

*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**

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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

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<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. Commercial 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/psc/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

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<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

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<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]

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<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-Faciliator-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.

backpage.com > post ad > adult entertainment

## Choose a Category

- [adult jobs](#)
- [male escorts](#)
- [body rubs](#)
- [phone & websites](#)
- [domination & fetish](#)
- [strippers/strip clubs](#)
- [escorts](#)
- [transsexual escorts](#)

[My Account](#) | [Buy Credits \(new!\)](#) | [Contact](#) | [Help](#) | [Privacy](#) | [Terms](#) | [Safety](#)

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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>

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<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/>.

The Subcommittee has limited information about Backpage’s moderation procedures, and the company has publicly provided only a broad description:

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>

Through our investigation, we have attempted to understand the details of that process. But that attempt has raised more troubling questions than answers. In particular, the Subcommittee has learned that Backpage does not merely screen for and delete offending advertisements. Instead, the company *edits* and deletes content in some advertisements before posting them.

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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<sup>56</sup> App. 33.

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>

The screenshot displays an administrative interface for an advertisement. It is divided into several sections:

- Administrative Data:** Includes fields for Partner (redacted), Ad Type (Online Ad), Paid Ad (Yes), Ad Price (\$3.00), and Whitelisted (Yes).
- Name and Contact:** Name (redacted), Phone (Unknown), and Email (redacted with a [+SPAM+] tag).
- User Information:** User Created (Friday, July 1, 2011 08:49 AM EDT) and Settings (Bypass Fraud Alerts, Bypass Moderation, Whitelist Ad, Has Account).
- Ad Analysis:** Referrer (Unknown), IP (redacted), and Ad Created (Monday, August 29, 2011 04:10 PM EDT).
- Actions:** A list of links for managing the ad, including "View all ads by this user on this site (5)", "View Account", "View Cardref Number", "Edit this Ad (backpage form)", "Edit this ad (object editor)", "Report this ad to the NCMEC", "Delete this Ad | Global Delete |", "Moderate this Ad (fail)", "Edit or Delete this User (local)", and "Bypass Moderation (central settings)".
- Invoices for this Ad:** Shows "\$3.00 on 08-29-2011 - View".

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

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<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

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<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:

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

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<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:

<b>Year</b>	<b>Net Revenue</b>
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

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<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).

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# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

October 1, 2015

KEITH B. ASHDOWN, STAFF DIRECTOR  
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

**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

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<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

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<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

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<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*

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 McCAIN, ARIZONA  
ROB PORTMAN, OHIO  
RAND PAUL, KENTUCKY  
JAMES LANKFORD, OKLAHOMA  
MICHAEL B. ENZI, WYOMING  
KELLY AYOTTE, NEW HAMPSHIRE  
JONI ERNST, IOWA  
BEN SASSE, NEBRASKA

THOMAS R. CARPER, DELAWARE  
CLAIRE McCASKILL, MISSOURI  
JON TESTER, MONTANA  
TAMMY BALDWIN, WISCONSIN  
HEIDI HEITKAMP, NORTH DAKOTA  
CORY A. BOOKER, NEW JERSEY  
GARY C. PETERS, MICHIGAN

KEITH B. ASHDOWN, STAFF DIRECTOR  
GABRIELLE A. BATKIN, 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

App. 000009

# 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.

October 23, 2015

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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.

## 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

- 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.

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.

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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.

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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-

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### **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.

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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.

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App. 000023

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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,

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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### 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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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](#)

[I don't agree](#)

**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

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<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.zephorias.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. Gozdzia 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

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<sup>13</sup> [http://www.foxnews.com/on-air/justice-jeanine/index.html#v/1574568847001/lawmakers-question-googles-role-in-human-trafficking/?playlist\\_id=163706](http://www.foxnews.com/on-air/justice-jeanine/index.html#v/1574568847001/lawmakers-question-googles-role-in-human-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

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<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)).

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<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]

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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.

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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>

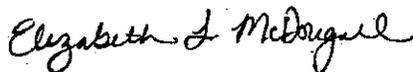
Similarly, the President and CEO of the National Center for Missing and Exploited Children (NCMEC) has lauded Backpage.com's genuine commitment to help stop sex trafficking and observed that its employees are "aggressively reviewing their ads" and had "reported 1,600 ads that they believe are suspicious."<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

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<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

KEITH B. ASHDOWN, STAFF DIRECTOR  
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

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

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<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

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<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/psc/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-Faciliator-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

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<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>

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<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.

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<sup>27</sup> See generally, Latonero, M., et al., USC Annenberg Ctr. on Commc'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-

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<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

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<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/psc/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*

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<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[ly]” 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:

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<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.”

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<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 “identif[y] 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

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<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>

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<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  
202.887.4343/fax: 202.887.4288  
sross@akingump.com

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”).

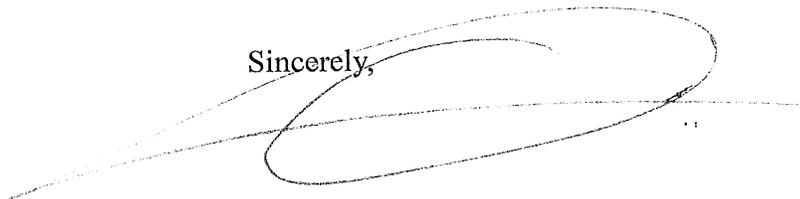
As outlined in our October 23, 2015 letter, and notwithstanding the Subcommittee’s letter of November 3, 2015, Backpage.com continues to object to the Subpoena on the basis that its requests violate the First Amendment, are overbroad, and/or are not pertinent to a proper legislative inquiry by the Subcommittee. 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.

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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,

A large, stylized handwritten signature in black ink, appearing to be "S. Ross", written over 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

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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

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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 blue ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Steven R. Ross  
Stanley M. Brand  
Akin Gump Strauss Hauer & Feld  
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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

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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.

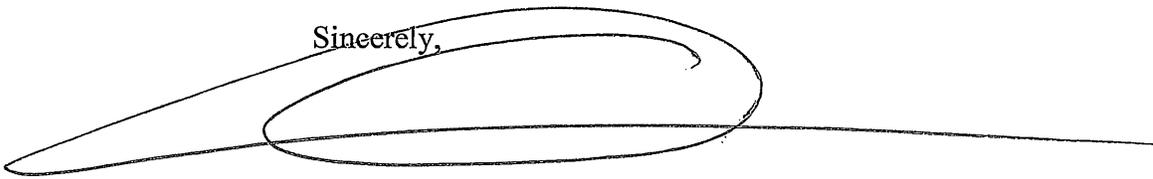
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As we have said in our past correspondence, the concerns we raise with regard to the First Amendment implications of the Subcommittee's investigation of an entity engaged in speech and publication activities are far from trivial. The legal seriousness 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,



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

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<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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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.

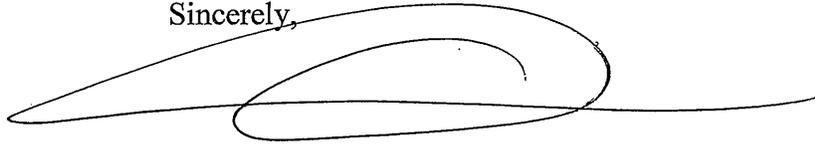
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<sup>2</sup> We have further indicated to the Subcommittee that Backpage.com will comply with any production or disclosure requirements found in a final judicial decision to be constitutionally proper.

<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).

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Sincerely,

A handwritten signature in black ink, consisting of a large, fluid, cursive loop that starts on the left, goes up and over, then loops back down and under, ending with a long horizontal stroke extending to the right.

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

JOHN MCCAIN, ARIZONA  
ROB PORTMAN, OHIO  
RAND PAUL, KENTUCKY  
JAMES LANKFORD, OKLAHOMA  
MICHAEL B. ENZI, WYOMING  
KELLY AYOTTE, NEW HAMPSHIRE  
JONI ERNST, IOWA  
BEN SASSE, NEBRASKA

THOMAS R. CARPER, DELAWARE  
CLAIRE McCASKILL, MISSOURI  
JON TESTER, MONTANA  
TAMMY BALDWIN, WISCONSIN  
HEIDI HEITKAMP, NORTH DAKOTA  
CORY A. BOOKER, NEW JERSEY  
GARY C. PETERS, MICHIGAN

KEITH B. ASHDOWN, STAFF DIRECTOR  
GABRIELLE A. BATKIN, 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).

**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>

-----  
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: \$\$HOT 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]

[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>

-----  
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>

-----  
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)

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:

All:

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]

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]

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 Fu11 \$ervice".
- 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]





Cc:

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

**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>

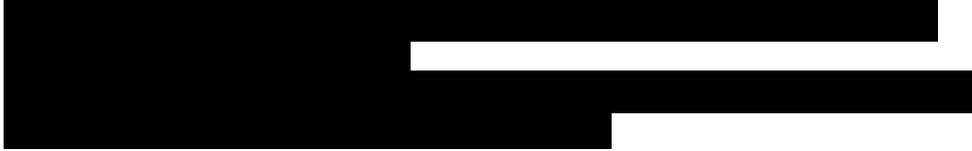
there were 8 pictures there one minute ago and now there are only 4. the other pics did not look like they broke any rules as far as i know. maybe they did? anyway, this keeps happening to her and she wants to know why. she thinks there's some big conspiracy.

please advise.

thanks,



--



**print readership is up > 354,000 unique readers weekly**

*PMB fall 2011*

**web audience is up > 292,000 unique readers monthly**

*ComScore fall 2011*



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

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]

--



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**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



>  
>  
>  
>  
>  
> -



**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]

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  
[REDACTED]

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.bigcity.com](#)

SalonByJill.bigcity

Tasha.bigcity

- They can load pics, add text, etc.

- Other users can follow.

- We are creating a [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, Sukesh Mohan 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

**From:** [Carl Ferrer](#)  
**To:** [REDACTED]  
**Cc:** [REDACTED] [Andrew Padilla](#)  
**Subject:** Re: Introduction to Review/ Moderation Services from El Camino Technologies  
**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,  
>>  
>> That's 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.





