate governmental interest. See

<sup>35</sup> See, e.g., Letter from PSI to Backpage at 1 (July 7, 2015); Letter from PSI to Backpage at 4 (Aug. 26, 2015); Letter from PSI to Backpage, at 2 (Oct. 1, 2015).

<sup>36</sup> Backpage also urges (Letter from Backpage to PSI at 4 (Oct. 23, 2015)) that that the financial records of a publisher cannot be discovered without trenching on the First Amendment. Specifically, Backpage contends that, “[i]n *Rumely*, the committee sought ‘pertinent financial records’ to determine whether lobbying laws were being circumvented, but the Court held that the First Amendment did not permit the investigatory mandate to be read so expansively.” *Id.* That seriously misreads *Rumely*. As described below, *Rumely* concerned a House committee’s attempt to learn the identity of purchasers of disfavored books. 345 U.S. at 42. In its opinion, the court of appeals made clear that “as the case comes to us, *there was no refusal to produce financial records*. Over and over again *Rumely* asserted before the Committee that he had given, and was willing to give, all records except the names and addresses of the purchasers of the books. \* \* \* [The prosecutor] insisted, and the [district] court sustained his view, that, *so long as the names of purchasers of books were not given, financial records on contributions and loans were immaterial to the issues in the case.*” 197 F. 2d 166, 172 (D.C. Cir. 1952) (emphasis added). Unsurprisingly, then, the Supreme Court’s opinion in *Rumely* does not mention these financial records (though the concurrence does); and nothing in the Court’s analysis turned on them. In any event, the financial records in *Rumely*, unlike those sought in our subpoena, were designed to assist a House committee in identifying the readers of “political[ly] tendentious[]” literature. See *Rumely*, 345 U.S. at 544. Our subpoena does not raise similar concerns.

<sup>37</sup> Letter from Backpage to PSI at 4 (Oct. 23, 2015).

*NAACP*, 357 U.S. at 461. Backpage does not dispute the gravity of Congress's interest in combating the scourge of interstate sex trafficking by means of well-informed legislation. And the company does not address, in its objections, whether the First Amendment interests it asserts are sufficient to overcome the governmental interests in obtaining the requested information. The closest it comes to doing so is by lodging terse objections to the *pertinence* of the Subcommittee's particular requests—*i.e.*, that the requests are insufficiently connected to a legitimate investigation.<sup>38</sup> We will address the direct connection between the requests and the Subcommittee's investigative interests in Part III. That connection satisfies both the pertinence requirement and any required First Amendment showing that the requests are directed at legitimate investigative interests.

2. In short, Backpage has not shown any violation of First Amendment rights. Instead, relying on *Rumely*, Backpage invokes the canon of constitutional avoidance to argue that “First Amendment tensions”<sup>39</sup> compel a cramped reading of the Subcommittee's authorizing resolution that excludes this subpoena. That argument has no support in *Rumely* or in the text of our authorizing resolution.

As an initial matter, *Rumely*, like Backpage's other cases, involves an attempt to obtain personally identifying information about individuals engaged in core political speech. In *Rumely*, a congressional committee was authorized to evaluate the efficacy of lobbying laws. As part of those efforts, the committee demanded of a witness “the names of those who made bulk purchases” of “books of a particular political tendentiousness.” 345 U.S. at 42. The Supreme Court concluded that the power to make such a demand threatened First Amendment interests because it would permit Congress to “inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process.” *Id.* at 46. The Court, however, avoided the need to balance those First Amendment interests against Congress's investigative power because it construed the relevant language in its authorizing investigation—the word “lobbying”—not to include what books people buy. Instead, the Court held that “lobbying” should be given its “commonly accepted” meaning: representations made directly to the Congress, its members, or its committees, and [not to] attempts ‘to saturate the thinking of the community.’” *Id.* at 47 (citation omitted).

Backpage relies on *Rumely* to argue that First Amendment concerns militate against interpreting Senate Resolution 73 to authorize this investigation and the challenged subpoena. That argument is wrong for two independent reasons. First, as explained above, the Subcommittee's subpoena does not threaten First Amendment interests, much less the core political speech at issue in *Rumely*, so its enforcement raises no “serious constitutional doubt.” 345 U.S. at 47. Second, in *Rumely*, the natural reading of the word “lobbying” did indeed exclude, “[a]s a matter of English,” the House committee's investigation into book-reading. *Id.* Our authorizing resolution, by contrast, cannot be read to bar the challenged subpoena. Indeed, it plainly embraces the subject of this investigation:

<sup>38</sup> Letter from Backpage to PSI at 7-8 (Oct. 23, 2015).

<sup>39</sup> *Id.* at 4.



organized criminal activity which may operate in or otherwise utilize the facilities of interstate or international commerce in furtherance of any transactions \* \* \* and to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce; and to determine whether any changes are required in the laws of the United States in order to protect the public against such practices or activities.

S. Res. 73, § 12(e)(1)(C), 114th Cong. That is a crystal-clear statement of the Senate's intention to authorize investigations into the use of interstate facilities to commit organized crime, and Congress has defined human trafficking as a racketeering offense. 18 U.S.C. § 1961(1). No permissible construction of that language excludes the challenged subpoena. *Cf. Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 397 (1988) ("The key to application of [the avoidance canon] is that the statute must be readily susceptible to the limitation; we will not rewrite a \* \* \* law to conform it to constitutional requirements.").

3. Backpage also relies on a number of cases invalidating state statutes seeking to criminalize the advertising of sexual services on the Internet. *See Backpage.com, LLC v. Hoffman*, 2013 WL 4502097, at \*9 (D.N.J. Aug. 20, 2013); *Backpage.com, LLC v. Cooper*, 939 F. Supp. 2d 805, 830–33 (M.D. Tenn. 2013); *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1280–81 (W.D. Wash. 2012). Those cases are unavailing here. First, unlike the state laws at issue in those cases, the Subcommittee's subpoena does not regulate the content of speech, which automatically triggers First Amendment scrutiny. *See Brown v. Entertainment Merchants Ass'n*, 131 S. Ct. 2729, 2738 (2011). Second, these cases are also distinguishable because the challenged state laws were held to be preempted by Section 230 of the Communications Decency Act (CDA), 47 U.S.C. § 230. *See Cooper*, 939 F. Supp. 2d at 817, 822–24 (holding that the CDA preempts a state criminal ban on knowingly "advertising commercial sexual abuse of a minor"); *McKenna*, 881 F. Supp. 2d at 1273 (same). The CDA "overrides the traditional treatment of publishers [and] distributors . . . under statutory and common law" by immunizing certain internet-based businesses from state-law liability for content created by third parties. *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1176 (9th Cir. 2008) (citation omitted). But having preempted traditional state police powers in this area, and reserved the task of regulation to itself, Congress has a heightened responsibility to marshal the "facts needed for intelligent legislative action." *Watkins*, 354 U.S. at 187.

Indeed, legislative fact-finding is necessary to ensure that any potential future legislation on this issue is carefully tailored to protect a free and open Internet and respect First Amendment rights. The cases cited by Backpage only underscore the peril of enacting imprecise or ill-informed legislation on this issue. In *Cooper* and *McKenna*, for example, courts enjoined state statutes for, *inter alia*, vagueness and overbreadth; a better informed legislative effort might have prevented those legislatures from drafting invalid statutes. *See McKenna*, 881 F. Supp. 2d at 1280 (recognizing that the challenged statute "might find itself on better constitutional footing if the statute included [more clear] definitions"); *Cooper*, 939 F. Supp. 2d at 832–33 (holding that

overly expansive definition of “commercial sex at” rendered statute overbroad). Congress cannot be expected to legislate with a “scalpel”<sup>40</sup> if it must operate blindly.<sup>41</sup>

### III. The Subpoena’s Document Requests Are Directly Related to the Subject of the Subcommittee’s Investigation.

The Subcommittee’s investigation is designed to serve Congress’s interest in well-informed legislation to combat sex trafficking on the Internet, including the sale of minors for sexual services through online marketplaces. Backpage cannot dispute the validity or weight of that interest. But it has objected to several document requests in the subpoena—Requests One, Two, Three, Five, and Eight—on the ground that they are not pertinent to the investigation. Like its jurisdictional objection, Backpage blends this objection with vague references to the First Amendment. It has not, however, offered any analysis of any document request in the subpoena—either to explain why Backpage believes the documents sought do not pertain to our investigation, *see Orman*, 207 F.2d at 154–55; or why the requests are not supported by an adequate governmental interest, *see NAACP*, 357 U.S. at 461. As explained below, however, the subpoena’s requests are directly related to the subject matter of the Subcommittee’s legitimate investigation. *See Sinclair v. United States*, 279 U.S. 263, 299 (1929) (“The matter for determination . . . [is] whether the facts called for by the question were so related to the subjects covered by the Senate’s resolutions that such facts reasonably could be said to be ‘pertinent to the question under inquiry.’”).

#### A. Requests One, Two, and Three.

1. Backpage groups Requests One, Two, and Three together for the purpose of its response. These items require the production of documents concerning (1) “Backpage’s reviewing, blocking, deleting, editing, or modifying of advertisements in Adult Sections, either by Backpage personnel or by automated software processes, including but not limited to policies, manuals, memoranda, and guidelines”; (2) “advertising posting limitations, including but not limited to the ‘Banned Terms List,’ the ‘Grey List,’ and error messages, prompts, or other messages conveyed to users during the advertisement drafting or creation process”; and (3) “reviewing, verifying, blocking, deleting, disabling, or flagging user accounts or user account information, including but not limited to the verification of name, age, phone number, payment information, email address, photo, and IP address,” subject to the reminder that it “does not include the personally identifying information of any Backpage user or account holder.”

<sup>40</sup> Letter from Backpage to PSI at 1 (Oct. 23, 2015).

<sup>41</sup> Backpage also relies on two cases in which courts invalidated investigative demands because of procedural foot-faults. In *Russell v. United States*, the Supreme Court reversed a contempt conviction because the indictment failed to “identify[ ] the topic under inquiry.” 369 U.S. 749, 759, 771–72 (1962). And in *Shelton v. United States*, the D.C. Circuit reversed a conviction because the underlying subpoena was not issued pursuant to the committee’s rules. 327 F.2d 601, 606–07 (D.C. Cir. 1963). These cases do not bear on the question whether First Amendment concerns are present here.

In response to these requests, Backpage produced its Terms of Use, Posting Rules, User Agreement, and testimony given by Ms. McDougall before the New York City Council. These items are all publicly available. Backpage then asserted that “[t]o the extent the Subcommittee seeks further documents in this regard, Backpage.com objects to the request that it violates the First Amendment, is overbroad, and is not pertinent to a proper legislative inquiry by this Subcommittee.”<sup>42</sup>

2. We have already addressed and rejected Backpage’s First Amendment objections to the subpoena. It is equally clear that these requests are pertinent to our investigation. In her interview with Subcommittee staff, Ms. McDougall confirmed that Backpage’s moderation practices have included the ability to edit or modify advertisements that are being reviewed by moderators. Other information acquired by the Subcommittee has supported this finding. Gathering more information about these practices is important to understanding what steps can be taken to identify criminal activity on the Internet and to assessing whether Backpage’s moderation practices are helping or hindering that effort. Backpage publicly touts its moderation efforts as an effective way to prevent illegal content from appearing on its site.<sup>43</sup> Ms. McDougall’s testimony from 2012 stated that “Backpage leads the industry in” its moderation methods.<sup>44</sup> If indeed Backpage’s moderation practices are the gold standard, it would be useful for lawmakers to better understand those practices and whether they should be adopted or incentivized more broadly.<sup>45</sup>

Requests Two and Three ask for more specific information about Backpage’s review practices for advertisements and accounts. In Request Two, the Subcommittee seeks documents concerning an advertising moderation method described by Ms. McDougall in her interview with Subcommittee staff. Ms. McDougall stated that Backpage maintains a “black list” of more than 95,000 items, including emails, IP addresses, and specific words. Further, Ms. McDougall describes Backpage’s automated filter designed “to preclude ads with suspect words, phrases, codes and data.”<sup>46</sup> Again, these are procedures and methods that Backpage itself highlights as an

<sup>42</sup> Letter from Backpage to PSI at 7 (Oct. 23, 2015).

<sup>43</sup> Liz McDougall, SEATTLE TIMES, *Backpage.com is an Ally in the Fight Against Human Trafficking*, May 6, 2012, <http://www.seattletimes.com/opinion/backpagecom-is-an-ally-in-the-fight-against-human-trafficking/>.

<sup>44</sup> BP-PSI-000016 (“A key to disrupting and eventually ending human trafficking via the World Wide Web is therefore an online service provider community—of business including Backpage.com—that aggressively monitor for and trace potential trafficking cases and promptly report to and cooperate with frontline law enforcement. As stated, Backpage.com leads the industry in these measures.”).

<sup>45</sup> Backpage’s submission asserts that it “does not maintain policies or procedures regarding its moderation process.” Letter from Backpage to PSI at 2 (Oct. 23, 2015). It is not clear to us whether that is also an assertion that Backpage has no responsive documents in its possession. We have reason to believe otherwise: In her interview with Subcommittee staff, Ms. McDougall explained that Backpage previously did have a written moderation policy, but has since abolished it in favor of hands-on apprenticeship-style training of its moderators. Another witness interviewed by the Subcommittee has also confirmed that documents containing moderation guidelines did once exist at Backpage.

<sup>46</sup> BP-PSI-000016.

effective tool to combat trafficking that the Subcommittee seeks to understand. Request Three seeks documents about how Backpage reviews, verifies, blocks, deletes, disables, or flags user accounts—but specifically reminds Backpage not to produce information that could identify specific users. All this information will enable Congress to assess how effectively it has “encourag[ed] service providers to self-regulate” as Congress intended in the CDA. *Zeran v. America Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997).

3. Finally, Backpage leaves completely unexplained its assertion that Requests One, Two, and Three (but evidently no other Requests to which it objects) are “overbroad.” Nowhere else in its submission does Backpage supply any argument relating to the breadth of the subpoena. It does not identify the burden imposed by the Requests or explain what information would be captured by them that would raise special problems. In any event, the Requests are not overbroad. They are targeted at information concerning practices at the core of the Subcommittee’s investigation.

#### **B. Request Five.**

Request Five concerns documents about Backpage’s policies regarding data retention, metadata removal or retention, and hashing of images<sup>47</sup> in the adult section.<sup>48</sup> Backpage’s objection to the pertinence of this Request has no merit. In fact, Ms. McDougall’s 2012 testimony details its value. In a section titled “Backpage.com’s Combat of Online Trafficking,” Ms. McDougall stated, “When traffickers use the Internet, especially in a financial transaction, they leave forensic footprints that create unprecedented tools and evidence that law enforcement can use to locate and rescue victims of exploitation and to investigate, arrest and convict pimps and their criminal networks.”<sup>49</sup> “Forensic footprints” described by Ms. McDougall in her testimony include metadata<sup>50</sup> and image hashing technology that law enforcement and investigators use to conduct investigations into sex trafficking. The retention of that data is also vital to those efforts. As companies make decisions to purge data, those forensic footprints vanish—often along with law enforcement’s ability to find new leads. The details of Backpage’s efforts to maintain, archive, and otherwise limit access to this valuable data are relevant to this inquiry. It will enable the Subcommittee to understand whether existing retention policies are adequate for law enforcement needs.

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<sup>47</sup> Image hashing refers to reducing an image file to a numeric value, which serves as a unique fingerprint for each photo. This technique permits one to search for identical photos in other places, including on different web pages.

<sup>48</sup> Subpoena, Schedule A (Oct. 1, 2015).

<sup>49</sup> BP-PSI-000016.

<sup>50</sup> Metadata summarizes basic information about data, which can make finding and working with particular instances of data easier. For example, *author*, *date created*, *date modified*, and *file size* are examples of very basic document metadata.

### C. Request Eight.

Request Eight seeks information about Backpage's annual revenue and profit over the last five years. In particular, the request calls for information that will identify what proportion of Backpage's annual revenue and profit derives solely from advertisements in its "adult" section. This information is important to the Subcommittee's ability to assess the impact on the profitability of online advertising sites on voluntary anti-trafficking measures, and to evaluate the resources available to commit to other potential efforts. When considering changes to any regulatory system, it is a basic task of any legislative or regulatory body to assess the compliance costs, and available resources, of the regulated industry. The requested information will also enable Congress to assess the financial incentives for effective private efforts against human trafficking on the Internet.

### IV. Backpage Has Not Timely Produced Documents In Connection With Other Requests To Which It Has Not Objected.

Backpage has lodged no specific objection to Requests Four, Six, or Seven. But neither has it produced any documents, sought an extension of its time to do so, or certified that it has no responsive materials. To the contrary, Backpage suggests it may produce some materials responsive to these requests on an unknown future date.

Request Four seeks documents concerning "human trafficking, sex trafficking, human smuggling, prostitution, or the facilitation or investigation thereof, including but not limited to policies, criteria, manuals, procedures, memoranda, instructions, guidelines, and communications." Backpage has announced it will produce to the Subcommittee certain documents responsive to Request Four: "its many records regarding its cooperation with law enforcement, including responses to subpoenas, testimony provided by Backpage.com personnel, voluntary investigations by Backpage.com, and communication with law enforcement commending Backpage.com for its work and support combatting human trafficking."<sup>51</sup> But Request Four encompasses more than these records. It requires the production of *all* documents concerning the enumerated illegal activities, not just those Backpage selects. Accordingly, the Subcommittee expects Backpage to produce all responsive materials.

Requests Six and Seven seek basic statistical data about the number of advertisements posted, blocked, and reported to law enforcement over the past three years. Backpage has not asserted that it has no documents responsive to these requests; instead, it represents that it does not routinely maintain records of this information.<sup>52</sup>

<sup>51</sup> Letter from Backpage to PSI at 7 (Oct. 23, 2015).

<sup>52</sup> We have reason to doubt that Backpage lacks documents responsive to this request. Backpage has made several public and private statements about the volume of advertisements on its website. In an interview with Subcommittee staff, for example, McDougall stated that only 12% of the advertisements placed on the site were placed in the adult section. And while Backpage claims it does "not routinely maintain ad volume information as requested by the Subcommittee," it was able to state that ad volume has recently increased. In any event, given that advertisements in

Because Backpage's submission did not articulate any specific objections to Requests Four, Six, or Seven, we do not understand the company to be asserting any basis for withholding those documents. If, however, Backpage is relying on general objections to withhold documents responsive to these requests, then those objections are overruled for the reasons stated above. In either case, Backpage must produce documents responsive to these requests by November 12, 2015, at 10 a.m.

### CONCLUSION


On behalf of the Subcommittee, we overrule each of your objections to the October 1 subpoena. We understand those objections to apply only to Requests One, Two, Three, Five, and Eight. You are ordered and directed to produce all documents responsive to each of the subpoena's eight requests by November 12, 2015, at 10:00 a.m., in accordance with the instructions attached to the subpoena.

Your personal appearance is further continued until November 19, 2015, at 10:00 a.m., at 342 Dirksen Senate Office Building. We strongly caution you that further noncompliance may be treated as contempt of the Subcommittee's subpoena and may subject you to civil enforcement or criminal penalties.

Sincerely,



Rob Portman  
Chairman  
Permanent Subcommittee on Investigations



Claire McCaskill  
Ranking Member  
Permanent Subcommittee on Investigations

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Backpage's adult section are a significant source of its revenue, we think it unlikely that Backpage does not regularly maintain some documents about advertising volume.

# Akin Gump

STRAUSS HAUER & FELD LLP

STEVEN R. ROSS  
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November 5, 2015

**VIA HAND DELIVERY**

The Honorable Rob Portman, Chairman  
The Honorable Claire McCaskill, Ranking Member  
Permanent Subcommittee on Investigations  
Committee on Homeland Security & Governmental Affairs  
United States Senate  
Russell Senate Office Building, SR-199  
Washington, DC 20510

*Re: October 1, 2015 Subpoena Issued to Backpage.com*

Dear Chairman Portman and Ranking Member McCaskill:

On behalf of Backpage.com, LLC ("Backpage.com"), we write in further regard to the subpoena for documents issued by the Permanent Subcommittee on Investigations (the "Subcommittee") on October 1, 2015 (the "Subpoena").

