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Congress of the United States
House of Representatives

March 27, 2013

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The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW Rm 5111
Washington DC 20530

Dear Attorney General:

HE Attorney General

As you know I have long been outraged that Web sites like Backpage.com, which in case after case have been found to be a conduit for the buying and selling of human beings, including children, to the tune of millions of dollars in profits a year, appear to do so with impunity from federal prosecutors.

Just recently, Joshua Jacquis Dumas, plead guilty to “running a commercial sex business that prostituted multiple juvenile girls in Herndon, Virginia, and other locations throughout Virginia, Maryland, North and South Carolina, Georgia and Florida.” To his great credit, the office of U.S. Attorney for the Eastern District of Virginia, Neil MacBride, brought the case against Dumas. The “statement of facts” that Dumas agreed to before entering his guilty plea is a grotesque account of abuse, manipulation and exploitation and much of it took place in and around my congressional district. These crimes were made possible with Backpage.com. The FBI press release announcing the guilty plea specifically mentioned the website: “Daily, the enterprise posted multiple advertisements on Backpage.com, and sometimes within minutes customers would call.”

I have repeatedly requested that the Department of Justice provide an analysis of whether there are sufficient laws on the books to prosecute the type of activity that Backpage.com engages in, and, if not, that the department provide a broader legal analysis and recommendations to Congress of legislative initiatives that may be undertaken to fully equip law enforcement to tackle this problem. To date this request has gone unanswered. Meanwhile, as the National Center for Missing and Exploited Children (NCMEC) pointed out in a recent letter to me, “children are still being sold for sex on this site [Backpage].”

I recognize that complex legal questions are involved in this discussion, but surely the safety and security of America’s most vulnerable, our children, warrants such a discussion. I have enclosed the letter I received from NCMEC as I believe it provides invaluable information about critical next steps that the department could take to challenge Backpage.com.

Specifically NCMEC provides four recommendations for practices that Backpage.com and similar Web sites used for trafficking could immediately and voluntarily adopt to reduce the sexual exploitation of children online, including:

- “Prohibiting payment sources that mask the customer’s identity—such as gift cards, prepaid credit cards and using another’s credit card. These payment sources hamper law enforcement’s ability to investigate these ads.
- “Verifying and knowing its customers. Verifying the identity and age of the person submitting the ad as well as the person depicted in any images in the ad. These are ways to verify this information either in person or online when the ad is purchased. Other classified ad sites have implemented verification processes including database checks and review of government issued identification.
- “Consistently blocking or removing postings believed to involve minors being sold for sex.
- “Preventing ads with previously flagged images from being posted and refusing to post ads from customers who are believed to have posted suspicious ads in the past.”

I urge you, as the nation’s chief law enforcement authority, to press Backpage.com to immediately adopt these recommendations. **And if they fail to voluntarily adopt these recommendations, I implore you to take legal action against Backpage.com.**

Despite mounting public pressure, Backpage.com seems impervious to criticism and even shame. I am increasingly convinced that they will only respond to the very real prospect of criminal or civil liability. Sites like Backpage.com have historically hid behind the Communications Decency Act (CDA) which, as NCMEC points out, “Provides immunity to Internet communication service providers, such as website operators, for publishing content by third parties.” But importantly, the CDA does not prevent federal prosecutions of sexual crimes against children.

On January 10, the *Kansas City Star* reported that the Eighth Circuit Court of appeals “decided for the first time that a federal anti-slavery law applies to both the consumers as well as the sellers of sex with children.” Specifically the court found, “The unambiguous text...makes no distinction between suppliers and purchasers of commercial sex acts with children, and the defendants have failed to persuade us Congress intended a supplier-only limitation or a purchaser exception.”

The anti-trafficking movement has recognized this as a landmark ruling which closes an important loophole in the fight against trafficking through criminal deterrence, and raises the priority of prosecution of demand. However, this victory will be short-lived if Backpage.com and related online classified sites operate without fear of repercussion, fostering an atmosphere of demand which results in the continued trafficking of women and children for sex.

This is a grave injustice—a blot on our collective national conscience which demands action. Will you allow this exploitation to continue on your watch?

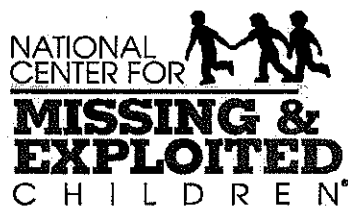
Sincerely,

Frank R. Wolf
Member of Congress

FRW:ea

I hope you will act on this. If you do not, you will regret it every time you see a story about someone being exploited like this. Please act. To whom much is given, much is required. You have been given the ability to help, please do so.