From: [REDACTED]  
To: [Carl Ferrer](#)  
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 wold 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]  
>>  
>  
>

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]

From: [REDACTED]  
To: [Andrew Padilla](#)  
Subject: Re: new guidelines in adult  
Date: Wednesday, October 27, 2010 1:19:40 PM

---

Hi Andrew

Thanks we will implement these guidelines now

re: editing the ads is great idea and the team is certainly skilled for this, only thing I would analyze is the time this would involve as Carl mentioned he wanted the ques cleared ASAP. We would also need to understand how unobtrusively we can achieve editing so that we maintain the essence of the ad

Thanks

On Wed, Oct 27, 2010 at 10:05 AM, Andrew Padilla [REDACTED] wrote:

Hi [REDACTED],

I'm attaching an email I sent to our staff this morning. You can begin enforcing these changes as well.

Also, I think we should explore the idea of letting your best trained employees start to edit ads rather than fail them. Carl can probably elaborate more on this.

Andrew Padilla  
Operations Manager  
Backpage.com | Village Voice Media

----- Forwarded message -----

From: "Andrew Padilla" [REDACTED]

To: [REDACTED]

[REDACTED]

[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]

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

--

[REDACTED]

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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.



**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

>>> 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]

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



**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  
[REDACTED]  
**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 than 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>



**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

From: [Andrew Backpage](#)

To:

[REDACTED]

Cc:

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]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

human trafficking  
[REDACTED]

x

[REDACTED]

[Redacted]

|

|

[Redacted]

schoolgirl

x

A female in full or part time education

teen

x

someone between the ages of 13 and 19  
someone between the ages of 13 and 19

[Redacted]

|

|

[Redacted]

yung

x

y

[Redacted]

၁၀၁၅

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



**Codewords**

**Meaning**

[REDACTED]

REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Date	Total Done	Phoenix	El Camino
8/1/2012	15611	1085	14526
8/2/2012	17154	950	16204
8/3/2012	17324	713	16611
8/4/2012	15041	611	14430
8/5/2012	12949	809	12140
8/6/2012	15888	1142	14746
8/7/2012	16163	1125	15038
8/8/2012	16840	1012	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	15,083	855	14,228
95 Percentile	17195.5	1225.25	16289.5

Per Day/ Per Staff	Staff	Staff Working	Daily Total
320	50	42.86	13,714
320	55	47.14	15,086
320	60	51.43	16,457





[REDACTED]

[REDACTED]

[REDACTED]

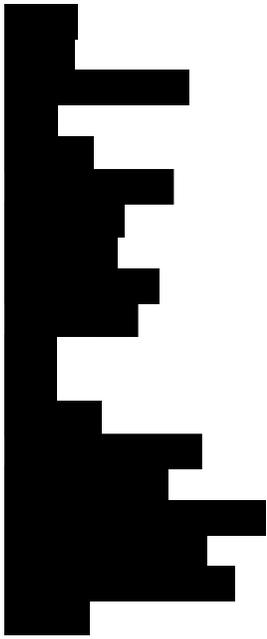
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



yung



x



y



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]

[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.

--  
Thanks and Regards

[REDACTED]

Young hot brunette [redacted] x  
cincinnati.backpage.com/FemaleEscorts/young-hot-brunette/[redacted] ☆ ABP  
backpage Post Ad keyword escorts search  
cincinnati, oh free classifieds

backpage.com > Cincinnati adult entertainment > Cincinnati escorts

# Young hot brunette [redacted]

Report Ad

Posted: Sunday, September 20, 2015 6:52 PM

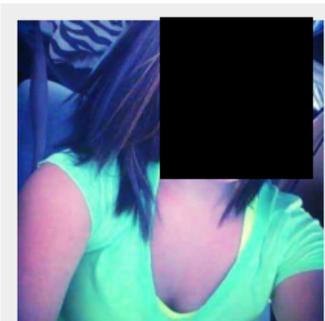
Reply

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]

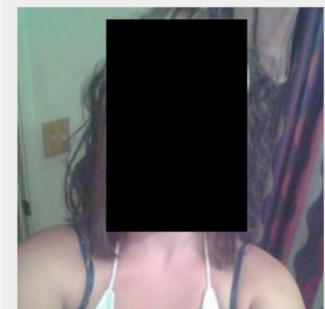
Poster's age: [redacted]

- Location: Cincinnati, Cincinnati, oh
- Post ID: 24437524 cincinnati

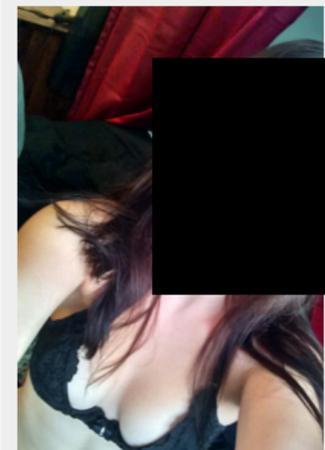
email to friend



[Enlarge Picture](#)



[Enlarge Picture](#)



backpage.com > Dallas adult entertainment > Dallas escorts

**100♥white big booty judy♥100 ( ) - 20 - 20 - 20 - 20**

Report Ad

Posted: Monday, November 16, 2015 5:48 AM

Reply

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.



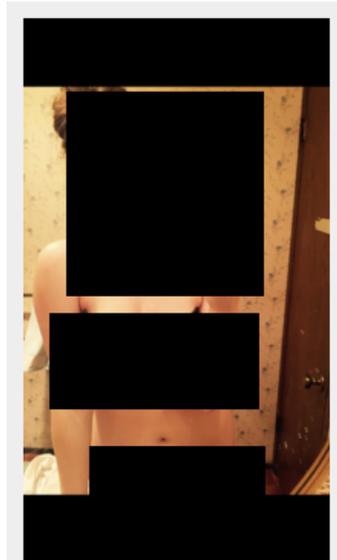
Poster's age

- Location: Allen TX, Dallas
- Post ID: 36662449 dallas

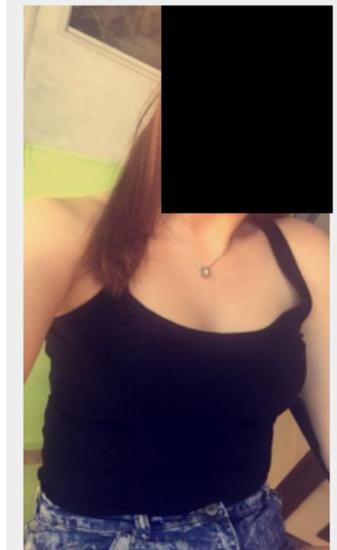
• Other ads by this user:

- [100♥white big booty judy♥100 \( \) - 20 - 20 - 20 - 20 \(635/75\)](#)  
adult entertainment: escorts
- [100♥white big booty judy♥100 \( \) - 20 - 20 - 20 - 20 \(635/75\)](#)  
adult entertainment: escorts
- [100♥white big booty judy♥100 \( \) - 20 - 20 - 20 - 20 \(635/75\)](#)  
adult entertainment: escorts
- [100♥white big booty judy♥100 \( \) - 20 - 20 - 20 - 20 \(635/75\)](#)  
adult entertainment: escorts
- [100♥white big booty judy♥100 \( \) - 20 - 20 - 20 - 20 \(plano\)](#)  
adult entertainment: escorts

email to friend



Enlarge Picture



Enlarge Picture

backpage.com > Manhattan adult entertainment > Manhattan escorts

## Petite spinner Blonde Outcalls [REDACTED]

Report Ad

Posted: Thursday, November 12, 2015 4:19 PM

Reply

Hi guys  
I'm [REDACTED]  
in town  
from  
Russia I  
cater to  
upscale



professional men only No AA men No guys under35 [REDACTED]

Poster's age [REDACTED]

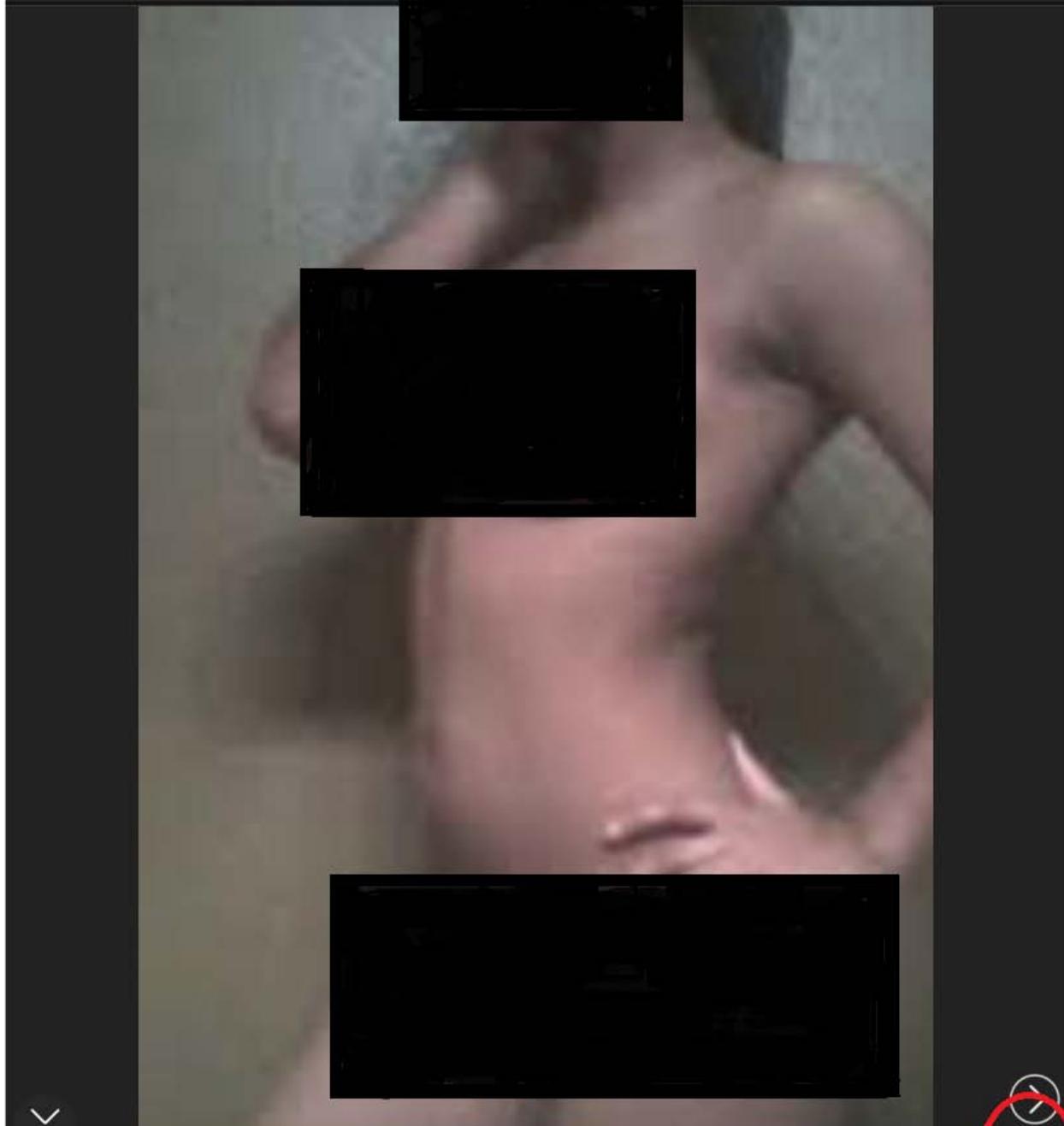
- Location: Manhattan, Manhattan outcalls, Upper Manhattan
- Post ID: 67944487 manhattan