As outlined in our October 23, 2015 letter, and notwithstanding the Subcommittee's letter of November 3, 2015, Backpage.com continues to object to the Subpoena on the basis that its requests violate the First Amendment, are overbroad, and/or are not pertinent to a proper legislative inquiry by the Subcommittee. Nonetheless, and as discussed with Subcommittee staff, Backpage.com is willing to provide certain additional documents and information to the Subcommittee as a gesture of good faith. To that end, today's submission contains Backpage.com's "Software License, Hosting, Maintenance and Development Agreement" with DesertNet, L.L.C. For purposes of identification and reference, this agreement has been numbered from BP-PSI-000022 to BP-PSI-000068.

Please note that this agreement is confidential and proprietary in nature, and has been marked as such. Backpage.com expressly requests that this information be kept confidential by the Subcommittee and its staff. In addition, I ask that Subcommittee staff provide me with notice and an opportunity to be heard before it discloses any such information or documents to any third parties.

**Akin Gump**  
STRAUSS HAUER & FELD LLP

November 5, 2015  
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Finally, while Backpage.com has agreed to provide particular documents in response to some of the Subpoena's requests, Backpage.com does not waive and expressly reaffirms its First Amendment and pertinence objections as to all requested documents and information. The production of this information is not intended, and should not be taken, as a waiver of these or any other privilege that might be asserted in any other forum or proceeding. The objections outlined in our October 23, 2015 letter, as well as our earlier letters, are specifically asserted as a basis for not producing documents or information called for by the Subpoena

Sincerely,



Steven R. Ross  
Stanley M. Brand  
Akin Gump Strauss Hauer & Feld  
Counsel for Backpage.com, LLC

Robert Corn-Revere  
Davis Wright Tremain, LLP  
Counsel for Backpage.com, LLC

Encl.



# Akin Gump

STRAUSS HAUER & FELD LLP

STEVEN R. ROSS  
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November 13, 2015

**VIA HAND DELIVERY**

The Honorable Rob Portman, Chairman  
The Honorable Claire McCaskill, Ranking Member  
Permanent Subcommittee on Investigations  
Committee on Homeland Security & Governmental Affairs  
United States Senate  
Russell Senate Office Building, SR-199  
Washington, DC 20510

*Re: October 1, 2015 Subpoena Issued to Backpage.com*

Dear Chairman Portman and Ranking Member McCaskill:

On behalf of Backpage.com, LLC ("Backpage.com"), we write in further regard to the subpoena for documents issued by the Permanent Subcommittee on Investigations (the "Subcommittee") on October 1, 2015 (the "Subpoena").

As outlined in our October 23, 2015 letter, and notwithstanding the Subcommittee's letter of November 3, 2015, Backpage.com continues to object to the Subpoena on the basis that its requests violate the First Amendment, are overbroad, and/or are not pertinent to a proper legislative inquiry by the Subcommittee. Nonetheless, and as discussed with Subcommittee staff, Backpage.com is willing to provide certain additional documents and information to the Subcommittee as a gesture of good faith.

Notwithstanding that, as you know, Backpage.com is in the midst of other legal challenges, the company has been working diligently to try to compile information and documents responsive to your Subpoena. To that end, today's submission contains additional documents identified by Backpage.com as responsive to the Subpoena. Certain documents have been withheld on the basis of attorney-client and/or attorney work product privilege, and certain documents within the submission contain redactions on that same basis. Please note that although the Subpoena identifies "Adult Sections" to include the Massage category of the website, Backpage.com does not include Massage as a subset of its Adult category; as such, documents and information contained in this submission may not pertain to the "Adult Sections" as defined in the Subpoena.

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For purposes of identification and reference, these documents have been numbered from BP-PSI-000069 to BP-PSI-016838. Specifically, the documents being provided are as follows:

In response to Subpoena Request One, Backpage.com has provided the following: screen shots of the moderation team's computer interface that display certain moderation guidelines (BP-PSI-000069 – BP-PSI-000071 and BP-PSI-000073); a previously-used list of moderation guidelines (BP-PSI-000072); documents regarding the moderation process discussions with SSP Blue in 2011 (BP-PSI-000074 – BP-PSI-000081); a sample moderation log (BP-PSI-016831 – BP-PSI-016838); and a list of banned terms used by Backpage.com moderators in the manual review process (BP-PSI-000082).<sup>1</sup>

In response to Subpoena Request Two, Backpage.com has provided the following: screen shots of user error screens (BP-PSI-000083 – BP-PSI-000104). In addition, Backpage.com intends to supplement this submission next week with a list of terms used in the filtering process.

In response to Subpoena Request Three, Backpage.com refers the Subcommittee to the documents provided in response to Subpoena Request One.

In response to Subpoena Request Four, Backpage.com has provided the following: correspondence with Cook County, Illinois Sheriff Thomas J. Dart in 2011 (BP-PSI-000105 – BP-PSI-000112); presentations and guides created to assist law enforcement officials (BP-PSI-000113 – BP-PSI-000163 and BP-PSI-000409 – BP-PSI-000463); correspondence with law enforcement entities regarding potential human trafficking or similar potentially illegal activity (BP-PSI-000164 – BP-PSI-000408); and other records pertaining to Backpage.com's cooperation with law enforcement subpoenas (BP-PSI-000473 – BP-PSI-016830). Given the volume of these documents, Backpage.com continues to process these files for the electronic production to the Subcommittee, and expects to complete this portion of its submission shortly.

In response to Subpoena Request Five, Backpage.com does not maintain formal written retention policies. At this time, we are unaware of non-privileged documents responsive to the remainder of the request, and will follow-up with the Subcommittee if such documents are discovered.

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<sup>1</sup> As noted in our letter of October 23, 2015, Backpage.com does not maintain policies or procedures regarding its moderation process.

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In response to Subpoena Request Six, as explained in our October 23, 2015 letter, Backpage.com does not routinely maintain advertisement volume information as requested by the Subcommittee. In an effort to provide the Subcommittee with information relevant to this request, however, Backpage.com has compiled the following information:

- In response to Request Six Subparts A and B, Backpage.com reports the following advertisement volumes:

	All	Adult Section	Non-Adult Section
January, 2013	1,876,045	169,508	1,706,537
February, 2013	1,600,261	139,703	1,460,558
March, 2013	1,847,002	163,222	1,683,780
April, 2013	1,748,318	164,055	1,584,263
May, 2013	1,706,100	169,335	1,536,765
June, 2013	1,605,029	169,266	1,435,763
July, 2013	1,530,333	174,047	1,356,286
August, 2013	1,259,296	170,644	1,088,652
September, 2013	1,270,105	158,373	1,111,732
October, 2013	1,537,488	164,570	1,372,918
November, 2013	1,717,038	154,585	1,562,453
December, 2013	2,324,225	156,102	2,168,123
January, 2014	2,018,720	154,975	1,863,745
February, 2014	1,684,353	128,270	1,556,083
March, 2014	1,793,397	156,032	1,637,365
April, 2014	1,614,980	162,109	1,452,871
May, 2014	1,341,548	176,172	1,165,376
June, 2014	1,113,937	177,013	936,924
July, 2014	1,121,579	188,859	932,720
August, 2014	1,040,015	190,424	849,591
September, 2014	1,080,722	182,438	898,284
October, 2014	1,091,408	192,915	898,493
November, 2014	1,009,889	183,951	825,938
December, 2014	946,859	193,192	753,667
January, 2015	1,034,848	205,370	829,478
February, 2015	900,586	161,313	739,273
March, 2015	1,019,451	196,061	823,390
April, 2015	726,397	203,059	523,338
May, 2015	648,519	207,422	441,097
June, 2015	637,683	206,842	430,841
July, 2015	1,487,639	1,017,990	469,649
August, 2015	1,910,150	1,289,517	620,633
September, 2015	2,564,313	1,884,697	679,616
October, 2015	2,811,871	2,100,602	711,269

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- In response to Request Six Subpart C, Backpage.com has made the following number of reports to the National Center for Missing & Exploited Children “NCMEC”):

October 2012	778
November 2012	711
December 2012	789
January 2013	723
February 2013	645
March 2013	767
April 2013	824
May 2013	958
June 2013	808
July 2013	807
August 2013	847
September 2013	700
October 2013	542
November 2013	512
December 2013	592
January 2014	530
February 2014	422
March 2014	458
April 2014	475
May 2014	455
June 2014	475
July 2014	473
August 2014	471
September 2014	372
October 2014	445
November 2014	396
December 2014	318
January 2015	327
February 2015	318
March 2015	306
April 2015	413
May 2015	417

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June 2015	509
July 2015	540
August 2015	155
September 2015	185

With respect to law enforcement entities other than NCMEC, Backpage.com has included correspondence with these law enforcement entities regarding potentially illegal conduct (BP-PSI-000464 – BP-PSI-000472).

In response to Subpoena Request Seven, as explained in our October 23, 2015 letter, Backpage.com does not routinely maintain the statistical information requested by the Subcommittee. In an effort to provide the Subcommittee with information relevant to this request, however, Backpage.com has used a reporting tool to estimate the number of advertisements deleted through Tier One review. Based upon that tool and available data, Backpage.com estimates that from October 23, 2012 through October 23, 2015, more than 1,040,661 advertisements were deleted through Tier One review. With respect to Tier Two review, based upon the data and tools available, Backpage.com estimates that from January 1, 2015 to June 30, 2015, approximately 557,763 advertisements were deleted.

As discussed with Subcommittee staff, documents included in this submission contain sensitive information regarding victims and/or potential victims of crime and confidential law enforcement tactics used to investigate and/or prosecute criminal activity. These documents have been specifically marked as “Law Enforcement Sensitive.” To preserve the privacy of victims and/or potential victims of crime, and to preserve the efficacy of law enforcement strategies and tactics, Backpage.com expressly requests these documents and information be kept strictly confidential by the Subcommittee and its staff. In addition, please note that this submission contains documents that are confidential and proprietary in nature, and have been marked as such. As also discussed with Subcommittee staff, Backpage.com expressly requests that this information be kept confidential by the Subcommittee and its staff. In addition, I ask that Subcommittee staff provide me with notice and an opportunity to be heard before it nonetheless discloses any such information or documents to any third parties.

Finally, while Backpage.com has agreed to provide particular documents in response to some of the Subpoena’s requests, Backpage.com does not waive and expressly reaffirms its First Amendment and pertinence objections as to all requested documents and information. The production of this information is not intended, and should not be taken, as a waiver of these or any other privilege that might be asserted in any other forum or proceeding. The objections

**Akin Gump**  
STRAUSS HAUER & FELD LLP

November 13, 2015  
Page 6

outlined in our October 23, 2015 letter, as well as our earlier letters, are specifically asserted as a basis for not producing documents or information called for by the Subpoena

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line.

Steven R. Ross  
Stanley M. Brand  
Akin Gump Strauss Hauer & Feld  
Counsel for Backpage.com, LLC

Robert Corn-Revere  
Davis Wright Tremaine, LLP  
Counsel for Backpage.com, LLC

Encl.

# Akin Gump

STRAUSS HAUER & FELD LLP

STEVEN R. ROSS  
202.887.4343/fax: 202.887.4288  
sross@akingump.com

November 16, 2015

**VIA ELECTRONIC DELIVERY**

The Honorable Rob Portman, Chairman  
The Honorable Claire McCaskill, Ranking Member  
Permanent Subcommittee on Investigations  
Committee on Homeland Security & Governmental Affairs  
United States Senate  
Russell Senate Office Building, SR-199  
Washington, DC 20510

*Re: October 1, 2015 Subpoena Issued to Backpage.com*

Dear Chairman Portman and Ranking Member McCaskill:

On behalf of Backpage.com, LLC ("Backpage.com"), we write in further regard to the subpoena for documents issued by the Permanent Subcommittee on Investigations (the "Subcommittee") on October 1, 2015 (the "Subpoena"), and specifically in response to an email from Subcommittee Chief Counsel Matt Owen on November 14, 2015.

While our sense of the conversation I had on November 13, 2015 with Subcommittee staff differs from Mr. Owen's email description—a matter I sought to clarify both during that conversation and again in writing shortly thereafter in an email to Subcommittee staff—Backpage.com continues to object to the Subcommittee's efforts to compel production of an alarmingly vast amount of documents and information regarding the First Amendment protected activities of Backpage.com and those individuals who engage in First Amendment protected activities on its internet platform. As clearly outlined in our numerous letters to the Subcommittee, Backpage.com's objections are based on the overbreadth of the demands, the lack of pertinence to any constitutionally valid legislative purpose, the burden of compliance with the Subcommittee's demands, as well as Backpage.com's core First Amendment objections.

Notwithstanding these objections, in its continuing effort to be of assistance to the Senate—just as it has assisted law enforcement efforts directed at the scourge of human trafficking—Backpage.com has provided the Subcommittee with extensive information regarding its endeavors to assist in efforts to combat human trafficking. First, Backpage.com's general counsel provided a lengthy briefing to Subcommittee staff in June 2015, and the

November 16, 2015  
Page 2

company has since submitted more than 16,000 pages of documents and information compiled by the company relating to the Subcommittee's requests for information. As I stated in my phone call with Subcommittee staff on November 13, 2015, the only request to which the company has declined to provide *any* information is Request Eight, which seeks extensive revenue and profit information regarding Backpage.com's business.

As counsel for Backpage.com, we have not represented, and do not now represent, that the company's submissions of information and documents to date constitute either the fruits of a complete search of every bit of data possessed by Backpage.com or by all of its employees over the full (nearly six year) time period covered by the Subpoena. Indeed, to be required to conduct such a search and review in light of the significant overbreadth and First Amendment infirmities of the Subpoena would in itself be constitutionally inappropriate.

Rather, the November 13, 2015 submission, as explained in the accompanying cover letter, was made because Backpage.com was "willing to provide certain additional documents and information to the Subcommittee as a gesture of good faith." In its effort to be helpful to the stated purpose of the Subcommittee's inquiry, Backpage.com did compile and, in some instances, did collect information and documents from the employees most likely to have the relevant information and documents. Backpage.com strove to include the documents most relevant to the Subcommittee's professed inquiry concerning potential legislation regarding human trafficking, and the company undertook significant efforts to collect over five million pages of documents specifically responsive to the Subpoena's document request regarding suspected human trafficking or other illegal activities and the investigation of such activities. In his November 14, 2015 email, Mr. Owen instructed us to suspend the production of these documents.

In addition to Backpage.com's clearly and consistently stated constitutional objections to the Subpoena, our recent communications with the Subcommittee and its staff continue to raise concerns regarding the actual purpose and intent of the Subcommittee's inquiry.

It is in light of these concerns and of the ongoing dispute over documents that Subcommittee staff informed us on November 13, 2015 that the Subcommittee has published notice of a public hearing to be held on November 19, 2015 and commanded the personal appearance of Carl Ferrer, Backpage.com's Chief Executive Officer. Respectfully, Mr. Ferrer will decline to provide testimony on the First Amendment and related constitutional grounds outlined in this and our prior letters, as well as his Fifth Amendment rights. Accordingly, we ask that his personal appearance—which would necessitate Mr. Ferrer's international travel solely for the assertion of his constitutional rights—be waived by the Subcommittee. If the Subcommittee insists upon a personal appearance by Mr. Ferrer, we would ask that it be scheduled following November 22, 2015 to accommodate Mr. Ferrer's schedule.

App. 000067



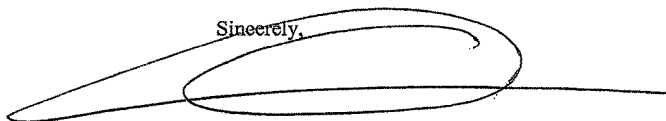
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As we have said in our past correspondence, the concerns we raise with regard to the First Amendment implications of the Subcommittee's investigation of an entity engaged in speech and publication activities are far from trivial. The legal seriousness of these concerns is evidenced by the quashing of one subpoena, which sought similar information, by one federal district court, and, in a separate matter, by the issuance of an injunction earlier today by the Federal Court of Appeals for the Seventh Circuit.

In its very language, the First Amendment constitutes a textual limitation on the authority of Congress. It is therefore uniquely the case that a determination of the limits imposed by the First Amendment on the actions of a congressional subcommittee should be made not by that subcommittee itself, but by the judicial branch which bears the responsibility of interpreting the First Amendment in a manner to protect the rights of citizens. While we had hoped that Backpage.com's significant production of information and documents would have satisfied any legitimate need for information regarding human trafficking, our recent communications with the Subcommittee belie that hope. Therefore, we repeat our suggestion that if the Subcommittee seeks additional documents and information from Backpage.com, Subcommittee counsel and Backpage.com's counsel should next discuss the presentation of this issue to the courts for resolution. As we have stated before, a civil statutory mechanism exists for the Subcommittee to present the constitutional issues for judicial determination, and Backpage.com would abide by a final judicial determination of these constitutional questions.

Thank you for your consideration.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of a long horizontal line with a large loop at the end.

Steven R. Ross  
Stanley M. Brand  
Akin Gump Strauss Hauer & Feld  
Counsel for Backpage.com, LLC

Robert Corn-Revere  
Davis Wright Tremaine, LLP  
Counsel for Backpage.com, LLC

# Akin Gump

STRAUSS HAUER & FELD LLP

STEVEN R. ROSS  
202.887.4343/fax: 202.887.4288  
sross@akingump.com

November 18, 2015

**VIA ELECTRONIC DELIVERY**

The Honorable Rob Portman, Chairman  
The Honorable Claire McCaskill, Ranking Member  
Permanent Subcommittee on Investigations  
Committee on Homeland Security & Governmental Affairs  
United States Senate  
Russell Senate Office Building, SR-199  
Washington, DC 20510

*Re: October 1, 2015 Subpoena Issued to Backpage.com*

Dear Chairman Portman and Ranking Member McCaskill:

On behalf of Backpage.com, LLC ("Backpage.com"), we write in further regard to the subpoena for documents issued by the Permanent Subcommittee on Investigations (the "Subcommittee") on October 1, 2015 (the "Subpoena"), and specifically in response to emails from Subcommittee Chief Counsel Matt Owen on November 16 and 17, 2015.

On Friday, November 13, 2015, Subcommittee staff informed us by email that a *public* hearing would be held on November 19, 2015 and that Backpage.com's Chief Executive Officer, Carl Ferrer, "should plan to appear." By letter on November 16, 2015 to the Subcommittee, we (as counsel to Backpage.com) formally repeated Backpage.com's request Mr. Ferrer's personal appearance be waived or continued, on the basis that Mr. Ferrer will decline to provide testimony on the First Amendment and related constitutional grounds, as well as on the basis of his Fifth Amendment rights. By email sent Monday evening, Mr. Owen denied our request.

Again, we write today to confirm that Mr. Ferrer will, on the basis of his constitutional rights, decline to answer any and all questions posed the Subcommittee. As explained further below, we believe it is inappropriate for the Subcommittee to require Mr. Ferrer's personal appearance. As we have also previously informed the Subcommittee, Mr. Ferrer is presently out of the country for business. He will not be in Washington, D.C. on November 19, 2015.

To be clear, Mr. Ferrer has never agreed to appear before the Subcommittee on November 19, 2015. As we explained in our November 16, 2015 letter, Mr. Ferrer is on

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important international business travel, and does not return until November 22, 2015. We note that these travel plans were made well before the Subcommittee decided—without any attempt to consult Mr. Ferrer regarding his availability—commanded his personal appearance on November 19, 2015 regarding the Subpoena.<sup>1</sup> Multiple times since, we requested Subcommittee staff to continue the personal appearance date, both by email and in discussion. Subcommittee staff indicated that they would only entertain such a request once Backpage.com provided documents in response to the Subpoena. As the Subcommittee is aware, Backpage.com has now voluntarily produced more than 16,000 pages responsive to the Subpoena's requests. It also collected more than five million additional pages of documents directly related to human trafficking before the Subcommittee staff instructed Backpage.com to cease production.

Notwithstanding the foregoing, if the Subcommittee—in a departure that echoes the ignominious approach of an earlier era of Senate inquiries—elects to engage in the unnecessary exercise of requiring a private citizen to attend a public hearing to assert his constitutional rights, Mr. Ferrer will do so after his return to the United States this weekend. Indeed, we are presently able to obtain and convey Mr. Ferrer's agreement to a specific future date on which he will personally appear before the Subcommittee.

