



**Internet Association**

Testimony of K. Dane Snowden

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on

Cleaning Up Online Marketplaces: Protecting Against Stolen, Counterfeit, and  
Unsafe Goods

before the

U.S. Senate

Committee on the Judiciary

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Chairman Durbin, Ranking Member Grassley, and Members of the Committee, on behalf of Internet Association (IA)<sup>1</sup> and the U.S. internet industry, thank you for the opportunity to appear before the Committee today to discuss how online platforms are partners in the fight against illegal and counterfeit goods, retail theft, and protecting consumers from bad actors online.

Online marketplaces and platforms are the virtual main streets that have brought unprecedented choice to consumers, as well as a broadening market for entrepreneurs and small businesses. In households across America, consumers use online marketplaces and platforms to purchase essential goods without having to leave their homes, sell equipment, clothes, or electronics to someone who can put them to better use, and find new artists and vendors to decorate their homes—all with a click or swipe on a screen. The convenience and ease of access to goods that online platforms and marketplaces provide benefit everyone—consumers, small sellers, the creative community, big box retailers, and everyone in between.<sup>2</sup>

While the vast majority of online sellers and goods sold online are legitimate and have been a lifeline for people during the COVID-19 global pandemic, the internet industry recognizes that online systems have created new challenges for brand owners, rights holders, retailers, and consumers. Counterfeiting and retail theft are not new problems created by online platforms and marketplaces. As my testimony will demonstrate, we are on the right path to addressing these challenges on internet marketplaces and platforms.

Internet companies prohibit the sale of illegal or counterfeit goods on their online platforms and marketplaces. IA's member companies invest hundreds of millions of dollars in tools and

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<sup>1</sup> IA represents over forty of the world's leading internet companies, and we exclusively represent global internet companies on public policy. Our mission is to foster innovation, promote economic growth, and empower people through the free and open internet. Members, Internet Association, <https://internetassociation.org/our-members/> (last visited Oct. 22, 2021).

<sup>2</sup> McKinsey Global Institute, *Internet matters: The Net's sweeping impact on growth, jobs, and prosperity*, May 1, 2011, <https://www.mckinsey.com/industries/high-tech/our-insights/internet-matters> (finding that more than 75 percent of the economic value created by internet is captured by companies in traditional industries, many of them small businesses).

deploy thousands of team members to implement clear policies and offer counterfeit reporting and prevention tools. For example, online platforms and marketplaces vet sellers upfront through direct and indirect means and use advanced tools, like image detection and machine learning, as well as reports from brand owners, rights holders, and consumers to continuously monitor for any issues. Internet companies' partnerships with brand owners and rights holders are critical because they are in the best position to identify counterfeit goods. When internet companies find sellers, listings, or products that violate their terms of service, they do not put them on or they will take them off their platforms and marketplaces.

Beyond these efforts, IA and its member companies support the Chairman and Committee members' goals of further minimizing the availability of counterfeit and other illegal goods online. Based on our member companies' experience, IA encourages the Committee to consider two aspects when taking legislative actions that affect marketplaces and platforms, sellers, and consumers.

First, a national framework that clearly preempts a patchwork of state or local laws would ensure that Americans continue to receive a consistent internet experience nationwide. While states have an important law enforcement role to play in protecting consumers and stopping retail theft, federal law should be the sole source of regulation for internet companies that operate across state lines. Further, a nationwide framework will minimize compliance burdens and provide a consistent experience for small businesses and consumers that use online platforms and marketplaces.

Second, any information collection and disclosure requirements should be careful not to impose unnecessary burdens or barriers on small businesses who rely on online marketplaces and platforms to reach a global market. For example, as many online sellers are very small, home-grown operations, requiring small sellers to disclose specific information about themselves and their businesses would discourage them from using online marketplaces and platforms, and pose privacy and security risks for everyone involved. In adopting information

collection and disclosure requirements, Congress should consider their challenges by establishing reasonable thresholds and timelines and protecting their privacy.

