



## Backpage Is Bad. Banning It Would Be Worse.

The world's premier online sexual marketplace has come under fire from the government for hosting child sex traffickers, raising important questions about constitutional rights.

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On Monday, the advertising website [Backpage.com](http://Backpage.com) shuttered its adult ads section, leaving bewildered escorts, sex workers, and clients in the lurch. In lieu of countless ads and bulletins, the page now boasts a single, blood red heading: "CENSORED: The government has unconstitutionally censored this content. What happened? Find out."

On Tuesday, four of Backpage's top executives refused to testify at a Senate Permanent Subcommittee on Investigations hearing, following a Senate report accusing them of knowingly facilitating sex trafficking. Backpage CEO Carl Ferrer, former owners Michael Lacey and James Larkin, chief operating officer Andrew Padilla and Elizabeth McDougall, the company's general counsel, told the Senate subcommittee that they would be invoking their Fifth Amendment rights against self-incrimination. The leaders of the subcommittee's investigation released a statement, claiming that Backpage's decision to shut down the adult ads page was a "validation of our findings."

Carl Ferrer joined Village Voice Media Holdings in 1996 as *The Dallas Observer's* director of classified advertising. In 2003, he urged Village Voice Media Holdings to expand its print classifieds into an online platform. The following year, Backpage was born. The website's name came from the classified advertisements that were published on the "back page" of Village Voice Media publications. While Backpage hosts a diverse array of classifieds, its remarkable growth can be attributed to its adult advertisements. According to [internal documents](#) from 2011, Backpage reported that while the adult classifieds represented merely 15.5% of total ad volume, the company reaped 93.4% of its weekly paid ad revenue from this section alone. Adult ads also received significantly more online traffic than other categories—for example, as of May 2011, ads in the jobs section had approximately 2 million page views. Meanwhile, adult ads boasted over one billion.

Currently, Backpage is the world's second-largest classified advertising website. It's valued at more than a half-billion dollars, and is operating in 97 countries and 943 locations worldwide, according to the Senate report. But according to critics, these cheery statistics mask a heinous operation.

According to the National Center for Missing & Exploited Children, Backpage is involved in 73% of the suspected child trafficking reports it receives from the public. In the words of Massachusetts Attorney General Maura Healey, “[t]he vast majority of prosecutions for sex trafficking now involve online advertising, and most of those advertisements appear on Backpage.”

When it comes to child sex trafficking, precise empirical data is difficult to come by. According to a 2013 report from the State Department, social scientists estimated that there were as many as 27 million victims of human trafficking worldwide, including 4.5 million people trapped in sexual exploitation. The Department of Justice has reported that more than half of sex-trafficking victims are 17 years old or younger. Last year, NCMEC reported an 846% increase from 2010 to 2015 in reports of suspected child sex trafficking, which they surmised to be “directly correlated to the increased use of the Internet to sell children for sex.”

As America's premier online sexual marketplace, Backpage has faced its fair share of ire. In 2010, The Rebecca Project for Human Rights ran a series of ads in a number of Village Voice Media-owned papers. The arresting images showed a man in a mugshot holding up a sign reading, “I paid for sex with a 14-year-old child I found on Backpage.” They were accompanied by a message to Village Voice Media: “Each year, 100,000 children are sold for sex in America—many through your website, Backpage.com. Do you really want to provide a platform for predators who pay for sex with girls?” The campaign was referencing the specific case of a 14-year-old girl from Missouri, who sued Village Voice Media for aiding and abetting her pimp. The minor's abuser, Latasha Jewell McFarland, was sentenced to five years in prison for posting nude photos of the teenage runaway on Backpage and arranging meetings with clients in cheap motels.

A post on the company's corporate blog insisted that in the McFarland case, “Without our knowledge, the predator violated our terms of use. Backpage.com has stringent safeguards in place to ensure that only adults use the site. We provided the FBI with the perpetrator's IP address and credit-card information.” The court ultimately held that Backpage was not guilty of aiding and abetting, and that it retained its immunity as an internet service provider.