Backpage.com is well aware that its business, particularly the advertisements posted by users in its Adult section, is unpopular with some audiences. Because some do not approve of the content of the speech that occurs on Backpage.com's internet platform, multiple branches of the government have attempted and still continue to attempt to disrupt its business. But protected speech is protected speech. Therefore, to protect the First Amendment, the courts—most recently the U.S. Court of Appeals for the Seventh Circuit—have enjoined inappropriate attempts to use the government's authority to disrupt Backpage.com's internet speech-based business, and the judicial branch has quashed subpoenas that were, like this Subcommittee's subpoena, overly broad and intrusive. Thus, the Subcommittee's investigation of Backpage.com must be viewed in the context of concerted government actions to shut the company down, particularly when there have been efforts by some in the Senate to collaborate or coordinate with those other government entities engaged in these targeted and non-legislative matters.

Despite the disapproval of some in the government, however, the fact remains that both Backpage.com and Mr. Ferrer are engaged in the business of speech. This business is specifically protected by the limits specifically imposed upon Congress by the First Amendment to the U.S. Constitution, and we believe the Subcommittee's investigation is outside of these

---

<sup>1</sup> We note that the Subpoena itself contemplates that the personal appearance be waived upon the production of documents.

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Page 3

constitutional bounds. Throughout this inquiry, we have attempted to raise these concerns with the Subcommittee respectfully, consistently, and in the manner requested by Subcommittee staff.

While the Subcommittee has itself rejected Backpage.com's constitutional objections to the Subpoena, we believe the appropriate arbiter of such a dispute is the federal judiciary. Over the past months, we have suggested to Subcommittee staff that we pursue such a course. Indeed, we would welcome a proper judicial review of whether or not the Subcommittee's inquiry is within proper constitutional bounds. If the Subcommittee would like to pursue a civil contempt against Backpage.com—an action which would provide an opportunity for judicial review of the Subpoena—a sufficient foundation has already been established through our writings, and through Backpage.com's objections to the Subpoena's requests.<sup>2</sup>

Accordingly, the Subcommittee need not conduct a public spectacle attempting to shame Mr. Ferrer in order to advance this matter. Indeed, requiring his appearance on November 19, 2015 would be a further denigration of his rights, and an action unbecoming of the Subcommittee and its recent history of conducting fair and serious investigations.<sup>3</sup> Given the existing record, and given that the Subcommittee has received written notice that Mr. Ferrer will decline to testify before the Subcommittee on the basis of his constitutional rights, we believe there is no legitimate reason to compel his appearance.

Thank you for your consideration.

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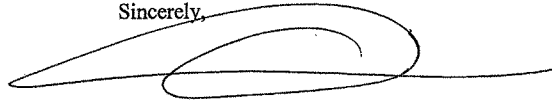
<sup>2</sup> We have further indicated to the Subcommittee that Backpage.com will comply with any production or disclosure requirements found in a final judicial decision to be constitutionally proper.

<sup>3</sup> In Opinion 31, the Rules Review Committee of the District of Columbia Bar has stated that a congressional staff attorney violates ethical rules where he or she knows that summoning a witness to appear (1) will provide no information to the committee and (2) is intended merely to degrade a witness. *See* D.C. Bar Ethics Opinion 31 (1977). According to this opinion, a lawyer violates the D.C. Rules of Professional Conduct if he or she summons a witness to appear when "it is known in advance that no information will be obtained and the sole effect of the summons will be to pillory the witness." *Id.* In 2011, in Ethics Opinion 358, the D.C. Rules Review Committee rejected a request to vacate Opinion 31, holding that the Rules of Professional Conduct are violated "if there is no substantial purpose in calling a witness other than embarrassment, burden, or delay." D.C. Bar Ethics Opinion 358 (2011).

**Akin Gump**  
STRAUSS HAUER & FELD LLP

November 18, 2015  
Page 4

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line.

Steven R. Ross  
Stanley M. Brand  
Akin Gump Strauss Hauer & Feld  
Counsel for Backpage.com, LLC

Robert Corn-Revere  
Davis Wright Tremaine, LLP  
Counsel for Backpage.com, LLC

RON JOHNSON, WISCONSIN, CHAIRMAN  
 JOE BLUNT, ARIZONA  
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 THOMAS H. CARPER, DELAWARE  
 CLARE McCASKILL, MISSOURI  
 JUDY BATES, MONTANA  
 TAMMY BALDWIN, WISCONSIN  
 HERB HERRMANN, NORTH DAKOTA  
 DANNY K. ROBERTS, MISSISSIPPI  
 GARY C. PETERS, MICHIGAN  
 KATHA JOHNSON, STAFF DIRECTOR  
 GABRIELLE A. BATAVIA, MINORITY STAFF DIRECTOR

## United States Senate

COMMITTEE ON  
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
 WASHINGTON, DC 20510-6250

November 18, 2015

### VIA ELECTRONIC MAIL

Mr. Steven R. Ross  
 Akin, Gump, Strauss, Hauer & Feld LLP  
 1333 New Hampshire Avenue, N.W.  
 Washington, D.C. 20036

Dear Mr. Ross:

We write in response to your November 18, 2015, letter informing us that Mr. Ferrer will not appear before the Subcommittee tomorrow, November 19, 2015, despite being under subpoena to do so. Your letter offers two separate reasons why Mr. Ferrer will likely not appear. As explained below, neither reason is sufficient.

First, according to your letter, Mr. Ferrer is presently out of the country for business and will not return until November 22.<sup>1</sup> At this late date, that is not an adequate excuse. Mr. Ferrer has been subject to a subpoena requiring his personal appearance since October 1,<sup>2</sup> and on notice of the time and place of his appearance since November 3. As you will recall, on October 15, you informed Subcommittee staff that you would file objections to the subpoena by the return date, October 23. For that reason, on October 20, we continued Mr. Ferrer's personal appearance "to a date to be determined later to permit the Subcommittee to consider any objection [he] wish[ed] to submit."<sup>3</sup> We considered those objections and overruled them on November 3 by a letter order addressed to Mr. Ferrer.<sup>4</sup> That order further continued Mr. Ferrer's appearance "until November 19, 2015, at 10:00 a.m., at 342 Dirksen Senate Office Building," the Subcommittee's hearing room.<sup>5</sup>

That same day, Subcommittee staff spoke with you and Ms. Greer by phone. During that phone call, Subcommittee staff called your attention to Mr. Ferrer's appearance date and informed you that he should make travel arrangements to appear before the Subcommittee on that date. Subcommittee staff expressly cautioned that it would not accept logistical impediments as an excuse for Mr. Ferrer not to appear. Despite that, and despite extensive communications between you and Subcommittee staff in the interim, Mr. Ferrer only suggested today—the day before the hearing—that he would refuse to appear regardless of whether the Subcommittee continued his appearance.

<sup>1</sup> See Letter from Steven R. Ross to Permanent Subcommittee on Investigations, at 1-2 (Nov. 18, 2015).

<sup>2</sup> Subpoena, Oct. 1, 2015.

<sup>3</sup> Letter from Permanent Subcommittee on Investigations to Carl Ferrer, at 1 (Oct. 20, 2015).

<sup>4</sup> Letter from Permanent Subcommittee on Investigations to Carl Ferrer, at 19 (Nov. 3, 2015).

<sup>5</sup> *Id.* at 19.

Last Friday, November 13, in a letter to us, you explained that the company and Mr. Ferrer continued to object to the October 1 subpoena on First Amendment grounds. In that letter, you said nothing about any planned international travel by Mr. Ferrer or any other logistical impediment to his appearance. In fact, you first mentioned that travel on Monday, November 16—two days ago. Even then, you did not say that Mr. Ferrer’s travel plans would prevent his appearance; instead you simply “ask[ed] that his personal appearance—which would necessitate Mr. Ferrer’s international travel solely for the assertion of his constitutional rights—be waived by the Subcommittee.”<sup>6</sup> The Subcommittee denied that request within hours, acting promptly because of the urgent nature of the request. The next day, November 17, the Subcommittee asked you to confirm that Mr. Ferrer would appear for the hearing.

In short, Mr. Ferrer has received more than adequate notice that his appearance is legally required tomorrow. If Mr. Ferrer scheduled his travel prior to November 3—the date on which he received notice that he was required to appear on November 19—he had an obligation to inform the Subcommittee as soon as possible. If Mr. Ferrer scheduled his travel after November 3, he did so despite knowing that he was required to appear on November 19.

*Second*, you contend that, because it is your understanding that Mr. Ferrer will invoke his Fifth Amendment rights if questioned by the Subcommittee, it is inappropriate to require his appearance.<sup>7</sup> That is not so. As you know, this Subcommittee is not a criminal tribunal, and a witness before the Subcommittee is not a criminal defendant. The witness has no right to avoid questioning before the Subcommittee. It is proper and consistent with the practice of the Senate to require a witness to appear, hear the questions put to him, and then invoke his Fifth Amendment right to not answer if he has a good-faith belief that the answer will tend to incriminate him—a judgment that depends upon the question asked. In addition, witnesses may choose to answer questions despite their lawyers’ previous representation that they will not, or even their own previous intention not to do so. For those reasons, we decline to continue Mr. Ferrer’s November 19 appearance. If he validly invokes the Fifth Amendment in response to specific questions, however, the Subcommittee will respect his privilege to do so.

In short, we deny your client’s untimely request for a further continuance. We strongly caution Mr. Ferrer that failure to abide by his obligation to appear before the Subcommittee tomorrow may subject him to criminal penalties for contempt.

Sincerely,



Rob Portman  
Chairman  
Permanent Subcommittee on Investigations



Claire McCaskill  
Ranking Member  
Permanent Subcommittee on Investigations

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

<sup>7</sup> Letter from Steven R. Ross to Permanent Subcommittee on Investigations, at 2 (Nov. 18, 2015).

## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** Carl Ferrer  
**To:** [REDACTED]; Andrew Padilla  
**Cc:** [REDACTED]  
**Subject:** 25 minute reports on ads struck on the queue.  
**Date:** Sunday, October 24, 2010 12:03:43 AM

---

Hey [REDACTED]  
 Our goal is to make sure we review ads in less than 20 minutes, especially those ads under review.

We still have some work to do in the US and probably India since we have not hit that goal.  
 The email reports below get sent to one of my email addresses when an ad sits in the queue over 25 minutes.

I'm not sure this is useful reporting given our volume.

When you have a chance send me some ideas on improvements and reports you would like to see.

carl

---

[REDACTED]  
 Last Modified: 10-23-2010 01:27 am Market: lasvegas.backpage.com [REDACTED]  
 2:00 AM (18 hours ago)

Reply

[REDACTED]  
 to me  
 show details 4:00 AM (16 hours ago)

The following moderated ads have been under review for 25 minutes or longer.

---

Last Modified: 10-23-2010 03:30 am  
 Status: Under Review  
 Queue: New  
 Market: miami.backpage.com  
 User: [REDACTED]  
 Ad Title: Looking for the Next Top Web Model - Girls Guys - Earn \$100 to \$2000 Per Day  
<http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80366455>

---

Last Modified: 10-23-2010 03:31 am  
 Status: Under Review  
 Queue: New  
 Market: sandiego.backpage.com  
 User: [REDACTED]  
 Ad Title: Bikini Type Model Whom Is Not a FLAKE!!\$ ASAP  
<http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80368273>

App. 000075 [REDACTED]



-----  
Reply  
Forward

Reply

██████████

to me  
show details 9:00 AM (11 hours ago)

-----  
The following moderated ads have been under review for 25 minutes or longer.  
-----

Last Modified: 10-23-2010 08:29 am  
Status: Under Review  
Queue: New  
Market: miami.backpage.com  
User: ██████████  
Ad Title: Generous man seeks submissive lady role player  
[http://admin.www.backpage.com/online/central/admin/AdModeration?  
queue=new&section=3848891&oid=80381743](http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80381743)

-----  
Last Modified: 10-23-2010 08:29 am  
Status: Under Review  
Queue: New  
Market: atlanta.backpage.com  
User: ██████████  
Ad Title: \*\*&#9658; ESCORTS NEEDED\*\*\*\*\* START TODAY\*\*\*\*\* MAKE 400 - 1500 + Per shift!!! No Exp.  
Required  
[http://admin.www.backpage.com/online/central/admin/AdModeration?  
queue=new&section=3848891&oid=80381750](http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80381750)

-----  
Reply  
Forward

Reply

██████████

to me  
show details 1:00 PM (7 hours ago)

The following moderated ads have been under review for 25 minutes or longer.

---

Last Modified: 10-23-2010 12:30 pm  
 Status: Under Review  
 Queue: New  
 Market: joplin.backpage.com  
 User: [REDACTED]  
 Ad Title: Looking for my princess  
<http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80393846>

---

Reply  
 Forward

Reply

[REDACTED]

to me  
 show details 2:00 PM (6 hours ago)

---

The following moderated ads have been under review for 25 minutes or longer.

---

Last Modified: 10-23-2010 01:29 pm  
 Status: Under Review  
 Queue: New  
 Market: longbeach.backpage.com  
 User: [REDACTED]  
 Ad Title: Just looking for a nice female companion...  
<http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80396709>

---

Last Modified: 10-23-2010 01:30 pm  
 Status: Under Review  
 Queue: New  
 Market: sf.backpage.com  
 User: [REDACTED]  
 Ad Title: College student/webcam model needs \$500 by Thursday night. Hottest cam show ever!  
<http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80397177>

---

Last Modified: 10-23-2010 01:34 pm  
 Status: Under Review  
 Queue: New  
 Market: phoenix.backpage.com

User: [REDACTED]  
 Ad Title: Looking for an on going GFE situation  
<http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80397515>

-----

Reply  
 Forward

Reply

[REDACTED]

to me  
 show details 4:00 PM (4 hours ago)

-----  
 The following moderated ads have been under review for 25 minutes or longer.  
 -----

Last Modified: 10-23-2010 03:28 pm  
 Status: Under Review  
 Queue: New  
 Market: ftlauderdale.backpage.com  
 User: [REDACTED]  
 Ad Title: \$\$SHOT BOIS NEEDED FOR BODY RUBS \$1000-3000 per day\$\$\$\$\$\$\$\$\$\$  
<http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80403486>

-----

Last Modified: 10-23-2010 03:33 pm  
 Status: Under Review  
 Queue: New  
 Market: newyork.backpage.com  
 User: [REDACTED]  
 Ad Title: \_\_\_\_\_ Orgy Party TONIGHT: Come Have Fun & Make a Few Bucks \_\_\_\_\_  
<http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80403767>

-----

Reply  
 Forward

Reply

[REDACTED]

to me  
show details 5:00 PM (3 hours ago)

-----  
The following moderated ads have been under review for 25 minutes or longer.  
-----

Last Modified: 10-23-2010 04:28 pm  
Status: Under Review  
Queue: New  
Market: anchorage.backpage.com  
User: [REDACTED]  
Ad Title: Seeking A Woman Between 18-50 (nights) For Touch Therapy Biz  
[http://admin.www.backpage.com/online/central/admin/AdModeration?  
queue=new&section=3848891&oid=80406700](http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80406700)

-----  
Reply  
Forward

Reply

[REDACTED]

to me  
show details 6:00 PM (2 hours ago)

-----  
The following moderated ads have been under review for 25 minutes or longer.  
-----

Last Modified: 10-23-2010 05:33 pm  
Status: Under Review  
Queue: Failed  
Market: denver.backpage.com  
User: [REDACTED]  
Ad Title: \*\* I Just Got Out Of the Shower and Am Dripping \*\* So Tasty and Sweet \*\* 38D's \*\*  
[http://admin.www.backpage.com/online/central/admin/AdModeration?  
queue=new&section=3848891&oid=80410289](http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80410289)

-----  
Reply  
Forward

Reply

[REDACTED]

to me

show details 8:00 PM (55 minutes ago)

-----  
The following moderated ads have been under review for 25 minutes or longer.  
-----

Last Modified: 10-23-2010 07:27 pm  
Status: Under Review  
Queue: New  
Market: lasvegas.backpage.com  
User: [REDACTED]  
Ad Title: Attention All Adult Entertainers!!  
[http://admin.www.backpage.com/online/central/admin/AdModeration?  
queue=new&section=3848891&oid=80414578](http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80414578)

-----  
Last Modified: 10-23-2010 07:32 pm  
Status: Under Review  
Queue: New  
Market: boston.backpage.com  
User: [REDACTED]  
Ad Title: Boston-based, WOMEN-OWNED Escort Agency Now Hiring; No Experience or Transportation  
Necessary!  
[http://admin.www.backpage.com/online/central/admin/AdModeration?  
queue=new&section=3848891&oid=80414830](http://admin.www.backpage.com/online/central/admin/AdModeration?queue=new&section=3848891&oid=80414830)  
-----

## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** Andrew Padilla  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Fwd: another term bites the dust  
**Date:** Friday, February 18, 2011 5:43:32 PM  
**Attachments:** good.jpg  
bad.jpg  
bad (1).jpg  
bad (2).jpg  
bad (3).jpg

Hi [REDACTED],

The last part about doing searches doesn't apply to your crew. Thanks.

Andrew Padilla  
[REDACTED]

>>> On 2/18/2011 at 3:16 PM, Andrew Padilla wrote:

Alt:

We've been filtering out the terms "TER" and "The Erotic Review" along with links to theeroticreview.com since January of this year but our internet safety experts have suggested we take a more aggressive approach.

Effective immediately, any variation of, or reference to, TER is banned. If you find it in an ad, remove the phrase and update the ad but do not lock the ad from editing for this violation alone. If the review ID number is attached to the reference (TER #8675309), remove the ID number along with the TER reference.

If you find a string of numbers without a direct reference to TER, it's allowed.

Examples:

"#123456"

"Well Reviewed #666666"

"Google my reviews #12011201"

An easy way to weed out a good chunk of these references is to do a search for "TER" on the city page. You'll get some false positives but it should point you in the right direction. Non-adult spammers will sometimes use hidden keywords like "block bus ter video" and the search will see the tail-end of "bus ter". To avoid this, you can start your search after you've navigated to the Adult section of the city.

I'm attaching 4 example screenshots of what is not allowed (circled in red) and 1 example screenshot of what is okay (circled in green).

If you have any questions, please ask me or Joye. Thanks.

Andrew Padilla  
[REDACTED]

REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

From: [REDACTED]  
To: Andrew Backpage; [REDACTED]  
Subject: Fwd: Banned Code words.  
Date: Monday, July 09, 2012 2:02:12 PM  
Attachments: Backpage Code words.xls

---

Hi Andrew and [REDACTED]

Please confirm if you would like us to delete the ads with these words?

Best  
[REDACTED]

Hello Mam,

Kindly check the attached Doc of Backpage Code Words.

We came across with the words having the same Meaning given in the Banned list.

Attached Doc is having 2 Spread sheets

1. Backpage Banned Code words
2. Related code words

Let us know, What we have to do with Related Code Words ?

--

--  
[REDACTED]

## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** Andrew Backpage  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Fwd: Moderation Reminder / Update FOLLOW UP 4-7-12  
**Date:** Saturday, April 07, 2012 3:38:42 PM  
**Attachments:** banned.xls

---

All:

A few clarifications:

- Only worry about "cum" or "come" or any of its variations when it's being used to describe semen or ejaculation. If it's not being used sexually, regardless of how ridiculously it's spelled, it's okay.
- Don't delete ads that use "young" or misspellings of "young". You should still include them in your emails to me for review but there are too many legitimate uses of the word to warrant a removal every time.
- Don't delete ads when a banned termed is used to the contrary. Examples: "NO GFE" and "NO Full Service".
- Even though Girlfriend Experience is banned, the word "girlfriend" by itself isn't a problem. Examples: "Let me be your girlfriend" and "I'm hotter than your girlfriend."

Andrew

----- Forwarded message -----

**From:** [REDACTED]  
**Date:** Thu, Apr 5, 2012 at 2:30 PM  
**Subject:** Moderation Reminder / Update  
**To:** [REDACTED]

App. 000083 [REDACTED]



[REDACTED]

Cc: [REDACTED]

All:

Attached is a list of 120 Adult terms that are banned on the site. These are terms that we consider egregious violations of our Terms of Use. These should not be confused with terms that are merely suggestive or in poor taste.

The attached list is automatically filtered and a user attempting to post an ad with any of these terms receives an error message during the posting process. We don't want these terms on our site.