For these reasons, we are encouraged by the version of the INFORM Consumers Act (H.R. 5502, 117th Congress) that was recently introduced in the U.S. House of Representatives. H.R. 5502 would set national expectations about the type of information that online platforms and marketplaces should collect about high-volume sellers and disclose to consumers, while recognizing burdens and risks to small businesses. IA and our member companies hope that today's hearing can continue the discussion about clear, reasonable requirements within a national framework.

IA and its member companies are partners in the fight to protect consumers and rights holders from the threats posed by fake goods and bad actors. By striking the right balance through clear, reasonable requirements within a national framework, online platforms and marketplaces can continue to provide convenient and safe opportunities to connect online sellers and consumers.

### **FOSTERING SAFE AND TRUSTWORTHY ONLINE PLATFORMS AND MARKETPLACES THROUGH PROACTIVE EFFORTS AND COLLABORATION.**

In the last two decades, U.S. internet platforms have become a significant driver of the U.S. economy,<sup>3</sup> including online marketplaces and platforms that have brought unprecedented choice to consumers, as well as a broadening market for entrepreneurs, small businesses, and the creative community. 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

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<sup>3</sup> 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. Internet Association, *Measuring The U.S. Internet Sector: 2019*, Sept. 26, 2019, <https://internetassociation.org/publications/measuring-us-internet-sector-2019/>.

projections showed a growth of up to \$4.48 trillion by 2021.<sup>4</sup> 80 percent of internet users in the United States were estimated to make at least one purchase online in 2019.<sup>5</sup>

As we all live through the COVID-19 global pandemic, online marketplaces and platforms have helped Americans meet the moment by delivering the essential and healthcare goods and products that consumers need to maintain their daily lives and keep our economy going. The pandemic has shown that online marketplaces and retailers have earned the trust of consumers and small businesses—as a record number of consumers turned to online platforms for their goods and services at the height of the pandemic.<sup>6</sup> A foundation of that trust has been removing millions of products from online marketplaces that were illegal, counterfeit or otherwise harmful. Consumers, businesses, and sellers must be able to trust the online systems they use to sell and purchase goods, and the internet industry is committed to fostering and solidifying that trust.

While the vast majority of online sellers and goods sold online are legitimate and have been a lifeline for people during the pandemic, the internet industry recognizes that online systems have created new challenges for brand owners, rights holders, retailers, and consumers. IA's member companies are addressing these challenges by investing hundreds of millions of dollars and deploying thousands of team members to implement clear policies and improve counterfeit reporting and prevention tools. Today, online platforms and marketplaces vet sellers with new tools like live-video and postcard verification, and they continue to monitor sellers using human reviewers and automated technologies, including image detection and

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<sup>4</sup> Nina Angelovska, Top 5 Online Retailers: 'Electronics and Media' Is The Star of E-commerce Worldwide, *Forbes* (May 20, 2019), <https://www.forbes.com/sites/ninaangelovska/2019/05/20/top-5-online-retailers-electronics-and-media-is-the-star-of-e-commerce-worldwide/>.

<sup>5</sup> Pew Research Center, *About three-in-ten U.S. adults say they are 'almost constantly' online*, March 26, 2021, <https://www.pewresearch.org/fact-tank/2019/07/25/americans-going-online-almost-constantly/>.

<sup>6</sup> Keith Nealon, *How Covid-19 Changed Retail – Probably Forever*, *Forbes* (Jul. 22, 2021), <https://www.forbes.com/sites/forbesbusinesscouncil/2021/07/22/how-covid-19-changed-retail---probably-forever/?sh=195f7c52145c> (highlighting that pandemic accelerated shift to e-commerce by about five years).

machine learning. Online marketplaces and platforms also ensure that consumers can flag concerns by prominently displaying links and buttons to report items that may not comply with their terms of use.

