

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

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

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

Members of the Subcommittee:

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

Background on Washington's Anti-Trafficking Efforts

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

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

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

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

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

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

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

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

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

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

² *Id.* at 13-16.

³ *Id.* at 35; *see also* www.polarisproject.org

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

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

⁶ *Id.* at 114.

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

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

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

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

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

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

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

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

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

¹¹ Washington CSEC Committee Report, 2014, at 25.

¹² *Id.* at 23-29.

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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