email to friend



Browser address bar: <https://bigcity.com/profile/549762/0>

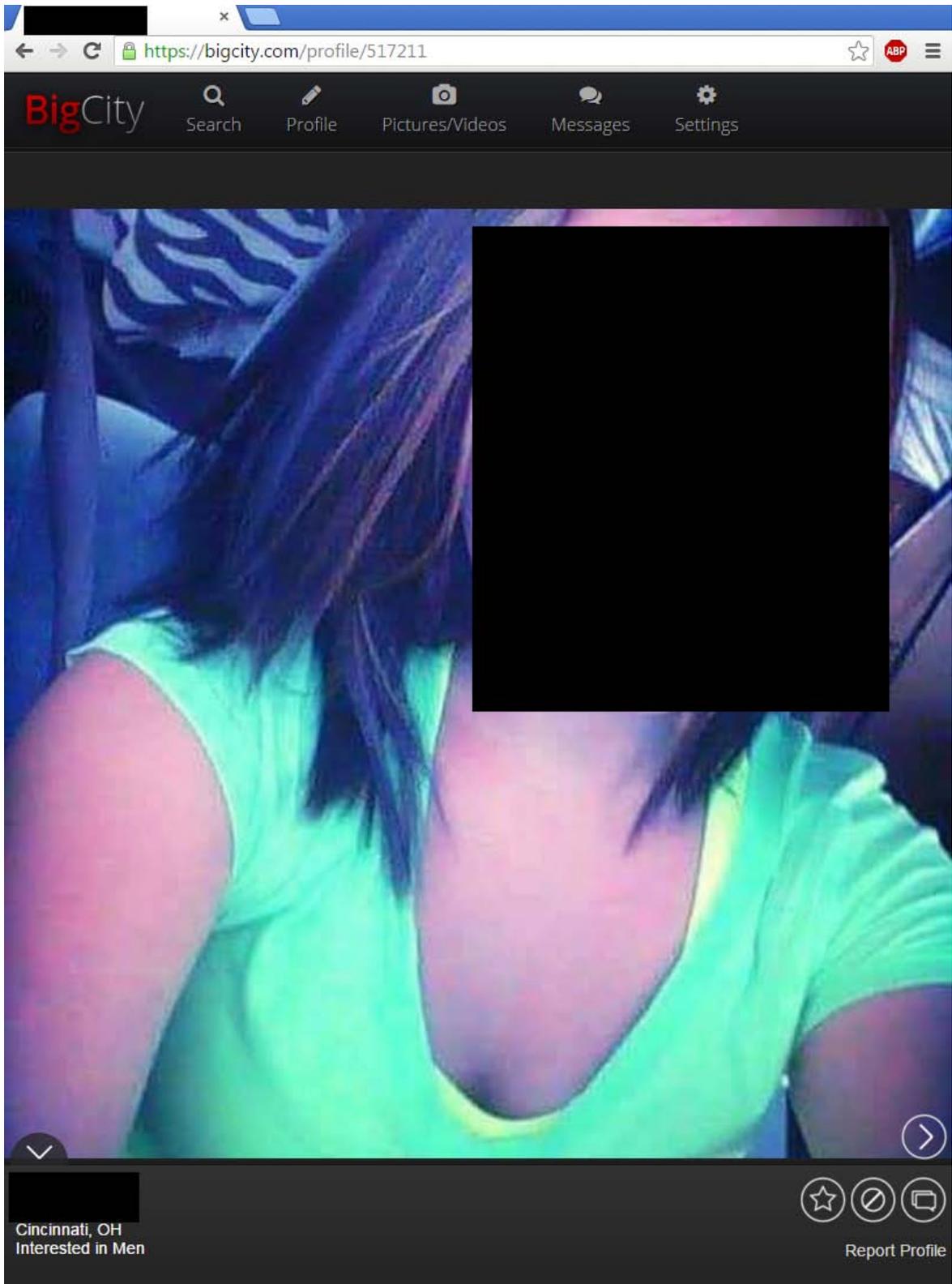
Navigation menu: BigCity Search Profile Pictures/Videos Messages Settings



Profile information:  
Southern Maryland, DC  
Interested in Everyone  
sexy cute sweet and amazing treat but u know candy not free

Chat icon on BigCity.com profile page

Report Profile



Browser address bar: <https://bigcity.com/profile/>

Navigation menu: BigCity Search Profile Pictures/Videos Messages Settings



Profile information: Dallas, TX Interested in Men

Actions: Report Profile

Browser address bar: <https://bigcity.com/profile/558302>

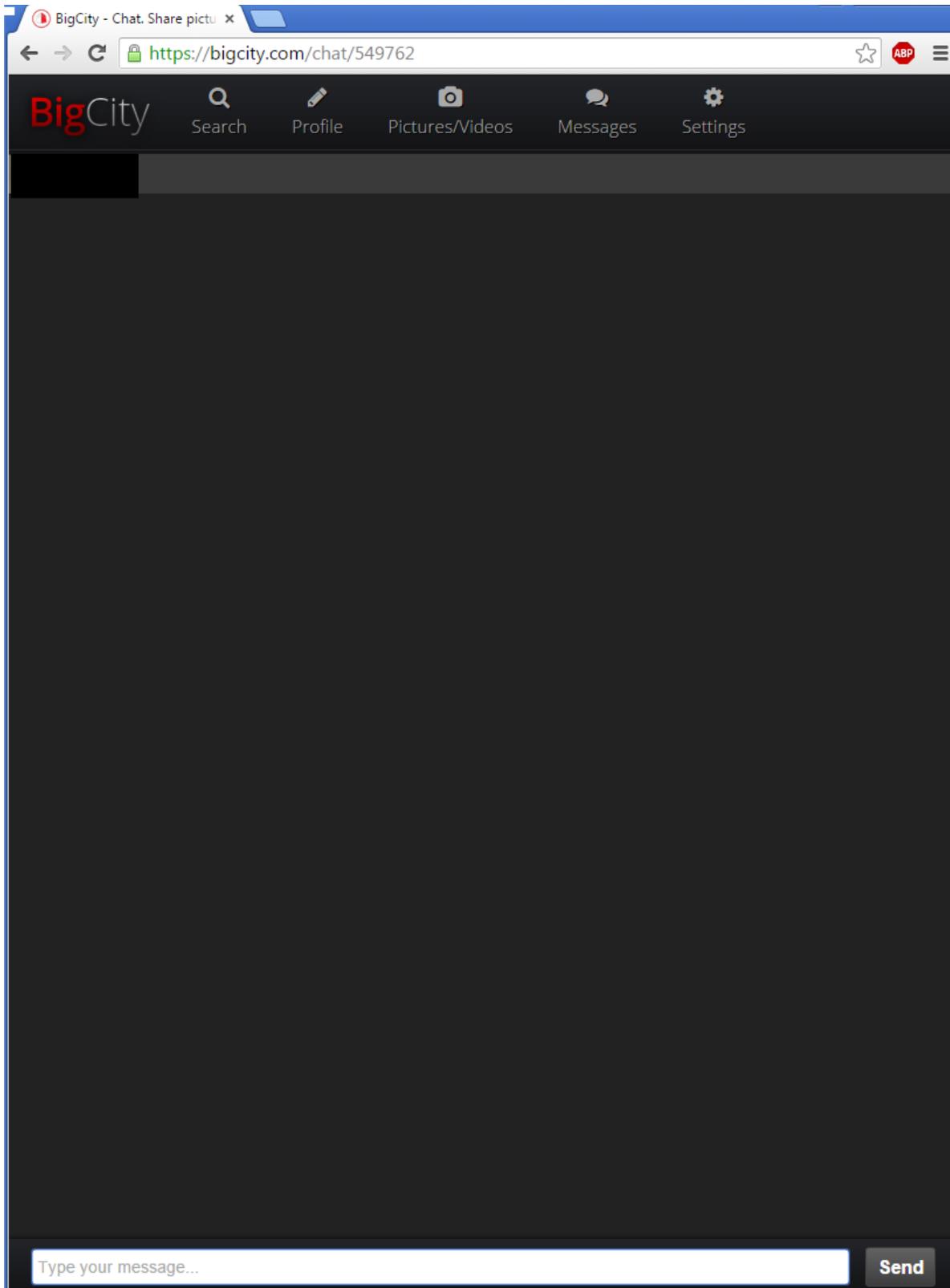
Navigation menu: BigCity, Search, Profile, Pictures/Videos, Messages, Settings



Video player controls: Play button, Next button, Star icon, No icon, Copy icon

Profile information: **Manhattan, NY**  
Interested in Men

Report Profile



assets; 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 1798.83 (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 Customer 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 mailing your request to:

BigCity.com  
PO Box 192307  
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

The 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.

BigCity - Chat. Share pictu x

← → ↻ <https://bigcity.com/terms-of-use> ☆ ABP ☰

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.