These efforts have helped to mitigate risks to consumers and block counterfeiters. Last year, Amazon’s Transparency program helped to block more than ten billion suspected bad listings from ever being published. Similarly, eBay’s Verified Rights Owner program works with 40,000 individual rights holders to identify intellectual property infringement.<sup>7</sup> Etsy has also doubled the size of its Trust & Safety team to better detect and remove prohibited items—leading to a 58 percent increase in the number of intellectual property-related take downs as compared to 2019.<sup>8</sup> More detail on these and other programs is provided in an Addendum to this testimony.

In the pandemic, the proactive and flexible efforts of online platforms and marketplaces has been essential to quickly acting against bad actors that are devising new schemes to defraud people online. These pandemic scams ranged from the offering of fraudulent COVID-19 vaccines and cures, to fake websites falsely claiming to provide customers with “pandemic essentials.”<sup>9</sup> Online platforms and marketplaces reacted quickly—sometimes removing specific products and otherwise issuing broader warnings for buyers to be aware.<sup>1</sup> While scammers used the pandemic to prey on vulnerable Americans, the internet industry worked to protect the health and safety of American consumers during this unprecedented crisis.

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<sup>7</sup> Verified Rights Owner Program, eBay, <https://pages.ebay.com/seller-center/listing-and-marketing/verified-rights-owner-program.html> (last visited Oct. 27, 2021).

<sup>8</sup> Etsy 2020 Transparency Report, <https://blog.etsy.com/news/2021/etsy-releases-2020-transparency-report/> (last visited Oct. 27, 2021).

<sup>9</sup> FBI Urges Vigilance During COVID-19 Pandemic, FBI, <https://www.fbi.gov/coronavirus> (last visited Oct. 27, 2021); Lesley Fair, *Seven Coronavirus scams targeting your business*, FTC BUSINESS BLOG (Mar 25, 2020, 1:33 PM), <https://www.ftc.gov/news-events/blogs/business-blog/2020/03/seven-coronavirus-scams-targeting-your-business>.

<sup>1</sup> During one point in the pandemic, Google was blocking approximately eighteen million scam emails every day. See Joe Tidy, *Google blocking 18m coronavirus scam emails every day*, BBC News (Apr. 17, 2020), <https://www.bbc.com/news/technology-52319093>.

Along with pursuing their own initiatives, internet companies are working to keep online platforms and marketplaces safe and trustworthy by collaborating directly with brand owners, retailers and law enforcement. IA's member companies have invested heavily in developing collaborative and productive relationships with brands across industries and around the world. Our member companies rely on these partnerships because trademark holders are in the best position to know when a good is fake, unsafe or infringes on their rights based on the quality, design and product's specifications. Notably, online platforms may never possess the counterfeit goods, and cannot examine them for signs of counterfeiting, even if they knew what to look for. Further, online platforms and marketplaces may not know whether brand owners have authorized third-party sellers. For these reasons, cooperation with brand owners is fundamental to mitigating the threats of counterfeit listings and making the online environment as safe and trustworthy as possible for businesses and consumers.

The internet industry is also committed to partnering with federal, state and local law enforcement to minimize transactions involving counterfeit goods and combat retail theft and other organized retail crime that may utilize online platforms and marketplaces.<sup>2</sup> At the federal level, IA's member companies work closely with U.S. Customs and Border Protection, the National Intellectual Property Rights Center, as well as other state and federal agencies. State and local law enforcement have also set up inter-agency task forces that seek to combat the growing threat of organized retail crime. For example, Illinois Attorney General Kwame Raoul recently established the Organized Crime Retail Task Force to foster cooperation among retailers, online marketplaces, law enforcement agencies and state's attorneys dedicated to targeting organized retail crime enterprises.<sup>3</sup> These partnerships are all important, as they allow law enforcement to share information to trace thefts to their source and minimize the

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<sup>2</sup> In 2019, theft, fraud, and losses from other retail theft totaled \$61.7 billion—an increase of \$50.6 billion from 2018. See National Retail Security Survey 2020, <https://nrf.com/research/national-retail-security-survey-2020> (last visited Oct. 27, 2021).