Year after year, Backpage continued to come under fire. Attorneys general from 48 states wrote a letter asking Village Voice Media to take down Backpage's adult ads, citing “the company's facilitation of the sexual exploitation of children.” The letter continued, “We have tracked more than 50 instances, in 22 states over three years, of charges filed against those trafficking or attempting to traffic minors on Backpage. These cases often involve runaways ensnared by adults seeking to make money by sexually exploiting them. In some cases, minors are pictured in advertisements.”

In 2011, VVM published an “investigative series” titled *The Truth Behind Sex Trafficking*, which attempted to debunk the idea that commercial sexual exploitation of children in the U.S. was increasing. Tony Ortega, *The Village Voice's* then editor-in-chief, dismissed the hype

around child sex trafficking as a mass panic, writing, “In the second decade of the 21st century, we are being told that there’s a widespread, growing, and out-of-control problem to fear in our country. And it has a catchy name: ‘trafficking.’” While the series took on some legitimately misleading statistics, such as the “between 100,000 and 300,000 child sex slaves in the United States” cited by actor/anti-trafficking activist Ashton Kutcher, it was perceived by critics as morally murky and ultimately self-serving.

Thirteen years ago, Backpage was created by Jim Larkin and Michael Lacey to compete with Craigslist, the nation’s largest forum for online classified ads. In 2010, Craigslist shut down its own adult advertisements section, citing pressure from a group of 17 state attorneys. Backpage has been similarly plagued with accusations of unsavory operations.

Last October, Ferrer was arrested in Dallas and charged with conspiracy and pimping a minor; the investigation by California and Texas authorities also led to felony charges against Lacey and Larkin. In a subsequent statement, California Attorney General Kamala Harris proclaimed that, “Backpage and its executives purposefully and unlawfully designed Backpage to be the world’s top online brothel.” While a December ruling threw Harris’ initial charges out, the then-attorney general (now U.S. Senator) proceeded to refile the criminal charges.

Harris’ campaign, combined with the Senate’s Permanent Subcommittee on Investigation’s hearing, appears to have applied a new degree of pressure to the controversial website and succeeded where so many public shamings, protests, and boycotts had previously failed. But for Backpage’s diverse network of supporters—from Constitutional scholars to sex workers to child trafficking non-profits—efforts to shutdown Backpage lack substance and compassion, and set a dangerous precedent for disregarding the First Amendment.

The federal Communications Decency Act provides immunity to websites that publish third-party content. This is why, typically, websites can’t be prosecuted when their users engage in illegal activities or transactions. However, multiple lawsuits have argued that the 1996 law does not protect Backpage because the site contributes to illegal activity — claims that Backpage has spent years denying. Ilya Shapiro, a Senior Fellow in Constitutional Studies at the Cato Institute, believes that the PSI’s actions constitute “official harassment with the ultimate goal of shutting down something that seems to the government to be unsavory.”

As evidence of this vigilante-style harassment, Shapiro cites Cook County Sheriff Thomas Dart, who aggressively pursued Backpage in 2015. The Chicago Sheriff wrote to Visa and MasterCard, implying that if the credit card companies continued to let Backpage use their services, he would have no choice but to prosecute them. While Dart claimed that he had written his letters as “a father and a caring citizen” and not as a public official, Seventh Circuit Judge Richard Posner saw the Sheriff’s efforts as legal coercion. In his opinion, Posner ordered Dart “to take no actions, formal or informal, to coerce or threaten credit card companies,” calling his prior efforts a “campaign of suffocation.” If not combatted, Posner continued, Dart’s tactics could constitute “a formula for permitting unauthorized, unregulated, foolproof, lawless government coercion.”

