

VILLAGE VOICE MEDIA HOLDINGS, LLC  
BACKPAGE.COM, LLC  
Office of General Counsel  
1008 Western Avenue, Suite 300  
Seattle, Washington 98104

March 23, 2012

**BY U.S. MAIL AND E-MAIL**

National Association of Attorneys General  
c/o Paula Selis, Esq., Senior Counsel  
Office of the Attorney General of Washington  
800 Fifth Avenue, Suite 2000  
Seattle, Washington 98104-3188

**WITHOUT PREJUDICE**

**Re: National Association of Attorneys General Demand for Elimination of  
Backpage.com's Adult Category and Requests for Information**

Dear Attorneys General:

On behalf of Backpage.com, LLC, this letter responds to correspondence from various members of the National Association of Attorneys General since 2009, including NAAG's August 31, 2011 demand for elimination of Backpage.com's adult advertisements category and request for more information.

We agree with NAAG regarding many issues that have become prominent on the Internet. It should go without saying that those issues include human trafficking and the sexual exploitation of children, which are abhorrent. Our goal has been and continues to be to work with NAAG, individual states' Attorneys General, law enforcement agencies, NGOs, and other online industry participants to fight child traffickers. As experts and law enforcement personnel have recognized, websites such as Backpage.com and their technology, resources and willingness to cooperate can and should be key participants in the solution to global and domestic human trafficking.

We disagree, however, with NAAG's approach to address, prevent, combat and prosecute human trafficking and exploitation, which appears limited to public demands for closure of adult categories on online classified websites. Irrespective of your admitted lack of legal grounds for this demand, it is the evident futility of the approach to which we most strongly object. Because we want to help solve the problem—not run away from it—we repeat our offer of the following.

As an initial matter, censorship is not the answer. The First Amendment to the United States Constitution respects and protects speech, including sexually explicit statements between adults. Moreover, the Communications Decency Act of 1996 makes clear that Congress expressly intended to preserve open discourse on the Internet, by immunizing websites like Backpage.com from state law liability for content generated by third parties, and to encourage websites to use best efforts to filter content themselves. 47 U.S.C. § 230. Concession to your demand would instead allow the elected officials of various states to decide what content is acceptable on the Internet and specifically to determine that it is acceptable to prohibit an entire category of speech on an unproven assumption that it does more harm than good or

more harm than justifies the online presence of all such speech. This type of censorship would be extraordinary state action, akin to book-banning efforts in the 1960's.

Free speech issues aside, 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>1</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>2</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>3</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 soundly refuted by The Urban Institute in its report to the House Judiciary Committee's Subcommittee on Crime, Terrorism and Homeland Security.<sup>4</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 useable insights into their behavior, techniques and patterns.<sup>5</sup> As the U.S.C. study also found, "Trafficking online thus presents the anti-trafficking community

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<sup>1</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).

<sup>2</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. Gozdziaik 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>3</sup> *Id.*, at 12 (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)).

<sup>4</sup> Colleen E. Owens and William Adams, *Feedback on Men Who Buy Sex with Adolescent Girls: A Scientific Research Study* (September 2010).

<sup>5</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,

with an unprecedented window to observe, track, and monitor the conduct of both the supply and demand sides of the trafficking trade.”<sup>6</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>7</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>8</sup> and a program sponsored by Microsoft Research and the Microsoft Digital Crimes Unit.<sup>9</sup> We believe that NAAG and its members would benefit from taking into account and understanding this ongoing work, and we would be happy to keep you apprised of it.

Backpage.com has already demonstrated the valuable role that online service providers can play in the identification and rescue of trafficking victims and the perpetrators of these crimes. The very investigations and prosecutions that NAAG repeatedly and publicly cites as proving that Backpage.com is a hub for human traffickers were made possible **because of** Backpage.com’s eagerness to help law enforcement officials. Backpage.com regularly receives praise from those officials; the following are a few of hundreds of similar messages:

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

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making it extremely difficult for law enforcement and rescue organizations to identify and act to capture perpetrators and save victims.”).

<sup>6</sup> *Human Trafficking Online*, at 9.

<sup>7</sup> *Id.* at 20, notes 112-113.

<sup>8</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>9</sup> *The Role of Technology in Human Trafficking—RFP*, available at <http://research.microsoft.com/en-us/collaboration/focus/education/human-trafficking-rfp.aspx>.

National Association of Attorneys General

March 23, 2012

Page 4

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]

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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>10</sup>

Similarly, the president of the National Center for Missing and Exploited Children 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>11</sup> Indeed, Backpage.com established a special "expedited" line to NCMEC for urgent reports of potentially trafficked minors (*i.e.*, situations where imminent rescue of child sex crime victims may be possible).