<sup>3</sup> Press Release, *Attorney General Announces Public-Private Partnership Aimed at Disrupting Organized Retail Crimes*, Office of the Illinois Attorney General (Sep. 3, 2021), available at [https://illinoisattorneygeneral.gov/pressroom/2021\\_09/20210913.html](https://illinoisattorneygeneral.gov/pressroom/2021_09/20210913.html).

threats that organized retail crimes pose to retailers, online platforms, and marketplaces and consumers.

**THE CURRENT LEGAL REGIME APPROPRIATELY BALANCES OBLIGATIONS TO MAINTAIN SAFE ONLINE PLATFORMS AND MARKETPLACES WHILE PROTECTING RIGHTS HOLDERS.**

Beyond the proactive efforts and collaborations that the internet industry undertakes on its own initiative, existing law appropriately incentivizes online marketplaces and platforms to readily collaborate with rights holders to protect intellectual property and prevent counterfeit or infringing products from being sold online.<sup>13</sup> If a listing is uploaded by a third-party seller that violates intellectual property rights, such as with counterfeit products protected by a design patent, online marketplaces may not willfully turn a blind eye to this illegal activity.<sup>4</sup> In the context of content, the Digital Millennium Copyright Act (DMCA) appropriately recognizes that rights holders are in the best position to protect their property by requiring them to notify online platforms of infringing content.<sup>15</sup> Online marketplaces and platforms commonly adopt a precautionary policy of then removing the allegedly infringing content after receiving notice from the rights holder.<sup>5</sup> Importantly, there is no one-size-fits-all solution to preventing the exchange of counterfeit and illegal goods. As brand owners, rights holders, and online marketplaces and platforms are working collaboratively, any new laws should maintain the careful balance afforded by existing laws to deal with evolving challenges.

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<sup>13</sup> See *Inwood Labs v. Inves Labs.*, 456 U.S. 844 (1982) (holding that liability for trademark infringement can extend beyond those who actually mislabel goods with mark of another, and recognizing that cause of action exists against intermediaries who induce others to infringe, or that have continued to supply while being aware of specific instances of infringement).

<sup>4</sup> See *Glob.-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 766–68 (2011) (holding that willful blindness does not protect against claims that person or entity induced infringement of patent).

<sup>15</sup> See Pub. L. No. 105-304, 112 Stat. 2860 (Oct. 28, 1998).

<sup>5</sup> See, e.g., *Verified Rights Owner Program*, eBay, <https://pages.ebay.com/seller-center/listing-and-marketing/verified-rights-owner-program.html> (last visited Oct. 28, 2021) (describing eBay's policy of taking down listings after receiving complaint of patent infringement).



**ONLINE SELLER INFORMATION COLLECTION AND DISCLOSURE REQUIREMENTS SHOULD ESTABLISH A CLEAR, REASONABLE, AND NATIONAL FRAMEWORK.**

As previously mentioned, IA and our member companies support further minimizing the availability of counterfeit and other illegal goods online. In the pursuit of legislative action, and based on its experience, the internet industry encourages the Committee to consider: (1) the importance of a national framework, set through the preemption of state or local laws, that maintains a consistent, nationwide internet experience for sellers and consumers;<sup>19</sup> and (2) establishing clear, reasonable thresholds and terms for the type of information collected from sellers and disclosed to consumers. While the current versions of the SHOP SAFE Act (S. 1843, 117th Congress), INFORM Consumers Act (S. 936, 117th Congress), and SANTA Act (S. 3073, 116th Congress) under consideration in the Senate could better address these issues, we are eager to work with the Committee to establish clear, reasonable requirements within a national framework.

As IA noted in testimony before a U.S. House of Representatives Subcommittee on Courts, Intellectual Property and the Internet earlier this year,<sup>17</sup> the SHOP SAFE Act could significantly burden and hinder online marketplaces and platforms by creating new legal liabilities based on broad and unworkable terms that run counter to the carefully balanced existing law. The SHOP SAFE Act would make an online platform liable for contributory trademark infringement by third-party sellers of goods that “implicate health and safety” unless the platform takes certain actions. The legislation defines goods that “implicate health and safety” as essentially anything that could cause an injury or illness if produced not in compliance with federal, state, and local law as well as industry standards. Such a broad definition could potentially cover any good available on online marketplaces and platforms and carry an expectation that online

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<sup>19</sup> See *Arizona v. United States*, 567 U.S. 387, 399 (2012) (“There is no doubt that Congress may withdraw specified powers from the states by enacting a statute containing an express preemption provision”).