You'll see examples, in the list, where a term is spelled several ways but we're only scratching the surface on all the possible spelling variations. If you see a misspelling of any of these terms that gets around our filters, **delete the ad in its entirety. Don't edit the text or remove any pics.**

For term violations **not on this list**, you can remove the term or phrase and update the ad.

Make a list of the url's of any ads you delete and send them to me at the end of your shift for review. You can skip this step if you're deleting from the queue.

If you have any questions, let me know. Thanks.

Andrew

## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** Carl Ferrer  
**To:** Andrew Backpage; [REDACTED]  
**Subject:** Fwd: pics dissapearing  
**Date:** Thursday, March 01, 2012 3:06:11 PM

---

Hey [REDACTED],  
 Please remind staff to exercise care when removing images. We have had an increase in users complaining about false positives.

Two examples below:

- Moderated by AT36 at 2012-03-01 12:28:08.  
<http://toronto.nowtoronto.com/FemaleEscorts/warning-someone-is-stealing-my-pics-for-bandslet-me-know-where-u-see-my-picsand-get-abig-dicount-32/10023066>

- AT19 - today (sorry I loss the time stamp when I had to restore the image)  
<http://philadelphia.backpage.com/Datelines/real-girls-discreet-phone-encounters-888-746-6372/8858055>

We are building a way to restore images so we can demonstrate mistakes for your training purposes.  
 For now, it is the customer's word. I think they may be right in most cases, but of course, not all cases.

Thank you and your staff for their hard work,

-carl

Begin forwarded message:

**From:** [REDACTED]  
**Date:** March 1, 2012 12:50:33 PM CST  
**To:** Carl Ferrer [REDACTED]  
**Subject:** pics dissapearing

hi carl,

see this ad: <http://toronto.nowtoronto.com/FemaleEscorts/warning-someone-is-stealing-my-pics-for-bandslet-me-know-where-u-see-my-picsand-get-abig-dicount-32/10023066>

there were 8 pictures there one minute ago and now there are only 4. the other pics did not look like they broke any rules as far as i know. maybe they did? anyway, this keeps happening to her and she wants to know why. she thinks there's some big conspiracy.

please advise.

thanks,

[REDACTED]

--

[REDACTED]

print readership is up > 354,000 unique readers weekly  
*PMB fall 2011*  
web audience is up > 292,000 unique readers monthly  
*ComScore fall 2011*

## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** Andrew Backpage  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Moderation Reminder / Update  
**Date:** Thursday, April 05, 2012 5:31:17 PM  
**Attachments:** banned.xls

---

All:

Attached is a list of 120 Adult terms that are banned on the site. These are terms that we consider egregious violations of our Terms of Use. These should not be confused with terms that are merely suggestive or in poor taste.

The attached list is automatically filtered and a user attempting to post an ad with any of these terms receives an error message during the posting process. We don't want these terms on our site.

You'll see examples, in the list, where a term is spelled several ways but we're only scratching the surface on all the possible spelling variations. If you see a misspelling of any of these terms that gets around our filters, **delete the ad in its entirety. Don't edit the text or remove any pics.**

For term violations **not on this list**, you can remove the term or phrase and update the ad.

Make a list of the url's of any ads you delete and send them to me at the end of your shift for review. You can skip this step if you're deleting from the queue.

If you have any questions, let me know. Thanks.

Andrew

## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

From: Andrew Padilla  
 To: [REDACTED]  
 Cc: [REDACTED]  
 Subject: Re: another term bites the dust  
 Date: Friday, February 18, 2011 6:25:43 PM

It's an abbreviation for The Erotic Review. <http://www.theeroticreview.com/>

We're trying to distance ourselves from the types of reviews found there.

Andrew Padilla  
 Operations Manager  
 Backpage.com | Village Voice Media  
 [REDACTED]

>>> On 2/18/2011 at 4:10 PM, [REDACTED] wrote:

Hi Andrew

What does TER stand for? I will need to explain to the teams what this means so that they intelligently edit the ads.

Thanks  
 [REDACTED]

On Fri, Feb 18, 2011 at 2:43 PM, Andrew Padilla [REDACTED] wrote:

Hi [REDACTED],

The last part about doing searches doesn't apply to your crew. Thanks.

Andrew Padilla  
 Operations Manager  
 Backpage.com | Village Voice Media  
 [REDACTED]

>>> On 2/18/2011 at 3:16 PM, Andrew Padilla wrote:

All:

We've been filtering out the terms "TER" and "The Erotic Review" along with links to [theeroticreview.com](http://theeroticreview.com) since January of this year but our internet safety experts have suggested we take a more aggressive approach.

Effective immediately, any variation of, or reference to, TER is banned. If you find it in an ad, remove the phrase and update the ad but do not lock the ad from editing for this violation alone. If the review ID number is attached to the reference (TER #8675309), remove the ID number along with the TER reference.

If you find a string of numbers without a direct reference to TER, it's allowed.

Examples:

"#123456"

"Well Reviewed #666666"

"Google my reviews #12011201"

An easy way to weed out a good chunk of these references is to do a search for "TER" on the city page. You'll get some false positives but it should point you in the right direction. Non-adult spammers will sometimes use hidden keywords like "block bus ter video" and the search will see the tail-end of "bus ter". To avoid this, you can start your search after you've navigated to the Adult section of the city.

I'm attaching 4 example screenshots of what is not allowed (circled in red) and 1 example screenshot of what is okay (circled in green).

If you have any questions, please ask me or [REDACTED]. Thanks.

Andrew Padilla  
 Operations Manager  
 Backpage.com | Village Voice Media  
 [REDACTED]



This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply email and delete all copies of this message. Any confidentiality or privilege is not waived or lost if this e-mail has been sent to you by mistake. If you are NOT an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or content to others and must delete the message from your computer.

## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** Carl Ferrer  
**To:** [REDACTED]  
**Cc:** Andrew Padilla  
**Subject:** Re: BFE is also a sex code word?  
**Date:** Wednesday, October 27, 2010 1:37:09 PM

---

Whoops...

Yes, since this is such a big change on to our users removing their ads is too harsh.

Better to edit by removing bad text or removing bad language. We will do this for a few weeks to give users a chance to adjust.

Editing takes time so we expect the queues to pile up some, hence we really need you.

Carl

On Oct 27, 2010, at 10:27 AM, [REDACTED] wrote:

> Hi Carl  
 >  
 > So removing/deleting means from our perspective failing as Andrew mentioned editing as an option.  
 >  
 > Thanks  
 > [REDACTED]  
 >  
 > On Wed, Oct 27, 2010 at 10:24 AM, Carl Ferrer [REDACTED] wrote:  
 > I guess I would say will worry about bfe later. It is so rarely used. Approve is the right call.  
 >  
 > I think our big task now is removing the 15 min and 1/2 hour rates, and the bare butt pics.  
 >  
 > There are some dev scheduled to significantly increase efficiency:  
 > - ban/limit use of html images  
 > - be able to delete a bad image quicker  
 > - separate image moderation queues  
 >  
 > Carl  
 >  
 > On Oct 26, 2010, at 11:35 PM, [REDACTED] wrote:  
 >  
 >> Hi Carl  
 >>  
 >> Since the guidelines do mention GFE is BFE also a sex code word?  
 >>  
 >> Hello mam  
 >> [11:22:35 PM] [REDACTED] Backpage PL: seeking upscale generous, gentleman to share my time and affection.  
 >> B.F.E (boyfriend experience) as well as casual encounters provided.  
 >> time spent with me will never be rushed nor forgotten.  
 >> [11:22:54 PM] [REDACTED] Backpage PL: This one Approved or fail mam ?  
 >>  
 >> I asked him to approve for now  
 >>  
 >> --  
 >> [REDACTED]  
 >> Manager

[REDACTED]

✓  
✓  
✓  
✓  
✓

[REDACTED]



REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** Carl Ferrer  
**To:** [REDACTED]  
**Cc:** Andrew Padilla  
**Subject:** Re: Can you edit ads now?  
**Date:** Wednesday, October 27, 2010 9:35:58 PM

---

Awesome.

Removing bad pics and removing bad text like 15 min 1/2hour is critical.

I think you will be busy.

carl

On Oct 27, 2010, at 6:32 PM, [REDACTED] wrote:

> Hi Carl and Andrew  
>  
> We can open the ads and edit them now in India and here in the US  
>  
> Thanks  
> [REDACTED]  
>  
> On Wed, Oct 27, 2010 at 6:25 PM, Carl Ferrer [REDACTED] wrote:  
> Can you edit ads now?  
>  
> I see the developers added your IP.  
>  
> Carl  
>  
>  
>  
> --

[REDACTED]

REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** [REDACTED]  
**To:** Carl Ferrer  
**Subject:** Re: Development companies  
**Date:** Friday, March 02, 2012 8:03:08 PM

---

Hi Carl,

Thanks for the description. If you ask our recommendation, we at [REDACTED] can help you with this development project. I do not know of any other companies personally.

Currently, our internal IT staff manages our intranet which is using the [REDACTED] environment. We are managing a domain name, hosting, utilizing [REDACTED] to upload and keep internal company information. We are also running [REDACTED].

If you provide mock ups and a description, we can make samples for you. I can offer a 1 month evaluation with 1 person. Once you decide to proceed with the evaluation, we can hire a dedicated staff for the evaluation.

Pricing after the evaluation is [REDACTED]

Look forward to an opportunity to work with your development team.

Thanks

On Mon, Feb 27, 2012 at 8:42 AM, Carl Ferrer [REDACTED] wrote:

The concept is as follows:

- We allow people to create their own web sites / blogs with custom sub-domains.

Example:

[carpetcleaners.biggcity.com](http://carpetcleaners.biggcity.com)

SalonByJill.biggcity

Tasha.biggcity

- They can load pics, add text, etc.
- Other users can follow.
- We are creating a [tumblr.com](http://tumblr.com) for classifieds and small businesses.
- We will content by giving users the option for any postings on backpage to automatically appear on their BigCity post.
- We expect a lot of user generated content
- We will provide mockups and a thorough development description.
- We will provide hosting and CDN management.

- The development company should have a LAMP development environment.

Hope this helps,

carl

On Feb 26, 2012, at 5:50 PM, [REDACTED] wrote:

Hi Carl,

Thanks for reaching out on this.

Could you send a sample description of the project. Based on this we can try to find a solution. How much staff do you anticipate needing for this development project?

Best  
[REDACTED]

On Sat, Feb 25, 2012 at 12:37 AM, Carl Ferrer [REDACTED] wrote:

I'm looking to launch another web project. My current developers are slammed.

I'm looking to hire another development company dedicated to this project.

If you have recommendation in the US or outside the US, please send them my way.

The ideal development company would be hired as follows:

- we pay an hourly rate
- we describe the development we want
- they build it and maintain it.
- we pay the hosting and equipment.

Examples:

<http://www.webteltechnologies.com/#>;

<http://www.tisindia.com/offers/virtual-office-india.html>

Thanks

-Carl

## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** Carl Ferrer  
**To:** [REDACTED]  
**Cc:** [REDACTED] Andrew Padilla  
**Subject:** Re: Introduction to Review/ Moderation Services from [REDACTED]  
**Date:** Thursday, September 30, 2010 11:01:31 PM

---

I have three steps left:

1. Add your IP's
2. Modify the queue to have a "fail".  
If you staff finds something violating our rules, they will click fail. It will move to a US staff who will determine what to do (edit, reduce user's rights, or remove ad)
3. Provide you with url, username and password, and documentation on moderation standards.  
Andrew is working on this. He's manages our spam/abuse US staff.

Looks like next week sometime.

Carl

On Sep 30, 2010, at 7:46 PM, [REDACTED] wrote:

> Hello Carl,  
 >  
 > When I clicked on this link I got a message for forbidden access  
 >  
 > When it was clicked in India they too got a message for forbidden access.  
 >  
 > Thank you  
 > [REDACTED]  
 >  
 > On Thu, Sep 30, 2010 at 7:33 PM, Carl Ferrer [REDACTED] wrote:  
 > Can your staff click this url?  
 > <http://admin.www.backpage.com>  
 >  
 > Do you get a user login in prompt?  
 >  
 > I just want to confirm that my developers added your IP.  
 >  
 > Carl  
 >  
 > On Sep 25, 2010, at 4:30 PM, [REDACTED] wrote:  
 >  
 >> Hi Carl,  
 >>  
 >> Thats good to hear that the queue is build. We have a staff member identified to work on the project. We can start within 2 days of receiving the documents. Lets have a conference next week to go over the guidelines.  
 >>  
 >> After the evaluation payment can be by check. I understand you may want to build a team quickly. So as we start the evaluation, we will start building the team. You can give us guidance on number of members you might need.  
 >>  
 >> Thanks  
 >> [REDACTED]

> > -----Original Message-----  
> > From: Carl Ferrer [REDACTED]  
> > Date: Sat, 25 Sep 2010 15:29:50  
> > To: [REDACTED]  
> > Cc: [REDACTED]  
> > Subject: Re: Introduction to Review/ Moderation Services from [REDACTED]  
> >  
> > I'll send you urls, username and password, and the guidelines next week.  
> > We actually have the queue built and we can start next week.  
> >  
> > I understand you will give me one person to test.  
> >  
> > But I'll probably want to increase people with in a few days.  
> > When we add people, what's your preference on payment?  
> >  
> >  
> > carl  
> >  
> > On Sep 23, 2010, at 11:45 PM, [REDACTED] wrote:  
> >  
> >> Hi Carl,  
> >>  
> >> Thanks for your interest in testing us out. Please send us your guidelines so we can begin training and  
> >> evaluating staff for placement on your project. Attached are our Static IP Addresses for our offices.  
> >>  
> >> I have copied [REDACTED], our US Project Manager.  
> >>  
> >> [REDACTED]  
> >>  
> >> On Thu, Sep 23, 2010 at 9:24 PM, Carl Ferrer [REDACTED] wrote:  
> >> Ok, I'd like to test you out.  
> >>  
> >> To do this right, we probably need to start with 6 staff.  
> >>  
> >> - Send me your static IP so you can get admin access.  
> >> - I will give them URLs and specific instructions on what to delete.  
> >> - I need modified the rights to secure some user info/cc data, etc. .  
> >>  
> >> carl  
> >>  
> >>  
> >>> Hi Carl  
> >>> I will call you during your open time slots.  
> >>> [REDACTED]  
> >>> -----Original Message-----  
> >>> From: Carl Ferrer  
> >>> To: [REDACTED]  
> >>> Subject: Re: Introduction to Review/ Moderation Services from [REDACTED]  
> >>> Sent: Sep 22, 2010 3:58 PM  
> >>>  
> >>> I'm in phoenix for a few more days (pacific time)  
> >>> I'm open 10:00a till 11:30a pacific time.  
> >>>  
> >>> You can call me then on my cell or some time after 2p pacific.  
> >>>  
> >>> I'd like to talk about how other sites have organized the data for your staff to remove bad content, the  
security, reporting, etc.

\_\_\_\_\_



## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** [REDACTED]  
**To:** Carl Ferrer [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Re: Introduction to Review/ Moderation Services from [REDACTED]  
**Date:** Friday, September 24, 2010 2:45:30 AM  
**Attachments:** Static IP Addresses [REDACTED].doc

---

Hi Carl,

Thanks for your interest in testing us out. Please send us your guidelines so we can begin training and evaluating staff for placement on your project. Attached are our Static IP Addresses for our offices.

I have copied [REDACTED], our US Project Manager.

[REDACTED]

On Thu, Sep 23, 2010 at 9:24 PM, Carl Ferrer [REDACTED] wrote:  
 Ok, I'd like to test you out.

To do this right, we probably need to start with 6 staff.

- Send me your static IP so you can get admin access.
- I will give them URLs and specific instructions on what to delete.
- I need modified the rights to secure some user info/cc data, etc. .

carl

> Hi Carl  
 > I will call you during your open time slots.  
 > [REDACTED]  
 > -----Original Message-----  
 > From: Carl Ferrer  
 > To: [REDACTED]  
 > Subject: Re: Introduction to Review/ Moderation Services from [REDACTED]  
 > Sent: Sep 22, 2010 3:58 PM  
 >  
 > I'm in phoenix for a few more days (pacific time)  
 > I'm open 10:00a till 11:30a pacific time.  
 >  
 > You can call me then on my cell or some time after 2p pacific.  
 >  
 > I'd like to talk about how other sites have organized the data for your staff to remove bad  
 > content, the security, reporting, etc.  
 >  
 > carl  
 > [REDACTED]  
 >  
 >  
 > On Sep 22, 2010, at 3:32 PM, [REDACTED] wrote:



>  
>> Hi Carl,  
>>  
>> Sure would be great to chat. How is tomorrow at 10am Dallas time. My mobile number is  
[REDACTED]  
>>  
>> [REDACTED]  
>> -----Original Message-----  
>> From: Carl Ferrer  
>> To: [REDACTED]  
>> To: [REDACTED]  
>> Subject: Re: Introduction to Review/ Moderation Services from [REDACTED]  
>> Sent: Sep 22, 2010 12:45 PM  
>>  
>> Are you available for a call?  
>>  
>> Also, lets start emailing me on the backpage email address (I check it  
>> more often)  
>>  
>> [REDACTED]  
>>  
>> Carl  
>>  
>> On Tue, Sep 21, 2010 at 12:16 PM, [REDACTED]  
>> [REDACTED] wrote:  
>>> Hi Carl,  
>>>  
>>> Thanks for your interest. Attached is a presentation which covers our  
>>> company introduction, services offered (review of Ads and Images), working  
>>> methodology, pricing and customers.  
>>>  
>>> Please let me know if you have any questions or if you would like to  
>>> follow-up with a conference call. We can offer 1 month of no charge trial (1  
>>> person for 1 month - 6 days a week, 8 hours/ day).  
>>>  
[REDACTED]  
>>  
>  
>

REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** [REDACTED]  
**To:** [Andrew Padilla](#)  
**Cc:** [REDACTED]  
**Subject:** Re: missed violations  
**Date:** Tuesday, January 11, 2011 6:17:22 PM

---

Thanks Andrew

This is really very helpful

Best  
[REDACTED]

On Tue, Jan 11, 2011 at 3:10 PM, Andrew Padilla

[REDACTED] wrote:

> Hi [REDACTED],  
>  
> Here are a few examples of image violations missed by moderators. Thanks.  
>  
>  
> Andrew Padilla  
> Operations Manager  
> Backpage.com | Village Voice Media  
> [REDACTED]  
[REDACTED]

--  
[REDACTED]

**App. 000102**

[REDACTED]

Date: Wed, 27 Oct 2010 09:25:24 -0700

Subject: new guidelines in adult

We've been messing around with listing guidelines in the queue since last night but the language isn't finalized yet. Regardless of what we specifically wind up saying there, here are some new rules:

- no bare butts (thongs okay)
- no penises
- no breast sucking
- no GFE, no PSE
- no pricing for services less than an hour

You can move forward enforcing these changes immediately. I'll have more instructions later about how much female frontal nudity will be allowed.

We won't be removing ads for these violations. These ads should be edited and "violated terms of use" should be selected.

We have to be fair to the users and give them time to adapt. Thanks.

Andrew Padilla  
Operations Manager  
Backpage.com | Village Voice Media

[REDACTED]

[REDACTED]

## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** Andrew Backpage  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Re: photo question  
**Date:** Thursday, June 23, 2011 3:46:21 PM

---

Thanks, [REDACTED] :)  
Andrew

On Thu, Jun 23, 2011 at 12:37 PM, [REDACTED] wrote:  
Hi Andrew

The team is clear that such kinds of images should not be deleted. WE will put this in our next test and training round to make sure everyone is aware and clear.

Best  
[REDACTED]

On Thu, Jun 23, 2011 at 12:18 PM, Andrew Backpage [REDACTED] wrote:  
[REDACTED] and [REDACTED],

Can you check with your respective moderation crews and see if any of them would remove an image like this:

<http://admin.nova.backpage.com/FemaleEscorts/classifieds/EnlargeImage?oid=3993344&image=4714268>

I don't see that her nipple is exposed but maybe I'm missing something or someone is being too strict. Also, I want to make sure that no one is confused and applying the pixelization rule to things like eyes and faces. Let me know what you find out. Thank you.