At base, NAAG's approach ignores a fundamental and indisputable fact: The Internet is not going away. As experts have 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>12</sup> As Dr. boyd of Harvard has stated: "Going 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

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<sup>10</sup> We have redacted the names and personally identifying information of the agents and officers.

<sup>11</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>.

<sup>12</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.

visibility does not break the trade network itself but it does make it harder to get to the source of exploitation.”<sup>13</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>14</sup> “If you focus on the sites, you will be playing whack-a-mole and helping no one.”<sup>15</sup>

We agree with the calls for a collaborative effort among governments, NGOs, online service providers and other public and private interests to critically analyze the role of the Internet in human trafficking and to work toward meaningful solutions<sup>16</sup> And we have consistently demonstrated our genuine commitment to such collaboration for more than four years, by consulting NAAG members, implementing their suggestions, retaining child safety consultants, and continuing to meet with public interest groups (including monthly meetings with NCMEC) and public officials.

Backpage.com would like this collaboration to continue, although we must say that we do not view NAAG’s demand for information in a letter that simultaneously and publicly accuses Backpage.com of complicity in the horrific crime of child sex trafficking as collaborative. Nonetheless, we provide under separate cover responses to the questions posed by NAAG in its August 31, 2011 letter. Pursuant to our agreement with NAAG, we have designated this information as confidential because, for example, it would obviously hinder law enforcement efforts to make public Backpage.com’s practices for reviewing and reporting suspect ads. Backpage.com provides the supplemental information and this letter without prejudice and while preserving all legal rights, including under the First Amendment, the Communications Decency Act, and the Civil Rights Act, 42 U.S.C. § 1983.

Backpage.com stands ready to continue collaboration with NAAG and individual Attorneys General, as we do routinely with front-line law enforcement, NGOs and other online industry participants to fight child and human trafficking. If NAAG or its members would like to further discuss Backpage.com’s moderation practices or the technological means with which to prevent and combat trafficking or exploitation, we would be happy to do so. To be clear, however, we believe it would be unwise and, in fact, counterproductive to eliminate the adult category from the website. We also believe that your public statements castigating Backpage.com are counterproductive, particularly given the admission by Attorney General Rob McKenna, NAAG’s president, that he and other Attorneys General “know they have little legal standing to forcibly shut down [Backpage.com].”<sup>17</sup> If NAAG and its members are interested in cooperation, and will stop instead simply continuing demanding elimination of the adult category, please let me know by March 28, 2012 so that we may determine how to proceed.

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<sup>13</sup> *Id.*, at 2.

<sup>14</sup> This figure comes from a web analysis performed by the anti-trafficking organization, Shared Hope International. See *Human Trafficking Online*, at 14.

<sup>15</sup> *Combating Child Exploitation Online*, at 3.

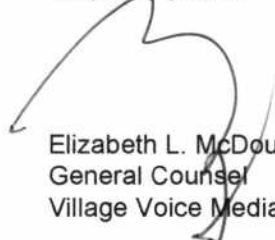
<sup>16</sup> *Human Trafficking Online*, at vi & 39 (“Successful implementation of anti-trafficking technologies requires cooperation among actors across government, nongovernmental, and private sectors, sharing information and communicating in a coordinated manner.”); see also *Combating Sexual Exploitation Online*, at 3 (urging General Coakley to “[e]ngage companies to collaborate with you in combating exploitation”).

<sup>17</sup> Rob McKenna for Governor website, reprinting editorial, *It’s an uphill fight, but officials right to go after backpage.com*, THE OLYMPIAN (Sept. 8, 2011), available at: <http://www.robmckenna.org/newsitem/it%E2%80%99s-uphill-fight-officials-right-go-after-backpagecom>.

National Association of Attorneys General  
March 23, 2012  
Page 6

We sincerely hope to work with you to combat this issue.

Very truly yours,



Elizabeth L. McDougall  
General Counsel  
Village Voice Media Holdings, LLC

**CONFIDENTIAL Enclosures:**

**Exhibit A** (BACKPAGE.COM SUPPLEMENTAL REPOSSES, *WITHOUT PREJUDICE*, TO NAAG REQUESTS FOR INFORMATION)

**Exhibit B** (In the Matter of Backpage.com AFFIDAVIT OF CARL FERRER)

**Exhibit C** (SAMPLE OF BACKPAGE.COM PROHIBITED WORDS, ACRONYMS AND CODES)

**Exhibit D** (In the Matter of Backpage.com CONFIDENTIALITY AGREEMENT)

cc: Don Bennett Moon