<sup>17</sup> Testimony of Jonathan Berroya Before the Subcomm. on Courts, Intellectual Property, and the Internet of the H. Comm. On the Judiciary 117th Cong (2021).

marketplaces and platforms know whether goods sold were produced in compliance with all applicable law and standards, which is a threshold to avoid liability that cannot be met.

Viewed from another angle, under a constant threat of liability, the SHOP SAFE Act would require online marketplaces and platforms to use “reasonable proactive” technological tools to scan nearly every third-party listing or advertisement that includes a trademark, and to rely on such automated processes to make determinations that brand-trained experts are expected to make in every other legal context. At the same time, by threatening platforms with legal liability if they fail to take action to remove potential “false positives,” the SHOP SAFE Act would incentivize over-enforcement at a potentially massive scale and risk undermining the convenient online experience that consumers expect. Further, the SHOP SAFE Act would mandate that companies impose punitive consequences on sellers and would not permit online platforms and marketplaces to afford due process to sellers who may be able to assert that their use of a trademark was valid.

The SHOP SAFE Act, the INFORM Consumers Act, and the SANTA Act would also require online marketplaces and platforms to investigate, periodically confirm, and publish information of third-party sellers to determine their veracity to sell goods. Despite exceptions in these bills, many entrepreneurs and small businesses would be forced to choose between listing personal information—like phone numbers, email addresses, and physical addresses—along with their online product listing, or avoid online marketplaces and platforms, drastically limiting their potential customer base.

Given our concerns with these bills and interest in clear, reasonable requirements within a national framework, the version of the INFORM Consumers Act that was recently introduced in the U.S. House of Representatives (H.R. 5502) is encouraging. Importantly, H.R. 5502 contains an express preemption provision—establishing a national framework to enable online platforms and marketplaces to identify bad actors and prevent them from harming consumers nationwide. As multiple states have either passed, or are considering, various INFORM

Consumers Acts,<sup>18</sup> a patchwork of state approaches would cause inefficiencies and burdens for internet companies and sellers and undermine the consistent nationwide online experiences that consumers expect. H.R. 5502 also provides online marketplaces and small businesses with greater flexibility in the disclosure requirements for high-volume third-party sellers, as well as the timeframes for verifying sellers' information. Further, H.R. 5502's thresholds, collection, and reporting terms would enable online marketplaces and sellers to effectively meet the enumerated requirements of the legislation, while protecting the information of small businesses and entrepreneurs.

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IA and its member companies are partners in the fight to protect consumers and rights holders from the threats posed by counterfeit goods and bad actors. The internet industry believes that clear, reasonable requirements within a national framework would best enable online platforms and marketplaces to continue providing convenient and safe opportunities to connect online sellers and consumers.

Thank you again for the opportunity to appear today. The internet industry looks forward to further discussions with the Committee on these matters.

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<sup>18</sup> Makers and Merchants Coalition, About INFORM and State Bills Page, *available at* <https://makersandmerchantscoalition.com/inform-act-and-state-bills-page/> (last visited Oct. 27, 2021).

## **ADDENDUM**

IA would like to provide further details on specific actions that its member companies are taking to ensure a safe and legal online marketplace.