Shapiro believes that the PSI’s investigation is a continuation of Dart’s brand of government coercion. While the investigation purports to be an inquiry into human trafficking, Shapiro alleges that it is “punitive rather than legislative”—an effort to punish Ferrer and Backpage for

publishing third-party content that the subcommittee considers offensive. He charges that the subcommittee did not identify a specific legislative need to subpoena Ferrer, but rather that it wielded the subpoena as a tool for punishing Ferrer and Backpage because it disfavored the content of the website's speech.

Shapiro told The Daily Beast that, "The government in its breadth of its subpoenas and ultimately even arresting the CEO of Backpage is trying to put a stop to that particular type of advertising," and that, "This kind of investigation and extraordinary subpoenas have led to the viability of Backpage being put into question." Therefore, while Backpage was not literally censored by the government, it appears that the website's operators have been pushed to the point where it no longer makes sense to spend resources in response to a never-ending stream of lawsuits and investigations.

The Senate subcommittee released [a report on Monday](#), charging that Backpage systematically edited its adult ads to remove words that indicate sex trafficking. "When a user submitted an adult ad containing one of the above forbidden words, Backpage's filter would immediately delete the discrete word and the remainder of the ad would be published after moderator review," the report explained. "Of course, the Strip Term From Ad filter changed nothing about the real age of the person being sold for sex or the real nature of the advertised transaction. But as [Backpage COO Andrew] Padilla explained, thanks to the filter, Backpage's adult ads looked 'cleaner than ever.'"

Missouri Sen. Claire McCaskill, the panel's top Democrat, [called Backpage](#) "a \$600 million company built on selling sex—and importantly, built on selling sex with children." She further alleged that Backpage's editing practices amounted to "coaching" traffickers in how to best package their ads in order to appear legitimate. The subcommittee hearing featured testimony from several parents of trafficked teenagers, including one mother who claimed that her 15-year-old daughter was "repeatedly raped, beaten, threatened and treated as a sex object every day" while being advertised on Backpage as a "weekend special." She told subcommittee members that, "We finally got Natalie [not her real name] back... but our Natalie was gone. Our new American Dream is to live in an America that doesn't stand aside when little girls are sold online as commodities." Senator Rob Portman, R-Ohio, the subcommittee's chairman, insisted that Backpage has revealed itself to be, "Intent on profiting from human trafficking—and human misery," continuing, "and profit they have, at the expense of countless innocent victims."

Despite the indisputable horror of these testimonies, experts debate whether shutting down Backpage—and Craigslist before it—will actually reduce sex trafficking.

According to one line of reasoning, Backpage allows police to identify possible trafficking victims and monitor traffickers' activities. On Backpage, criminals create a digital record that law enforcement officials can track. Shuttering Backpage could push these traffickers and their victims further underground, to websites that are less widely known by officials and more difficult to monitor.

Lois Lee, the founder and president of Children of the Night, a nonprofit that rescues trafficked children, [released a statement](#) claiming that ending Backpage will inevitably fail to end child sex trafficking. In fact, she argued that the website "made law enforcement's job easier," and that it "made them much more effective at rescuing kids and convicting pimps." She continued, "The

ability to search for and track potentially exploited children on a website and have the website bend over backwards to help and cooperate with police the way Backpage did was totally unique.” Lane told The Daily Beast that Backpage has worked extensively with her organization; additionally, they have made financial donations to Children of the Night for the past four years.

Backpage has also published alleged testimonies of support from the law enforcement community, such as an August 2015 missive attributed to the FBI Child Exploitation Task Force: “Thank you for your response... There is a violent pimp associated with these postings that was arrested and two of his victims have been rescued and are doing well. Can’t do this without your help.”

While it’s too early to say if the demise of Backpage’s adult ads will reduce child sex trafficking, sex worker advocates are confident that these recent developments will have a negative effect on the populations that they serve.

