

Allow States and Victims to Fight Online Sex Trafficking Act of 2017 ("FOSTA")



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Overview

- The Factual Problem
- The Legal Problem
- Enter FOSTA
 - Federal Impact
 - State and Local Criminal Law
 - Civil Law



Online Advertisements for Commercial Sex

backpage.com

adult

Hey sexes!!!! I'm YOUNG WILD AND FREE!!! I seek companionship for tonight I'm ready to have some fun right now... :). Low trying new things and low being pleased SAFE and CLEAN guarantee that you won't be disappointed at all why settle for one when u can have twice the fun. ABSOLUTELY NO YOUNG GUYS NO BS!!! NO BLOCKED CALLS 100% REAL/RECENT PICTURES SERIOUS INQUIRES ONLY!!! LIMITED TEXTING!!! ask about our 2 girl specials hmu@ 8324188001

Poster's age: 19

Location: Houston, 45 NORTH (spring area)

Post ID: 20995796 houston

\$ DONATION \$ Is for my time & companionship Not PROSTITUTION!!! Be RESPECTFUL Gentleman Only NO THUGS..

I was here...

HTI and PSI Reports

- **84.3% of federal criminal sex trafficking cases involved online advertisements to solicit purchasers for sexual services**
- **Of those cases, 72.3% involved Backpage specifically**
- **Backpage involved in 73% of all NCMEC child trafficking reports**



The Legal Problem

- The Communications Decency Act: 47 U.S.C. § 230
 - Enacted at the dawn of the internet to allow technology to grow
 - Provides protections for technology platforms that host content generated by third-parties
 - Complete civil immunity
 - Immunity from prosecution by state and local authorities
 - Still subject to federal criminal prosecution

In practice, the CDA became

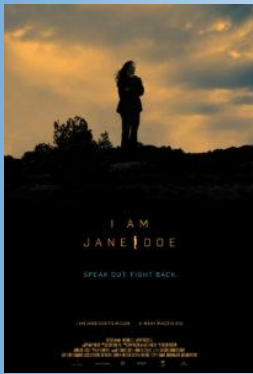


CDA as a sword

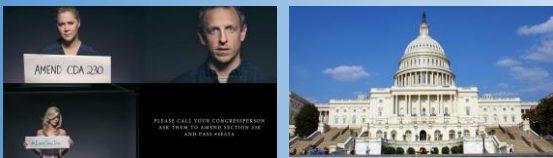
- Backpage relied on the CDA to obtain injunctions barring state criminal or civil action against it.
- *Backpage.com, LLC v. Hoffman*, 2013 WL 4502097 (D. N.J. Aug. 20, 2013)
- *Backpage.com, LLC v. Cooper*, 2013 WL 1249063 (M.D. Tenn. Mar. 27, 2013)
- *Backpage.com, LLC v. McKenna*, 2012 WL 4120262 (W.D. Wash. Sept. 18, 2012)

CDA as a shield

- Backpage relied on the CDA to obtain dismissals of state criminal and civil actions against it.
- Charges brought by California Attorney General: dismissed *twice*
- *Jane Doe No. 1, et al. v. Backpage.com, LLC*, 817 F.3d 12 (2016), *cert. denied*, 137 S.Ct. 622 (2017)



April 11, 2018



Three changes

- Created new federal offense: 18 U.S.C. 2421A
- Carved out immunity from state and local prosecution
- Carved out immunity from civil suits

What Conduct Violates 2421A?

“Whoever, using a facility or means of interstate or foreign commerce or in or affecting interstate or foreign commerce, owns, manages, or operates an interactive computer service..., or conspires or attempts to do so, with the intent to promote or facilitate the prostitution of another person shall be [punished].”

Section 2421A: important details

- Aggravated felony: 5 or more individuals prostituted or reckless disregard that conduct contributed to sex trafficking
 - Victims of aggravated penalty have civil remedy*
- Mandatory restitution for sex trafficking victims
- Does not apply to self-promotion
- Affirmative defense

Not that new

- 18 U.S.C. 1952:
Whoever ... uses the mail or any facility in interstate or foreign commerce, with intent to—
... promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform [such an act] ...

