



Before the
Office of the United States Trade Representative
Washington, D.C.

In re:

2020 Review of Notorious Markets for
Counterfeiting and Piracy: Comment Request

Docket No. USTR-2020-0035
85 FR 62006

**COMMENTS OF
INTERNET ASSOCIATION**

Internet Association¹ (IA) appreciates the opportunity to provide comments on behalf of the association and its members 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 2020 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List).

IA represents over 40 of the world's leading internet companies. IA is the only trade association that exclusively represents leading global internet companies on matters of public policy. IA's mission is to foster innovation, promote economic growth, and empower people through the free and open internet. The internet creates unprecedented benefits for society, and as the voice of the world's leading internet companies, we ensure stakeholders understand these benefits.

Beginning in 2006, USTR identified notorious foreign markets in the annual Special 301 Report. In 2010, USTR announced that it would publish 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. The Notorious Markets List is intended to identify examples of foreign online platforms and physical markets that reportedly engage in and facilitate substantial copyright piracy or trademark counterfeiting. The list was always intended to be the worst actors outside U.S. jurisdiction that the U.S. government had no other mechanism or tools to go after.

IA members take protecting consumers from counterfeit goods seriously and the platforms work with brands to protect their intellectual property. IA member companies have taken the lead by implementing clear policies, proactively partnering with enforcement entities, and creating transparent and innovative counterfeit reporting and prevention tools that allow third parties to identify and remove counterfeit items listed for sale on their platforms in a timely manner. The high standards developed by IA member companies should be what foreign platforms strive to emulate.

In the last two decades, U.S. internet platforms have become a significant driver of the U.S. economy. The internet sector contributes 10.1 percent of the U.S. GDP and 4.0 percent of jobs (non-farm employment). IA estimates the internet sector supported another over 13.1 million indirect jobs and that the sector invested over \$60 billion into the economy.² Since the mid-90s consumers have increasingly been shopping online. In 2017, an estimated 1.66 billion people worldwide purchased goods online. During the same year, global e-retail sales amounted to \$2.3 trillion and projections show a growth of up to \$4.48 trillion by 2021.³ It is estimated that about 80 percent of internet users in the U.S. were expected to make at least one purchase online during the calendar year in 2019.⁴

¹<https://internetassociation.org/our-members/>

²<https://internetassociation.org/publications/measuring-us-internet-sector-2019/>

³<https://www.forbes.com/sites/ninaangelovska/2019/05/20/top-5-online-retailers-electronics-and-media-is-the-star-of-e-commerce-worldwide/>

⁴<https://www.pewresearch.org/fact-tank/2019/07/25/americans-going-online-almost-constantly/>



Internet platforms facilitate growth for the rest of the economy. Businesses of all sizes have embraced internet platforms to effectively and efficiently sell their goods and services. Buyers and sellers from around the globe are now connected instantaneously through internet platforms. Small businesses and entrepreneurs are harnessing the power of the internet to reach new markets, connect with new customers, and increase their productivity. The internet is also having a dramatic impact outside the internet industry. A recent study found 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.⁵

Unfortunately, a small percentage of bad actors misuse online services to offer counterfeit goods. While reports vary on the number of counterfeit goods sold, IA members that facilitate online sales are working hard to ensure consumers can feel safe buying online.

The following are a few examples of some of the transparent and innovative practices that internet companies have implemented.

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 in order to help protect consumers and support rights holders against bad actors. 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.⁶ eBay also works closely with governments and law enforcement around the globe to help ensure the safety of consumers and protect rights holders.

