



August 26, 2025

Coke M. Stewart
Acting Undersecretary of Commerce of Intellectual Property
Acting Director, U.S. Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

Submitted via: <https://regulations.gov>

Re: Request for Comments on OECD's Working Party on Countering Illicit Trade (WP-CT) Draft Voluntary Guidelines for Countering Illicit Trade in Counterfeit Goods on Online Marketplaces

Dear Acting Director Stewart:

Intellectual Property Owners Association (IPO) appreciates the opportunity to respond to the United States Patent and Trademark Office's (USPTO) request for comments on the Organisation for Economic Co-operation and Development (OECD) Draft Voluntary Guidelines for Countering Illicit Trade in Counterfeit Goods on Online Marketplaces (the "Guidelines"), published in the *Federal Register* on May 19, 2025.

IPO is an international trade association representing a "big tent" of diverse companies, law firms, service providers, and individuals in all industries and fields of technology that own, or are interested in, intellectual property rights. IPO membership includes over 125 companies and spans over 30 countries. IPO advocates for effective and affordable IP ownership rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current IP issues; providing information and educational services; supporting and advocating for an IP system that enables innovation and creativity; and disseminating information to the public on the importance of IP rights. IPO's vision is the global acceleration of innovation, creativity, and investment necessary to improve lives.

IPO thanks the USPTO and OECD for their efforts in drafting and negotiating these Guidelines. These comments primarily reflect the views of U.S.-based rights holders, many of whom advise or represent multinational companies with global anti-counterfeiting programs. This response consists of several general comments regarding the Guidelines, followed by several specific comments on provisions or sections of the Guidelines.

General Comments

1. Need for Regulation of Online Marketplaces

Rights holders face significant challenges in monitoring and taking action against counterfeiters operating across an ever-expanding number of online marketplaces. The volume, speed, and anonymity of digital commerce makes it difficult for even the most sophisticated rights holders to keep pace. IPO believes that governments must play a primary and proactive

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role in regulating online marketplaces to ensure they adopt robust, consistent, and transparent anti-counterfeiting measures.

2. Need for International Cooperation

International cooperation is essential to combatting global illicit trade. IPO supports the inclusion of Section 3.5 in the Guidelines, outlining the need for government partnerships and greater enforcement of new and existing international agreements against the trade of counterfeit goods across multiple jurisdictions.

3. Need to Raise the Compliance Bar for Marketplaces

The current draft Guidelines set a low threshold for marketplace compliance. Voluntary actions have not stemmed the tide of counterfeit goods online. IPO recommends strengthening the Guidelines to create financial incentives for marketplaces to implement effective enforcement policies to combat counterfeit goods. IPO supports the inclusion of sanctions in Section 3.3c against online marketplaces with patterns of not expeditiously removing listings of counterfeit goods.

4. Litigation Is Not a Practical Solution

Litigation is often not a viable recourse for rights holders. The cost and complexity of bringing legal action against anonymous or foreign counterfeiters—especially across multiple platforms—are prohibitive. This reality underscores the importance of strong marketplace regulations and Terms of Service, rather than reliance on post-sale litigation to protect consumers and safeguard rights holders' intellectual property.

5. Support for Government Action Against Repeat Offenders

IPO supports the inclusion of measures that allow marketplaces to take action against repeat offenders, with the support of governments. The development of government-managed registers or watch lists of bad actors would be a valuable tool in preventing repeat counterfeiters from continuing to profit from illicit activity.

6. Need for Information Sharing and Centralized Databases

Effective enforcement is hindered by the lack of information sharing among marketplaces, rights holders, and consumers. IPO recommends that the Guidelines promote the creation of a centralized, secure repository of information regarding repeat offenders and suspicious activity. Marketplaces should be required to contribute to and consult this resource in order to proactively block and prevent repeat infringers from reappearing on their platforms, while maintaining secrecy of confidential information.

7. Standardized Metrics for Marketplace Accountability

IPO strongly supports the concept of measuring online marketplaces' anti-counterfeiting activities through the development and use of standardized, transparent metrics, which could enable regulators, rights holders, and the public to assess and compare the effectiveness of different platforms in combatting counterfeits. This would also incentivize marketplaces to continuously improve their practices.

8. Need to Address Online-to-Offline Counterfeiting

Although the Guidelines aim to address counterfeiting via online marketplaces, IPO wishes to comment on and draw attention to the growing trend of counterfeiters promoting counterfeit goods through online platforms, only to consummate transactions of counterfeit goods either offline or through direct-to-consumer correspondence (e.g., text message, messaging apps, social media groups, etc.). This may be beyond the purview of the draft Guidelines, but is an increasing problem that the USPTO and OECD may wish to recognize in connection with these Guidelines.