Thank you —



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From the desk of
John Ryan
Chief Executive Officer

January 28, 2013

The Honorable Frank R. Wolf
U.S. House of Representatives
241 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Wolf:

Thank you again for taking the time to meet with me recently. The National Center for Missing & Exploited Children (NCMEC) shares your concern about effective ways to combat child sex trafficking in the U.S. and to provide services to the survivors.

The scope of the problem of child sex trafficking is difficult to quantify with accuracy. The failure of victims to self-identify and the challenges in law enforcement investigations make it impossible to gauge the incidence of this type of crime. There have been studies estimating the number of children with characteristics that *may* put them *at risk* for commercial sexual exploitation, including being a runaway or affiliated with a gang.¹ More than 6,600 of the missing children reported to NCMEC have suspected or confirmed involvement in the commercial sex industry. However, this doesn't come close to the actual number of child sex trafficking victims.

The Internet has added a new aspect to the child sex trafficking business model. The advertising of children for commercial sex acts via online classified ad sites is a serious and growing problem. These sites include MyRedbook.com, Craigslist.com, MyProviderGuide.com and Eros-Guide.com. The most well-known of these sites is Backpage.com.

As the operator of the CyberTipline, the congressionally-authorized reporting mechanism for online crimes against children,² NCMEC believes that Backpage provides an infrastructure for illegal activity and thereby supports a criminal prostitution enterprise that includes child victims. After NCMEC communicated its concerns to officials of Backpage, it implemented a monitor/review policy and has made thousands of reports of suspicious ads to NCMEC's CyberTipline which were referred to law enforcement for investigation.

¹ Estes, Richard J. and Weiner, Neil Alan, *The Commercial Sexual Exploitation of Children In the U.S., Canada and Mexico, Executive Summary of the U.S. National Study*, University of Pennsylvania, 2001, pp. 11-12. Characteristics also included foster care and drug use, among others.

² 42 U.S.C. § 5773(b)(1)(P).

Some of these reports have led to arrests of suspects for child sex trafficking and the rescue of child victims. Despite these efforts, it is clear that these measures alone simply aren't enough to address the problem. Children are still being sold for sex on this site.

There are additional practices and techniques that may help Backpage and other online classified ad websites reduce the online sexual exploitation of children on their sites. Examples of these include:

- Prohibiting payment sources that mask the customer's identity – such as gift cards, prepaid credit cards and using another's credit card. These payment sources hamper law enforcement's ability to investigate these ads.
- Verifying and knowing its customers. Verifying the identity and age of the person submitting the ad as well as the person depicted in any images in the ad. There are ways to verify this information either in person or online when the ad is purchased. Other classified ad sites have implemented verification processes including database checks and review of government issued identification.
- Consistently blocking or removing postings believed to involve minors being sold for sex.
- Preventing ads with previously-flagged images from being posted and refusing to post ads from customers who are believed to have posted suspicious ads in the past.

A responsible company would take all available measures to address the sexual exploitation of children – mere reporting is grossly insufficient. We are disturbed that Backpage has not taken a single one of these additional steps and continues to operate under a business model that facilitates the sexual exploitation of children.

This business model has not gone unnoticed by state attorneys general, many of whom have been dedicated to fighting child sex trafficking. In September 2010, 21 attorneys general sent a letter to Backpage asking the company to take down its adult services section. In August 2011, the National Association of Attorneys General submitted a lengthy inquiry letter to Backpage. Forty-six attorneys general signed the letter that asked Backpage to provide, among other things, information about their policies to prevent illegal activity from occurring on the site. Yet Backpage continues to post these ads.

The legal landscape surrounding this issue is complicated with regard to criminal and civil liability of classified ad websites. I have included a brief summary of some of the challenges.

Liability of Internet sites for content is controlled by Section 230(c) of the Communications Decency Act (CDA):

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider. 47 U.S.C. § 230(c)(1).

The CDA provides immunity to Internet communication service providers, such as website operators, for publishing content by third parties. Courts look to whether a website had a role in creating the

content on the site, which would defeat immunity.³ Congress' intent in passing this provision was to provide an incentive for websites to remove objectionable content without fear of liability for failure to remove all such content.⁴

There have been several attempts to hold online classified sites civilly liable for content that they place on their sites. In 2010, a victim of child sex trafficking sought civil remedies in federal court in Missouri, alleging that Backpage (Village Voice Media Holdings at the time) aided and abetted the crimes committed against her by a pimp.⁵ The court dismissed the complaint on the basis of the CDA's immunity provision. In July 2012, three victims filed a civil complaint in state court in Washington.⁶ That suit is pending.

