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COMMON LAW NOTICE-AND-TAKEDOWN

MICHAEL P. GOODYEAR\*

*Platform liability is a complex landscape under U.S. law. Section 230 of the Communications Decency Act has generated significant scholarly and political interest due to providing platforms with broad immunity for their users' torts. In addition, many intellectual property law scholars have examined the requirements of the Digital Millennium Copyright Act ("DMCA"), which provides safe harbors for users' copyright infringements. The DMCA enumerates a long series of requirements that online platforms must satisfy to be immunized for their users' infringements, including a notice-and-takedown regime, a repeat infringer policy, and a prohibition on having the right and ability to control and a direct financial benefit.*

*There is also a third, more opaque and less scrutinized regime: trademark law's common law notice-and-takedown system stemming from, most notably, the Second Circuit's decision in *Tiffany v. eBay*. While the DMCA provides a large set of statutory requirements, the *Tiffany v. eBay* framework says very little beyond requiring removal of content upon specific knowledge that it is infringing a trademark. The common law is—as of yet—a general standard.*

*This Article seeks to understand how private ordering for online platforms' trademark infringement notice-and-takedown policies has developed under this general common*

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*law standard. This study examines the trademark policies and other publicly reported practices of nearly four dozen major online platforms in marketing-related sectors, including social media, blogging and reviews, e-commerce, and print-on-demand. There is necessarily ambiguity about how platform private ordering has developed in the trademark context. The findings suggest that the DMCA is a significant influence on the trademark notice-and-takedown practices online platforms have adopted. Nonetheless, the capaciousness of common law notice-and-takedown has allowed platforms to vary their policies and practices considerably. Some platforms have adopted more onerous takedown requirements, while others seem to streamline procedures for rights owners. Platforms in the same sector seem to adopt each other's practices more frequently. These findings not only help us understand how online trademark infringement policies have developed, but also provide a guide as to how private ordering may influence future common law standards in trademark and other areas of law, especially if Congress repeals Section 230 and platforms can face liability for their users' torts.*

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## INTRODUCTION

Intellectual property provides a unique vantage point into content moderation law and practice. In the United States, a federal law known as Section 230

provides a general liability shield for platforms for most of their users' torts.<sup>1</sup> Five areas of law lie outside Section 230's protections, however, including intellectual property.<sup>2</sup> In the absence of Section 230, separate frameworks emerged for copyright and trademark law. Congress enacted the Digital Millennium Copyright Act ("DMCA") to provide platforms with a series of liability safe harbors for their users' copyright infringement in exchange for complying with a multifaceted set of requirements centered on a notice-and-takedown regime.<sup>3</sup> Many scholars have previously examined the DMCA and related secondary liability doctrine under copyright law.<sup>4</sup>

No equivalent exists for trademark law.<sup>5</sup> Instead, courts—most notably the Second Circuit in *Tiffany v. eBay*—crafted a common law notice-and-takedown regime based on knowledge of specific instances of infringement instead.<sup>6</sup> Common law notice-and-takedown for trademark infringement requires

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<sup>1</sup> 47 U.S.C. § 230.

<sup>2</sup> 47 U.S.C. § 230(e).

<sup>3</sup> 17 U.S.C. § 512.

<sup>4</sup> See, e.g., Michael P. Goodyear, *Infringing Information Architectures*, 58 UC DAVIS L. REV. 1959, 1975–96 (2025) (elucidating the central role of intent in courts and Congress' refinements to copyright law's secondary liability doctrines in response to new information technologies); Matthew Sag, *Internet Safe Harbors and the Transformation of Copyright Law*, 93 NOTRE DAME L. REV. 499, 505 (2017) (describing "how the DMCA notice-and-takedown regime and DMCA-plus agreements negotiated in the shadow of that regime have shifted the locus of power with respect to copyright"); Alfred C. Yen, *Third-Party Copyright Liability After Grokster*, 91 MINN. L. REV. 184, 212–21 (2006) (discussing how courts have not carefully delineated fault-based contributory liability and strict vicarious liability, allowing for adaptation); Felix T. Wu, *The Structure of Secondary Copyright Liability*, 61 HOUS. L. REV. 385, 387 (2023) (arguing that "the current rules of secondary copyright liability are framed too much in terms of *mens rea* and fault"); Mark Bartholomew & John Tehranian, *The Secret Life of Legal Doctrine: The Divergent Evolution of Secondary Liability in Trademark and Copyright Law*, 21 BERKELEY TECH. L.J. 1363, 1369–94 (2006) (tracing the origins of secondary liability and comparing contributory and vicarious copyright and trademark infringement liability); Edward Lee, *Decoding the DMCA Safe Harbors*, 32 COLUM. J.L. & ARTS 233, 234–35 (2009) (arguing against the vicarious liability and red flag "loopholes" and offering principles to guide courts and Congress to clarify and update the DMCA safe harbors); R. Anthony Reese, *The Relationship Between the ISP Safe Harbors and the Ordinary Rules of Copyright Liability*, 32 COLUM. J.L. & ARTS 427, 442 (2009) (finding that in some "instances the safe harbor will insulate an OSP from secondary liability claims that would, in the absence of section 512, succeed").

