

PROTECTING PEOPLE FROM ILLEGAL HARMS ONLINE CONSULTATION – EBAY RESPONSE

INTRODUCTION

eBay welcomes the opportunity to respond to Ofcom's consultation on 'Protecting People from Illegal Harms Online'.

Since its founding in 1995, eBay's tools and technology have been developed to empower our customers, providing eBay users around the world the opportunity to thrive. Our platform transcends borders to build community, bringing sellers and buyers together around approximately 1.9 billion items in a trusted experience. As a global ecommerce platform, eBay is committed to the safety of its users and to protecting the integrity of the products sold on its marketplace. eBay's work to maintain the safety of its marketplace is a top priority and is always evolving. New technologies are constantly being developed and deployed, and eBay continuously works to enhance its marketplace through improved policies, tools and partnerships.

User Agreement and Policies

By engaging with eBay's services, users are subject to eBay's User Agreement and User Privacy Notice. The User Agreement explicitly requires that users refrain from violating any laws, thirdparty rights and/or eBay policies. Users are also bound by policies referenced by and incorporated into the User Agreement. By integrating laws and third parties' rights in the User Agreement in this way, eBay has discretion to impose contractual sanctions (e.g., block or cancel items, restrict or suspend accounts, etc.) in cases where eBay determines a user may have violated those laws or third-party rights. As part of this governance, eBay has developed policies to address Prohibited and Restricted Items. These policies are designed to protect consumers and provide clarity to sellers about what can and cannot be sold on our platform (and under what conditions).

Investment in Technology

eBay continues to invest heavily in AI and image detection technology to proactively identify and address suspicious behaviour and potentially problematic items. eBay algorithms evaluate items during the listing creation process to identify those that could be prohibited under our policies. These algorithms flag items for review by eBay investigators or can in some cases automatically block the item from being published entirely. If an item is determined to violate eBay policy, it is removed and the seller is notified with an explanation as to why it was removed.

eBay also has developed robust measures to stop bad actors and deter repeat policy violations. In addition to the 88 million suspected counterfeit items eBay blocked in 2022, our AI tools blocked an additional 295 million prohibited items from being listed. This is approximately a 20% decrease from the number of prohibited items blocked in 2021 and was primarily driven by a reduced need for COVID-related blocks. This also demonstrates how AI technology adapts to stop bad actors and prevent problematic items. Thanks to our partnerships with brands and rights owners and the information they provide, our AI continues to get stronger.

Active use of our Verified Rights Owner ("VeRO") Program by rights owners is essential to obtaining the information we need to better detect infringing or prohibited items and keep them off our platform. We also have highly-trained eBay experts across the globe who work around the clock to quickly remove potentially problematic items. These proactive efforts have been

highly successful, helping us to remove over 2.8 million potentially counterfeit and prohibited items in 2022 and preventing buyers from purchasing them.

In addition to the technology and human experts that keep our platform safe, eBay allows its community of users to report items that violate policy. Any registered eBay user can use the “Report Item” functionality to report a potentially counterfeit or otherwise non-compliant item. Community access to this reporting mechanism has been in place since 2007. In 2022, we removed 773,000 items based on reports from our community through our Report Item functionality. As we continue to invest in proactive detection technology, the number of reports received through our “Report Item” functionality declined in 2022 by 24% compared to 2021 and by 54% compared to 2020.

More recently in early 2023, eBay acquired 3PM Shield, a provider of advanced AI-based marketplace compliance solutions. This further enhanced eBay’s world-class monitoring solutions with new technologies designed to prevent the sale of counterfeit items, unsafe products and illegal goods. Bringing 3PM Shield to eBay is part of eBay’s ongoing commitment to provide sellers and buyers with a safe and trusted platform enabled by technology. 3PM Shield enhances eBay’s ability to address suspicious or harmful seller behavior, and potentially problematic items.

SPECIFIC COMMENTS

Avoiding a ‘One Size Fits All’ Approach

It is important that Ofcom’s approach to regulating platforms recognises the enormous diversity in business models and, by extension, the associated risk of illegal harms.

For example, the consultation makes numerous broad statements about the risks associated with online marketplaces without in any way distinguishing between the many different types of marketplace that currently exist - e.g. hybrid marketplaces like Amazon (which offer a mixture of first party retail and third party sellers), pure third party marketplaces like eBay, or online classifieds sites like Facebook Marketplace or Gumtree.