Andrew



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privilege is not waived or lost if this e-mail has been sent to you by mistake. If you are NOT an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or content to others and must delete the message from your computer.

## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** Andrew Padilla  
**To:** Carl Ferrer [REDACTED]  
**Subject:** Re: Request quick feedback - are we on track in training?  
**Date:** Friday, October 29, 2010 12:49:51 PM

---

Hi [REDACTED],

No glaring mistakes that I can see.

It's a little more difficult to provide constructive feedback with your crew editing instead of failing. With a Fail, we can see the ad intact and ask questions; with an Edit we can only see what they've left behind. The risk there is that your crew might be working harder than necessary. After things settle down, we should come up with some quality control tests to make sure they aren't editing too much. In the meantime, I consider it completely acceptable if they are being too strict. The trade off is that you're helping our crew directly and that's tremendous right now. Thank you for all the time you're putting into this training phase.

Andrew Padilla  
Operations Manager  
Backpage.com | Village Voice Media  
[REDACTED]

>>> On 10/29/2010 at 8:39 AM, [REDACTED] wrote:

Hi Andrew

Please let me know if there are any glaring mistakes being made so that I can rectify them immediately. I am running 3 training sessions daily to drum in the guidelines and some feedback letting me know what I should emphasize more will be very helpful - training is only as good as the results.

Thanks  
[REDACTED]

-  
[REDACTED]

## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** [REDACTED]  
**To:** Carl Ferrer; Andrew Backpage  
**Cc:** [REDACTED]  
**Subject:** Re: Staffing 11a phx / 1p dallas  
**Date:** Friday, September 07, 2012 2:05:23 PM  
**Attachments:** Backpage Daily Data Aug to Sep 5 2012.xlsx

---

Hi Carl and Andrew,

Please see the sheet for number of ads done and staffing.

Thanks  
[REDACTED]

On Thu, Sep 6, 2012 at 10:13 PM, Carl Ferrer [REDACTED] wrote:  
Andrew has a call in phone number:

Toll free: [REDACTED]  
Conference code: [REDACTED]

Here's my Agenda:

1. Staffing-
2. Image tools proposed
3. Extra office space in the US: we are considering moving a day shift of Tier 1 back to US.
4. Can we have you moderate email spam?  
(need help describing how we should build this)

On Sep 6, 2012, at 10:48 PM, Carl Ferrer wrote:

11 AM Phoenix time.  
1 PM Dallas time.

I need to get set up with one of those fancy 800 phone conference dial in-s.  
For now, I can conference people in the old fashion way.

Are you in the US and can I call you?  
Or, perhaps you can call me at the landline i will be at tomorrow [REDACTED]

-Carl

On Sep 6, 2012, at 10:27 PM, [REDACTED] wrote:



Hi Carl,

Sure. What time works for you tomorrow?

Thanks  
[REDACTED]

On Thu, Sep 6, 2012 at 7:46 PM, Carl Ferrer

[REDACTED] wrote:

[REDACTED] and [REDACTED],

Can you review the volumes? Perhaps even have a quick phone call tomorrow.

Andrew and I only need one of you if you like.

carl

On Jul 3, 2012, at 1:27 PM, [REDACTED] wrote:

Hi Carl,

Ok thanks. We will begin hiring and training the staff.

[REDACTED]

On Tue, Jul 3, 2012 at 11:20 AM, Carl Ferrer

[REDACTED] wrote:

I consulted with Liz last week about staff resources. She is good with you hiring 10 more people and you should proceed.

Thanks.

On Jul 3, 2012, at 1:58 PM, [REDACTED]

[REDACTED] wrote:

Hi Carl,

It was great meeting you and the team in Phoenix.

For planning we will estimate 17000 / day instead of the peaks at close to 19000/ day on some days. As discussed, we expect it to go down so

I assume 17000/ day is a good estimate. Normal volume we were handling was 14000/ day. Based on this an additional staff of 8 - 10 will be fine (50 to 60 ads per hour).

We reviewed the hourly incoming volume, based on this the staff required to be on shift will be as follows:

- 22 in US Evening Hours (India morning shift)
- 8 Late US Hours (India afternoon shift)
- 20 US Day Hours (India night shift)

Counting off days (1 day a week) we would need a staff of 59 to 60.

Please feel free to call me on skype or my cell when you need to talk. I am not as alert to skype chat and saw your note a few days later.

Thanks



REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** Carl Ferrer  
**To:** [REDACTED]  
**Cc:** Andrew Backpage; [REDACTED]  
**Subject:** Re: This moderation staff member is costing us time and money  
**Date:** Friday, March 02, 2012 11:52:45 AM

---

[REDACTED],  
 That was the same client as I referenced yesterday. UGH.  
 AT19 cost us \$1k in freebies to pacify the client.

-carl

On Mar 2, 2012, at 10:49 AM, [REDACTED] wrote:

Hi Andrew

We will pull him off and retrain him.

Best  
 [REDACTED]

On Mar 2, 2012, at 8:48 AM, Andrew Backpage [REDACTED]  
 wrote:

Hi [REDACTED],

Can you take AT19 off of moderation and have them retrained?

I'd rather see zero edits from a moderator than any edits that were  
 unnecessary. Thanks.

Andrew

----- Forwarded message -----

**From:** [REDACTED]  
**Date:** Fri, Mar 2, 2012 at 9:27 AM  
**Subject:** This moderation staff member is costing us time and money  
**To:** Andrew Backpage [REDACTED], Carl Ferrer  
**Cc:** [REDACTED]

The ad below was edited unnecessarily yesterday.

<http://admin.www.backpage.com/online/classifieds/VerifyAd?oid=122131370&id=735bf36954cbdba50eef3d426646c0cf-1321561391-central>

We fixed it. Less then 12 hours later it got edited again - by this same staff member AT19

We already added time to the \$2K buy to pacify this client. They spend a bunch with us.

<bad edit.pdf>

## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** Andrew Backpage  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** retraining for at20  
**Date:** Friday, October 21, 2011 1:34:31 PM  
**Attachments:** at20\_sunday.jpg

---

Hi [REDACTED],

This morning, one of our third-party watchdog groups pointed this ad out to Carl. It's one of the most egregious oversights I've ever seen a moderator make. Clearly, even the most poorly trained moderator would recognize that this ad contains nudity so this must be a case of an employee who doesn't care or an employee who is rushing through their work. I imagine it could also be an example of someone who doesn't understand how to properly remove images from an ad.

In a perfect world, our own 2nd tier moderation would have caught this but we're spread pretty thin on the weekends. It's extremely unfortunate that a third-party company caught this and brought it to Carl's attention.

Let me know what action you take to remedy the issue with at20. Thanks.

Andrew

## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

**From:** Andrew Backpage  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** This is what happens when you don't check the TS category in your cities  
**Date:** Thursday, April 12, 2012 1:46:14 PM

---

<http://admin.www.backpage.com/classifieds/central/ManageAds?>  
[REDACTED]

Lots of people have worked this city in the last two months during the week and on weekends; on nights and overnights. Some people have taken on this city when someone called in. All of these ads ran through the queue. There are just so many times when this should have been caught.

























Make sure you're checking all of your categories. Too many moderators are in a rush to say "I'm all caught up" when the only reason they're "caught up" is because they're cutting corners.

Andrew Padilla  
Backpage.com  
Operations Manager  
[REDACTED]

114

<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>
<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>
<div>human trafficking</div> <div>[REDACTED]</div>	<div>X</div> <div>[REDACTED]</div>	<div>[REDACTED]</div>



		
		
schoolgirl	x	A female in full or part time education
		
teen	x	someone between the ages of 13and 19
	x	someone between the ages of 13and 19
		
		
yung	x	y
		
		
		

[illegible]

Per Day/ Per Staff	Staff	
	Working	Daily Total
320	50	42.86
320	55	47.14
320	60	51.43
		13,714
		15,066
		16,457

Date	Total Done	Phoenix	
8/1/2012	15611	1085	14526
8/2/2012	17154	950	16204
8/3/2012	17224	713	16511
8/4/2012	15041	611	14430
8/5/2012	12949	809	12140
8/6/2012	15888	1142	14746
8/7/2012	16168	1125	15038
8/8/2012	16840	1032	15828
8/9/2012	17003	842	16161
8/10/2012	17320	774	16546
8/11/2012	15431	507	14924
8/12/2012	12534	477	12057
8/13/2012	15658	772	14886
8/14/2012	15753	1160	14593
8/15/2012	16191	1065	15126
8/16/2012	16832	1229	15603
8/17/2012	16903	827	16076
8/18/2012	14605	710	13895
8/19/2012	11801	533	11268
8/20/2012	14893	723	14170
8/21/2012	15799	1142	14657
8/22/2012	14860	985	13875
8/23/2012	15542	731	14811
8/24/2012	16721	940	15781
8/25/2012	14245	574	13671
8/26/2012	11312	555	10757
8/27/2012	13722	869	12853
8/28/2012	14715	944	13771
8/29/2012	15278	1050	14228
8/30/2012	15177	847	14330
8/31/2012	15814	781	15033
9/1/2012	13965	390	13575
9/2/2012	12039	699	11340
9/3/2012	12067	598	11469
9/4/2012	14495	1397	13098
9/5/2012	15350	1224	14126
Average	15,063	855	14,228
95 Percentile	17193.5	1225.25	16283.5

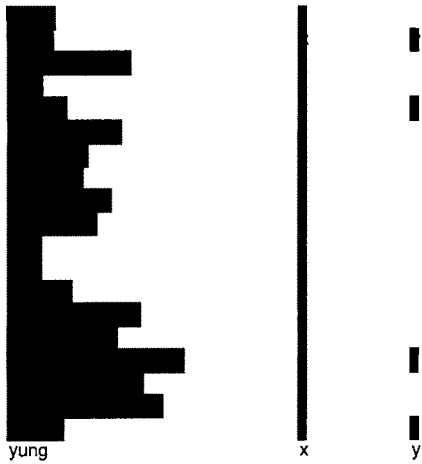
REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

TERM	BANNED	ALLOWED IN PHONE AND WEB
<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>
<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>
<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>

[REDACTED]

[REDACTED]

[REDACTED]



## REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

From: [REDACTED]  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: Clarification on Underage ads VERY VERY IMPORTANT  
Date: Tuesday, June 26, 2012 1:11:39 AM  
Attachments: [Suspicious underage doc.xls](#)

---

Hello All

Please note very carefully:

The definition of underage is anyone under the age of 18. But for the purposes of making reports, we err on the side of caution and try to report anyone that looks under the age of 21.

IF IN DOUBT ABOUT UNDERAGE : The process for now should be to accept the ad and note the link. However, if you ever find anything that you feel IS UNDERAGE AND is more than just suspicious, you can delete the ad, note the link and notify IN ONLINE DOC.

**PLEASE CREATE AN ONLINE DOC FOR ALL SUSPICIOUS UNDERAGE AD LINKS SHOULD BE PLACED.**

**ONLY DELETE IF YOU REALLY VERY SURE PERSON IS UNDERAGE. (IN ONLINE DOC NOTE THE AD LINK)**

**Please confirm back your understanding AND THAT YOU HAVE SPOKEN TO EVERY TM INDIVIDUALLY AND EXPLAINED THIS POINT.**

I have attached example of the online doc. Please create it ASAP.

[REDACTED]

--  
[REDACTED]

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Re: NEW GUIDELINES services for less than an hour are no longer violations  
**Date:** Thursday, April 05, 2012 8:53:26 PM

---

Hello Mam,

Thanks for the Update.

Can we have a meeting regarding the update & new moderating tool.

On Fri, Apr 6, 2012 at 5:23 AM, [REDACTED] wrote:  
Hello all

Please confirm your understanding

[REDACTED]

-  
All:

Blank pricing and services for less than an hour are **now allowed** in Adult.

**15 mins - \$60** is okay

**30 mins - \$80** is okay

**\$90** is okay

**15 min - \$80 back rub** is okay

Anything time related is okay.

The only reason to check pricing now is for illegal services.

**\$60 - 15 min blow and go** is still a violation because of the service. The time is irrelevant in this case.

Let me know if you have any questions. Thanks.

[REDACTED]





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--  
Thanks and Regards



Young hot brunette 000 x

cincinnati.backpage.com/FemaleEscorts/young-hot-brunette

backpage Post Ad keyword escorts search

cincinnati, oh free classifieds

backpage.com > Cincinnati adult entertainment > Cincinnati escorts

**Young hot brunette 000**

Posted: Sunday, September 20, 2015 6:52 PM

Hi, I'm [REDACTED] I'm looking for a generous man to show me what they got. I'm open to pretty much anything so hit me up and let's have some fun [REDACTED]

Poster's age: [REDACTED]

- Location: Cincinnati, Cincinnati, oh
- Post ID: 24437524 cincinnati

Enlarge Picture

Enlarge Picture

Enlarge Picture

white big booty judy x

dallas.backpage.com/femaleEscorts/white-big-booty-judy 20/3

backpage Post Ad keyword escorts search

dallas, tx free classifieds

backpage.com > Dallas adult entertainment > Dallas escorts

100♥white big booty judy♥100 ( ) - 20 - 20 - 20 - 20

Posted: Monday, November 16, 2015 5:48 AM

I'm a beautiful Whitegirl with a juicy booty blue eyes I am devine :) call me for my rates. No A A ASK ABOUT EVERYTHING ELSE.

Poster's age

- Location: Allen TX, Dallas
- Post ID: 36662449 dallas
- Other ads by this user:
  - 100♥white big booty judy♥100 adult entertainment escorts - 20 - 20 - 20 - 20 (635/75)
  - 100♥white big booty judy♥100 adult entertainment escorts - 20 - 20 - 20 - 20 (635/75)
  - 100♥white big booty judy♥100 adult entertainment escorts - 20 - 20 - 20 - 20 (635/75)
  - 100♥white big booty judy♥100 adult entertainment escorts - 20 - 20 - 20 - 20 (635/75)
  - 100♥white big booty judy♥100 adult entertainment escorts - 20 - 20 - 20 (olano)

Enlarge Picture

Enlarge Picture

Petite spinner Blonde Outcalls

manhattan.backpage.com/Female-Escorts/petite-spinner-blonde-outcalls-only

backpage Post Ad keyword escorts search

manhattan, ny free classifieds

backpage.com > Manhattan adult entertainment > Manhattan escorts

**Petite spinner Blonde Outcalls**

Posted: Thursday, November 12, 2015 4:10 PM

Hi guys  
I'm  
in town  
from  
Russia I  
cater to  
upscale

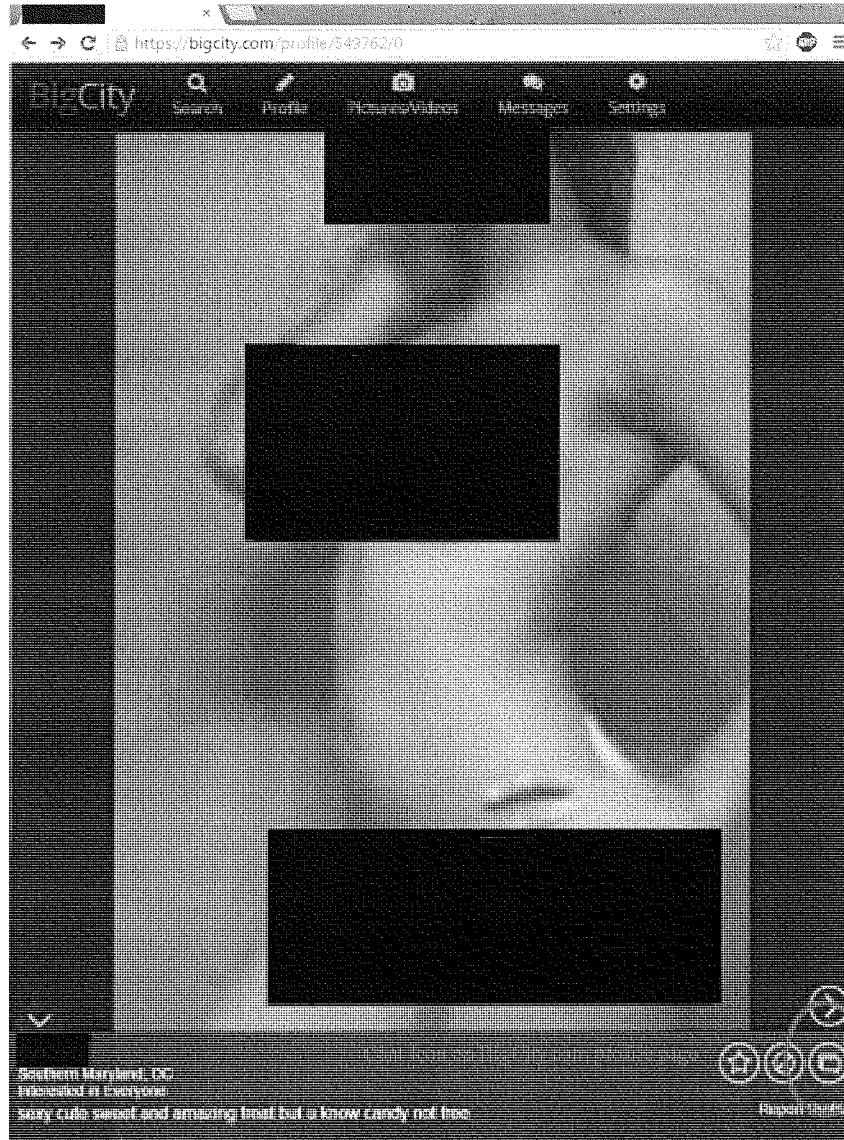


professional men only No AA men No guys under 35

Poster's age

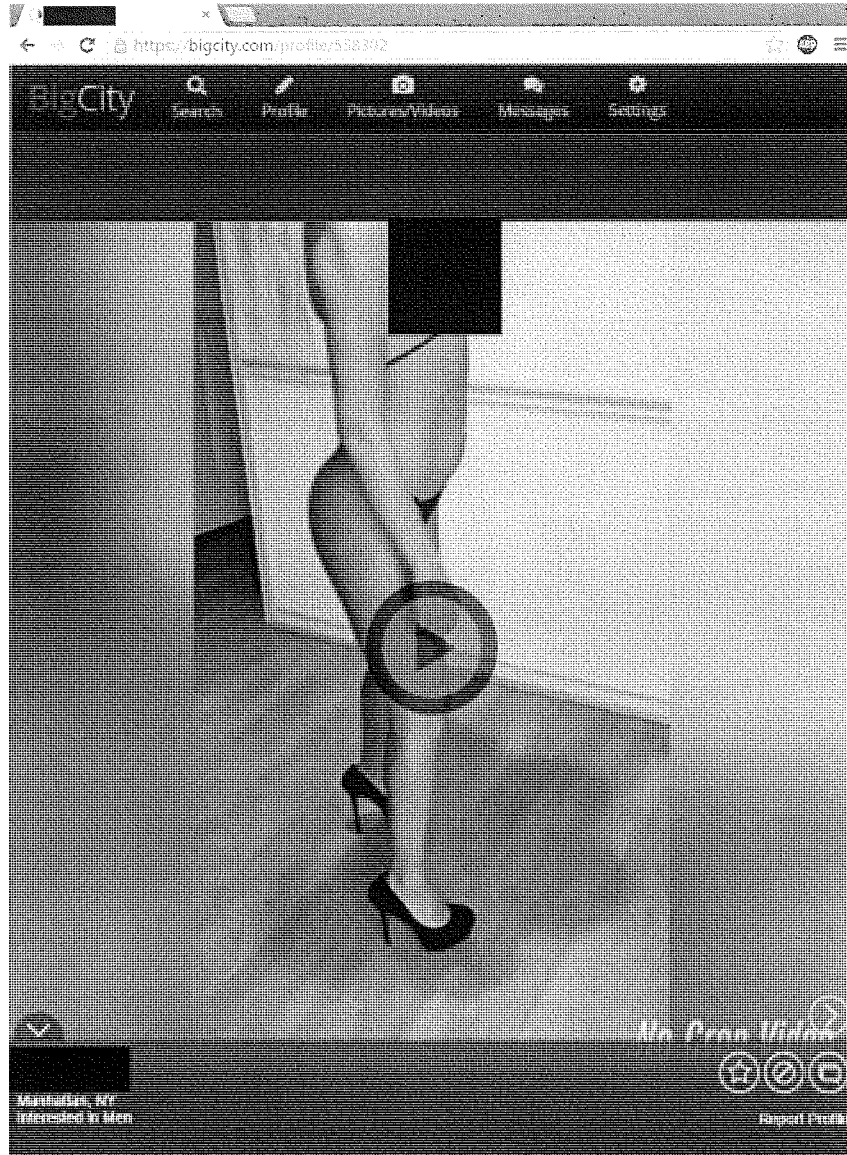
- Location: Manhattan, Manhattan outcalls, Upper Manhattan
- Post ID: 67944487 manhattan