<sup>5</sup> There is a limited safe harbor of sorts for printers and publishers, including of electronic communications, but it only limits liability for "innocent infringers." 15 U.S.C. § 1114(2). Once a platform has knowledge of specific trademark infringement, it would no longer be an innocent infringer. *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d 1082, 1095 (C.D. Cal. 2001).

<sup>6</sup> *Tiffany (NJ) Inc. v. eBay, Inc.*, 600 F.3d 93, 107 (2d Cir. 2010).

the removal of content upon knowledge that it is infringing.<sup>7</sup> However, unlike the DMCA, trademark law provides hardly any other rules for notice-and-takedown. The literature on trademark secondary liability doctrine is limited, especially in relation to platforms.<sup>8</sup> While the trademark literature has addressed *Tiffany v. eBay*, it has largely not looked beyond the case and its progeny to determine how platform practices have emerged within this general common law notice-and-takedown structure.

This Article offers the first study of platforms' trademark infringement policies and practices to determine how the general common law standard of *Tiffany v. eBay* has influenced platforms' private ordering.<sup>9</sup> This study examines a sample of forty-five large platforms in markets in which trademark infringement is fairly likely to occur: social media, blogging and reviews, e-commerce, and print-on-demand.<sup>10</sup> While this is a small fraction of all websites, it offers insights into how some of the most sophisticated and likely trademark infringement-sensitive of platforms craft their policies within the space afforded by *Tiffany v. eBay*. This study specifically addresses: whether the platforms' policies—and other public information about their practices—suggest that platforms prohibit trademark infringement and related counterfeiting; the requirements for reporting infringement; repeat infringer prohibitions; the existence of takedown-plus policies

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<sup>7</sup> *Id.*

<sup>8</sup> See, e.g., Graeme B. Dinwoodie, *Secondary Liability for Online Trademark Infringement: The International Landscape*, 37 COLUM. J.L. & ARTS 463, 479 (2014) (arguing that sensitivity to individual context is valuable because intermediaries' behaviors occupy a spectrum of trademark infringement liability and culpability); Stacey L. Dogan, "We Know It When We See It": *Intermediary Trademark Liability and the Internet*, 2011 STAN. TECH. L. REV. 1, 2, 10 [hereinafter Dogan, "We Know It When We See It"] (arguing that trademark secondary liability under *Tiffany v. eBay* is trying to hold bad actors liable); Stacey L. Dogan, *Principled Standards vs. Boundless Discretion: A Tale of Two Approaches to Intermediary Trademark Liability Online*, 37 COLUM. J.L. & ARTS 503, 504–14 (2014) [hereinafter Dogan, *Principled Standards*] (positing that courts have relied upon three normative values—non-interference, culpability, and reasonableness—in applying secondary trademark liability to platforms).

<sup>9</sup> Criminology and other-non-legal scholars at the University of Portsmouth in the United Kingdom and Michigan State University conducted a study on online marketplaces' enforcement practices to address counterfeits, but that study focused on a wide range of proactive technical and legal enforcement measures rather than comparing the policies and practices for trademark and copyright infringements, based on the DMCA. The study also focused primarily on online marketplaces, so the subjects of the study do not significantly overlap with those in this Article. See generally David Shepherd et al., *Practices Used by Online Marketplaces to Tackle the Trade in Counterfeits*, WIPO/ACE/16/11 (Nov. 24, 2023), [https://www.wipo.int/edocs/mdocs/enforcement/en/wipo\\_ace\\_16/wipo\\_ace\\_16\\_11.pdf](https://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_16/wipo_ace_16_11.pdf) [<https://perma.cc/XNH7-69NQ>].

<sup>10</sup> See *infra* Part II.

that go beyond what the law requires; and counter-notice procedures for reported users.<sup>11</sup> This study is limited to publicly available material, as platforms could engage in additional, private practices in response to notices of infringement. Future qualitative work could help elucidate those additional practices, although even then platforms may not reveal the full extent of their practices or how they vary in response to different notices.

The findings of this study reveal that platforms' policies and practices can vary widely under the common law notice-and-takedown standard, suggesting that the bare requirement of specific knowledge acts as a floor on which platforms can experiment to craft their own optimal requirements and engage in private ordering. For example, the examined platforms had thirty-nine unique requests for information in takedown notices.<sup>12</sup> Platforms widely adopted the DMCA's six requirements for takedown notices in the trademark context, but there was significant experimentation with requirements beyond those.<sup>13</sup> Some of those requirements suggest greater protections for users or streamlining reporting procedures for rights owners. However, others imposed onerous trademark registration requirements on rights owners, despite the viability of false advertising, false designation of origin, and state law claims without federal registration.<sup>14</sup> Repeat infringer policies and counter-notice procedures, which are core features of the DMCA safe harbors,<sup>15</sup> are seemingly only available (or at least publicly acknowledged) for less than half these platforms.<sup>16</sup> While prior scholarship has highlighted Amazon's offering superior trademark takedown tools for certain rights owners,<sup>17</sup> there is a wider trend of several platforms, especially in the e-commerce space, offering similar takedown-plus policies.<sup>18</sup>

These findings offer insights into both trademark law and the development of notice-and-takedown regimes for other areas of the law. General standards such as that under trademark common law offer significant flexibility for platform private

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<sup>11</sup> See *infra* Part III.