Specific Comments

22. Governments should:

a. Work together with online marketplace operators and rights holders, within and across jurisdictions, to:

- i. Coordinate efforts to disrupt online trade in counterfeit goods.*
- ii. Share, where appropriate, information and intelligence on the identity and methods, respectively, of the parties involved in the online trade in counterfeit goods.*
- iii. Engage actively with one another in anti-counterfeiting enforcement activities.*

Comment: A fourth bullet point should be included requiring governments to provide training to law enforcement on identifying and enforcing against online counterfeiting.

30.a *Online marketplace operators should: Consider monitoring their online marketplaces in a proactive manner, with a view towards detecting counterfeit goods, which would include the screening of listings, where possible prior to their being posted on the platforms, with a view towards identifying potentially counterfeit goods.*

Comment: IPO recommends removing “Consider monitoring” and instead starting this section with “Monitor.” Platforms should be proactively screening and monitoring sellers as well as listings. Proactive measures should be shared with rights holders that have established accounts with the online marketplaces, as highlighted in Section 32.b, to assist in offline investigations. Finally, online marketplaces should ensure that listings and sellers are proactively screened and taken down when regulated products that are not allowed to be sold on their platforms are being offered.

30.e *Online marketplace operators should: Explore how advanced screening technologies, such as image fingerprinting, can be used to facilitate the identification of counterfeit goods*

Comment: If marketplaces adopt tools such as image fingerprinting, such information should be shared among marketplaces, excluding proprietary information.

34.a *Online marketplace operators should: Remove listings and suspend sales of goods that are subject to a notification promptly, as soon as the allegations of counterfeiting have been examined and confirmed; in the case of government enforcement authorities and rights holders with strong notification and takedown records, action should be taken on an expedited basis. If third-party sellers contest actions, listings should only be restored and suspensions should only be lifted once their counterclaims have been reviewed and confirmed.*

Comment: IPO supports these recommendations but would add that marketplaces should be required to sequester inventory that has been determined to be counterfeit and that is in their custody or control (e.g., goods held at their premises or in their supply chain).

34.b *Online marketplace operators should: Inform concerned rights holders, third-party sellers and government enforcement authorities of actions taken to remove or restore listings of counterfeit goods.*

Comment: The Guidelines should include and consider focusing on removing *sellers* rather than specific *listings*.

34.d *Online marketplaces should: Provide rights holders with written explanations when actions are taken on their counterfeiting claims, including actions to remove or restore listings.*

Comment: Collaboration between private and public stakeholders is critical to combat the sale of counterfeit goods on online marketplaces. IPO recognizes many online marketplaces participate in a wide variety of public and private initiatives—such as the European Commission’s Memorandum of Understanding (MOU) initiative—that bring together rights holders and online marketplaces to share best practices and develop creative solutions. Although online marketplaces are often constrained by privacy laws, such information sharing is very important for driving progress and should continue to be pursued within the confines of local regulations.

38. *Online marketplace operators should:*

- a. Ensure that consumers that purchase confirmed counterfeit goods on their platforms:

 - i. Are provided with information on how to obtain redress when they have purchased counterfeit goods.*
 - ii. Are provided with support in their efforts to obtain refunds from third-party sellers.**
- b. Consider providing refunds to consumers directly, in the event that consumers are unable to obtain refunds from a third-party seller, or other parties that might be involved in the sale of the counterfeit good.*
- c. Withhold payments to third-party sellers for counterfeit goods sold on their platforms, when they are in position to do so, in cooperation with payment providers, where appropriate.*
- d. Support consumers in obtaining redress from other parties for any further harm that may have been caused by the counterfeit goods sold on their platforms.*

Comment: IPO agrees that marketplaces should have a financial stake in the use of their platforms to peddle counterfeit goods and consumers should not bear the sole or primary risk of purchasing counterfeit goods. The Guidelines should also consider whether to recommend that marketplaces reimburse rights holders for their costs incurred in purchasing test products which are subsequently determined to be counterfeit.

40.a *Online marketplace operators should: Indicate clearly whether a listing for a good offered for sale on their platforms is being sold or fulfilled by the i) online marketplace operator or ii) a third party.*

Comment: IPO recommends adding that marketplaces must “clearly attribute the third-party source of the goods” to show which third party is fulfilling the goods offered for sale. In some cases, platforms offer goods for sale without attributing to the source, which may confuse consumers into believing that they are purchasing the goods from the rights holder.