Criminal liability of online classified sites is also impacted by the CDA's immunity provision. It is well-established by several courts (in civil cases) that a website operator's general knowledge that its site is used to advertise illegal activity is not sufficient evidence of intent to aid or abet a crime.⁷ Some courts have stated that the CDA's section 230 immunity applies to state criminal laws.⁸

At least two states have attempted to criminalize these sites' specific conduct by enacting legislation. However, these new laws were not enforced because of the preemption language of the CDA:

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section. 47 U.S.C. § 230(e)(3).

Washington's Senate Bill 6251 would have made it a felony to knowingly publish, disseminate, or display, or cause directly or indirectly, to be published, disseminated or displayed, any advertisement for a commercial sex act in Washington that includes the depiction of a minor. Before it could take effect in 2012, it was challenged by Backpage and other plaintiffs. The U.S. District Court granted the plaintiffs' motion for a preliminary injunction, finding that the law is likely preempted by Section 230 of the CDA as well as unconstitutional on a number of grounds.⁹ In December 2012, the Washington Attorney General's office ended its defense of the law, in light of its flaws.

³ *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997); *Fair Housing Council of San Fernando Valley v. Roommates.com, L.L.C.*, 521 F.3d 1157 (9th Cir. 2008).

⁴ P.L. 104-104, *Telecommunications Act of 1996*.

⁵ *M.A. v. Village Voice Media Holdings, L.L.C.*, 2011 WL 3607660 (E.D. Mo.).

⁶ *J.S., S.L. and L.C. v. Village Voice Media Holdings, L.L.C., Backpage.com, LLC, and Baruti Hopson*, filed July 27, 2012.

⁷ *M.A. v. Village Voice Media Holdings, L.L.C.*, 2011 WL 3607660 (E.D. Mo.); *Chicago Lawyers Committee for Civil Rights Under the Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 668 (7th Cir. 2008).

⁸ *Voicenet v. Communications, Inc. v. Corbett*, No. 04-1318, 2006 WL 2506318 (E.D. Pa. Aug. 20, 2006); *People v. Gorlay*, No. 278214, 2009 WL 529216 (Mich. Ct. App. Mar. 3, 2009).

⁹ *Backpage.com, LLC and Internet Archive v. McKenna et al.*, No. C12-954-RSM (Order Granting Plaintiffs' Motions for Preliminary Injunction, U.S. Dist. Ct. W.D. Wash. July 27, 2012).

Tennessee's Senate Bill 2371, also enacted in 2012, was similar to the Washington law. Once again, Backpage challenged its constitutionality based on the CDA. In January 2013, the U.S. District Court issued a temporary restraining order, finding that the law is likely preempted by the CDA, and that it is unconstitutionally overbroad, among other findings.¹⁰

The CDA does not prevent federal prosecutions of sexual crimes against children:

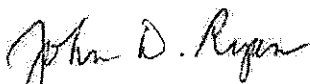
Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this Act [47 USCS § 223 or 231], chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code [18 USCS §§ 1460 et seq. or §§ 2251 et seq.], or any other Federal criminal statute. 47 U.S.C. § 230(e)(1).

To date there have been no attempts to bring criminal charges against a classified ad website for facilitating child sex trafficking. A charge of aiding and abetting requires the willful causation of a criminal act, rather than the passive role of an online publisher. At the time the CDA was written, publisher liability, both criminal and civil, was based on the then-traditional role of publishers such as newspapers, who generally knew what they were publishing. In the Internet age, however, websites' knowledge of the content they make available is limited at best. And, again, Congress' intent was to incentivize website operators to remove some objectionable content without fear of failing to remove all objectionable content.

When the CDA was drafted it was hardly conceivable that the Internet would be used to facilitate the sexual exploitation of children. As long as the CDA stands in the way of holding these classified ad websites legally accountable, they will continue to be an integral part of the child sex trafficking industry in the U.S.

Thank you for the opportunity to provide the information you requested at our meeting. Please let me know if you need additional information about NCMEC's efforts to combat child sex trafficking as it relates to missing and exploited children.

Sincerely,


John D. Ryan
Chief Executive Officer

¹⁰ *Backpage.com, L.L.C. v. Robert E. Cooper, Jr.*, No. 3:12-cv-00654 (Order Granting Plaintiff's Motion for Temporary Restraining Order, U.S. Dist. Ct., M.D. Tenn. Jan. 3, 2013).