

# Towards an efficient notice & action system

eBay DSA Series #2

*This paper is part of the eBay DSA Series – for more information on eBay and the series, you can have a look at our inaugural blog post [here](#).*

## Our recommendations

- **An efficient notice & action system should be based on adequate prioritization and safeguards against abuse.** In other words, the power to both deal efficiently with a high volume of notices and discard unfounded ones is the prerequisite for effective content moderation on our platform. This can be achieved through:
  - **A balanced protection against unwarranted liability.** Platforms should be protected from liability when they process an incorrect notice received under Article 14, but also when content is taken down or reinstated after a complaint under Article 17.
  - **A reliable “trusted flaggers” status.** The status should strictly be tied to a **verified area of expertise, rather than to a person or organization as a whole**, thus enabling swift identification of notices to be trusted and prioritized. This would encourage online marketplaces to pursue collaboration with rights owners, as the most relevant experts for intellectual property rights infringements.
  - **Strong sanctions against abuse of the system.** In addition to liability protection, platforms should be able to seek compensation from identified authors of notice abuse. This would help deter mass abuse which would seriously undermine the long-term efficiency of content moderation.
- **Out-of-court dispute settlement bodies should be approached in full coordination with existing legislation**, whether the Alternate Dispute Resolution Directive for B2C disputes, or the Platform-to-business Regulation for B2B disputes.

## What we observe

Competition between e-retailers on online marketplaces is often intense. We regularly observe users engaging in unfounded reporting in order to trigger the removal or demotion of their competitors' content. This abuse diverts platform resources, lowering the efficiency of our enforcement against legitimately reported content.

As the DSA proposes to strengthen the notice and action mechanism, we are concerned about its misuse and impact on our moderation of user-posted content. With more than 1.7 billion product listings live at any moment globally on eBay platforms, we have to anticipate high daily volumes of reports while maintaining operational performance and resilience.

Yet, detecting and acting against notice abuse is not straight-forward for a pure third-party online marketplace platform like eBay. In most cases, we are not in a position to determine the legality of content, because the third-party marketplace business model limits the platform operator's direct access to the products listed on the platform. This is even more true when the notice is being disputed by several parties.

To tackle this issue, we establish special cooperation schemes with trusted sources of information with respect to specific content: eBay has run a Verified Rights Owners program to fight against IP infringements since 1998. Our dedicated Regulatory Portal lets market surveillance authorities and other officials report infringing and dangerous products. We hope that the DSA's "trusted flaggers" status can reinforce these established tools and partnerships, rather than attempt to recreate them from scratch.

Lastly, we believe that the right to reply to a report of allegedly illegal content must be considered as an essential safeguard to the rights of eBay users. On top of our internal complaint-handling system, we hope to rely on existing mediation bodies as established by the EU Platform-to-business Regulation and Alternate Dispute Resolution Directive.

## Referenced articles

**The notice and action mechanism (article 14):** *"The mechanisms (...) shall be such as to facilitate the submission of sufficiently precise and adequately substantiated notices, on the basis of which a diligent economic operator can identify the illegality of the content in question."*

**Complaint-handling (article 17):** *"Where a complaint contains sufficient grounds for the online platform to consider that the information to which the complaint relates is not illegal and is not incompatible with its terms and conditions (...), it shall reverse its decision..."*

**Trusted flaggers (article 19):** *"Online platforms shall take the necessary technical and organizational measures to ensure that notices submitted by trusted flaggers through the mechanisms referred to in Article 14, are processed and decided upon with priority and without delay."*

**Measures against misuse (article 20):** *"Online platforms shall suspend, for a reasonable period of time and after having issued a prior warning, the processing of notices and complaints submitted through the notice and action mechanisms and internal complaints-handling systems referred to in Articles 14 and 17, respectively, by individuals or entities or by complainants that frequently submit notices or complaints that are manifestly unfounded."*