40.c Online marketplace operators should: Take measures to help ensure that their listings containing offers from multiple sellers do not contain ones for counterfeit goods, and encourage third-party sellers to do the same.

Comment: The Guidelines should be revised to address the bigger issue of marketplaces commingling together counterfeit and genuine goods in their inventories, not just allowing both counterfeit and authentic goods under the same listing, such that it becomes nearly impossible for the marketplace to sequester goods determined to be counterfeit or to distinguish between counterfeit and genuine goods when fulfilling an order.

40.e Online marketplace operators should: Collect and publish consumer reviews on verified third-party sales that provide information on i) the performance of the third-party sellers and ii) the quality of the purchased goods.

Comment: IPO recommends that marketplaces allow for comments and consumer reviews to be tied to a specific *seller* rather than a *listing* so consumers can help identify sellers who are offering counterfeit goods.

42.a Online marketplace operators should: Collect and verify information on the name, physical address, working phone number and email address of third-party sellers. Such information should, when possible, be supported by official government-issued documentation, including trade registers and tax records. Where applicable, information on the registration of a business in a jurisdiction should also be collected and verified. Information should be subject to periodic reverification.

Comment: To help alleviate the difficulties in vetting seller information, the Guidelines should consider whether to require a verified e-commerce seller ID, which sellers could use across marketplaces and which would be tied to a specific business or individual across all online marketplaces.

43.b Online marketplace operators should conclude terms of service agreements with third-party sellers that among other things: Permit an online marketplace operator to i) conduct investigations on third-party sellers of counterfeit goods and/or ii) impose sanctions on those sellers.

Comment: The Guidelines should consider stating that Terms of Service should allow marketplaces to conduct onsite inspections of sellers’ inventory. Some products must be stored in certain conditions to ensure their quality and effectiveness (e.g., refrigeration of certain goods). The Terms of Service should account for this.

43.c Online marketplace operators should conclude terms of service agreements with third-party sellers that among other things: Permit an online marketplace operator to permanently

suspend or terminate a third-party seller, and any known related seller profiles, from a marketplace for major infractions and/or infractions involving repeat infringements.

Comment: Marketplaces should include in their Terms of Service that they are permitted to share information about known counterfeiters with government entities, other marketplaces, consumers, and rights holders. It is critical that Terms of Service allow for sharing relevant information that may otherwise be protected by privacy laws in a given jurisdiction.

45. Online marketplace operators should:

- a. Work together with governments and rights holders, within and across jurisdictions, to:

 - i. Coordinate efforts to disrupt online trade in counterfeit goods.*
 - ii. Share, where appropriate, information and intelligence on the identity and methods, respectively, of the parties involved in the online trade in counterfeit goods.*
 - iii. Engage actively with one another in anti-counterfeiting enforcement activities.**
- b. Actively apply the sanctions provided for in their terms of service agreements with third-party sellers.*

Comment: IPO believes this is a very important point to include and agrees marketplaces should be encouraged to work together to further the identified aims in this paragraph.

47.a Online marketplace operators should:

- a. Work together with governments and rights holders to develop effective joint campaigns to:

 - i. Raise consumer awareness of the damaging impacts of counterfeiting on individuals and economies, including the potential health and safety risks.*
 - ii. Discourage parties from knowingly engaging in online trade in counterfeit goods, underscoring the legal and economic consequences of doing so.**

Comment: In addition to collaboration with governments and rights holders, marketplaces should be encouraged to partner directly with one another in furtherance of these aims. By coordinating cross-platform campaigns, marketplaces can share resources, pool insights on counterfeit and illicit behaviors on their platforms and drive greater reductions in counterfeit activity.

47.c Online marketplace operators should:

- c. Prepare public reports annually on the measures that they have taken to combat trade in counterfeit goods on their marketplaces and provide an assessment of the effectiveness of these measures. The reports should:

 - i. Identify the major types of goods that were subject to takedowns.*
 - ii. Include indicators that would enhance insights into trends and developments in takedowns.*
 - iii. Provide information on developments and trends in the different jurisdictions in which they operate.*
 - iv. Not reference specific rights holders, without their consent.**

Comment: IPO agrees annual public reports are a valuable step towards transparency and encourages OECD to provide specific indicators to be included in annual reports to enhance insights into takedowns and enable stakeholders to assess and compare marketplace

performance more effectively while ensuring protection of marketplace operator's confidential information

Conclusion

IPO thanks the USPTO and OECD for their work on the Guidelines, the opportunity for review, and consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Krish Gupta". The signature is written in a cursive, flowing style.

Krish Gupta
President