**Termination of Access:**

We have the right terminate your access for any reason if we believe you have violated these Terms in any manner. You agree not to hold us liable for such termination, and further agree not to attempt to use the Service 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 Service, 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 us or owned by other parties who have posted on the Service. Materials from the Service and from any other web site owned, operated, controlled, or licensed by the Service may not be copied, reproduced, republished, uploaded, posted, transmitted, or distributed in any way.

In posting content on the Service, you grant the us, and our 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 Service;
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  
BigCity.com  
2501 Oak Lawn Ave, Suite 700,  
Dallas, TX 75219 USA  
Fax 214-757-8548

Email: [abuse@bigcity.com](mailto:abuse@bigcity.com) (Please put Copyright Infringement in the subject line)

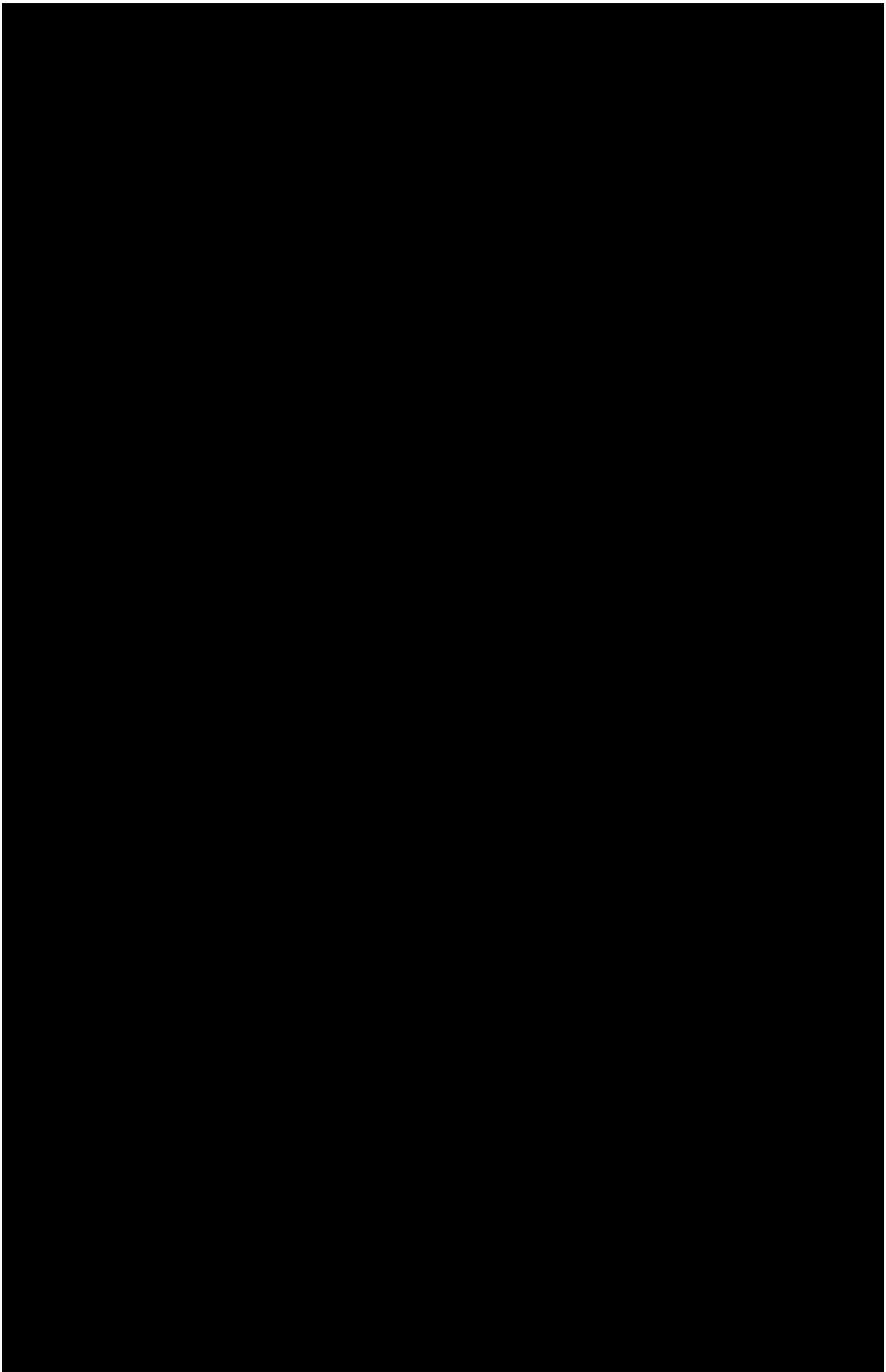
The Service may, under appropriate circumstances and at our own discretion, disable and/or terminate the accounts of users who may be repeat infringers.

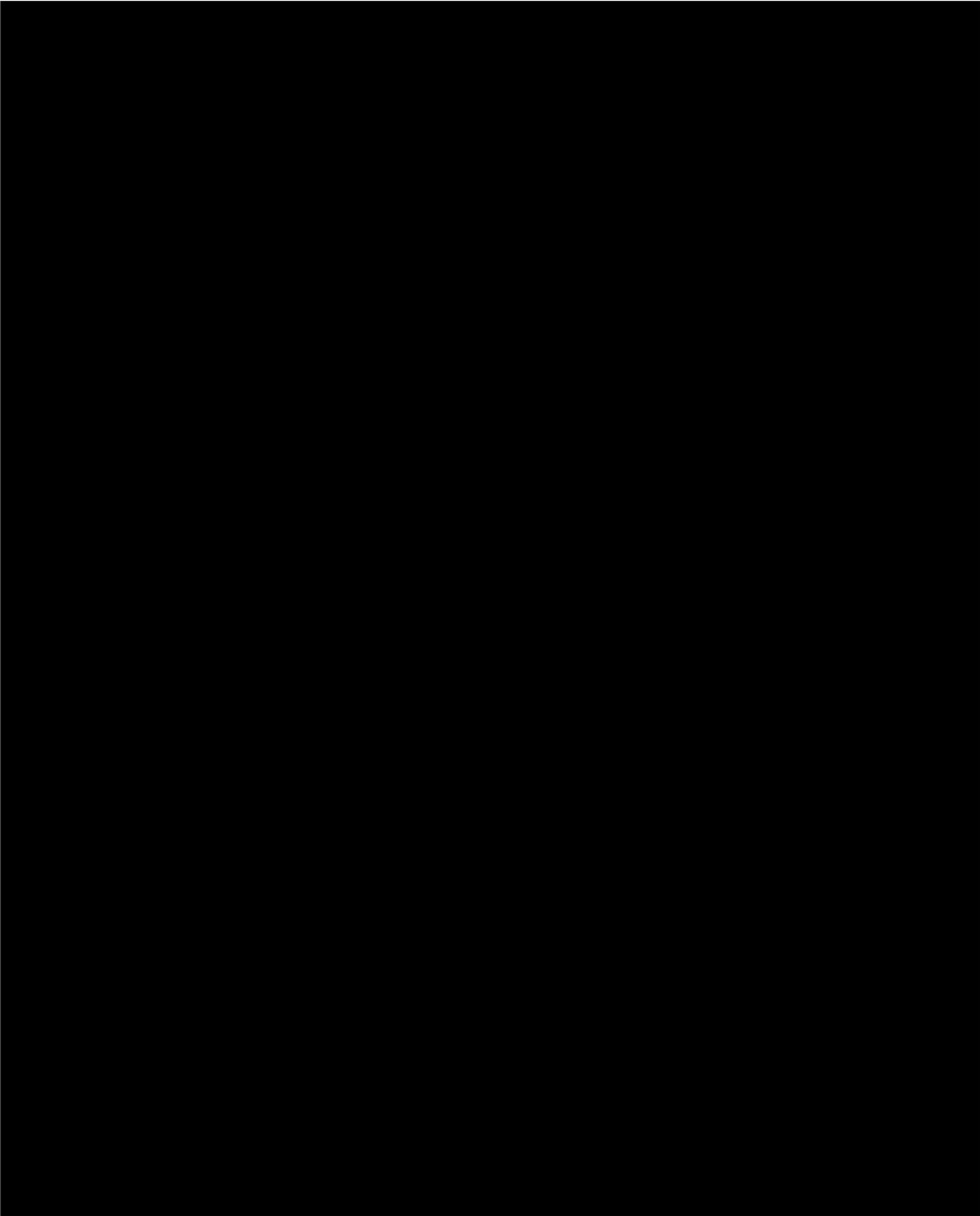
**Privacy:**

We have posted a Privacy Policy setting forth what information is collected about you through our Service and how it is used and stored. Your use of the Service constitutes acknowledgment of our privacy policy. You further agree that the Service may automatically collect and use information about your device including your: usage of and interaction with our application, precise location, device type, serial number, device identifiers, the types and versions of mobile operating systems on your device, the version of the application you are using, login and session start/stop time, and a time-stamped log of data exchanges, including when messages are sent and received and between whom.

