

The Challenges of Illicit Ad Sites

Accountability for the Advertising of Sex Trafficking Victims

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In the past few years, there have been successful federal takedowns of commercial sex ad sites used to sell the victims¹ of human trafficking and sexual exploitation. We assess that increased site closures would greatly disrupt the main method by which traffickers and sex buyers communicate. So, why do so many ad sites continue to profit from trafficking and exploitation with seeming impunity?² The answer is multifaceted: website owners and administrators hide behind laws meant to protect free speech, sites operate in whole or in part overseas to try and evade U.S. legal reach, and business enablers such as web hosts, registrars, payment processors and advertisers refuse to act. Newer laws contain elements as yet untested by the judicial system. Cases against ad sites require serious investments of time, money, and effort—simply put, they are daunting commitments.

CHALLENGES POSED BY ILLICIT AD SITES AND OPERATORS

Ads for commercial sexual services play an essential role in the Illicit Massage Industry (IMI)³ and other forms of sex trafficking. Impeding the ease of these transactions is possibly the single most direct way to disrupt supply meeting demand, but hurdles exist in addition to the reluctance of businesses to forgo the profits of exploitation. The high volume of sites, and owners who operate and/or reside in countries without extradition agreements, add complexity.

- According to The Network's data, as of early 2022 there were at least 192 websites that posted ads for commercial sex and/or featured "reviews" posted by sex buyers. At least 13 of these sites appear to focus exclusively on the IMI⁴, while others contained a variety of IMI and other types of commercial sex ads and sex buyer review content.
- A 2021 Government Accountability Office (GAO) report cited open-source research by the Human Trafficking Institute, which found that 84% of active federal sex trafficking defendants in 2019 used online sites as their primary means of solicitation.⁵
- Owners and administrators have tried to stay out of U.S. legal jurisdictions by moving site registrations, servers, and hosts overseas. While the advertising and selling of U.S. victims can mean that sites are still liable in U.S. jurisdictions, cases can depend on considerations like personal jurisdiction. For example, in a case involving Xvideos.com, a judge ruled that even though the victim in the contested video was American, the court lacked jurisdiction over the Czech site.⁶
- The GAO report noted that the process of discovering documents, communications, and electronic records by U.S. prosecutors is complicated by the overseas residences and operations of website owners and administrators; a significant burden when there is a requirement to prove the *intent* to profit from prostitution or sex trafficking.⁷
- Those suspected to be the beneficial owners of ad sites, for example Swiss citizen David Azzato,⁸ often reside in countries that do not have extradition treaties with the U.S. Therefore, if such a site owner is the subject of an arrest warrant, the U.S. would require assistance from 3rd party countries when the subject of the warrant travels, adding coordination and operational burdens to the case.

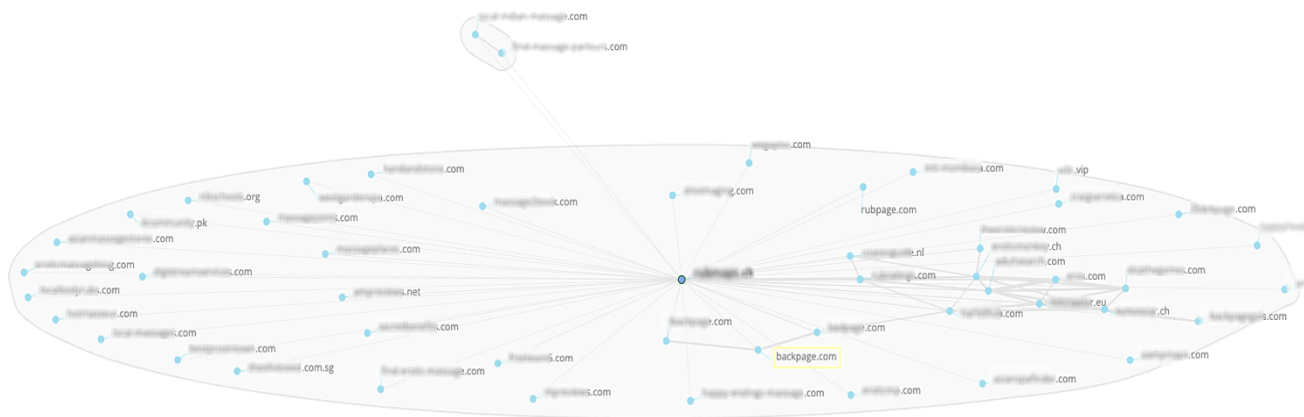


Figure 1: Visual analysis of which illicit ad sites are visited by the same users, e.g. the likelihood that a user who visits site A will also visit site B. As this is relational data based on web user activity, not all of these sites are implicated in illegal activity.