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 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.⁷ Etsy's Legal Response and Enforcement team reviews and responds to notices of alleged infringement on its site. In 2019, Etsy processed 33,920 properly submitted takedown notices, removing or disabling access to 470,533 listings from 96,876 sellers. It closed 13,906 shops for repeat infringement—more than double the amount of the previous year. When a shop on Etsy is closed for infringement, this termination also applies to any other shop Etsy considers to be related to the seller, including attempts to open new shops. Of all of the sellers whose shop content was taken down by intellectual property takedowns, 51 percent were in North America, 24 percent in Europe, and 18 percent in Asia.⁸

⁵ <https://www.mckinsey.com/industries/high-tech/our-insights/internet-matters>

⁶ <https://pages.ebay.com/seller-center/listing-and-marketing/verified-rights-owner-program.html>

⁷ <https://www.etsy.com/legal/ip/>

⁸ https://extfiles.etsy.com/advocacy/Etsy_2019_Transparency_Report.pdf



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 2019, Amazon’s global proactive efforts successfully prevented over 2.5 million suspected bad actor accounts from offering a single product for sale in their stores, blocked over 6 billion suspected bad listings from being published on its stores, and blocked and suppressed more than 100 million suspected fake reviews. Its efforts have also ensured that 99.9 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. Amazon continuously monitors the more than 45 million pieces of feedback received from customers each week searching for any indication of an issue. 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.

Furthermore, in 2017, Amazon launched the Brand Registry, a free service that gives rights holders advanced tools to protect their brands. More than 350,000 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. Since Transparency’s launch in 2018, over 7,500 brands have enrolled, protecting over 25,000 products, and preventing over 400,000 counterfeits from being sold. 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.¹⁰ Other programs like IP Accelerator, the Utility Patent Neutrality Program, and the Counterfeit Crimes Unit 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.

On Facebook and Instagram (collectively “Facebook”), IP infringements are strictly prohibited in their respective Terms of Service and Terms of Use,¹¹ as well as more specialized policies relating to ads¹² and commercial posts.¹³ 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. As part of its commitment to making its platforms safer for people and businesses to connect, share, buy, and sell, in 2019 Facebook launched a new centralized website¹⁴ describing its range of IP protection and anti-counterfeiting measures.

As part of its IP protection program, Facebook has established dedicated channels for rights holders to report infringing content, including a specific counterfeit channel.¹⁵ 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, Marketplace posts,

⁹ <https://brandservices.amazon.com/>

¹⁰ <https://brandservices.amazon.com/projectzero>

¹¹ <https://www.facebook.com/policies/ads>; <https://help.instagram.com/581066165581870>

¹² <https://www.facebook.com/policies/ads>

¹³ <https://www.facebook.com/policies/commerce>

¹⁴ <https://www.facebook.com/business/tools/anti-counterfeiting/guide>

¹⁵ <https://www.facebook.com/help/contact/counterfeitform>; <https://help.instagram.com/contact/instagramcounterfeitform>



and group sale posts they believe infringe their IP rights.¹⁶ The tool, built based upon feedback from rights holders, provides functionalities like searching Marketplace globally and searching all currently active ads by keyword. Facebook also maintains comprehensive repeat infringer policies to disable profiles, Pages, and groups on Facebook, along with accounts on Instagram, where appropriate.

Facebook has launched several other proactive measures that target counterfeits. These include a pre-publication review of ads and Marketplace posts, 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 products as well, such as Facebook Pages and groups, and Instagram content, hashtags, and accounts.

Internet platforms have created close relationships with law enforcement to combat counterfeit goods, including active engagement with U.S. Customs and Border Protection, the National Intellectual Property Rights Center, under the Department of Homeland Security, and other federal and state enforcement agencies. Platforms regularly report misconduct and help in supporting ongoing investigations, and several have proactively created training programs to ensure that law enforcement officials understand how the platforms work, and to provide information about evolving internet-based investigative techniques, and other emerging trends. IA member companies also encourage users to report illegal activities to appropriate authorities and have created links to facilitate such reporting.

Innovative prevention and reporting tools created by internet companies and effective partnerships with law enforcement and rights holders are vital to addressing the risks posed by counterfeit goods. IA appreciates the opportunity to provide comments on behalf of its member companies and to highlight some of the proactive policies these companies have implemented. Internet Association looks forward to continuing to engage with USTR on these matters in the future.

¹⁶ <https://www.facebook.com/help/835772913244854>; <https://www.facebook.com/help/contact/423912757973851>