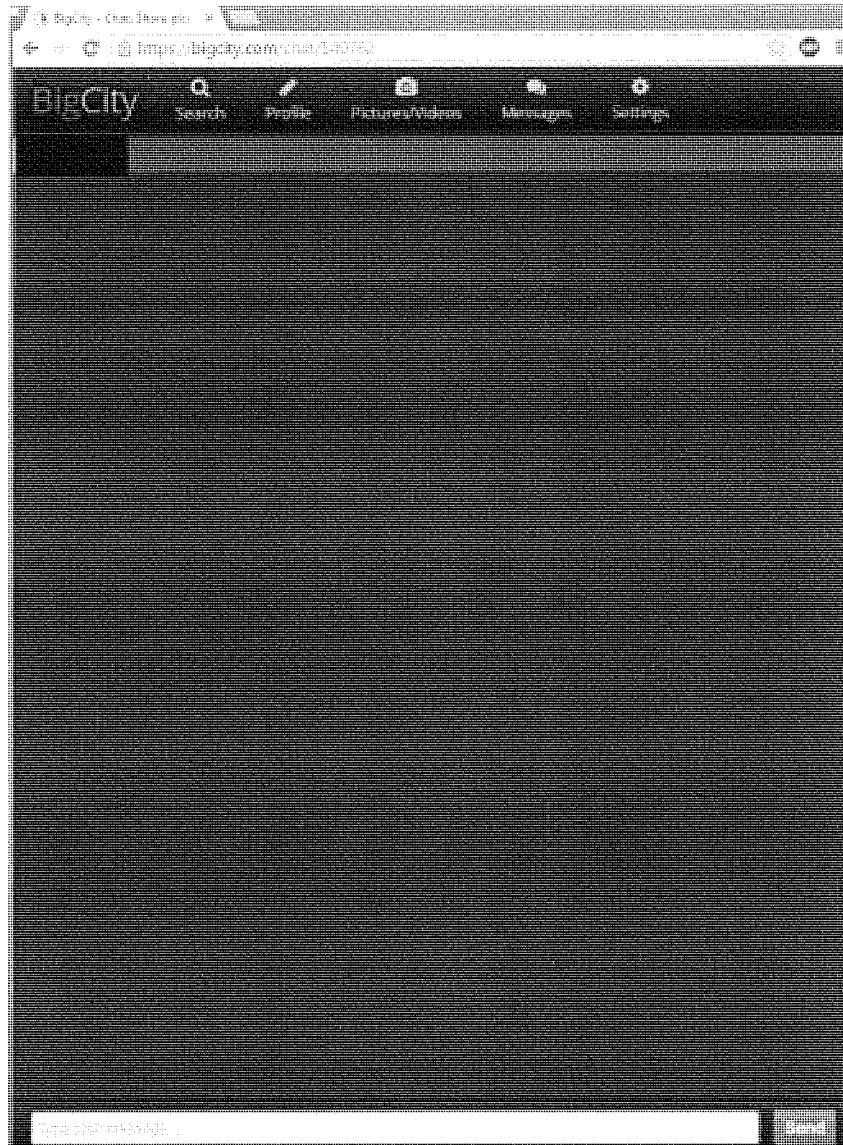












needs, and to respond to actual or suspected fraud or illegal activity; (iv) to protect the safety of any person and prevent harm or potential harm, including, if there is an emergency involving personal danger.

**Non-Personal Information.** We may share aggregated and de-identified data with others for their own purposes.

**Access and Choices**

**Email Opt-Out.** From time to time, we may send you information with announcements and updates about the Service and your account. You may elect to opt-out of promotional emails from us by using the "opt out" procedure described in our emails. However, if you opt out, we may still send you non-marketing emails. Non-marketing emails include emails about your account and our business dealings with you.

**Review/Correction/Update of Personal Information.** You may request to review/correct/update your personal information at any time by sending us an email at [support@bigcity.com](mailto:support@bigcity.com). You may also access your settings in the BigCity Mobile app to edit or view your profile, view conversations, and change your password.

**Notice of Privacy Rights of California Residents**

If you are a California resident and have provided personal information to the Service, you may request certain information regarding our disclosures of your personal information to third parties for their direct marketing purposes. In general, a business subject to California Civil Code section 1798.82 (the "Code") that makes a disclosure of "personally identifiable information" as defined by the Code, (Personal Data) must upon receipt of a request by a California customer provide a list of all third parties to whom Personal Data was disclosed in the preceding calendar year, as well as a list of the categories of Personal Data that were disclosed. To make such a request, send an email to [support@bigcity.com](mailto:support@bigcity.com), specifying that you seek your "California Consumer Choice Privacy Notice." Please allow thirty (30) days for a response. The Site is required to respond to only one request per customer each year, and is not required to respond to requests made by means other than through the above email address.

We will not share your personal information with third parties for their direct marketing purposes if you request that we do not do so. You may make such a request by sending us an email at [support@bigcity.com](mailto:support@bigcity.com) or making your request to:

**BigCity.com**  
PO Box 192367  
Dallas, TX 75219 USA

When contacting us, please indicate your name, address, email address, and what personal information you do not want us to share with third parties for their direct marketing purposes. Please note that there is no charge for controlling the sharing of your personal information or for processing this request.

**Security**

We understand that storing data in a secure manner is important. We store personal information using reasonable and technically feasible, physical, technical, and administrative safeguards.

Please be aware that the Service and data storage are run on software, hardware, and networks, any component of which may, from time to time, require maintenance or experience problems or breaches of security beyond our control. We cannot guarantee the security of the information on and sent from the Service or your device upon which our Services run. Please protect your user names and passwords to help prevent anyone from accessing your accounts and Services. Also, do not use or reuse the same passwords you use with other accounts as your password for our Services.

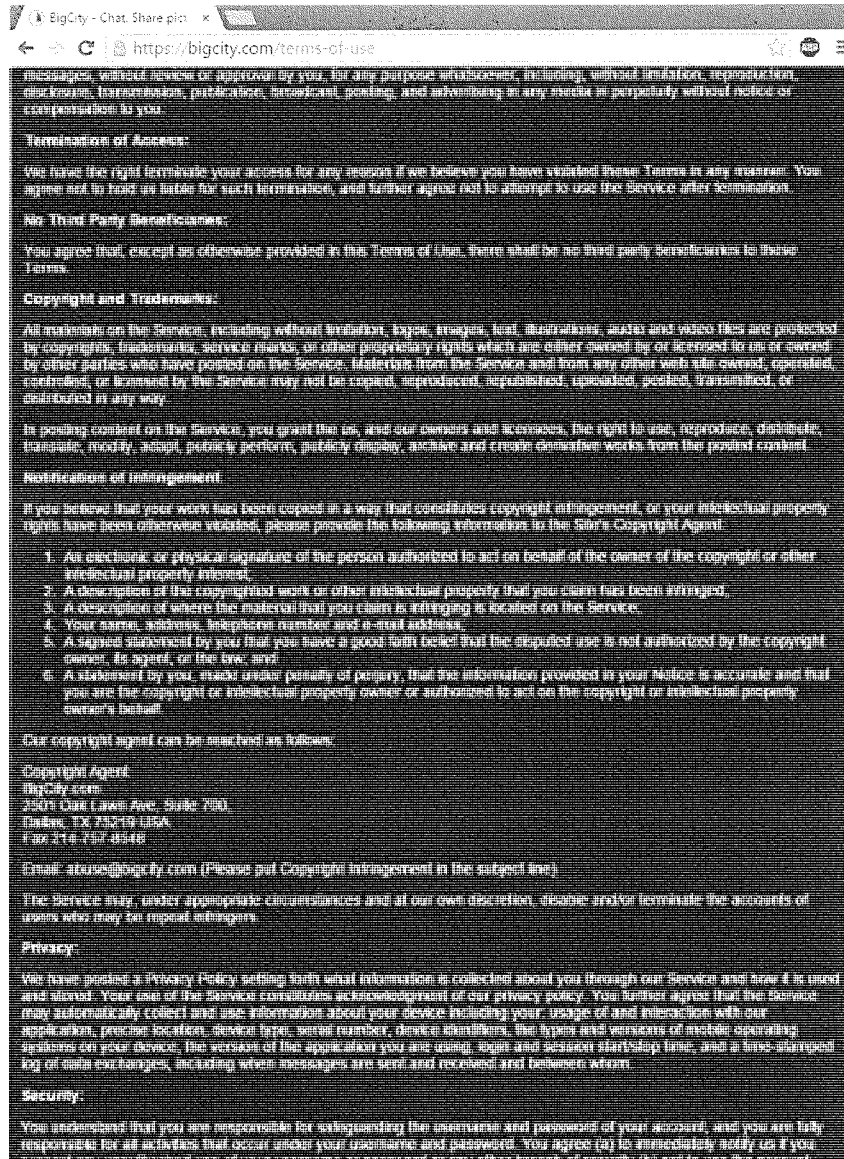
**Policy Changes and Acceptance**

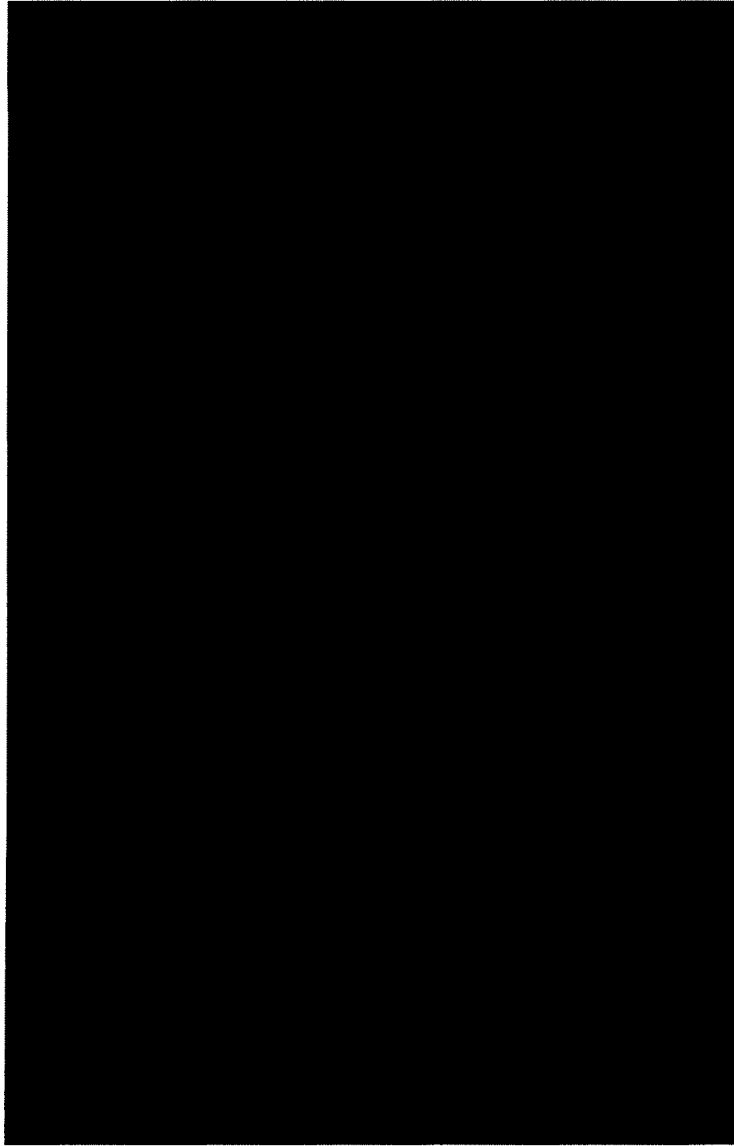
This Privacy Policy may be revised from time to time. We display an effective date on the upper left corner of the Privacy Policy to make it easier for you to know when there has been a change. You should check the Privacy Policy on a regular basis for the most current privacy practices.

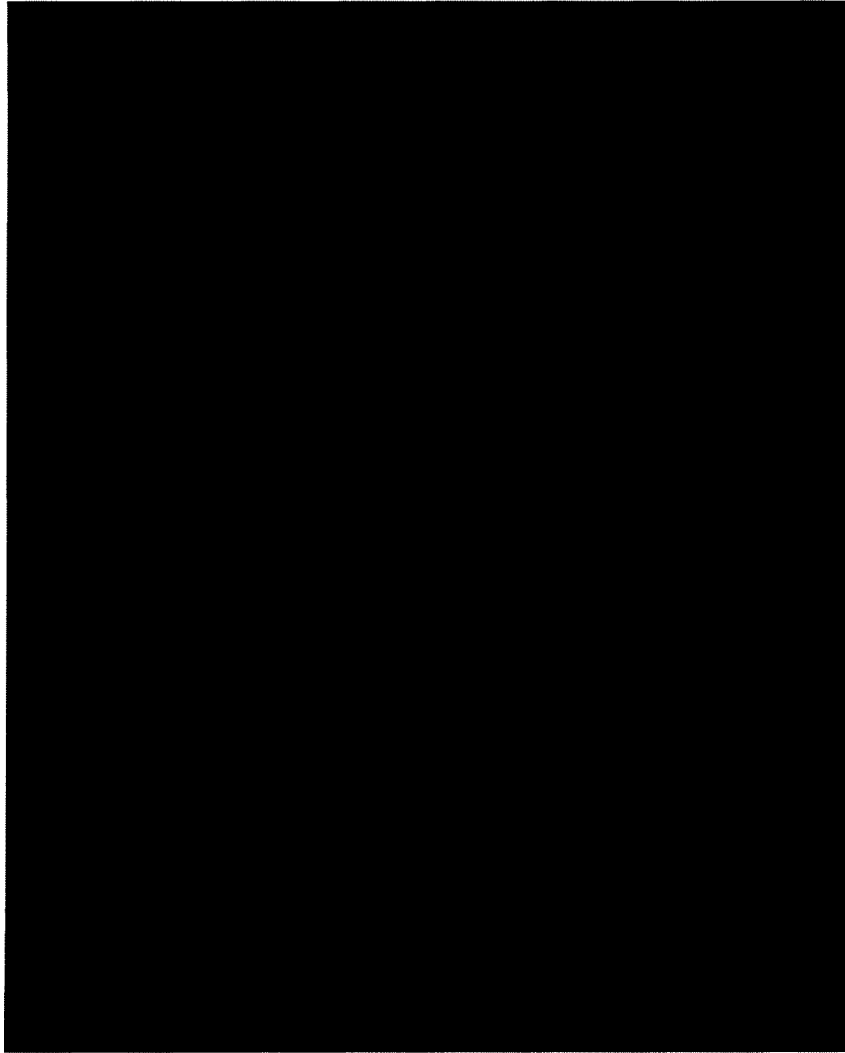
Material changes in the Privacy Policy will generally take effect upon posting and apply only to information collected from you on and after Last Revised date, unless we provide notice or have other communications with you.

**More Questions?**

If you have any questions about this Privacy Policy, e-mail them to [abuse@bigcity.com](mailto:abuse@bigcity.com), and be sure to indicate the specific site you're visiting and the nature of your question or concern.







**Interim Designation of Agent to Receive Notification  
of Claimed Infringement**

Full Legal Name of Service Provider: AD TECH B.V.

Alternative Name(s) of Service Provider (including all names under which the service provider is doing business): nakedcity.com, evil empire.com

Address of Service Provider: Zuidplein 116, Tower H, Level 14, 1077 XV Amsterdam, NL

Name of Agent Designated to Receive  
Notification of Claimed Infringement: Carl Ferrer

Full Address of Designated Agent to which Notification Should be Sent (a P.O. Box or similar designation is not acceptable except where it is the only address that can be used in the geographic location):  
2501 Oak Lawn Ave. Suite #700, Dallas, TX 75219

Telephone Number of Designated Agent: 866-456-6877

Facsimile Number of Designated Agent: 214-737-8548

Email Address of Designated Agent: support@adtechbv.com

 Designating Service Provider:  
Date: 4-8-15

Typed or Printed Name and Title: Carl Ferrer, Chief Operating Officer

Note: This Interim Designation Must be Accompanied by a Filing Fee\*  
Made Payable to the Register of Copyrights.

\*Note: Current and adjusted fees are available on the Copyright website at  
[www.copyright.gov/docs/fees.html](http://www.copyright.gov/docs/fees.html)

Mail the form to:  
U.S. Copyright Office, Designated Agents  
P.O. Box 71537  
Washington, DC 20024-1537

Scanned

JUN 22 2015

Received

JUN 11 2015

Copyright Office

**Interim Designation of Agent to Receive Notification  
of Claimed Infringement**

Full Legal Name of Service Provider: IC Holdings, LLC

Alternative Name(s) of Service Provider (including all names under which the service provider is doing business): Bigcity.com

Address of Service Provider: 2501 Oak Lawn Avenue, Suite #700, Dallas, TX 75219

Name of Agent Designated to Receive  
Notification of Claimed Infringement: Carl Ferrer

Full Address of Designated Agent to which Notification Should be Sent (a P.O. Box or similar designation is not acceptable except where it is the only address that can be used in the geographic location):  
2501 Oak Lawn Avenue, Suite #700, Dallas, TX 75219

Telephone Number of Designated Agent: 866-456-6877

Facsimile Number of Designated Agent: 214-757-8548

Email Address of Designated Agent: support@bigcity.com

Signature of the Designating Service Provider:  
Date: 5/14/13

Typed or Printed Name and Title: Carl Ferrer, Chief Operating Officer

Note: This Interim Designation Must be Accompanied by a Filing Fee\*

Made Payable to the Register of Copyrights.