APPROACHES TO COMBATTING ILLICIT AD SITES

Because the commercial sex ad site realm is so large and presents such an array of challenges, an equally large arsenal of tools and strategies is needed to hold them accountable. It is essential to assess vulnerabilities from legal, technical, and reputational perspectives, demystifying technical or legal details for non-experts. Below we have outlined categories for civil, criminal, and community action approaches, highlighting both successes and limitations.

1. Public Scrutiny: Public scrutiny may play an important role in cases where citizens can apply pressure to the businesses that provide infrastructure and operations for the ad sites, e.g. financial services, web registrars or hosts,⁹ and advertisers that care about reputational risk and/or about trafficking victims. Negative publicity removes enablers' plausible deniability; something that matters where legal responsibilities are written to a "should have known" standard. In addition, corporate policy changes made as a result of public pressure take effect globally and quickly, as opposed to public policy.

- **Site registrars and webhosts:** In January 2022, The Network attempted to engage the U.S. web registrar GoDaddy regarding 4 websites¹⁰ that it could clearly link to trafficking, setting a high bar for our evidence by only using sexual ad site use examples linked to indicted or convicted traffickers. Despite this, as of publication date, GoDaddy refused to meet with The Network (then Heyrick Research) to discuss our evidence. The National Center on Sexual Exploitation (NCOSE) has approached Verisign, which has exclusive management over the .com and .net generic top-level domains, as well as Amazon Web Services, which holds roughly 33% of worldwide cloud infrastructure market share as of Q2 2022, to proactively disrupt domains that are hosting child and adult sex trafficking.
- **Financial services:** In 2020, *New York Times* columnist Nick Kristof's columns about victims who could not get explicit videos of themselves removed from Pornhub resulted in public scrutiny and pressure that led Visa, Mastercard, and Discover to refuse to service payments to the site any longer (American Express had already done so). We assess that

these companies might take similar action against other sites if presented with compelling evidence that the sites are being used to advertise trafficking victims.¹¹

- **Advertisers:** Putting pressure on advertisers may be particularly effective on free sites that do not have other means of revenue, such as buyer subscriptions. When evidence was surfacing of abuses on Pornhub, Unilever and Kraft Heinz cut ties with it (a year before the credit card companies did) after public pressure.
- **Search engines:** Some organizations see potential in engaging companies like Google to cease driving web traffic to these sites, at least in cases where the ad sites can be definitively linked to trafficking victims.¹² After another Nick Kristof column calling out Google for driving people to pornography sites when they searched terms like “rape porn,” Google adjusted its algorithms so at least the first few search engine result pages (SERPs) no longer yielded pornography sites. NCOSE named Google Search to its 2022 Dirty Dozen List and is pressing on it to cease surfacing sites that have been proven to host or promote illegal content and/or do not have sufficient age and consent verification measures for sexually explicit content.

2. FOSTA-SESTA: In 2018, Congress passed the Fight Online Sex Trafficking Act and the Stop Enabling Sex Traffickers Act (together known as “FOSTA-SESTA”), which clarified that Section 230 of the Communications Decency Act (CDA) should not be construed to prevent federal civil or state criminal sex trafficking claims from proceeding. Faced with the new potential for liability for ad content, many sites moved quickly to protect themselves. Some—mostly sites focused exclusively on commercial sex—moved all or part of their operations overseas to try and evade U.S. legal reach, or “blocked” U.S. users, thought this was easily evaded via VPN.¹³ Others—generally those with broader uses than commercial sex—moved to remove certain parts of their sites to protect the rest from liability. The small number of cases brought thus far under FOSTA-SESTA appears to be mostly attributable to the labor-intensive nature of these investigations and hesitation over untested parts of the law.