**Security:**

You understand that you are responsible for safeguarding the username and password of your account, and you are fully responsible for all activities that occur under your username and password. You agree (a) to immediately notify us if you suspect any unauthorized use of your username or password or any other breach of security (b) not to use the account





**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, evilempire.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: 214-757-8548

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.**

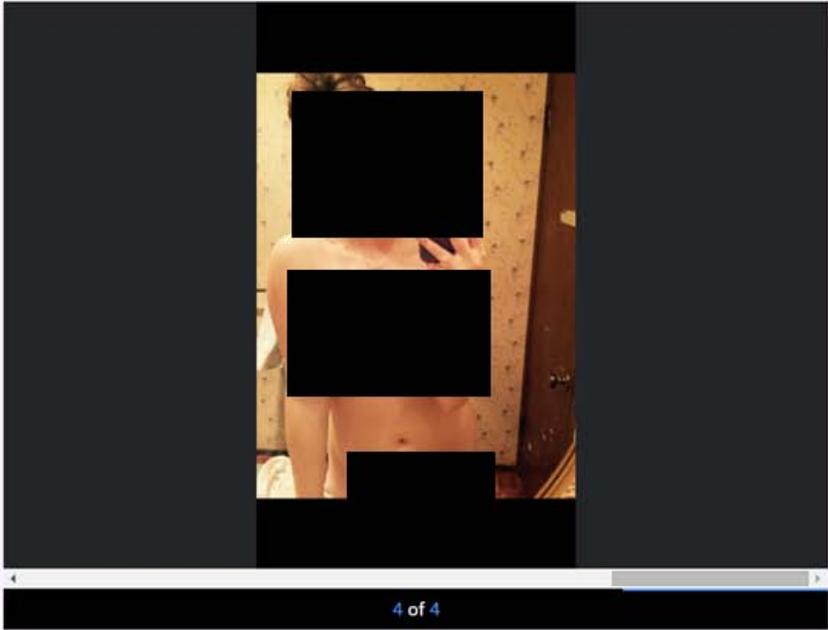
**\*Note: Current and adjusted fees are available on the Copyright website at  
[www.copyright.gov/docs/fees.html](http://www.copyright.gov/docs/fees.html)**

Mail the form to:  
Copyright I&R/Recordation  
P.O. Box 71537  
Washington, DC 20024



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JUN 11 2013

Received  
MAY 22 2013  
Copyright Office



Call

[redacted] - Dallas, TX

PREVIOUS ADS

Friday, November 13th 2015

[white big booty judy](#) - 20 - 20 - 20  
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 ...

PROFILE

View



If your personal information changes, you may review/correct/update your personal information previously provided at any time by sending us an email at support@evilempire.com. You may also have your personal profile data deleted from our database by sending us an email to support@evilempire.com. However, if you have your personal profile data deleted from our database, you may forfeit entrance rights to areas restricted to account members and certain benefits for account members.

#### Notice of Privacy Rights of California Residents

If you are a California resident and have provided personal information to the Site, you are entitled by law to request certain information regarding any disclosure by the Site to third parties of personal information for their direct marketing purposes. To make such a request, send an email to support@evilempire.com, specifying that you seek your "California Customer 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@evilempire.com or mailing your request to:

Ad Tech B.V.  
2501 Oak Lawn Ave. #700  
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.

#### Children

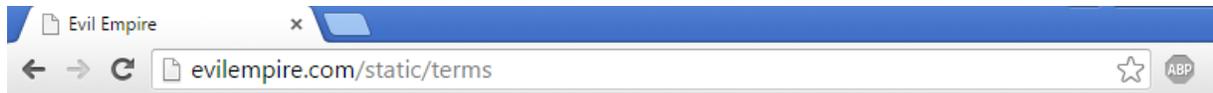
The Site is not intended for children under the age of 13 nor does the Site knowingly collect personal information from children under 13. The Site does not orient this Site toward children or target them as an audience, nor does it screen them from using the Site. Some of the material on this Site is for mature audiences, and parents and guardians should take responsibility for monitoring their children's use. The Site does not collect or distribute information indicating whether a user is a child.

#### Links to Other sites

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Copyright Agent Ad Tech B.V.  
2501 Oak Lawn Ave. #700  
Dallas, TX 75219 USA

Fax: 214-757-8548

Email: [support@evilempire.com](mailto:support@evilempire.com) (Please put Copyright Infringement in the subject line)

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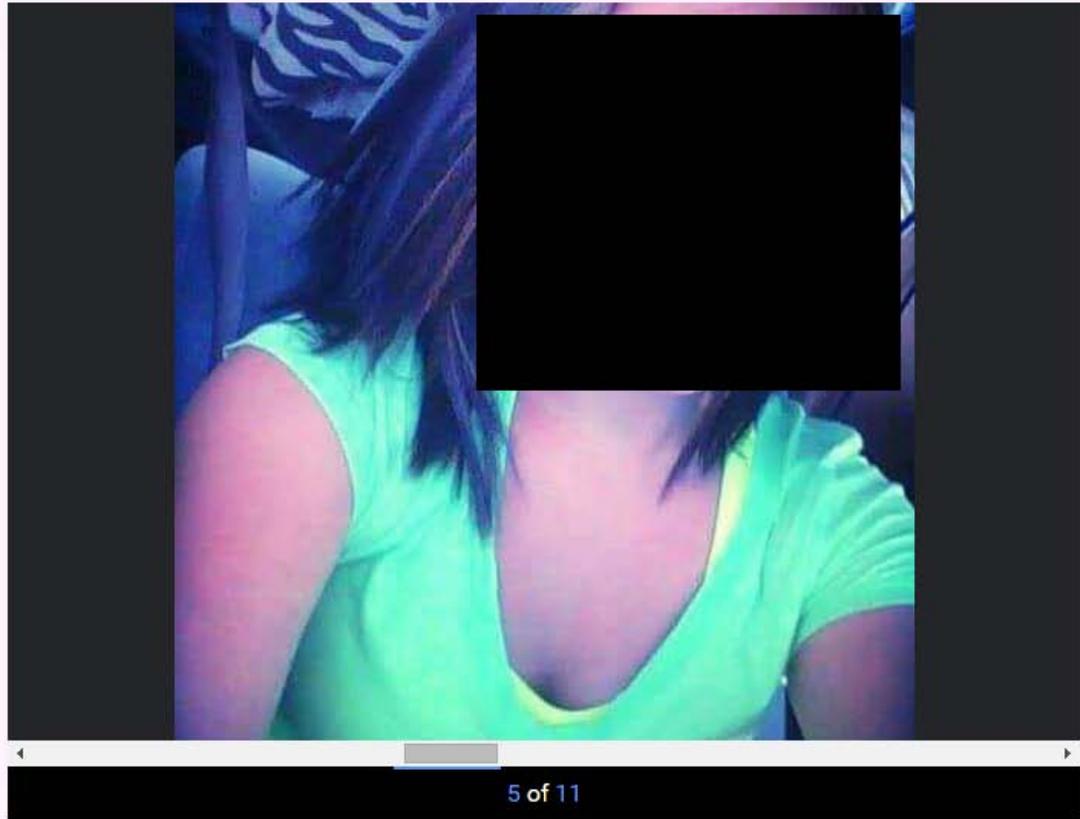
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Call

██████████ — Cincinnati, OH

PREVIOUS ADS

Sunday, September 20th 2015

[Young hot brunette](#) [████]

Hi, I'm ██████████ 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 ██████████ im looking for a generous man, I'll do just about anything you like. Open to new ideas. Hit me ...



Petite spinner Blonde Outcalls only

View Ad

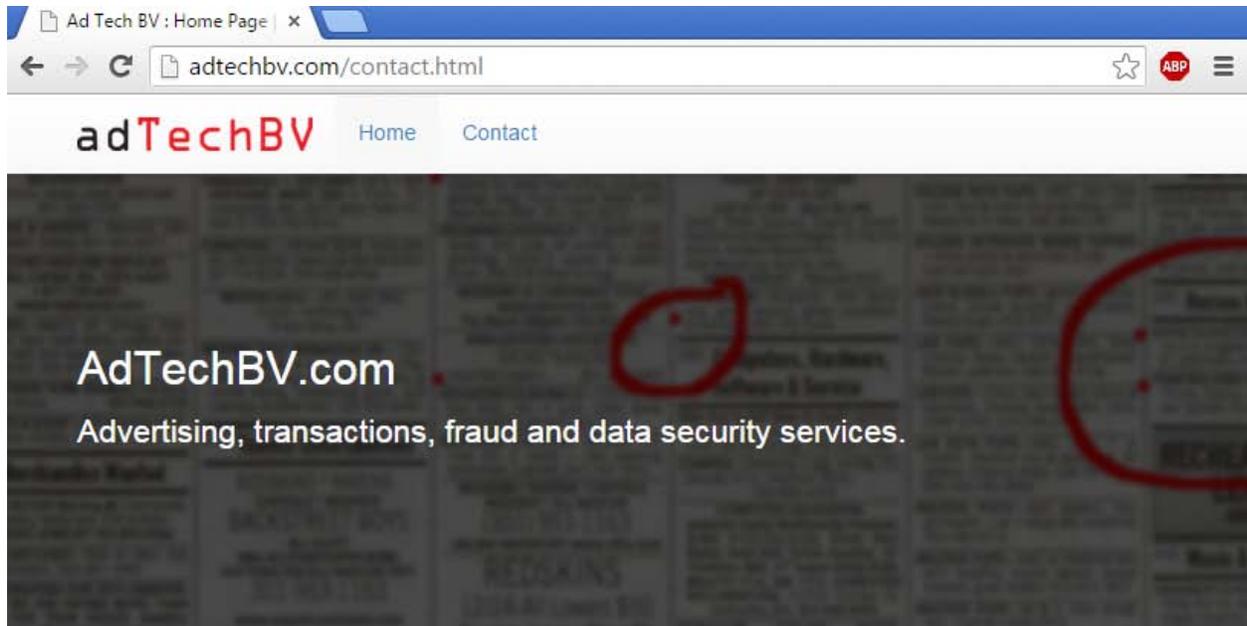
View Profile

← Previous Video

Next Video →

Manhattan, New York

Hi guys I'm [redacted] in town from Russia I cater to upscale professional men only No AA men No guys under35 [redacted]