Backpage CEO and Owners



Federal Indictment

- 93-count indictment on March 28, 2018 charging Backpage and 7 individuals including Lacey and Larkin with the **crimes of facilitating prostitution and money laundering**.
 - 100 count superseding indictment issued July 25, 2018

Federal Indictment

- Indictment alleges:
 - Backpage has earned over \$500 million in prostitution-related revenue since its inception in 2004.
 - Over 80% of the ads originally submitted by Backpage customers contained text and pictures that were indicative of prostitution and that Backpage choose to publish ads after editing them.
 - Describes 17 victims, including several minors, who were sold for sex through the use of Backpage ads. Many of the victims were physically and sexually assaulted, and four of them were murdered or died as a result of being trafficked.

Backpage and CEO Plead Guilty

- On April 5, 2018, the corporate entity Backpage.com and Backpage's Co-founder and CEO Carl Ferrer pleaded guilty to federal charges for conspiring to facilitate prostitution and money laundering.

Backpage and CEO Plead Guilty

- Ferrer admitted:
 - He and his co-conspirators created a "moderation" processes through which Backpage would remove terms and pictures that were particularly indicative of prostitution and then publish a revised version of the ad.
 - Backpage and its leadership knew what these ads were for, and yet they allowed them to be published.
 - Ferrer admitted that he conspired with other Backpage principals to engage in various money laundering offenses.

Backpage.com Seized





FOSTA

“Nothing [in the CDA] shall be construed to impair or limit any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of title 18, United States Code, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant’s promotion or facilitation of prostitution was targeted.”

So...

If a person:

1. Owns, manages, or operates a website or other platform;
2. With the intent to promote or facilitate the prostitution of another person

then that conduct would constitute a violation of 2421A and the person could be charged with a state crimes such as...

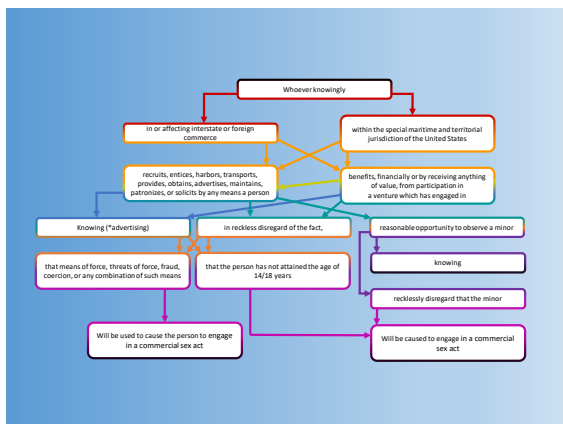
Such as...

The September 26, 2016 charges brought by the California Attorney General against Ferrer, Lacey, and Larkin that charged them with 13 counts of pimping and conspiracy to commit pimping in violation of CA Penal Code sections 182/266h that were dismissed on August 23, 2017 because of the CDA.

What else does FOSTA do?

- “Nothing [in the CDA] shall be construed to impair or limit ...

any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of title 18, United States Code.



Section 1591: key takeaway

- Knowingly advertises a minor or participates in a venture that knowingly advertises a minor; or
- Knowingly advertises an adult subjected to FFC or participates in a venture that knowingly advertises an adult subjected to FFC; and
- Knowing that victim would be caused to engage in commercial sex; and
- Interstate/foreign commerce

FOSTA: civil remedy for sex trafficking

- **“Nothing [in the CDA] shall be construed to impair or limit ...**

any claim in a civil action brought under section 1595 of title 18, United States Code, if the conduct underlying the claim constitutes a violation of section 1591 of that title.

Note: does not carve out immunity for civil remedy in Section 2421A

Federal civil remedy

- An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

Extended statute of limitations

- Ten years after the cause of action arose, or
- If victim was a minor when the offense occurred, ten years after they turn 18

Effective Date?

- "Effective Date.--The amendments made by this section shall take effect on the date of the enactment of this Act, and the amendment made by subsection (a) shall apply regardless of whether the conduct alleged occurred, or is alleged to have occurred, before, on, or after such date of enactment."

•Final thoughts and observations



- Questions?