### **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 blocked more than ten billion suspected bad listings before they were published in its stores. It invested over \$700 million to protect its stores from fraud and abuse, and employed more than 10,000 people for that same purpose. Previously, 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, 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. In the rare instance where a bad actor is successful, Amazon takes action and (1) removes the allegedly infringing items, (2) permanently bans bad actors, (3) pursues legal action, and (4) works 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. In 2020, more than 500,000 brands were enrolled in Brand Registry. On average, those enrolled brands reported 99% reduction in suspected infringements than prior to the launch of the service.<sup>6</sup>

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. In 2020, more than 15,000 brands were using Transparency. The service has enabled the protection of more than 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

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<sup>6</sup> *Amazon brand registry*, Amazon, available at <https://brandservices.amazon.com/> (last visited Oct. 27, 2021).

best to detect counterfeits of their products.<sup>7</sup> In 2020, there were more than 18,000 brands enrolled in Project Zero. For every listing removed by a brand through the self-service counterfeit removal tool, automated protections removed more than 600 listings through scaled technology and machine learning that proactively addresses potential counterfeits and stops those listings from appearing in the store.

Other programs like IP Accelerator, the Utility Patent Neutrality Program, and the Counterfeit Crimes Unit have also recently launched to attack the issue of counterfeiting from multiple angles. In short, Amazon's policies and innovative tools help customers 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.

eBay partners with more than 40,000 rights holders through its Verified Rights Owner program, allowing rights holders to quickly and easily report instances of alleged intellectual property infringement.<sup>8</sup> 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 those 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 and remove potentially problematic sellers, including sellers of counterfeit goods, or prevent these harmful actors 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,

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<sup>7</sup> *Amazon projectZERO*, Amazon, available at <https://brandservices.amazon.com/projectzero> (last visited Oct. 27, 2021).

<sup>8</sup> *Verified Rights Owner Program*, eBay, available at <https://pages.ebay.com/seller-center/listing-and-marketing/verified-rights-owner-program.html> (last visited Oct. 27, 2021).

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 is committed to maintaining an environment that promotes trust and safety for its vibrant community of buyers and sellers. When sellers open a shop on Etsy, they agree to Etsy's Seller Policy,<sup>9</sup> which outlines their rights as well as the platform's expectations. This includes adhering to the Prohibited Items Policy, which asks users to consider the safety of others when listing goods. Beyond Etsy's seller policies, it also seeks to reinforce appropriate product safety practices, which are reflected in its Product Safety Pledge.<sup>10</sup>

In 2020, Etsy received close to 4 million flags regarding potentially noncompliant listings, a 400% increase in flags from 2019 (breaches of its handmade policy were among the most commonly flagged violations). This increase is in large part due to the exponential growth of the marketplace last year. The vast majority of flags were generated by Etsy's internal automated systems and Etsy's enforcement scaled with the marketplace. In 2020, 20 percent of shop and listings flags came from users in comparison to the 80 percent generated from Etsy's tools—a proportion that remained consistent with 2019. Overall, Etsy saw a 58 percent increase in the number of intellectual property related takedowns compared to 2019.<sup>11</sup>

In addition to upholding Etsy's commitment to transparency, it has worked to scale its policy enforcement resources, allowing it to better detect and remove prohibited items. In the last two years, Etsy has nearly doubled the size of its Trust & Safety team, adding more monitoring capabilities. This includes growing its Content Moderation team by five times and adding a new Handmade & Counterfeit team dedicated to fighting counterfeits and handmade violations.

Since the beginning of last year, Etsy has significantly increased its investments in Trust & Safety technology, including building a dedicated trust and safety machine learning engineering team and exploring computer vision technology, with the goal of using powerful algorithms to drive improvements in the precision of automated risk detection. Etsy has taken steps to ensure that Etsy sellers are positioned for success by making its policies easy to

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<sup>9</sup> *Etsy's Seller Policy*, Etsy, available at <https://www.etsy.com/legal/section/sellers> (last visited Oct. 27, 2021).

<sup>10</sup> *Product Safety Pledge*, Etsy, available at <https://medium.com/etsy-impact/etsy-joins-eu-product-safety-pledge-46e22b608eea> (last visited Oct. 27, 2021).