Sasanka Jinadasa is a community resource manager at HIPS, a D.C.-based organization that works with individuals impacted by sexual exchange “due to choice, coercion, or circumstance.” Jinadasa was disappointed and confused by the recent disappearance of Backpage’s adult ads, an action that she believes will further stigmatize sex work. She told The Daily Beast that, “Moves like this stigmatize sex workers when people conflate sex work and sex trafficking, and say that any place that supports sex work implicitly supports sex trafficking.” If sex work was destigmatized and de-criminalized, Jinadasa argued, sex workers could become crucial allies in the fight against sex trafficking: “They can be that person who knows intimately who is coerced and who is not on the stroll.” Additionally, trafficking survivors could feel more comfortable coming forward if sex work wasn’t widely seen as dirty and amoral.

Jinadasa explained that Backpage was a “safer” space for sex workers: “Being able to use the internet to put ads up gives you an opportunity to screen your clients, it gives you opportunities to be more choosy about your dates, it actually removes you physically from the street in a lot of ways, or it gives you an opportunity to meet people where you want to meet them, it gives you more power in the negotiation process, and it gives you more power to define your terms.”

She continued, “Backpage has worked with law enforcement, has worked with the government to eradicate trafficking on their site, they have provided opportunities for people to sell sexual services in a way that feels safer and gives them more agency, and it has afforded sex workers an opportunity to choose if they want to work the street or not... What is particularly infuriating for me about this case is that it’s going to help no one. It’s not going to help them find traffickers, it’s not going to help them end human trafficking, it’s not diverting resources to support survivors of trafficking or to support sex workers. It’s just an empty action to make people feel like they’ve helped curb something that they find morally ambiguous or morally wrong.”

For Jinadasa and others with ties to the sex worker community, continuous attacks on Backpage ultimately feel misguided and disingenuous. Jinadasa concluded that, “To take away that space under the guise of moving people off the streets or moving people out of sex trafficking... it shows me that people don’t actually know the people who they’re trying to help, and they haven’t actually talked to the people they’re trying to help, and they haven’t listened to the people they’re trying to help.”

Rebecca, a sex worker based in Ann Arbor, Michigan, felt similarly, dismissing child exploitation charges as “sort of like a baseless claim.” Rebecca told The Daily Beast that Backpage could be used as a tool to help law enforcement identify and track underage advertisements— “So,” she opined, “That’s actually taking away from the solution.”

A college student, Rebecca started posting on Backpage in search of supplemental income. She has previous experience camming but “found this to be easier and actually a bit more enjoyable for myself.” As a “full-service escort,” Rebecca used Backpage to stay safe: “It provides a medium for me where I have an easy way to screen my clients and make sure they’re not creeps or people that are coming out to get me, and it makes sure that me and my client are safe and that we can have an arrangement that’s good for both of us.”

Screening could be as little as asking a series of questions to get a sense of a person’s character or motives. But that added interview—conducted from the safety of her own home—could make all the difference. Rebecca elaborated, “So if they’re like overly aggressive, or demand extra pictures that weren’t on my ad, or if they’re trying to convince me to not use a condom, or if it seems like they’re trying to pry a little bit deeper...those are signs that that person might be unsafe or trying to corner me.” Because of her day job, Rebecca says that she’ll still be able to make her rent this month. However, she knows other Backpage-reliant sex workers who aren’t so lucky. “I’m seeing a lot of my friends that are not sure how they’re going to make rent this coming month, or how they’re going to eat tomorrow,” she says.

Rebecca told The Daily Beast that she’s already starting to see new websites come into favor, but insisted that, “It still makes it a lot harder,” since many sex workers or clients may not know about the new pages that are being circulated. Jinadasa corroborated that, “Something new will come up,” adding, “What’s unfortunate is that sex workers are constantly forced to rebuild their lives. These interruptions, whether they’re via the internet or arrest or incarceration, can do real damage to your life trajectory. It’s just unfortunate that for so many of our clients, so many sex workers in the United States, their lives can be a series of things collapsing and having to rebuild.”