For example, in Volume 2 of the Consultation (“The Causes and Impacts of Online Harms”), it is stated that:

“Marketplaces, fundraising services and payment services are used by terrorists to raise and collect funds.” (page 29)

“Our evidence points to marketplaces and listing services as the most prominent service type in the facilitation or commission of this set of priority offences [i.e. firearms and weapons offences].” (page 161)

“Social media services are likely to be used by potential perpetrators to recruit victims and to advertise the services of the victims and survivors they have gained control of for sexual exploitation. Marketplaces and listings services are also used to advertise services.” (page 178)

Such statements fail to reflect the huge variation in the level of protection provided to users by different platforms – for example, the level of protections offered by a managed marketplace like eBay vastly outstrips those provided by an online classified site.

In relation to terrorist financing, for example, Ofcom's analysis takes no account of the Know Your Customer checks and SARS reports which are already required as a condition of eBay's payment licence as granted by the Financial Conduct Authority.

On knives, Ofcom's analysis cites evidence offered by Which but makes no mention of the fact that eBay has banned the sale of knives (except cutlery) on our UK platform since 2009; that, in 2023, our global team either blocked or removed around 800,000 listings for prohibited knives globally, of which almost 500,000 related to products that are additionally prohibited by our UK policy; or that this prohibition goes well above and beyond our legal requirements, and considerably further than any other online marketplace, including Amazon, Facebook, Wish and AliExpress as well as other sites like Instagram.

Finally, in relation to the issue of sexual exploitation, no distinction is made between online classified sites which offer services which may generate specific risks in relation to such harms and goods-based marketplaces like eBay which do not.

Measuring Risk

In measuring risk, while we fully understand the need to prioritize platforms with a larger number of users in terms of risk, we are concerned that Ofcom's proposed approach does not take adequate account of risk mitigation measures employed by platforms and therefore the reduced likelihood of actual harm. If content can only be uploaded in specific circumstances and provided certain conditions are met, that minimises the risk. Similarly, it should be recognized explicitly in Risk Assessment Guidance that ancillary user-generated content (e.g. reviews, feedback, seller ratings) represents a reduced risk. Platforms should be assessed on actual risk (taking into account the full range of mitigation measures in place) rather than theoretical risk.

For example, as noted above, at any given time, up to 1.9 billion items may be live to site on the eBay platform. Moreover, despite the extensive measures put in place to keep our site and our users safe, no systems can eliminate risk of harm entirely. But in assessing risk properly, specific examples of non-compliance must be viewed in the context of the total number of transactions which take place on a platform over the course of a year. Otherwise, we risk creating a distorted picture of the real risk of harm to users.

Further clarity is also required in the final Code of Practice as to what would constitute 'significant changes' whereby platforms would be required to revise their phase 1 risk assessment. Currently, the draft Code defines such changes as significant updates to the design of user-facing algorithms, systems and processes, adding/removing functionalities, changes to platform content rules, updates to the design of user facing functionalities and features etc. Such a broad definition runs the risks of platforms being required to almost continuously amend their risk assessments to take into account the roll out of new product features. We would therefore recommend that the final Code makes it clear that a new risk assessment is only required in cases where these changes would result in a significant change in the risk profile of the platform.

Timelines For Moving from Risk Assessments to Compliance

It is also essential that Ofcom recognize the very real constraints associated with implementing major product changes on global platforms, especially complex transactional marketplaces like eBay. Implementing major product changes require considerable lead times and planning and involve considerable coding resource which must be booked well in advance as part of a broader product roadmap.

We are concerned that the gap between platforms being required to complete their risk assessment and being deemed by Ofcom to be in full compliance fails to take account of these constraints, especially the need to limit major changes to our site during Q4 – the busiest period of the year for e-commerce platforms.

For example, on Ofcom's current timeline, platforms are required to submit risk assessments in Q4 2024 at the same time as Ofcom is finalizing the Illegal Harms Code and submitting it to the Secretary of State for approval. Meanwhile, Parliament is expected to approve the Codes sometime between Q4 2024 and Q1 2025, at which point platforms will be expected to be compliant.

While we would of course assess that we will be in compliance with our responsibilities in line with the timeline specified by the consultation, in the event that Ofcom reached a different assessment and required additional product changes, further time would be needed to implement any changes. As such, some sort of grace period would be required in terms of Ofcom's enforcement of the new duties. Given the constraints set out above, and depending on the extent of any changes required, this might need to take up to 12 months.