



Office of the United States Trade Representative

Washington, D.C.

In re:

2021 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request

Docket No. USTR-2021-0013
86 FR 48464

COMMENTS OF INTERNET ASSOCIATION

Internet Association (IA)¹ appreciates the opportunity to provide comments on behalf of the association and its member companies in response to the Office of the United States Trade Representative’s (USTR) request for comments to identify online and physical markets to be considered for inclusion in the 2021 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List).²

As the only trade association that exclusively represents leading global internet companies on matters of public policy, IA welcomes USTR’s efforts to discourage copyright piracy and trademark counterfeiting in foreign markets. The Notorious Markets List is an important tool for USTR to highlight prominent examples of such activities in foreign markets where the U.S. government lacks jurisdiction and the ability to impose effective remedies. By “naming and shaming” these foreign markets, the Notorious Markets List helps encourage foreign governments to intervene, to the benefit of U.S. innovators, consumers, and workers.

IA’s member companies take the protection of U.S. innovators, consumers, and workers from the economic harm of counterfeit goods very seriously. In these comments, IA highlights some of the ways in which our member companies work to prevent the exchange of counterfeit goods, including by implementing and taking action to enforce clear policies in their terms of service or use; proactively partnering with rights holders and law enforcement entities; and creating transparent and innovative reporting and prevention tools to remove, limit, and discourage the availability of counterfeit goods. USTR should continue to use the Notorious Markets List to encourage foreign marketplaces to emulate the significant efforts that IA member companies undertake to reduce piracy and the exchange of counterfeit goods.

¹ Internet Association is the only trade association that exclusively represents 40 leading global internet companies on matters of public policy. The Association’s mission is to foster innovation, promote economic growth, and empower people through the free and open internet. <https://internetassociation.org/>.

² Beginning in 2006, USTR identified notorious foreign markets in the annual Special 301 Report. Since 2010, USTR has published the Notorious Markets List as an Out-of-Cycle Review, separate from the annual Special 301 Report to highlight foreign bad actors. USTR published the first Notorious Markets List in February 2011. See USTR, Request for Comments, 2021 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List), USTR-2021-0013, 86 FR 48464 (Aug. 30, 2021).



Background

For over 25 years, consumers, businesses, and entrepreneurs in the United States and worldwide have been using the internet to access and exchange goods and services across the globe. In 2020, an estimated 2 billion people worldwide purchased goods online.³ During the same year, global e-retail sales amounted to \$4.28 trillion, and projections show a growth of over \$5 trillion by 2022.⁴ It is estimated that about 80 percent of internet users in the United States made at least one purchase online during calendar year 2020.⁵

Further, the internet empowers small businesses and entrepreneurs to reach new markets, connect with new customers, and increase their productivity, and creates new value beyond the internet industry. For example, one study estimated that more than 75 percent of the economic value created by the internet is captured by companies in traditional industries, many of them small businesses.⁶

Unfortunately, bad actors may misuse the internet to offer counterfeit goods. While reports vary on the number of counterfeit goods sold, IA member companies are working hard to partner with rightsholders and law enforcement to combat counterfeiting and ensure U.S. consumers can feel safe buying online.

The following are a few examples of some of the transparent and innovative practices that IA member companies are implementing to combat counterfeit and piracy on their platforms:

Amazon

Amazon strictly prohibits the sale of counterfeit products, invests heavily in prevention, and takes proactive steps to drive the number of counterfeits offered in Amazon's online stores to zero. In 2020, Amazon's global proactive efforts successfully prevented over 6 million suspected bad actor accounts from offering a single product for sale in their stores and blocked more than 10 billion suspected bad listings from being published on its stores.⁷ Its efforts have also ensured that 99.9

³ statista, Daniela Coppola, *E-commerce worldwide – statistics & facts* (Sept. 17, 2021), <https://www.statista.com/topics/871/online-shopping/#:~:text=As%20internet%20access%20and%20adoption,4.2%20trillion%20U.S.%20dollars%20worldwide> (last visited Oct. 5, 2021).