- The 2021 GAO report sums up key amendments to the U.S. Code thus:
 - Section 3 of FOSTA amended title 18 of the U.S. Code to add section 2421A, which states that it is a federal crime for those who control online platforms to do so with the intent to promote or facilitate the prostitution of others. Further, subsection (b) of section 2421A establishes enhanced penalties for “aggravated” violations when those who control online platforms (1) promote or facilitate the prostitution of five or more persons, or (2) act with reckless disregard that their conduct contributed to sex trafficking.
- FOSTA also removed immunity for the following kinds of claims:
 - Civil actions for trafficking brought under 18 U.S.C. 1595, “if the conduct underlying the claim constitutes a violation” of 18 U.S.C. 1591, the federal sex trafficking ban.
 - State criminal prosecutions “if the conduct underlying the charge would constitute a violation” of the federal sex trafficking ban.
 - State criminal prosecutions “if the conduct underlying the charge would constitute a violation” of 18 U.S.C. 2421A, and “promotion or facilitation of prostitution is illegal” in the relevant jurisdiction.¹⁴
- According to the *Washington Post*, in late March/early April 2018—the weeklong window between the Backpage closure and FOSTA-SESTA’s passage —online sex ads dropped

by 82%; however, by mid-August 2018 ads were back up to around 75% of the original number.¹⁵

- FOSTA-SESTA was used in 2020 to indict CityXGuide owner Wilhan Martono on 28 charges, including promotion of prostitution and reckless disregard of sex trafficking, interstate racketeering conspiracy (facilitating prostitution), interstate transportation in aid of racketeering (facilitating prostitution), and money laundering. Martono repeatedly refused to respond to subpoenas and law enforcement requests for information pertaining to cases of human trafficking, including of minors, according to the DOJ.¹⁶
- As of publication, no one had tested a civil case based on the provisions of promoting or facilitating the prostitution of 5 or more individuals.
- Case law on Section 1595, pertaining to beneficiaries, is in flux whether the knowledge requirement is based on the “should have known standard” or the proof of knowledge. Several cases have advanced past the dismissal phase.¹⁷

3. Non FOSTA-SESTA Criminal Liability: Because ad sites featuring trafficking victims were protected under the CDA before 2018 if the site could not be proved to have created the content, law enforcement could only target websites and their owners if they could prove other illegal acts committed by site owners such as derivation of proceeds from prostitution, racketeering, or promoting prostitution.

- Seattle police and prosecutors were able to infiltrate and dismantle a Seattle prostitution ring centered on a website in 2016.¹⁸ Prosecutors charged some sex buyers with pimping/pandering because their reviews exhorted others to engage in commercial sex acts with specific individuals.
- Craigslist shut down its personals section in 2018 amid fears of potential legal liability, after already having gotten rid of the controversial “Adult Services” section in 2010.¹⁹
- The case against Backpage, after first being dismissed for falling under CDA protection, later succeeded as a money-laundering case. Prosecutors showed that \$45 million worth of direct proceeds from illegal activity had been laundered by the 3 defendants.²⁰
- In 2019, the arrests of members of a large sex trafficking ring operating in the U.S., Canada, and Australia included the federal seizure of supermatchescort.com and a reported 500 affiliated sites, according to a DOJ press release.²¹

4. Non FOSTA-SESTA Civil Liability:

Recent civil cases against MindGeek and its sites (including Pornhub) have moved forward independently of FOSTA-SESTA’s provisions, based on illegal acts committed outside the purview of the CDA. At least two cases proceeded on the grounds that MindGeek sites had crossed the content creation threshold; and in one of these cases, the court also maintained that content-creation status is beside the point when the material was illegal contraband to begin with and thus never within CDA’s scope.²² The latter ruling dealt with child sexual abuse material (CSAM); it might be creatively used pertaining to content with trafficking victims if the argument is made that trafficking victims, like minors, cannot consent.

- In September 2021, a California federal court held that, because MindGeek was plausibly alleged to have been involved in content creation, it could not invoke immunity under Section 230 of the CDA.²³

- In February 2022, an Alabama federal court allowed a putative class action lawsuit to proceed against Pornhub and MindGeek. The judge ruled both that Pornhub and MindGeek were plausibly alleged to have been “content creators” under the CDA and thus could not invoke immunity under Section 230 (similar to the California ruling); and that, regardless of whether MindGeek or Pornhub are content creators, CSAM is “illegal contraband” and cannot ever be considered protected First Amendment speech.²⁴

Illicit ad sites can be difficult targets; however, the toolbox is continually growing. Members of the public willing to challenge and pressure enabling businesses, as well as new legal precedents and applications of previously untested statutes, illuminate successful paths to accountability for those who seek to enrich themselves via the proceeds generated by victims of trafficking and exploitation.