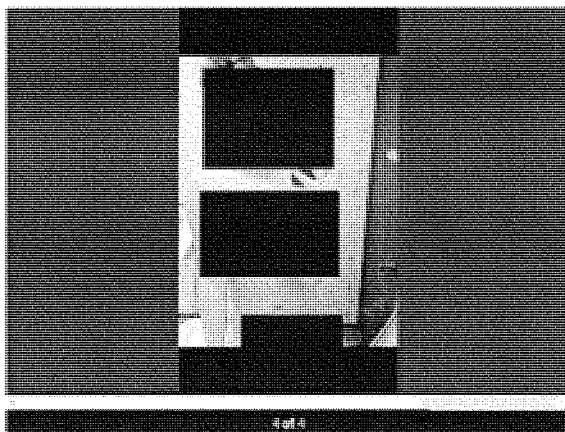
\*Note: Current and adjusted fees are available on the Copyright website at  
[www.copyright.gov/docs/fees.html](http://www.copyright.gov/docs/fees.html)

Mall the form to:  
Copyright I&R/Recordation  
P.O. Box 71537  
Washington, DC 20024



Scanned  
JUN 11 2013

Received  
MAY 22 2013  
Copyright Office



— Dallas, TX

PREVIOUS ADS

Friday, November 13th 2015

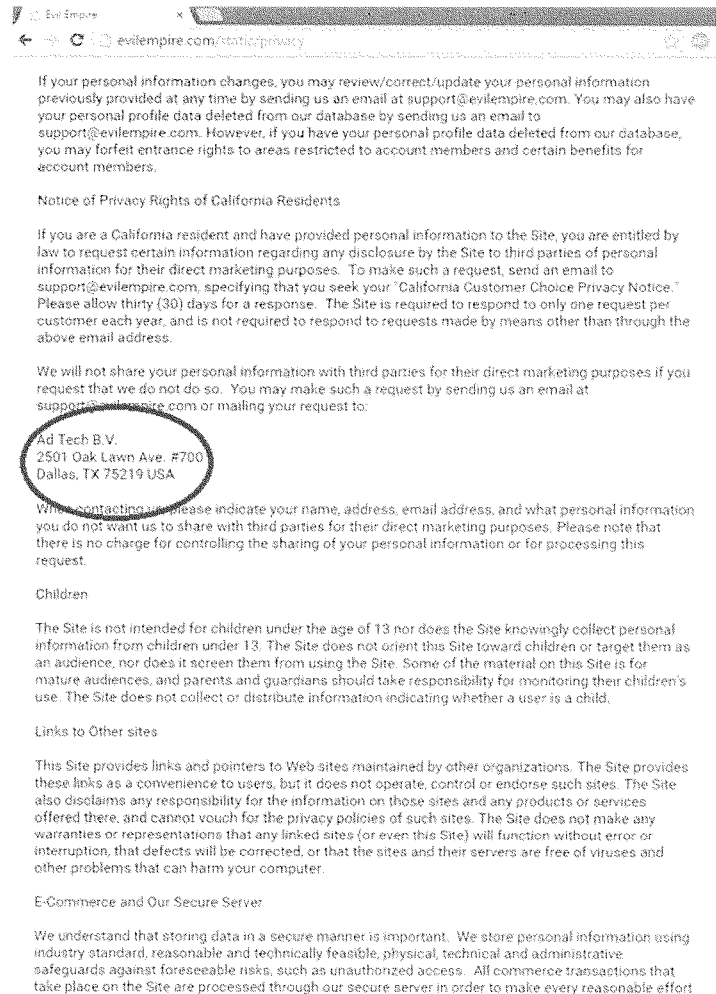
white hot booty 20-20-20  
I'm a beautiful Whitegirl with a juicy booty blue eyes I am divine :) call me for my rates. No A.A ASK  
ABOUT EVERYTHING

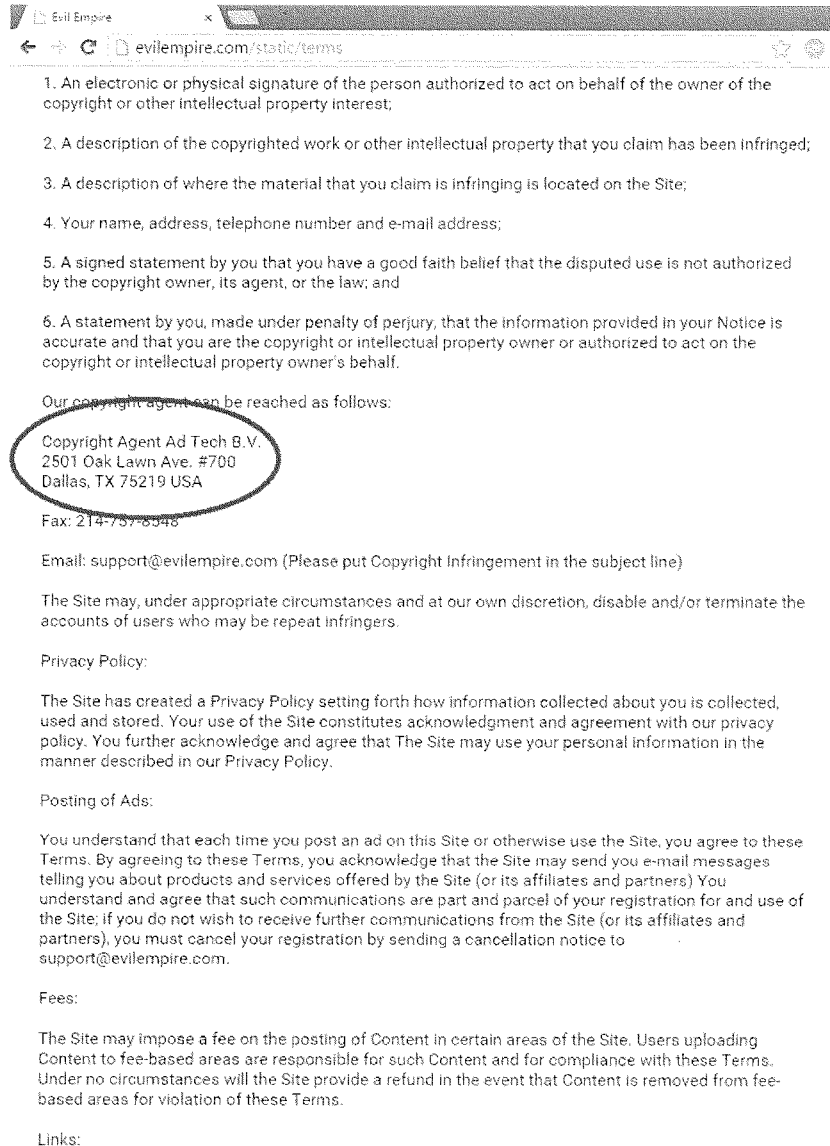
PROFILE



1







evil empire.com

# EVIL EMPIRE

escort phone number directory

Cincinnati, OH



5 of 11

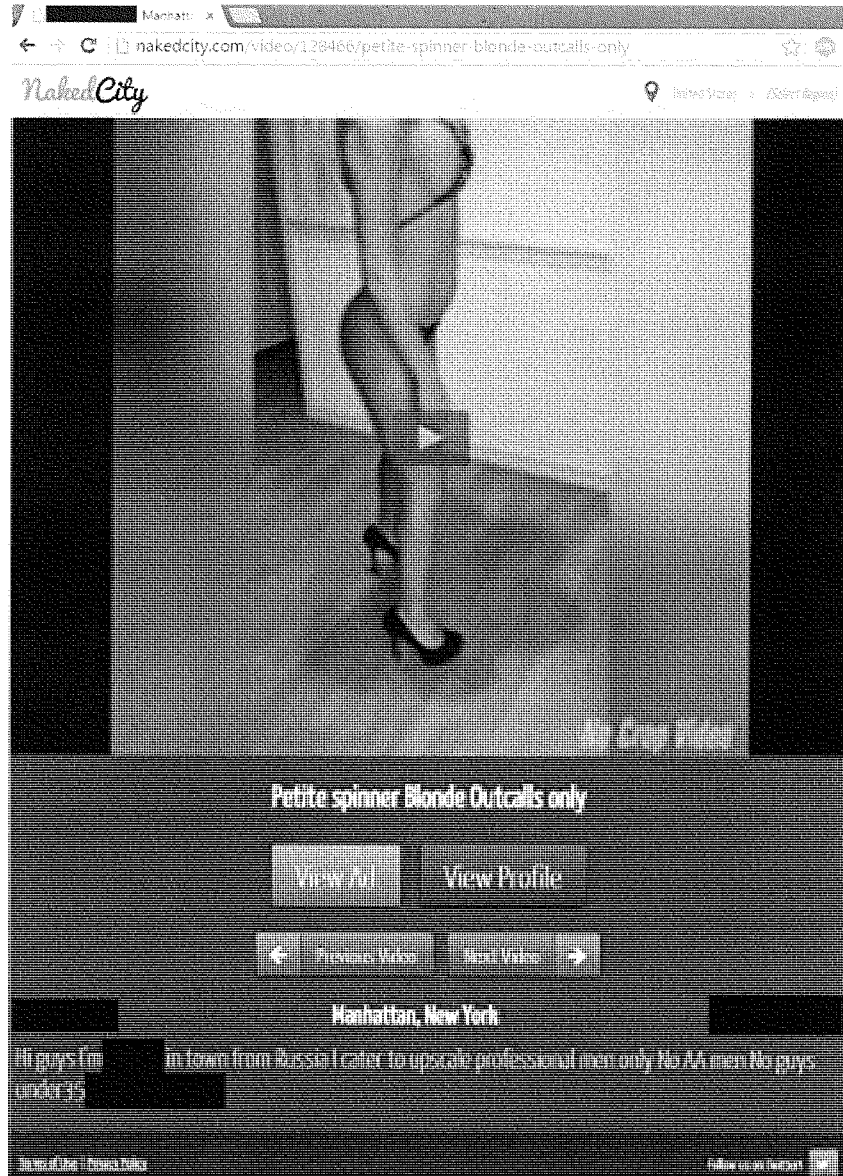
Cincinnati, OH

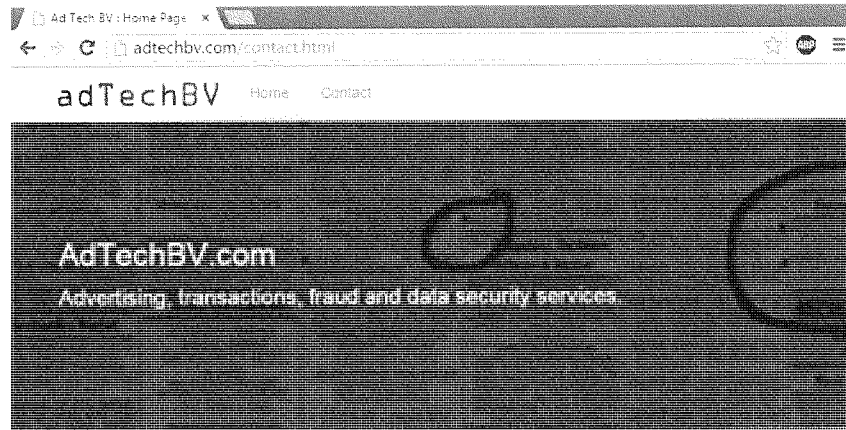
## PREVIOUS ADS

Sunday, September 20th 2015

Young hot brunette  
Hi, I'm [redacted] I'm looking for a generous man to show me what they got, I'm open to pretty much anything so hit me u...

Fresh young hot girl  
Hi, my name is [redacted] im looking for a generous man, I'll do just about anything you like. Open to new ideas. Hit me ...

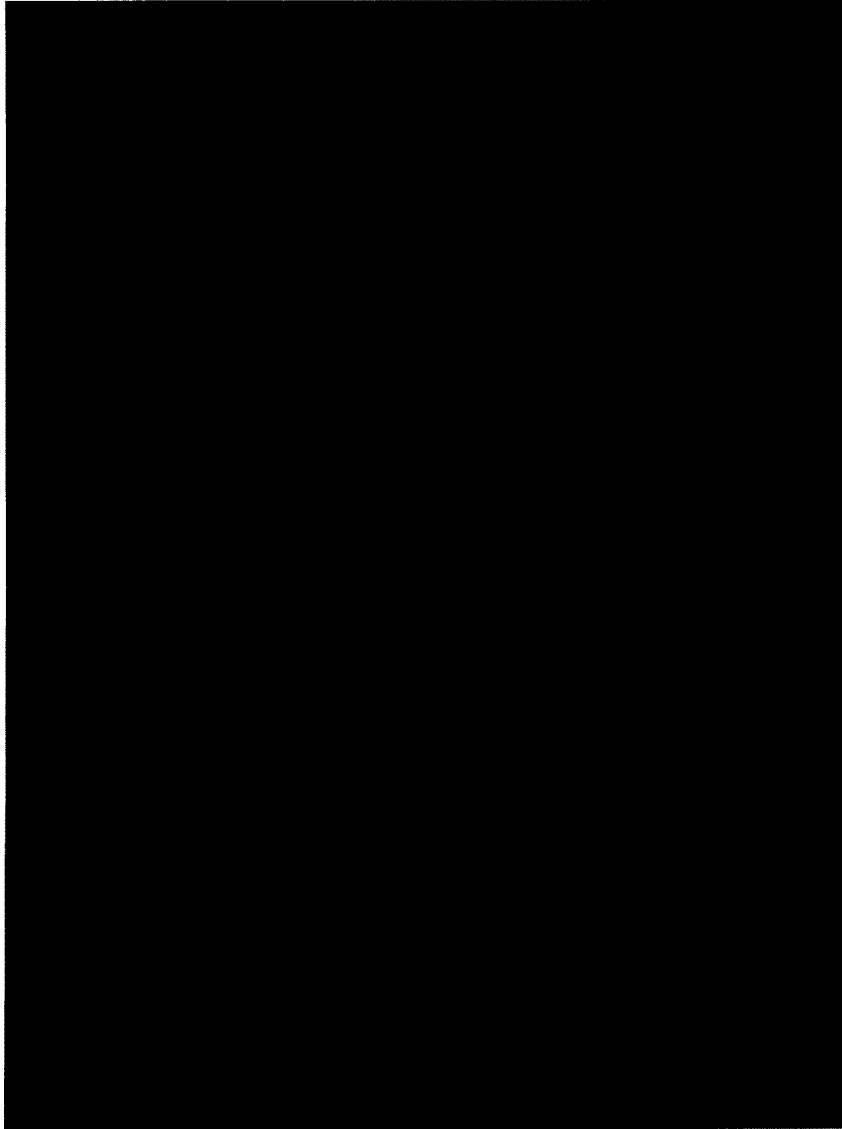


**Management**

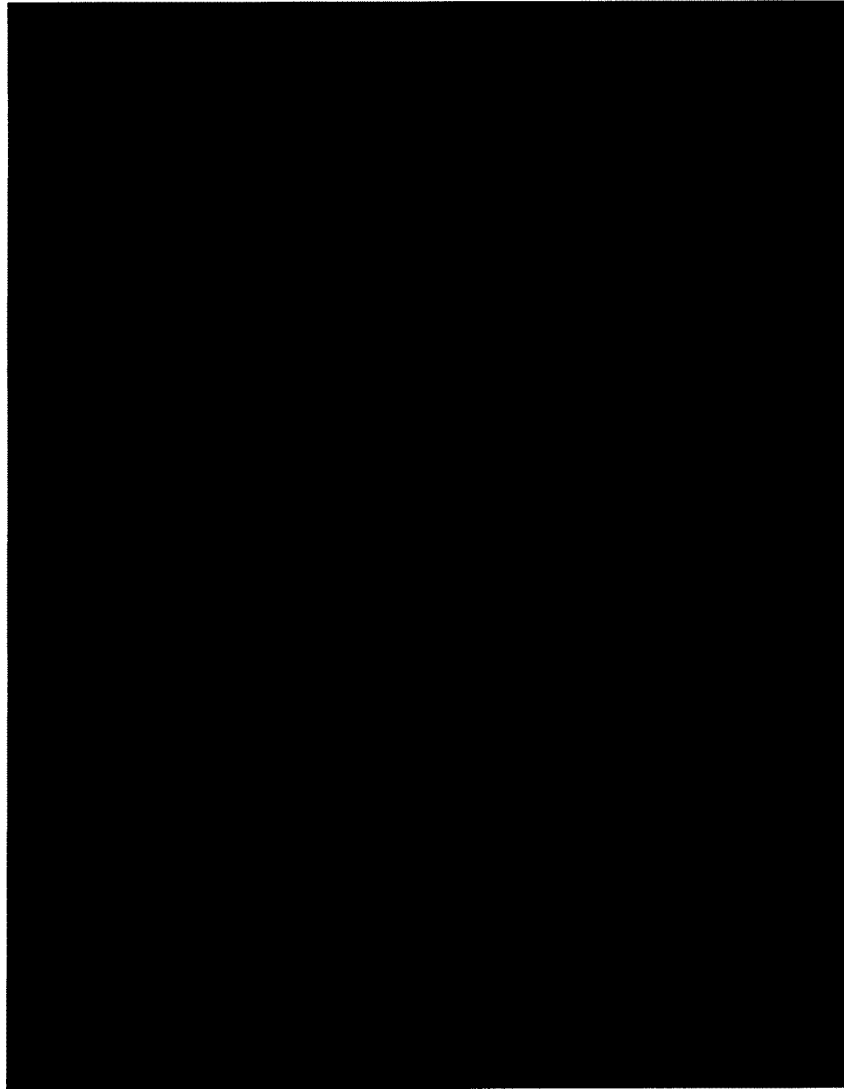
Carl Ferrer, Chief Executive Officer  
Nathan Kopecky, Chief Financial Officer  
Office Location  
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**Interim Designation of Agent to Receive Notification  
of Claimed Infringement**Full Legal Name of Service Provider: Backpage.com, LLCAlternative Name(s) of Service Provider (including all names under which the service  
provider is doing business): Ymas.com, Evilempire.comAddress of Service Provider: P.O. Box 192307, Dallas, TX 75219Name of Agent Designated to Receive  
Notification of Claimed Infringement: Carl FerrerFull Address of Designated Agent to which Notification Should be Sent (a P.O. Box  
or similar designation is not acceptable except where it is the only address that can be used in the geographic  
location):  
2501 Oak Lawn Avenue, Suite #700, Dallas, TX 75219Telephone Number of Designated Agent: 866-456-6877Facsimile Number of Designated Agent: 214-757-8548Email Address of Designated Agent: abuse@backpage.com

Signature of the Designating Service Provider:

Date: 5/13/2013Typed or Printed Name and Title: Carl Ferrer, Chief Operating Officer**Note: This Interim Designation Must be Accompanied by a Filing Fee\*  
Made Payable to the Register of Copyrights.****\*Note: Current and adjusted fees are available on the Copyright website at  
[www.copyright.gov/docs/fees.html](http://www.copyright.gov/docs/fees.html)**Mail the form to:  
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Sex / Obituaries - Evil Em: x

https://web.archive.org/web/20130631170653/http://evilempire.com/forumdisplay.php?g=0b6a5c0db675a5e91c9ac3785627DC&... Go

waybackmachine 1 captures 31 Aug 13 - 21 Aug 11

Sex / Obituaries Password Log in

newthread Page 1 of 3 1 2 3 >

Threads in Forum : Sex / Obituaries Forum Tools

**Announcement: This forum contains sexual content and is to be accessed only by persons who are 18 years of age or older...** Views: 172,658  
admin (nimba) 05-08-2007

Sticky: <b>Dad people</b> (1 2 3 ... Last Page) nphcp4fun	08-29-2013 06:55 PM by Kennys5	914	855,927
<b>Word Association Thread</b> (1 2 3 ... Last Page) admin	Today 09:46 AM by Kennys5	10,694	862,891
<b>Pics of hot blond/brunette sluts you would like to fuck</b> HornyBoy21	Today 09:43 AM by HornyBoy21	4	223
<b>Thread for horny you porn vids.</b> HornyBoy21	Today 09:48 AM by HornyBoy21	1	66
<b>May be Sharing</b> (1 2) Sharon74	Today 09:36 AM by Seekin4Love	16	903
<b>Boo-tay!!!</b> maxillie	Today 09:36 AM by Anthony6	3	172
<b>Lick My Asshole</b> (1 2 3 ... Last Page) texas1167	Yesterday 03:40 PM by texas1167	162	82,321
<b>Post here pics of bi-women / lesbian making out</b> HornyBoy21	Yesterday 09:15 PM by HornyBoy21	0	42
<b>So I met this gllf online what do you think?</b> MLFBanger	Yesterday 12:34 PM by gretlaninch	6	721
<b>Backpage Escorts</b> (1 2) lakecreek	08-29-2013 10:25 PM by richdan03	13	1,771
<b>Craigslist / backpage sluts lets have some fun..I am horny</b> HornyBoy21	08-29-2013 09:18 PM by HornyBoy21	0	102
<b>Choose Holly to make your stay memorable in Salt Lake City</b> johnthomas	08-29-2013 10:41 AM by johnthomas	0	67
<b>20/F Doing hot camshows :P</b> lonkygirl	08-28-2013 10:34 AM by lonkyold	1	289
<b>New National Escort Website</b> LiquorBox	08-27-2013 12:28 PM by LiquorBox	0	142
<b>Nsa fun in east bay :)</b> lastking1202	08-27-2013 01:35 AM by lastking1202	1	141
<b>Nude ladies in Public !!!</b> www.Jobs4Adults.com	08-25-2013 04:25 PM by www.Jobs4Adults.com	5	3,715
<b>18 years old girls ONLY!!!</b> (1 2 3) www.Jobs4Adults.com	08-29-2013 04:20 PM by www.Jobs4Adults.com	21	13,195
<b>Wanna trade?</b> christop30	08-24-2013 07:21 PM by Mike P	1	246
<b>Dildo Holder???</b> (1 2 3) ladylover	08-24-2013 09:02 AM by rancorous2	20	5,516
<b>Would You Let Your Wife Fuck Other Men?</b> (1 2 3 ... Last Page) Robin1	08-24-2013 02:31 AM by sunava4545	1,634	1,051,994
<b>Cuckold Phone sex</b> Yoursentoy24	08-24-2013 01:37 AM by Yoursentoy24	0	194

COMPANY OVERVIEW

[REDACTED]

Management further indicated that the Company is in the process of negotiating a transaction, where a 100 percent interest in Dartmoor Holdings, LLC, a subsidiary of Medalist, will be acquired by the former employee of the Company. Based on the non-binding letter of intent, the anticipated purchase consideration of approximately \$600.0 million (subject to working capital adjustments as of the closing date) will be structured as a 6-year term loan. The financing will be provided by the seller (or Medalist) for the full amount of the purchase consideration. We also understand that the consideration might include an earn-out provision based on the achievement of certain future performance milestones.