⁴ *Id.*

⁵ Fit Small Business, *33 Online Shopping Statistics Retailers Should Know in 2021* (April 23, 2021), <https://fitsmallbusiness.com/online-shopping-statistics/> (last visited Oct. 5, 2021).

⁶ McKinsey & Company, *Internet Matters: The Net's sweeping impact on growth, jobs and property*, Report (May 1, 2011), <https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/internet-matters> (last visited Oct. 5, 2021).

⁷ Amazon, *Brand Protection Report* (May 2021), <https://assets.aboutamazon.com/96/a0/90f229d54c8c5072b2c4e021f7/amz-brand-report.pdf> (last visited Oct. 5, 2021); Amazon, *Amazon releases its first Brand Protection Report* (May 10, 2021),



percent of all Amazon page views by customers landed on pages that have never received a valid counterfeit-related complaint from rights owners or other customers. Every claim of potential counterfeit is investigated thoroughly, and in the rare instance where a bad actor gets through, Amazon takes swift action, including removing the allegedly infringing items, permanently banning bad actors, pursuing legal action, and working with law enforcement when appropriate. In 2020, Amazon seized and destroyed more than 2 million products sent to their fulfillment centers and that were detected as counterfeit before being sent to a customer.⁸

Furthermore, in 2017, Amazon launched Brand Registry, a free service that gives rights holders advanced tools to protect their brands. More than 500,000 brands are enrolled in Brand Registry, and those brands are finding and reporting 99 percent fewer suspected infringements than before the launch of Brand Registry.⁹ In 2018, Amazon launched Transparency, which effectively eliminates counterfeits for enrolled products. This service relies on unit-level serialization, where brands apply a unique 2D code (similar to a QR code) to every unit they manufacture, allowing Amazon, other retailers, law enforcement, and customers to determine the authenticity of each unit of that product in the supply chain.¹⁰ Since Transparency's launch in 2018, over 15,000 brands have enrolled, protecting over 500 million product units. In 2019, Amazon announced Project Zero, a new program that empowers brands to help Amazon drive counterfeits to zero by combining Amazon's advanced technology with the sophisticated knowledge that brands have of their own intellectual property, including how best to detect counterfeits of their products.¹¹ Other programs like IP Accelerator¹², the Utility Patent Neutrality Program, and the Counterfeit Crimes Unit¹³ have also recently launched to attack the issue from multiple angles. In short, Amazon's policies and innovative tools help buyers to feel confident in their purchases on Amazon stores.

eBay

As threats against consumers and rights holders evolve, eBay continuously seeks to improve its efforts to fight against counterfeiters and bad actors. eBay invests millions of dollars annually to fight unlawful listings, proactively deploying sophisticated technologies and investing heavily in partnerships with rights holders and governments across the globe to help protect consumers and support rights holders against bad actors. In 2020 alone, eBay proactively blocked or removed 31.5

<https://www.aboutamazon.com/news/company-news/amazon-brand-protection-report> (last visited Oct. 5, 2021).

⁸ *Id.*

⁹ Amazon Brand Registry, <https://brandservices.amazon.com/> (last visited Oct. 5, 2021).

¹⁰ Amazon Transparency, <https://brandservices.amazon.com/transparency> (last visited Oct. 5, 2021).

¹¹ Amazon Project Zero, <https://brandservices.amazon.com/projectzero> (last visited Oct. 5, 2021).

¹² Amazon IP Accelerator, <https://brandservices.amazon.com/ipaccelerator> (last visited Oct. 5, 2021).