<sup>11</sup> Corinne Pavlovic, *Etsy Releases 2020 Transparency Report*, ETSY NEWS (May 17, 2021), available at <https://blog.etsy.com/news/2021/etsy-releases-2020-transparency-report/>.

understand, refining its violation notification process, and providing resources so that sellers can get help when they have questions about their compliance.<sup>12</sup>

## **Facebook**

Facebook is committed to protecting intellectual property rights and many U.S. businesses—large and small—choose to use its platforms every month to reach customers and grow their business. Facebook also shares the concerns of industry stakeholders that, in addition to harming user trust and safety, counterfeiting harms the economic interests of rights holders—many of whom are Facebook’s business partners and use its services to reach their audiences.

Facebook believes robust anti-counterfeiting enforcement is important for all stakeholders, which is why Facebook prioritizes the fostering of an online community that encourages the sharing of lawful content. Consequently, Facebook among other things, implements extensive measures and is transparent regarding the steps it takes to protect the intellectual property rights of others.<sup>13</sup>

As part of its IP protection program, Facebook has established dedicated channels for rights holders to report infringing content, including a specific counterfeit channel.<sup>14</sup> 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 Brand Rights Protection goes further, offering enrolled rights holders a streamlined interface to easily identify and report infringing content. Built based on rights holder feedback, the tool provides the ability to search text and images and to report counterfeit, trademark, or copyright infringement in ads on Facebook or Instagram, Shops content, Instagram posts with product tags, Marketplace posts, and group sale posts.<sup>15</sup>

Facebook also maintains comprehensive repeat infringer policies to disable profiles, pages, and groups on Facebook, along with accounts on Instagram, where appropriate.

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<sup>12</sup> Corinne Pavlovic, *Our Commitment to the Trust and Safety of the Etsy Marketplace*, ETSY NEWS (Apr. 29, 2021), available at <https://blog.etsy.com/news/2021/our-commitment-to-the-trust-and-safety-of-the-etsy-marketplace/>.

<sup>13</sup> For more information, see *Protect Your Intellectual Property*, available at <https://www.facebook.com/business/learn/lessons/protect-intellectual-property-rights-manager> (last visited Oct. 27, 2021).

<sup>14</sup> *Counterfeit Report Form*, Facebook, available at <https://www.facebook.com/help/contact/counterfeitform> (last visited Oct. 27, 2021); *Counterfeit Report Form*, Instagram (last visited Oct. 27, 2021).

<sup>15</sup> *About Brand Rights Protection*, Facebook, available at <https://www.facebook.com/business/help/828925381043253?id=4533021280101097> (last visited Oct. 27, 2021).

Additionally, IP infringements are strictly prohibited in Facebook’s and Instagram’s respective Terms of Service and Terms of Use,<sup>16</sup> as well as more specialized policies relating to ads and commercial posts.<sup>17</sup>

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 dedicated website<sup>18</sup> describing its range of IP protection and anti-counterfeiting measures.

Facebook has also 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 further 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.

In May 2021, Facebook published its semiannual Transparency Report, which for the first time included data relating to the amount of content it removes proactively as<sup>19</sup> potentially infringing IP rights. Notably, the data show that from July to December 2020, the vast majority of content Facebook took action on for counterfeit-related violations was removed proactively.

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<sup>16</sup> *Terms of Service*, Facebook, (last visited Oct. 27, 2021); *Terms of Use*, Instagram, available at <https://help.instagram.com/581066165581870> (last visited Oct. 27, 2021).

<sup>17</sup> *Commerce Policies*, Facebook, available at [https://www.facebook.com/policies\\_center/commerce/](https://www.facebook.com/policies_center/commerce/) (last visited Oct. 27, 2021).

<sup>18</sup> *How Facebook helps protect against counterfeits*, Facebook for Business, available at <https://www.facebook.com/business/tools/anti-counterfeiting/guide#:~:text=We%20have%20automated%20systems%20that,that%20may%20be%20selling%20counterfeits> (last visited Oct. 27, 2021).

<sup>19</sup> *Intellectual Property Transparency Report*, Facebook, available at <https://transparency.fb.com/data/intellectual-property/> (last visited Oct. 27, 2021).