References

1. While the topic here concerns sex trafficking victims, sex trafficking of the IMI also includes labor trafficking and labor law violations.
2. While we cannot prove that each and every illicit ad site online has featured or does feature trafficking victims, all human trafficking cases that we have studied have included the use of online advertisements to attract sex buyers.
3. <https://www.thenetworkteam.org>
4. The Network couldn't access some sites
5. <https://www.gao.gov/assets/gao-21-385.pdf>
6. Doe v. WebGroup Czech Republic, as, No. 221CV02428VAPSKX, 2022 WL 982248 (C.D. Cal. Jan. 13, 2022), amended on reconsideration in part sub nom. Doe v. WebGroup Czech Republic, No. 221CV02428VAPSKX, 2022 WL 982245 (C.D. Cal. Feb. 25, 2022).
7. <https://www.gao.gov/assets/gao-21-385.pdf>
8. <https://www.engadget.com/2019-09-15-us-investigates-escort-and-massage-sites.html>
9. In order to publish a website online, you need a Web host. The Web host stores the pages of your website and makes them available to computers connected to the Internet. Without a host, most sites cannot function.
10. AMPreviews.net, MpReviews.com, Bedpage.com, SpaHunters.com
11. Our researchers have found that searching for the business phone number in quotes, e.g. “(888) 888-8888” gives much better results than searching on IMB names, possibly because the names can change frequently.
12. <https://www.nytimes.com/2021/04/16/opinion/sunday/companies-online-rape-videos.html>
13. <https://arstechnica.com/tech-policy/2018/04/erotic-review-blocks-us-internet-users-to-prepare-for-government-crackdown/>
14. 47 U.S.C. § 230(e)(5)
15. <https://www.washingtonpost.com/politics/2018/08/20/has-sex-trafficking-law-eliminated-percent-sex-trafficking-ads/>
16. <https://www.justice.gov/usao-ndtx/united-states-v-wilhan-martono-cityxguide>
17. <https://www.nbcsandiego.com/news/local/50-women-settle-lawsuit-with-pornhub-over-san-diego-based-girlsdoporn-content/2746542/>. See Doe v. Twitter, Inc., 555 F. Supp. 3d 889, 918 (N.D. Cal. 2021) (concluding that FOSTA permits civil sex trafficking cases against websites that “should have known” about the trafficking); Doe v. Mindgeek USA Inc., 558 F. Supp. 3d 828 (C.D. Cal. 2021), adhered to on denial of reconsideration, 2021 WL 5990195 (C.D. Cal. Dec. 2, 2021) (same). But see Doe v. Kik Interactive, Inc., 482 F. Supp. 3d 1242, 1247 (S.D. Fla. 2020) (finding that FOSTA’s language exempts lawsuits only against websites who knew of or recklessly disregarded

trafficking); J. B. v. G6 Hosp., LLC, 2021 WL 4079207, at *4 (N.D. Cal. Sept. 8, 2021) (same), motion to certify appeal granted, 2021 WL 6621068 (N.D. Cal. Dec. 16, 2021); Doe v. Reddit, Inc., 2021 WL 5860904, at *7 (C.D. Cal. Oct. 7, 2021) (same). One case proceeded on other grounds, without reaching the “should have known” issue. Doe #1 v. MG Freesites, LTD, 2022 WL 407147, at *1 (N.D. Ala. Feb. 9, 2022) (permitting case against pornography websites to proceed both because the plaintiffs sufficiently alleged that defendants were content creators and because child sexual abuse material more generally has no CDA protection).

18. <https://projects.seattletimes.com/2017/eastside-prostitution-bust/>

19. <https://www.craigslist.org/about/FOSTA>

20. Krell, Maggy. Taking Down Backpage. 2022.

21. <https://www.justice.gov/usao-or/pr/nationwide-sting-operation-targets-illegal-asian-brothels-six-indicted-racketeering>

22. See, e.g., Doe v. Mindgeek USA Inc., 558 F. Supp. 3d 828 (C.D. Cal. 2021), adhered to on denial of reconsideration, 2021 WL 5990195 (C.D. Cal. Dec. 2, 2021); Doe #1 v. MG Freesites, LTD, 2022 WL 407147, at *1 (N.D. Ala. Feb. 9, 2022).

23. Doe #1 v. MG Freesites, LTD, 2022 WL 407147, at *1 (N.D. Ala. Feb. 9, 2022).

24. <https://endsexualexploitation.org/articles/judge-sides-with-survivors-mindgeek-ruling>