¹³ Amazon, *Amazon establishes new Counterfeit Crimes Unit* (June 24, 2020), <https://www.aboutamazon.com/news/company-news/amazon-establishes-new-counterfeit-crimes-unit> (last visited Oct. 5, 2021).



million listings for intellectual property violations, and permanently suspended 53,000 users for intellectual property violations.¹⁴

eBay partners with more than 40,000 rights holders through its Verified Rights Owner (VeRO) program, which allows rights holders to quickly and easily report instances of alleged intellectual property infringement. eBay also works closely with governments and law enforcement around the globe to help ensure the safety of consumers and protect rights holders. In 2020, eBay removed 1.9 million listings following reports from third parties.¹⁵

In addition to the above-mentioned partnerships, eBay has multiple teams and tools in place focused on enforcing its policies and proactively identifying and addressing any generally suspicious or potentially harmful seller behavior. These efforts help eBay flag potentially problematic sellers, including sellers of counterfeit goods, and remove or prevent them from obtaining an eBay account in the first place. eBay's policies, teams, partnerships, and tools help create a global commerce platform that enables sellers, including hundreds of thousands of American entrepreneurs and small businesses, to sell their inventory, and buyers to find and purchase items, virtually anytime and anywhere. eBay's core purpose, since its founding in 1995, is to safely connect buyers and sellers through its marketplace and help American entrepreneurs, including small and micro-businesses, reach markets around the world. eBay's commitments to consumer safety and rights owner protection are longstanding and are at the center of its corporate values.

Etsy

Etsy has also made addressing intellectual property infringement a priority. Its Intellectual Property Policy reflects a commitment to the expeditious removal of the allegedly infringing material with responsible communication of such to its members and third parties. Etsy's Legal Response and Enforcement team reviews and responds to notices of alleged infringement on its site. In 2020, Etsy received nearly 4 million flags regarding potentially non-compliant listings, a 400% increase in flags from 2019 which resulted in a 58% increase in the number of intellectual property takedowns compared to 2019.¹⁶ In 2021, Etsy is investing \$40 million to expand its Trust and Safety program to expand content team reviews, evolve policies and target key categories.¹⁷ Etsy has also developed

¹⁴ eBay, *2020 Global Transparency Report* (May 2021), <https://www.ebaymainstreet.com/sites/default/files/2021-05/2020-eBay-Global-Transparency-Report.pdf> (last visited Oct. 5, 2021).

¹⁵ *Id.*

¹⁶ Etsy, *2020 Transparency Report*, https://storage.googleapis.com/etsy-extfiles-prod/Etsy_2020_Transparency_Report.pdf; see also, Corinne Pavlovic, *Etsy Releases 2020 Transparency Report* (May 17, 2021), <https://blog.etsy.com/news/2021/etsy-releases-2020-transparency-report/> (last visited Oct. 5, 2021).

¹⁷ *Id.*



Product Safety Principles, which focus on maintaining an environment that promotes trust and safety for buyers and sellers.¹⁸

Facebook

On Facebook and Instagram (collectively “Facebook”), Intellectual Property (IP) infringements are strictly prohibited in their respective Terms of Service and Terms of Use,¹⁹ as well as more specialized policies relating to ads²⁰ and commercial posts.²¹ Consistent with these policies, Facebook has collaborated closely with rights holders and invested heavily to build numerous measures to combat counterfeits. This enforcement is done both in response to rights holders’ IP reports as well as proactively—that is, before a rights holder ever needs to see an infringement and often before it even goes live. Indeed, as indicated in Facebook’s most recent Intellectual Property Transparency Report, from July to December 2020, the vast majority of content the company took action on for potential counterfeit violations were removed proactively.²² On Facebook, 99.7% of all counterfeit-related removals were done proactively, and on Instagram, 82.8% of all counterfeit-related removals were done proactively. Additionally, Facebook continues to invest significant resources into educating its users, including by publishing a centralized website that describes the range of our IP protection and anti-counterfeiting measures.²³

As part of its IP protection program, Facebook has established dedicated channels for rights holders to report infringing content, including a specific counterfeit channel.²⁴ Reports of alleged infringement are handled by a global IP Operations team that provides around-the-clock multilingual coverage, promptly removing reported content – often within minutes. Facebook’s Commerce & Ads IP Tool goes further, offering rights holders a dashboard they can use to easily search for and report ads, Shops content, Instagram posts with product tags, Marketplace posts, and group sale posts they

¹⁸ Corinne Pavlovic, *Our Commitment to the Trust and Safety of the Etsy Marketplace* (April 29, 2021), <https://blog.etsy.com/news/2021/our-commitment-to-the-trust-and-safety-of-the-etsy-marketplace/> (last visited Oct. 5, 2021).