**Management**

Carl Ferrer, Chief Executive Officer

Nathan Kopecky, Chief Financial Officer

Office Location

Keizersgracht 125-127

1015 CJ Amsterdam

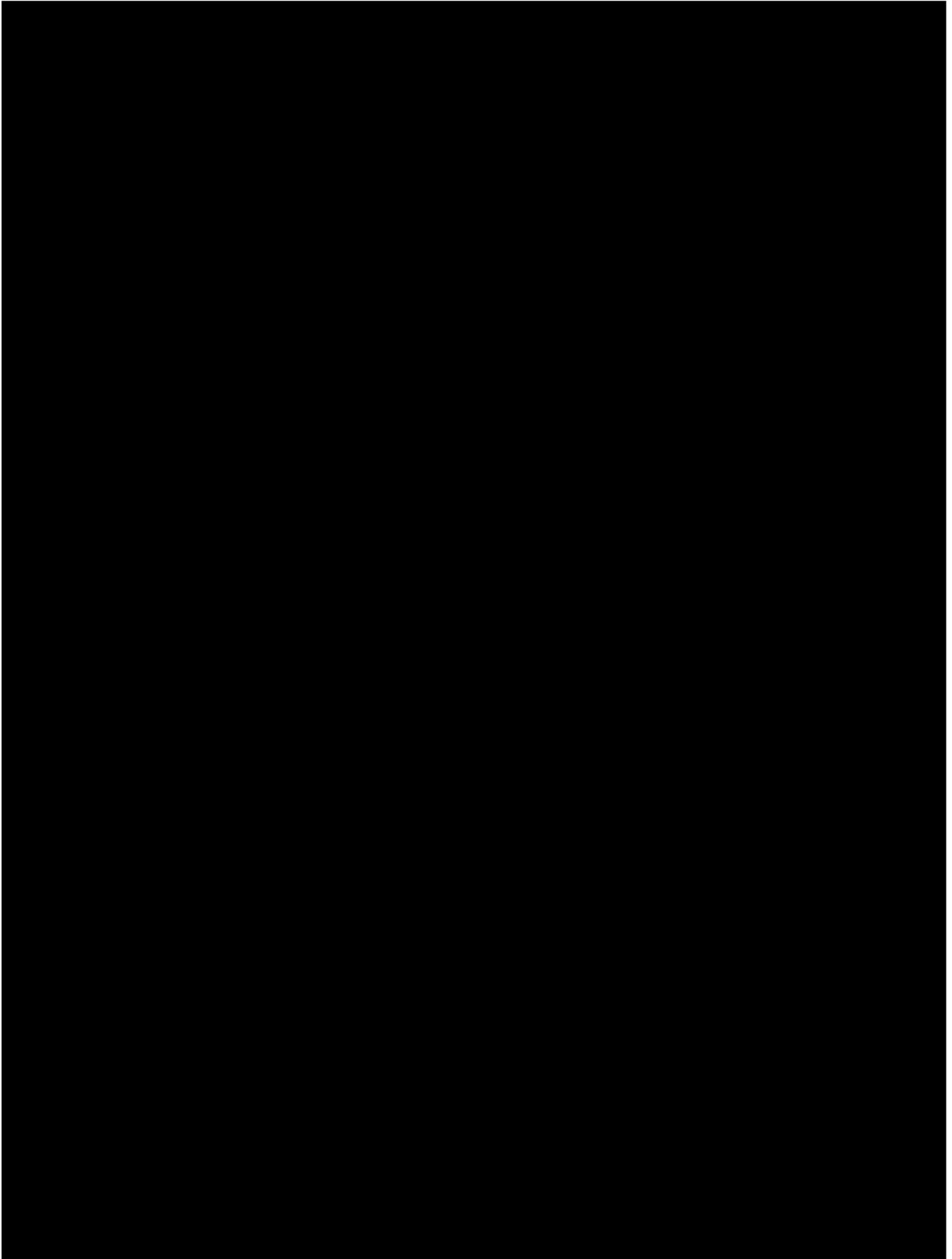
The Netherlands

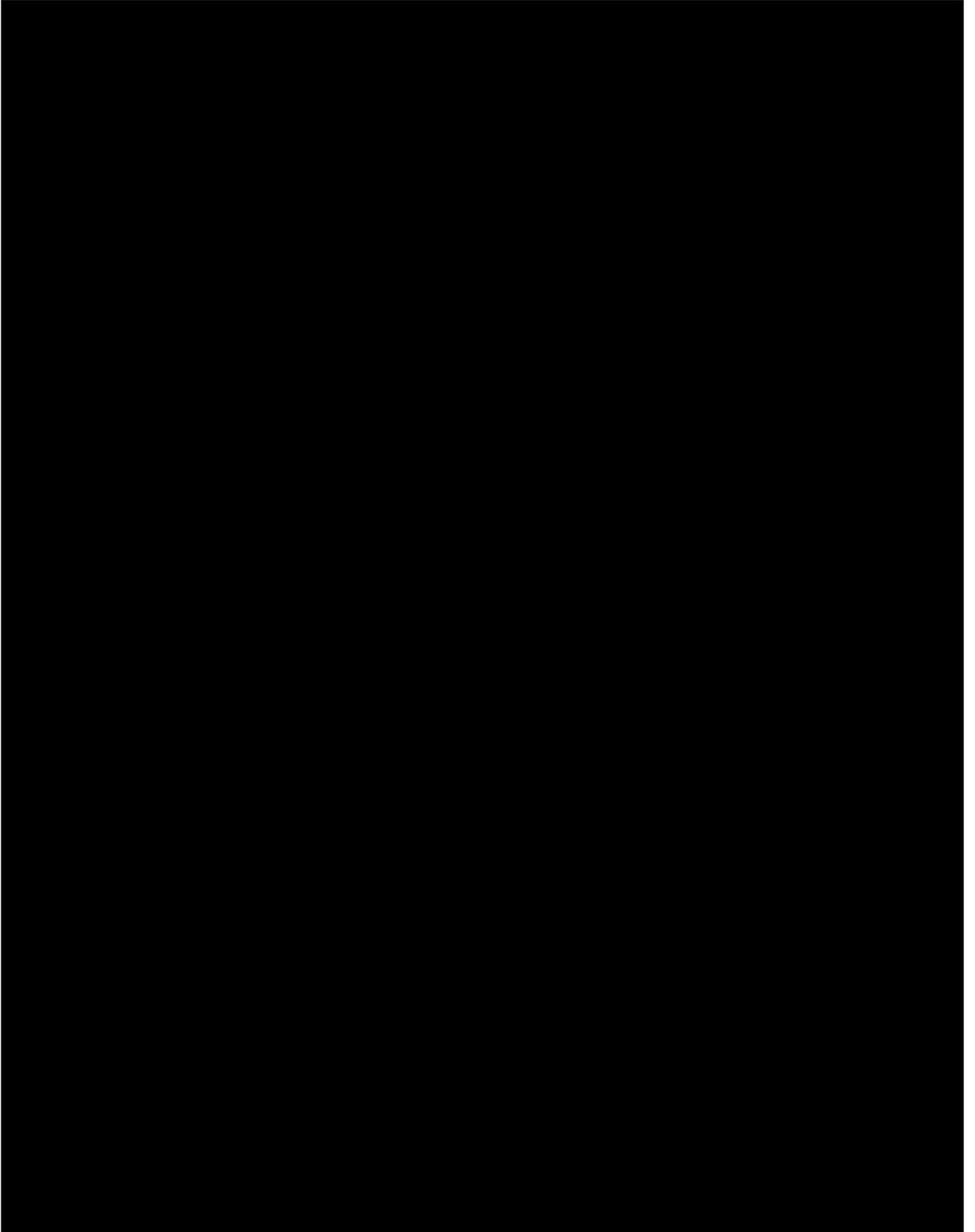
[info@adtechbv.com](mailto:info@adtechbv.com)

+ 31 (0)20 214 80 80

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**Interim Designation of Agent to Receive Notification  
of Claimed Infringement**

**Full Legal Name of Service Provider:** Backpage.com, LLC

**Alternative Name(s) of Service Provider (including all names under which the service  
provider is doing business):** Ymas.com, Evilempire.com

**Address of Service Provider:** P.O. Box 192307, 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:** abuse@backpage.com

**Signature of the Designating Service Provider:** \_\_\_\_\_  
**Date:** 5/13/2013

**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:  
**Copyright I&R/Recordation  
P.O. Box 71537  
Washington, DC 20024**



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Sex / Obituaries - Evil Emp. x

https://web.archive.org/web/20130831170655/http://evilempire.com/forumdisplay.php

WayBackMachine 1 captures 31 Aug 13 - 31 Aug 13

Sex / Obituaries Password Log in

new thread 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

	Thread / Thread Starter	Rating	Last Post	Replies	Views
📧	Sticky: <a href="#">Ded people</a> (1 2 3 ... Last Page) nphxpl4fun	0 ☆☆☆☆☆	08-25-2013 06:55 PM by <a href="#">Kenny55</a>	914	855,927
📧	<a href="#">Word Association Thread</a> (1 2 3 ... Last Page) admin	☆☆☆☆☆	Today 09:46 AM by <a href="#">Kenny55</a>	19,694	862,891
📧	<a href="#">Pics of hot blond/brunette sluts you would like to fuck</a> HornyBoy21		Today 08:48 AM by <a href="#">HornyBoy21</a>	4	223
📧	<a href="#">Thread for horny you porn vids.</a> HornyBoy21		Today 08:48 AM by <a href="#">HornyBoy21</a>	1	66
📧	<a href="#">May be Sharing</a> (1 2) Sharon74		Today 08:36 AM by <a href="#">Seekinalover</a>	16	903
📧	<a href="#">Boo-tay!!!</a> maxillio		Today 08:36 AM by <a href="#">AnthonyB</a>	3	172
📧	<a href="#">Lick My Asshole</a> (1 2 3 ... Last Page) texas1167	☆☆☆☆☆	Yesterday 03:40 PM by <a href="#">texas1167</a>	162	82,321
📧	<a href="#">Post here pics of bi-women / lesbian making out</a> HornyBoy21		Yesterday 03:15 PM by <a href="#">HornyBoy21</a>	0	42
📧	<a href="#">So I met this gilf online what do you think?</a> MILFbanger		Yesterday 12:34 PM by <a href="#">gretanrich</a>	6	721
📧	<a href="#">Backpage Escorts</a> (1 2) lakecreek		08-29-2013 10:25 PM by <a href="#">richdon03</a>	13	1,771
📧	<a href="#">Craiglist / backpage sluts lets have some fun..I am horny</a> HornyBoy21		08-29-2013 09:19 PM by <a href="#">HornyBoy21</a>	0	102
📧	<a href="#">Choose Holly to make your stay memorable in Salt Lake City</a> johnthomas		08-29-2013 10:41 AM by <a href="#">johnthomas</a>	0	67
📧	<a href="#">20/F Doing hot camshows :P</a> lonkygirl		08-28-2013 10:34 AM by <a href="#">lonkygirl</a>	1	289
📧	<a href="#">New National Escort Website</a> LiquorBox		08-27-2013 12:28 PM by <a href="#">LiquorBox</a>	0	142
📧	<a href="#">Nsa fun in east bay ;)</a> lastking1202		08-27-2013 01:35 AM by <a href="#">lastking1202</a>	1	141
📧	<a href="#">Nude ladies in Public !!!</a> www.Jobs4Adults.com	☆☆☆☆☆	08-25-2013 04:25 PM by <a href="#">www.Jobs4Adults.com</a>	5	3,715
📧	<a href="#">18 years old girls ONLY!!!</a> (1 2 3) www.Jobs4Adults.com	☆☆☆☆☆	08-25-2013 04:20 PM by <a href="#">www.Jobs4Adults.com</a>	21	13,195
📧	<a href="#">Wanna trade?</a> christog38		08-24-2013 07:21 PM by <a href="#">Mike D</a>	1	246
📧	<a href="#">Dildo Holder???</a> (1 2 3) ladylover		08-24-2013 09:02 AM by <a href="#">curiousiorae</a>	20	5,516
📧	<a href="#">Would You Let Your Wife Fuck Other Men?</a> (1 2 3 ... Last Page) Robin1	☆☆☆☆☆	08-24-2013 03:31 AM by <a href="#">gunsrus4545</a>	1,634	1,051,994
📧	<a href="#">Cuckold. Phone sex</a> Yoursextov24		08-24-2013 01:37 AM by <a href="#">Yoursextov24</a>	0	194

