



Internet Association



May 11, 2020

Honorable Patrick Page Cortez, Senate President
Honorable Beth Mizell, President Pro Tempore
Honorable Rick Ward, Senator
P.O. Box 94183
Baton Rouge, LA 70804

Re: Oppose SB 476, relative to third-party online marketplace sellers

Dear Senators:

The undersigned trade associations collectively represent a broad cross-section of online commerce and technology industries doing business in Louisiana and across the U.S., employing millions of people, while providing goods and services that benefit the local and national economy. We would like to express **opposition to SB 476**, a bill that passed out of a Senate committee last week with little advanced public notice, minimal committee discussion and no input from online marketplace operators. We ask that you please not rush to pass this seriously flawed bill that potentially invades consumer privacy, risks increasing fraudulent activity online and shifts enforcement burdens and liability to online marketplace operators thereby discouraging the business growth of American online retailers.

SB 476 requires online marketplaces to: 1) verify the identity of “high-volume third-party sellers” 2) require the seller to provide specific contact information on its website to provide more certainty to consumers and others that they can communicate with online sellers; 3) require sellers to submit information to verify and attest to the “authenticity” of trademarks used in connection with a listing, as well as to agree not to use counterfeit marks or copyrighted images in connection with the sale of a product; and 4) remove listings containing copyrighted images or any listing advertising an illegitimate consumer product for sale.

Unfortunately, these requirements will create significant confusion for marketplaces as they seek to verify the identities and accuracy of the information provided by sellers and make equitable decisions regarding the IP rights implicated by these requirements. The bill will also harm Louisiana companies and individuals, by limiting the ability of Louisiana companies to advertise and compete with larger sellers, while creating additional burdens on Louisiana residents seeking to sell goods online.

For example, if a neighbor sells a used Sony TV on Nextdoor, the platform will have to confirm the neighbor’s address, country of origin and the authenticity of the product for sale, or risk being exposed to huge liability. Platforms like Nextdoor, that are likely ill-prepared to comply with these mandates, may simply choose to cut off Louisiana small businesses and residents altogether, rather than attempting to comply with these mandates, and being forced to pay expensive liability insurance in order to avoid exposure to frivolous lawsuits. This would put small businesses across Louisiana at a significant disadvantage against big box retailers who do not rely on online marketplaces to reach potential customers and already dominate our retail landscape. Imposing such additional burdens on small businesses would be particularly onerous at this point in time, given how small and mid-sized companies are suffering due to the global COVID pandemic.

SB 476 also risks compromising the privacy of anyone selling an item on sites like Nextdoor, or even those using online classified ads, as it will require listings include the seller’s, name and home address. Making sensitive information like this open to the public creates many inherent privacy risks.

Online marketplaces should be incentivized to work closely with law enforcement to identify and prosecute fraudulent online sellers, instead of shifting liability directly onto online marketplaces. Indeed, Section 3214

of the bill states in relevant part that “[a]ny violation of this Chapter shall be a deceptive and unfair trade practice and shall subject the online marketplace to any and all actions and penalties provided for in the Unfair Trade Practices and Consumer Protection Law.” Sadly, one of the unintended consequences may be an *increase* in the number of online listings of fraudulent and illegal products, as wrongdoers will quickly figure out that the online marketplace bears the liability for “any violation” of the law. Of course, this would also increase the very risk to Louisiana residents that the bill seeks to address.

Compounding the liability issue, the bill would shift enforcement and analysis of copyright and trademark law to ecommerce platforms, with little consideration for concepts such as fair use and practices such as comparative advertising. As you know, companies routinely engage in advertising in order to differentiate their products from other brands and while doing so, often use an image of their competitor in the advertisement. Would this type of use run afoul of the bill’s restrictions on the use of copyrighted or trademarked materials? Forcing marketplaces into acting in a quasi-judicial role is not only impractical, but may force sites wanting to avoid liability to simply remove any and all Louisiana listings whether legal or not. This will result in limiting the ability of legitimate Louisiana companies to advertise and reach consumers.

The bill will impose mandates that conflict with federal law regarding platform management and liability. Unlike SB 476, the federal Digital Millennium Copyright Act does not require platforms to conduct proactive enforcement of potential IP violations. Further, SB 476 will run afoul of the Communications Decency Act, which limits the liability of online intermediary platforms for content posted by third parties.

Leading U.S. online marketplaces have and continue to make significant investments in proactive technologies and processes designed to detect and stop potentially counterfeit products from being sold on their platforms. It is in their best interest to maintain customer trust when buying and selling products online which includes trademark and intellectual property owners. Many sites already offer rights holders several options to protect their brands and intellectual property. This includes brand registries that trademark and intellectual property owners can participate in; tools to report potential copyright and trademark infringement violations; and processes for owners and consumers to request removal of potentially illegal products.

The proliferation of counterfeit and illegal goods online erodes the very trust that is required to bring consumers to online marketplaces. But solutions need to be targeted at the wrongdoer—not marketplaces who are already taking the lead in taking down such listings and working with law enforcement to put such actors out of business. Law enforcement has the authority and means to enforce national trademark, copyright, and intellectual property laws and should continue to utilize technological systems and tools available to them which are proven to be effective in detecting fraudulent and fake products. We stand ready to help craft a forward-thinking law that ensures owner’s rights while being flexible enough to encourage industry innovation and growth.

Please **reject SB 476** and avoid harming Louisiana’s small businesses and residents. Contact Tammy Cota, Executive Director, Internet Coalition, 802-279-3534 or tammy@theinternetcoalition.com for more information or if you have questions.

Sincerely,

Internet Coalition
CompTia
Electronic Transactions Association
Internet Association
NetChoice
TechNet

cc: Senate members