Capital Structure and Ownership

The table below summarizes the Company's capital structure and ownership as of the Valuation Date:

Shareholder Name	Common Voting	Common Non-Voting	Total Shares
Michael G. Lacey	1,640.3	162,388.6	164,028.9
James A. Larkin	1,254.4	153,899.7	155,154.1
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	3,635.3	315,899.6	319,534.9

[REDACTED]

*Conclusion of Value*

The business enterprise value ("BEV") of the Company indicated by the DCF Method represents the value of 100 percent of the Company's total invested capital ("TIC"), net of cash.

In view of the foregoing, the fair market value of the TIC, net of cash as of the Valuation Date, as indicated by the DCF Method presented in Schedule 4 is reasonably represented as follows:

\$620,900,000

SIX HUNDRED TWENTY MILLION,  
NINE HUNDRED THOUSAND DOLLARS

[REDACTED]

App. 000151

MARKET APPROACH

[REDACTED]

Guideline Public Company

[REDACTED]

[REDACTED]

[REDACTED]

In view of the foregoing, the fair market value of the TIC, net of cash as of the Valuation Date, as indicated by the GPC Method presented in Schedule 7 is reasonably represented as follows:

\$625,800,000

SIX HUNDRED TWENTY FIVE MILLION,  
EIGHT HUNDRED THOUSAND DOLLARS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

App. 000153

[REDACTED]

In view of the foregoing, the fair market value of the TIC, net of cash as of the Valuation Date, as indicated by the GMAC Method presented in Schedule 9 is reasonably represented as follows:

\$618,400,000

SIX HUNDRED EIGHTEEN MILLION,  
FOUR HUNDRED THOUSAND DOLLARS

[REDACTED]

#### ADDITIONAL CONSIDERATIONS

As part of our analysis, we also considered the anticipated transaction of Dartmoor Holdings, LLC ("Dartmoor") which holds 100 percent interest in the following entities: Backpage.com, LLC; Website Technologies, LLC; IC Holdings, LLC; Payment Solutions, B.V.; Classified Solutions, Ltd., Postfaster, LLC; Classified Strategies Cooperative U.A.; and Postfaster Solutions, LLC. Management also indicated that the only operating entity is Backpage.com.

Based on the non-binding letter of intent, the anticipated purchase consideration of approximately \$600.0 million (subject to working capital adjustments as of the closing date) will be structured as a 6-year term loan. The financing will be provided by the Company for the full amount of the purchase consideration. We also understand that the consideration might include an earn-out provision based on the achievement of certain future performance milestones. However, we understand that the exact terms of the transaction and the amount of the consideration were not finalized as of the Valuation Date.

[REDACTED]

[REDACTED]

[REDACTED]

*Conclusion*

Based on all that we have developed in our study, it is our opinion that the estimated fair market value of the common equity of Medalist on a non-controlling and non-marketable interest basis is reasonably represented as follows:

\$430,756,400

FOUR HUNDRED THIRTY MILLION, SEVEN HUNDRED FIFTY-SIX THOUSAND, FOUR HUNDRED DOLLARS

OR

\$1,184.9 Per Share Voting

AND

\$1,149.4 Per Share Non-Voting

**Medalist Holdings, Inc.**  
*Variation of Working Capital Holdings, Inc.*  
 Historical & Projected Income Statements - Adjusted  
 As of February 12, 2015

[illegible]



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Medalist Holdings, Inc. Vice President of Medalist Holdings, Inc. Guadalupe Public Company Merics	Schedule 8 (905 in Thousands)
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Figure 1 displays a 4x4 grid of bar charts showing the distribution of TTM EDITOR Margin for four companies (Academy Holdings, Inc., Guideline, Public Company, Average, Guideline, Public Company, Median) across four categories (1, 2, 3, 4). The y-axis for each chart ranges from 0 to 100. The x-axis for each chart is labeled with the company name. The bars are black and the background is white.

Company	Category 1	Category 2	Category 3	Category 4
Academy Holdings, Inc.	~10	~10	~10	~10
Guideline, Public Company	~10	~10	~10	~10
Average	~10	~10	~10	~10
Guideline, Public Company, Median	~10	~10	~10	~10

App. 000157

REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

### DEPOSIT ACCOUNT CONTROL AGREEMENT

This Deposit Account Control Agreement (this "Agreement") is entered into as of 2015 among [REDACTED] ("Secured Party"); Website Technologies, LLC, with an address of 2501 Oak Lawn Avenue, Suite 700, Dallas, TX 75219 ("Debtor"); and [REDACTED]

#### BACKGROUND

Bank maintains for Debtor one or more deposit accounts designated by the account number or numbers indicated on the Schedule attached to this Agreement. The deposit account or accounts, as re-numbered or otherwise re-designated from time to time, are referred to in this Agreement, collectively, as the "Deposit Account."

In connection with certain financing or other arrangements between Secured Party and Debtor, Debtor has informed Bank that Debtor has granted to Secured Party a security interest in the Deposit Account. Debtor is requesting that Bank enter into this Agreement. Bank is willing to do so upon the terms contained in this Agreement.

Accordingly, the parties agree as follows:

1. **Deposit Agreements.** The terms and conditions of this Agreement are in addition to any deposit account agreements and other related agreements that Debtor has with Bank, including without limitation all agreements concerning banking products and services, treasury management documentation, account booklets containing the terms and conditions of the Deposit Account, signature cards, fee schedules, disclosures, specification sheets and change of terms notices (collectively, the "Deposit Agreements"). The provisions of this Agreement shall supersede the provisions of the Deposit Agreements only to the extent the provisions herein are inconsistent with the Deposit Agreements, and in all other respects, the Deposit Agreements shall remain in full force and effect. All items deposited into the Deposit Account shall be processed according to the provisions of the Deposit Agreements, as amended by this Agreement.

2. **Security Interest.** Debtor has granted to Secured Party a security interest in, among other property, the Deposit Account and all credits or proceeds thereto and all monies, checks and other instruments held or deposited therein (all of which shall be included in the definition of the "Deposit Account"). Debtor represents and warrants that there are no perfected liens or encumbrances with respect to the Deposit Account (other than liens or encumbrances in favor of Secured Party).

3. **Control.** In order to provide Secured Party with control over the Deposit Account, Debtor agrees that if at any time Bank shall receive any instructions originated by Secured Party directing the disposition of funds in the Deposit Account, Bank shall comply with such instructions without further consent of Debtor or any other person. If Debtor is otherwise entitled to issue instructions and such instructions conflict with any instructions issued by Secured Party, Bank shall follow the instructions issued by Secured Party.

4. **Debtor's Dealings with the Deposit Account.**

(a) Except as provided in Section 4(b), Debtor shall be entitled to direct the disposition of the funds in the Deposit Account in accordance with the terms of the Deposit Agreements.

(b) If at any time Secured Party delivers to Bank a Notice of Sole Control in substantially the

App. 000158

**From:** [REDACTED] [mailto:[REDACTED]@websitetechologies.com]  
**Sent:** Friday, October 09, 2015 9:11 AM  
**To:** [REDACTED]  
**Subject:** RE: Just need to update our files

Hi [REDACTED],

I hope you're well. [REDACTED] forwarded your email to me so that we can give you clarity on the relationship between the entities.

See below for your questions and our answers. Please let me know if you have any other questions.

Thanks!

[REDACTED]

Hi [REDACTED]

I hope you are enjoying the cooler weather now that fall is coming our way.

I just want to reach out to you as I know there have been some changes and we are looking to update our information on your accounts with us.

We see that we are receiving a number of wires from overseas especially from Iceland and Lichtenstein . We would like to know who are clients are that are paying through these two companies.

App. 000159

[REDACTED]

[REDACTED]

Would you be able to provide that information to me

[REDACTED]

2) Wires from Lichtenstein: [REDACTED] is the acquirer for credit card transactions for the classified ad websites supported by WT operational services. The answer is the same as above. The classified websites also include [Cracker.com.au](http://Cracker.com.au) (formerly owned and operated by [REDACTED] and acquired in 2015 by Ad Tech BV)

[REDACTED]

We would also like a more detailed description of what Website Technologies does as to what services they provide to your client base and if you can send me their web address for our records.

Website Technologies was acquired in April 2015 by Carl Ferrer. We are in the process of creating a website for website technologies. Though it is not a priority since our clients are not the general public and have a sizable customer base already. Our clients are media companies we meet at trade shows. WT provides the following services to these clients:

- 1) Contracts with development companies for creation and maintenance of IT related products.
- 2) Uses IT marketplace platform technology to provide classified advertising sites for media companies.
- 3) Provides Payroll and administrative services for staff supporting the marketplace platform
- 4) Manages contracts and pays IT related vendors for hosting, content delivery networks, email service providers, fraud prevention services and other IT-related vendors.
- 5) Provides reporting and payment to its media company clients.

Please let me know if you would not mind sending this information over to me.

Thanks

[REDACTED]

United States Senate  
Permanent Subcommittee on Investigations

The Online Facilitation of Sex Trafficking

Testimony of

A. Brant Cook  
Director, Crimes Against Children Initiative  
Office of Ohio Attorney General Mike DeWine

November 19, 2015

Thank you Chairman and Members of the Subcommittee for the opportunity to provide testimony on the critical issue of the online facilitation of sex trafficking. I currently serve as the Director of Ohio Attorney General Mike DeWine's Crimes Against Children Initiative, an effort launched in 2011 that is aimed at better protecting Ohio's children. I am assigned to the Bureau of Criminal Investigation (BCI), which is the investigative division of the Ohio Attorney General's Office. There I work alongside sworn law enforcement who are tasked with combatting crimes against children. As part of my duties in this position, I serve as the Co-Chair of the Law Enforcement Subcommittee to the Ohio Human Trafficking Commission, and I also assist in the prosecution of cases relating to the sex trafficking and exploitation of minors. Prior to my service with the Ohio Attorney General's Office, I served as a prosecutor for approximately 10 years, including more than five years of experience as an Assistant United States Attorney (AUSA). During my time as an AUSA, I primarily focused on supporting investigations and prosecuting matters concerning online crimes against children. I offer my testimony based on my experience reviewing multiple investigations involving sex trafficking and other online-facilitated crimes, as well as numerous discussions with law enforcement officers with federal, state, and local agencies around the State of Ohio who investigate sex trafficking matters. In referring to sex trafficking in this testimony, I do so by reference to how that crime is defined within federal law.<sup>1</sup>

Like many states in the country, Ohio is faced with the heartbreaking problem of sex trafficking. The National Human Trafficking Resource Center reports that through the first six months of 2015, they processed 108 cases through their hotline involving sex trafficking in Ohio, the fifth highest amount in the nation.<sup>2</sup> Law enforcement in Ohio is aware of the problem, and substantial efforts continue to be directed at combatting sex trafficking in our state. These efforts have borne out with an increase in trafficking investigations and, more critically, more victims of trafficking being identified and offered services. Ohio law requires that data on human trafficking investigations must be forwarded to BCI.<sup>3</sup> According to the data collected for 2014, Ohio local law enforcement agencies reported 85 human trafficking investigations leading to 98 arrests.<sup>4</sup> These reports also establish that 181 potential victims of human trafficking were

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<sup>1</sup> 18 United States Code Section 1591.

<sup>2</sup> <http://traffickingresourcecenter.org/type-trafficking/sex-trafficking> (November 16, 2015).

<sup>3</sup> Ohio Revised Code Section 109.66.

<sup>4</sup> Ohio Attorney General's Office 2014 Annual Report on Human Trafficking, available at <http://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Human-Trafficking/HTC-2014-Annual-Report.aspx>.

identified in 2014.<sup>5</sup> The vast majority of these investigations and potential victims were involved with sex trafficking.<sup>6</sup> These numbers represent a more than doubling of reported trafficking investigations and victims identified from 2013.<sup>7</sup>

Though every sex trafficking case is different, there are some features that are commonly encountered with these cases around Ohio. One feature encountered in the vast majority of sex trafficking investigations is the traffickers' abuse of online marketplace websites to facilitate the crime. In order for sex traffickers to operate, they require an inexpensive and readily available way to publically offer their victims for commercial sex acts, without subjecting themselves to being easily or immediately identified. The use of internet-based advertisements allows traffickers to reach a wide audience, while maintaining the relative (though not absolute) anonymity of the internet. These online advertisements used by sex traffickers are also intermingled with other, similar advertisements for "erotic services," making it difficult to ascertain which advertisements relate to trafficking victims, versus individuals involved in prostitution or other erotic services. For this reason, as well as the increasing presence of the internet in every commercial endeavor, sex trafficking has a strong online presence, and that presence seems to be growing.

Investigators have encountered the use of many different online marketplace websites to facilitate the crime of sex trafficking. Though it is certainly not alone in traffickers' abuse of its services, the most frequently encountered online marketplace in sex trafficking investigations is Backpage.com, a website that allows for the advertisement of the sale of a wide range of items, personal services, and other announcements that were traditionally published in the "classified" section of newspapers. On numerous occasions, minor victims of sex trafficking have been identified and recovered following their traffickers' posting advertisements through Backpage and/or other online marketplace websites that used language and images familiar to law enforcement and those involved in prostitution and trafficking as suggestive of the victim's availability for commercial sex acts.

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<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Compare Ohio Attorney General's Office 2013 Annual Report on Human Trafficking, available at <http://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Law-Enforcement/Human-Trafficking-Reports/2013-Human-Trafficking-Annual-Report.aspx>.

Online marketplace websites, including Backpage, have made efforts to identify and stop the abuse of their services by traffickers. There is some amount of screening for illegal content, and law enforcement receives tips concerning potential illegal activity with some regularity. It remains unclear, however, precisely how that screening is done, and whether information detected through the screening process may be valuable to an investigation. It is also unclear the extent to which online marketplace websites may engage in the editing of portions of postings users submit for publishing (such as deleting obscene or other content that violates the websites' terms of service), and whether the full amount of any content edited out is retained by the online marketplace website.

The investigation by this Subcommittee concerning traffickers' use of online marketplace websites is critical in identifying any information that may assist law enforcement in more effectively combatting sex trafficking. The currency of any investigation is information, and a clear understanding of what information could be available through fuller and more uniform retention of information by online service providers – which may then be able to be acquired through appropriate legal process by law enforcement – would make a large difference in investigations of sex trafficking and other crimes. The Subcommittee and Senator Portman's questions deserve answers.

I thank you again for the opportunity to assist in addressing this critical issue.





**Written Testimony of  
Karen Friedman-Agnifilo, Chief Assistant District Attorney,  
New York County District Attorney's Office**

**Before the United States Senate Subcommittee on Investigations**

**Regarding the Use of Online Prostitution Advertisements by Sex Traffickers**

**November 19, 2015**

I am Karen Friedman-Agnifilo, Chief Assistant District Attorney at the New York County District Attorney's Office. Thank you for the opportunity to submit testimony regarding online prostitution advertisements that can serve as a platform to traffic minors and adult victims for sex. This is a critically important issue for my Office because nearly all of the sex traffickers we have prosecuted over the past few years used online posting sites to traffic their vulnerable victims.

Take for example a few sex trafficking convictions obtained by my Office's Human Trafficking Response Unit. In *People v. Froilan Rosado*, the defendant trafficked as many as 10 teenage girls using online posting sites to post photographs of his young victims and advertise their bodies for sex.<sup>1</sup> Rosado kept the victims under his control by using a mix of threats of violence, physical abuse, and even offers of affection. The girls he recruited were young and

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<sup>1</sup> See Manhattan District Attorney's Office Press Release, Sept. 15, 2015, available at <http://manhattanda.org/press-release/da-vance-froilan-rosado-sentenced-7-14-years-prostituting-teenage-girls>.

vulnerable – for example, they had run away from home, had extensive involvement with child protective services, and had been sexually abused as adolescents.

In *People v. Benjamin Gaston*, the defendant searched online advertizing websites to find a vulnerable victim.<sup>2</sup> He responded to her advertisement posing as a client, then he kidnapped her, and used those same online posting websites to advertise the victim, forcing her to earn money for him through forced prostitution. After two days of being subjected to numerous sexual assaults for Gaston's profit, the victim attempted to escape from the sixth-floor window of the room where she was being held, falling more than 50 feet to the ground and breaking multiple bones.

In *People v. Leon Brown*, the defendant trafficked women by advertising on online advertising websites in order to locate potential clients.<sup>3</sup> Brown used physical violence, threats of violence, and psychological manipulation to compel his victim to continue to work for him and turn over the money she received. He also branded the victim with his pimp name by tattooing "Sean the Don" on her body and required the victim to regularly "check in" with him to report how much money she was earning for him during the night. When the victim failed to follow the defendant's rules or meet his quota of earnings, he would assault her and strike her with a belt or stick.

In *People v. Donnell Baines*, the defendant used online posting sites to operate a sex trafficking ring out of his Manhattan apartment.<sup>4</sup> Like many traffickers, Baines preyed upon vulnerable women in need of money, maintaining control through emotional manipulation and

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<sup>2</sup> See Manhattan District Attorney's Office Press Release, Sept. 3, 2014, available at <http://manhattanda.org/press-release/da-vance-sex-trafficker-benjamin-gaston-sentenced-50-years-life-state-prison>.

<sup>3</sup> See Manhattan District Attorney's Office Press Release, Aug. 27, 2013, available at <http://www.manhattanda.org/node/4146>.

<sup>4</sup> See Manhattan District Attorney's Office Press Release, April 1, 2013, available at <http://manhattanda.org/press-release/da-vance-sex-trafficker-sentenced-50-years-state-prison>.

psychological abuse. He stole his victims' identifications, not only threatening to expose their private information, but to harm their families if they left him. Baines frequently beat his victims, and on one occasion used a rubber mallet for a slight infraction of his rules. He degraded the women and utilized sexual assaults to maintain his control.

In *People v. Taye Elleby*, the defendant used online posting sites to advertise commercial sexual services for his trafficking ring. The defendant controlled one of his victims, a 17-year-old girl, through physical, emotional, and psychological coercion, and demanded that she hand over nearly all of the money she made. If the victim did not follow his rules, he would physically assault her.<sup>5</sup>

These are just a few examples from my Office. Online trafficking and prostitution advertising is a pernicious problem that has been seen by law enforcement throughout the country.<sup>6</sup> These online posting sites are enabling sex trafficking by providing a place for sex traffickers to create demand for their product – *i.e.*, sex trafficking victims – and can serve as a means to recruit or kidnap other victims. We believe that all online posting sites must recognize that they could be facilitating sex trafficking.

Online advertisers should have retention practices in place and other policies that would be helpful to law enforcement to combat sex trafficking. These include the following:

- Retain customer invoices for at least one year.
- Retain advertisements after their expiration date for at least one year.
- Retain all versions of a particular advertisement rather than only the most recent version.

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<sup>5</sup> See Manhattan District Attorney's Office Press Release, February 5, 2014, available at <http://manhattanda.org/press-release/da-vance-sex-trafficker-sentenced-10-%E2%85%94-32-years-prison>

<sup>6</sup> See, e.g., National Association of Attorneys General Letter to Samuel Fifer, Counsel for Backpage.com, LLC, dated Aug. 31, 2011, available at <http://attorneygeneral.tn.gov/cases/backpage/backpageletter.pdf>.

- Do not “scrape” or remove Exchangeable Image File data from posted photos. If the advertisement is identified as part of a potential sex trafficking case or if the individual being advertised is a child, law enforcement would be able to trace where that photograph was taken.
- Capture full Internet Protocol (“IP”) addresses from mobile devices.
- Require users to provide their identifying information such as name and address when posting advertisements.
- Authenticate that email addresses and phone numbers provided by users are valid.
- Require identification to prove the age of the person depicted in sexually suggestive photographs in prostitution advertisements.

We believe that online posting sites have an obligation to do everything they can to prevent their sites from being used to promote child sexual exploitation and sex trafficking. Adopting the policies above would go a long way to help law enforcement better protect vulnerable victims and bring sex traffickers to justice.

Thank you again for your attention to this issue.