## COMPANY OVERVIEW

Medalist through its subsidiaries provides internet based classified advertising listing service. The Company was previously known as Village Voice Media Holdings, LLC and changed its name after the sale of certain subsidiaries engaged in newspaper publishing business in November 2012. Based on the terms set forth in the Membership Interest Purchase Agreement, dated November 8, 2012, the purchase consideration included a promissory note of \$27.0 million and the additional earn-out payments of up to \$10.0 million based on the performance metrics plus an interest rate of 12.0 percent compounded annually.

Camarillo Holdings, LLC (“Camarillo”) is a wholly-owned subsidiary of the Company and is a parent company of Backpage.com, LLC (“Backpage.com”). Backpage.com was launched in March 2004 as a provider of online communities for user-generated content. Backpage.com is a group of free community classified internet web sites with active domains across the U.S. and internationally, which allows users to post classified ads for a fee or free depending on the category. The classified listing categories include automotive, job listings, real estate, business services, buy/sell/trade, dating/personals and community forums.

Backpage.com is a second largest U.S. based classified advertisements website after Craigslist, Inc. (“Craigslist”). Craigslist has a much larger user base and has been ranked the 36<sup>th</sup> most used website in the internet worldwide and it takes 10<sup>th</sup> position in the U.S., while Backpage.com was ranked 679<sup>th</sup> worldwide and 157<sup>th</sup> in the U.S. according to alexa.com.

We also understand that Backpage.com has been under scrutiny and involved in various lawsuits due to the nature of the advertisements posted within the adult services sections.

Craigslist was a subject to similar negative publicity previously and although federal law protects Craigslist and similar internet web-based platforms under the Communications Decency Act (CDA) of 1996 against liability for the context users post on the web-sites, Craigslist decided to discontinue those ads and related sections back in September 2010.

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	1,554.4	153,889.7	155,444.1
John E. Brunst	206.0	20,389.1	20,595.1
Scott Spear	148.8	14,733.2	14,882.0
Troy Larkin	42.9	4,249.5	4,292.4
Ramon Larkin	42.9	4,249.5	4,292.4
Total	3,635.3	359,899.6	363,534.9

*Company Specific Risk Premium (α)*

An adjustment must also be made for the “company-specific risk.” In our judgment, an investor would require an additional return above the aforementioned equity and small company risk premiums in order to be appropriately compensated for the risks associated with an investment in an entity such as the Company. Based on our discussion with Management, a company specific risk premium of 13.0 percent was included to account for risk factors and uncertainties associated with achieving forecasted financial performance, reliance on a few key management personnel, industry regulations and litigation risk associated with negative publicity, as discussed previously within the Company overview section of this report.

Based on the CAPM analysis, the Company’s cost of equity was estimated to be 27.5 percent. The WACC was calculated as follows:

$$\begin{aligned}
 WACC &= \% Debt (K_d) + \% Equity (K_e) \\
 WACC &= 10.0\% (3.4\%) + 90.0\% (27.5\%) \\
 WACC &= 25.0\%
 \end{aligned}$$

Based on the results of the preceding analysis under the CAPM, the concluded WACC for the Company was 25.0 percent. The calculations of the WACC are presented in Schedule 5.

*Terminal Value*

Terminal value is the value of the business beyond the discrete forecasted period and can be estimated using an appropriate capitalization technique. To estimate the terminal value, we used the Gordon Growth model with a long-term growth rate of 3.0 percent. The selected long-term growth rate was based on

discussions with Management and the long-term growth outlook of the economy, inflationary expectations, and the growth outlook for the industry. The capitalization rate is the Company’s WACC less the projected long-term growth rate. Debt-free cash flow in the terminal year was estimated using the capitalization rate.

*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

## MARKET APPROACH

We considered both the GPC Method and the GMAC Method under the Market Approach for purposes of this analysis.

### GUIDELINE PUBLIC COMPANY METHOD

The GPC Method provides indications of value based upon valuation multiples calculated using the market value of minority interests in publicly traded guideline companies. We considered numerous public companies and narrowed our search to companies in the Internet Software and Services industry as well as the Online Services industry which were reasonably similar to Medalist. We eliminated companies based on constrains such as nature of the business, size, product diversification, geographic location, availability of publicly available information, and limited trading availability of the stock.

This process resulted in our identification of the following guideline public companies (the same comparable companies were also used in the WACC analysis):

#### Guideline Public Company

eBay Inc.  
 IAC / InterActiveCorp  
 Yelp, Inc.  
 Zillow Group, Inc.  
 Monster Worldwide, Inc.  
 Local Corporation

Financial data and a brief business description of each public company are summarized in Schedule 8 and Schedule 10.

We reviewed financial information of the selected guideline companies based on the public filings as provided by the CapitalIQ database in order to make both quantitative and qualitative comparisons with Medalist relative to financial and operating characteristics.

We then developed valuation multiples based on the ratio of the guideline companies' BEV to trailing twelve month ("TTM") revenue and BEV to next fiscal year ("NFY") revenue. We also considered TTM and NFY EBITDA multiples but ultimately did not utilize them for purposes of the analysis due to the insufficient data available and/or significant disparity in the observed multiples which did not provide a reliable and meaningful indication of value.

Based on our assessment of the financial metrics related to size, growth and profitability of Medalist and the guideline companies, we selected TTM and NFY multiples above the observed median and then applied them to Medalist's TTM revenue and forecasted FY 2015 revenue. We assigned equal weighting to the value indication resulting from the application of each multiple.

The stocks of publicly traded companies are actively traded in a free and open market. Because stock prices of the guideline companies represent minority interest values, a control premium should be applied to the implied equity value. In determining the control premium we analyzed recent merger and acquisition ("M&A") transactions involving public companies in industries similar to Medalist.

Based on the observed range of control premiums, we selected a 15.0 percent control premium for use in our analysis.

The BEV of the Company indicated by the GPC Method represents the value of 100 percent of the Company's 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 GPC Method presented in Schedule 7 is reasonably represented as follows:

\$625,800,000

SIX HUNDRED TWENTY FIVE MILLION,  
EIGHT HUNDRED THOUSAND DOLLARS

### GUIDELINE MERGED AND ACQUIRED COMPANIES METHOD

The GMAC Method provides value indications based on multiples derived from the sale of guideline companies. We reviewed comparable M&A transactions using the CapitalIQ database. The following criteria were used to search and identify comparable transactions:

- Target company with the industry classification Internet Software and Services, as well as Online Services;
- Target company business description included 'advertising' and 'classified';
- Transactions which closed within three years prior to the Valuation Date, and;
- Acquisitions of no less than 100 percent equity stakes.

Transactions were then qualitatively screened based on the business description of each target company, available deal information, and other qualitative measures. The search yielded 8

transactions. Brief business description of each target company is summarized in Schedule 11.

We then developed valuation multiples based on the ratio of the guideline companies' BEV to TTM revenue. Similar to GPC Method, we also considered TTM EBITDA multiples but ultimately did not utilize them for purposes of the analysis due to the insufficient data available and/or significant disparity in the observed multiples which did not provide a reliable and meaningful indication of value.

Based on our assessment of the selected transactions as well as the quantitative and qualitative comparison of the financial and operating characteristics related to size, growth and profitability of Medalist and the target companies, we selected TTM revenue multiple above the observed median and then applied it to the corresponding TTM financial metrics of Medalist.

The transactions used in our analysis involved the acquisition of controlling interests and were considered to be on a controlling basis; therefore no adjustments for premiums were required.

The BEV of the Company indicated by the GMAC Method represents the value of 100 percent of the Company's 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 GMAC Method presented in Schedule 9 is reasonably represented as follows:

\$618,400,000

SIX HUNDRED EIGHTEEN MILLION,  
FOUR HUNDRED THOUSAND DOLLARS

## 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 Cooperatief U.A.; and Posting 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.

Given that the anticipated transaction is between the Company and its existing employee (or a related party) where the Company will be providing financing for the full amount of the purchase price, it would not be classified as an arm’s length transaction for purposes of the fair market value analysis. Based on these factors we did not assign any weighting to the potential Dartmoor transaction.

## CONCLUSION OF VALUE

Our conclusion of fair market value of the Subject Interest is based upon considering all indications of value under the Income and Market Approaches. While the Income Approach best represents management’s expectations related to forecasted company’s revenues and profits, market based indicators of value represent how actual buyers and sellers arrive at overall value. However, it should be noted that the primary constraint of the GPC and GMAC Methods is the differences that exist between the business operations of Medalist compared to the guideline companies and the target companies in the guideline M&A transactions.

Considering the above factors, we applied 80.0 percent weighting to the value indication under the DCF Method, as we believe Management has the most insight into the future direction of the business. Both the GPC Method and the GMAC Method were assigned a weighting of 10.0 percent.

To derive a fair market value of common equity, we added cash and cash equivalents of \$11.4 million and non-operating assets related to the long-term note receivable of approximately \$28.0 million. Medalist did not have any interest bearing debt as of the Valuation Date.