¹⁹ Facebook, Advertising Policies, <https://www.facebook.com/policies/ads> (last visited Oct. 5, 2021); Instagram, Terms of Use, <https://help.instagram.com/581066165581870> (last visited Oct. 5, 2021).

²⁰ *Id.*

²¹ Facebook, Commerce Policies, <https://www.facebook.com/policies/commerce> (last visited Oct. 5, 2021); see also, Facebook, Sellers Agreement, https://www.facebook.com/legal/commerce_product_merchant_agreement (last visited Oct. 5, 2021).

²² Facebook, Transparency Center, Intellectual Property, <https://transparency.fb.com/data/intellectual-property/> (last visited Oct. 5, 2021).

²³ Facebook, *How Facebook helps protect against counterfeits*, <https://www.facebook.com/business/tools/anti-counterfeiting/guide> (last visited Oct. 5, 2021).

²⁴ Facebook, Counterfeit Report Form, <https://www.facebook.com/help/contact/counterfeitform> (last visited Oct. 5, 2021); Instagram, Counterfeit Report Form, <https://help.instagram.com/contact/instagramcounterfeitform> (last visited Oct. 5, 2021).



believe infringe their IP rights.²⁵ The Tool, built based upon feedback from rights holders, provides functionalities like searching Marketplace globally and searching all currently active ads by keyword, and in 2021, Facebook enhanced this Tool to allow for searching by images and filtering by price. Facebook also maintains comprehensive repeat infringer policies to disable profiles, Pages, and groups on Facebook, along with accounts on Instagram, where appropriate.²⁶

Facebook has launched several other proactive measures that target counterfeits. These include a pre-publication review of ads and commerce listings that uses technologies such as artificial intelligence and machine learning to identify suspicious indicators like keywords and discounts and, based on these indicators, to proactively block suspected counterfeits before they go live. Facebook also takes measures proactively to disable and/or reduce the visibility of suspected counterfeits on its organic surfaces as well, such as Facebook Pages and groups, and Instagram content, hashtags, and accounts.

These measures reflect Facebook's dedication to investing in systems, teams, and technologies to further enhance their IP enforcement capabilities. By collaborating closely with rights holders, Facebook has developed a robust IP program that continues to evolve to meet the needs of both rights holders and users.

Conclusion

IA appreciates the opportunity to provide comments to USTR that highlight some of the significant steps that IA member companies are taking to address copyright piracy and trademark counterfeiting. IA's member companies are committed to enforcing clear and effective terms of service and use and working closely with rights holders and law enforcement to combat counterfeiting. IA member companies are also creating innovative prevention and reporting tools to proactively takedown infringing content.

The proactive measures that IA member companies are implementing to remove, limit, and discourage the availability of counterfeit goods provide models that USTR should encourage, and that foreign platforms should emulate. In this way, USTR can further champion policies that empower people and businesses through a free and open internet; foster U.S. innovation; promote economic growth; and protect U.S. workers. IA looks forward to continuing to engage with USTR on these important issues.

²⁵ Facebook, Help Center, *What tools does Facebook provide to help me enforce my intellectual property rights in advertisements and sale posts?*, <https://www.facebook.com/help/835772913244854> (last visited Oct. 5, 2021); Facebook, Commerce & Ads IP Tool Application, <https://www.facebook.com/help/contact/423912757973851> (last visited Oct. 5, 2021).

²⁶ Facebook, *Updates to Our Brand Safety Controls and Intellectual Property Protection Tools* (March 23, 2021), <https://www.facebook.com/business/news/updates-to-facebook-brand-safety-controls-and-ads-ip-tool#> (last visited Oct. 5, 2021).