### *Discount for Lack of Control*

One especially important consideration in the valuation of an interest in an enterprise is the right to influence or determine certain actions of the business. Control is important because of the right to determine actions that impact the risk associated with an investment. For instance, the owner of a controlling interest in an enterprise enjoys valuable rights including the ability to affect

*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

**REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
(Updated on 5-18-2016)**

**Medalist Holdings, Inc**

Valuation of Medalist Holdings, Inc  
Historical & Projected Income Statements - Adjusted  
As of February 12, 2015

Schedule 2.2  
Page 1 of 2  
(\$US in Thousands)

	Historical Financials (1)			TTM As of		Projected Financials (1)			
	FYE December 31			January 31		FYE December 31			
	2012	2013	2014	2015	2015	2016	2017	2018	2019
<b>Net Revenue</b>	\$ 71,225.9	\$ 112,694.2	\$ 134,966.9	\$ 137,420.0	\$ 153,897.9	\$ 173,712.2	\$ 196,077.7	\$ 221,322.7	\$ 249,818.0
IT, Hosting and Web Development Expenses	1,869.2	2,901.5	3,697.7	3,806.6	4,216.4	4,759.2	5,372.0	6,063.6	6,844.3
Sales & Marketing Expenses	1,440.9	3,616.5	4,043.1	4,166.5	4,610.2	5,203.8	5,873.8	6,630.1	7,483.7
Admin, Moderation and Legal Expenses	15,179.3	19,590.9	27,610.9	27,952.6	11,400.4	12,576.4	13,882.1	15,332.3	16,944.0
<b>EBITDA (Before Adjustments and Corporate Expenses)</b>	<b>52,736.5</b>	<b>86,585.3</b>	<b>99,615.1</b>	<b>101,494.4</b>	<b>133,670.9</b>	<b>151,172.7</b>	<b>170,949.8</b>	<b>193,296.7</b>	<b>218,546.0</b>
(2) Less: Actual Management Salaries / Bonus Expenses	(646.1)	(738.3)	(1,087.0)	(1,125.2)	(1,119.6)	(1,153.2)	(1,187.8)	(1,223.4)	(1,260.1)
(2) Less: Actual Corporate Allocations (Performance Bonus) Expenses	(488.7)	(9,022.3)	(17,324.0)	(17,596.5)	-	-	-	-	-
(2) Add: Normalized Management Salaries / Bonus Expenses	1,150.9	1,910.6	2,522.0	2,595.2	226.7	233.5	240.5	247.8	255.2
Payroll Tax Expense Adjustment	1.2	(600.5)	(1,215.5)	(1,233.7)	(68.3)	(70.4)	(72.5)	(74.6)	(76.9)
<b>Operating Expenses - Normalizing Adjustments</b>	<b>17.4</b>	<b>(8,450.5)</b>	<b>(17,104.4)</b>	<b>(17,360.2)</b>	<b>(961.1)</b>	<b>(990.0)</b>	<b>(1,019.7)</b>	<b>(1,050.3)</b>	<b>(1,081.8)</b>
<b>Adjusted EBITDA (Pre-Corporate Expenses)</b>	<b>52,719.1</b>	<b>95,035.8</b>	<b>116,719.5</b>	<b>118,854.6</b>	<b>134,632.0</b>	<b>152,162.7</b>	<b>171,969.5</b>	<b>194,346.9</b>	<b>219,627.8</b>
Corporate Expenses	7,730.3	33,334.2	52,551.5	52,654.1	54,128.0				
Less: Actual Officers' Compensation Expense	(3,281.0)	(2,345.4)	(2,345.7)	(2,327.6)	(2,416.1)				
Less: Actual Officers' Bonus Expenses	(500.0)	(28,193.7)	(48,212.1)	(48,344.6)	(49,658.4)				
Add: Normalized Officers' Compensation / Bonus Expenses	3,834.9	5,978.0	6,925.7	7,024.2	10,546.1				
Payroll Tax Expense Adjustment	4.1	(1,878.9)	(3,337.9)	(3,339.1)	(3,176.9)				
(2) <b>Adjusted Corporate Expenses</b>	<b>7,788.3</b>	<b>6,894.1</b>	<b>5,581.6</b>	<b>5,667.1</b>	<b>9,422.8</b>	<b>10,636.0</b>	<b>12,005.3</b>	<b>13,551.0</b>	<b>15,295.7</b>
<b>Adjusted EBITDA (Post-Corporate Expenses)</b>	<b>44,930.8</b>	<b>88,141.7</b>	<b>111,138.0</b>	<b>113,187.5</b>	<b>125,209.3</b>	<b>141,526.7</b>	<b>159,964.1</b>	<b>180,795.9</b>	<b>204,332.0</b>
Depreciation Expense	721.8	496.6	521.4	527.7	800.0	900.0	1,000.0	1,100.0	1,200.0
<b>Adjusted EBIT</b>	<b>44,209.0</b>	<b>87,645.0</b>	<b>110,616.6</b>	<b>112,659.8</b>	<b>124,409.3</b>	<b>140,626.7</b>	<b>158,964.1</b>	<b>179,695.9</b>	<b>203,132.0</b>
Capital Expenditures		665.5	993.8		800.0	900.0	1,000.0	1,100.0	1,200.0

**Footnote(s)**

This schedule has been prepared on the basis of the information and assumptions set forth in our report and the attached schedules. It must be read in conjunction with the accompanying report and all the other exhibits included herein. Some totals may not add due to rounding.

- (1) Historical and projected financial data provided by Management.
- (2) Management salaries / bonus expenses were projected to increase at the long-term inflationary rate of 3% beyond FY 2015. Adjusted corporate expenses were projected to remain at the normalized level of approximately 6.1% of net revenues beyond FY 2015. Management indicated that corporate allocations related to performance bonuses were not included in the forecast from FY 2015 through FY 2019. Depreciation and annual levels of capital expenditures were projected at 0.5% of net revenue based on the observed historical levels and future expected levels required for business operations of Medalist.

Definition(s): TTM - Trailing Twelve Months, EBITDA - Earnings Before Interest, Taxes, Depreciation, and Amortization, EBIT - Earnings Before Interest and Taxes, EBT - Earnings Before Taxes

**REDACTIONS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
(Updated on 5-18-2016)**

**Medalist Holdings, Inc**

Valuation of Medalist Holdings, Inc  
Guideline Public Company Metrics  
As of February 12, 2015

Schedule 8  
(\$US in Thousands)

TTM Revenues		Total Assets		1-Year Hist. Revenue Growth		NFY Proj. Revenue Growth	
eBay Inc.	17,902,000	eBay Inc.	45,132,000	Zillow Group, Inc.	65.0%	Yelp, Inc.	53.2%
IAC/InterActiveCorp	3,109,547	IAC/InterActiveCorp	4,274,878	Yelp, Inc.	62.0%	Zillow Group, Inc.	36.4%
Monster Worldwide, Inc.	770,013	Monster Worldwide, Inc.	1,217,151	Medalist Holdings, Inc	19.8%	Medalist Holdings, Inc	14.0%
Yelp, Inc.	377,536	Zillow Group, Inc.	649,730	eBay Inc.	11.6%	IAC/InterActiveCorp	6.3%
Zillow Group, Inc.	325,893	Yelp, Inc.	629,650	IAC/InterActiveCorp	2.9%	eBay Inc.	6.3%
Medalist Holdings, Inc	137,420	Medalist Holdings, Inc	54,157	Monster Worldwide, Inc.	-4.7%	Local Corporation	2.7%
Local Corporation	83,120	Local Corporation	38,068	Local Corporation	-11.9%	Monster Worldwide, Inc.	-1.1%
Guideline Public Company Average	3,761,352		8,656,913		20.8%		17.3%
Guideline Public Company Median	573,775		933,441		7.2%		6.3%

TTM EBITDA Margin		NFY Proj. EBITDA Margin		Debt Free NWC as % of Revenue (Excl'd. Cash)		Current Ratio	
Medalist Holdings, Inc	82.4%	Medalist Holdings, Inc	81.4%	Yelp, Inc.	5.6%	Yelp, Inc.	12.39
eBay Inc.	28.1%	eBay Inc.	31.2%	Medalist Holdings, Inc	4.1%	Zillow Group, Inc.	8.16
IAC/InterActiveCorp	15.6%	Zillow Group, Inc.	19.6%	eBay Inc.	-1.4%	Medalist Holdings, Inc	3.95
Monster Worldwide, Inc.	8.9%	Yelp, Inc.	18.4%	Local Corporation	-4.3%	IAC/InterActiveCorp	2.31
Yelp, Inc.	6.5%	IAC/InterActiveCorp	15.9%	Zillow Group, Inc.	-6.3%	eBay Inc.	1.51
Zillow Group, Inc.	-0.8%	Monster Worldwide, Inc.	15.2%	IAC/InterActiveCorp	-8.7%	Monster Worldwide, Inc.	0.98
Local Corporation	-2.5%	Local Corporation	3.0%	Monster Worldwide, Inc.	-12.2%	Local Corporation	0.65
Guideline Public Company Average	9.3%		17.2%		-4.6%		4.33
Guideline Public Company Median	7.7%		17.1%		-5.3%		1.91

**Footnote(s)**

This schedule has been prepared on the basis of the information and assumptions set forth in our report and the attached schedules. It must be read in conjunction with the accompanying report and all the other exhibits included herein. Some totals may not add due to rounding. These schedules are for internal use only and have been compiled on the basis of the information and assumptions in the attached report and exhibits. Financial results used to calculate the valuation multiples were obtained from various sources, including Capital IQ, and may have been adjusted for conformity. BDO Consulting has not adjusted the financial results further and believes that the information obtained from Capital IQ is reliable and fairly reflects the operating results of the comparable public companies.

## DEPOSIT ACCOUNT CONTROL AGREEMENT

This Deposit Account Control Agreement (this "Agreement") is entered into as of \_\_\_\_\_, 2015 among \_\_\_\_\_ ("Secured Party"); Website Technologies, LLC, with an address of 2501 Oak Lawn Avenue, Suite 700, Dallas, TX 75219 ("Debtor"); and \_\_\_\_\_

### 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

**From:** [REDACTED] [mailto:[REDACTED]@websitetechnologies.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]