<sup>12</sup> See *infra* Part III.B.

<sup>13</sup> See *id.*

<sup>14</sup> See *id.*; 15 U.S.C. § 1125(a).

<sup>15</sup> 17 U.S.C. § 512(g), (i).

<sup>16</sup> See *infra* Parts III.C, III.E.

<sup>17</sup> Jeanne C. Fromer & Mark P. McKenna, *Amazon's Quiet Overhaul of the Trademark System*, 113 CALIF. L. REV. 1169, 1193–94 (2025).

<sup>18</sup> See *infra* Part III.D.



ordering, but that may come at the cost of certain desired requirements such as those under a detailed DMCA-like regime. General common law standards are likely to proliferate in other areas of the law if Congress repeals Section 230. There are growing calls to amend or repeal the law, with politicians on both sides of the aisle having criticized Section 230 and proposed new legislation.<sup>19</sup> In addition, courts may exclude other causes of action such as right of publicity misappropriation under existing Section 230's exceptions.<sup>20</sup> At least in the short term, the common law would likely bridge any gaps in statutory law for platform liability. As platform liability for users' actions would often be based on secondary liability, knowledge—the *sine qua non* of notice-and-takedown<sup>21</sup>—would be a key element. This makes trademark law, and this Article's findings on platform private ordering in response to a similar common law standard, a valuable comparator for other emerging platform liability doctrines. While weighing the normative benefits of detailed statutory rules versus general common law standards is beyond the scope of this Article, it nonetheless presents data that can contribute to future normative scholarship on law's relationship and enticement of content moderation practices.

This Article proceeds in four parts. Part I first discusses the two most prominent safe harbor regimes for the Internet, Section 230 and the DMCA. It then explains how trademark law was excluded from these regimes and how, instead, a common law notice-and-takedown regime has emerged from the courts, especially from the Second Circuit. Part II explains the methodology for this study on online platforms' trademark infringement policies to determine how these policies have emerged in the absence of strict requirements like those under the DMCA. Part III presents the findings of the study on platforms' policies and practices relating to users' trademark infringements. Part IV offers how these findings may be valuable as common law notice-and-takedown expands to new areas of legal doctrine.

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<sup>19</sup> See, e.g., *A Final Bow for Section 230? Latest Plea for Reform Calls for Sunset of Immunity Law*, PROSKAUER (June 11, 2024), <https://www.proskauer.com/blog/a-final-bow-for-section-230-latest-plea-for-reform-calls-for-sunset-of-immunity-law> [https://perma.cc/3CCT-BUGB].

<sup>20</sup> See Michael P. Goodyear, *Dignity and Deepfakes*, 57 ARIZ. ST. L.J. (forthcoming 2025) (manuscript at 47–52).

<sup>21</sup> *Tiffany (NJ) Inc. v. eBay, Inc.*, 600 F.3d 93, 107 (2d Cir. 2010).

## I

### THE EMERGENCE AND AMBIGUITY OF COMMON LAW NOTICE-AND-TAKEDOWN

Online trademark law emerged in response to earlier developments in the Internet platform liability ecosystem. Users sharing and posting content across the web with ease posed new liability questions for courts and Congress. What, if any, liability should service providers and platforms bear for transmitting and hosting users' content? In response, Congress ultimately decided to pass the Communications Decency Act, part of which, Section 230, has provided a general safe harbor for Internet services for their users' torts.<sup>22</sup> However, Section 230 excluded a few limited categories of claims from the safe harbor, including intellectual property law.<sup>23</sup> Two years later, Congress passed the Digital Millennium Copyright Act ("DMCA"), which provided Internet service providers with a series of liability safe harbors for users' copyright infringements.<sup>24</sup> Unlike Section 230, however, the DMCA only conferred a safe harbor if the service provider complied with a series of fact-specific requirements.<sup>25</sup>

Congress never enacted a platform liability safe harbor for users' trademark infringements. Instead, a series of court decisions, most notably the Second Circuit's decision in *Tiffany (NJ) Inc. v. eBay Inc.*, crafted a common law notice-and-takedown regime.<sup>26</sup> While its common law origins provide the trademark safe harbor with some flexibility, *Tiffany v. eBay* and its successors have not defined all the requirements of the safe harbor. This opaqueness leaves platform liability for trademark infringement somewhat uncertain compared to the rule-based structure of the DMCA.

#### A. Section 230

Dubbed "the twenty-six words that created the Internet,"<sup>27</sup> Section 230 of the Communications Decency Act provides a safe harbor for Internet services for

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<sup>22</sup> 47 U.S.C. § 230.

<sup>23</sup> *Id.* § 230(e)(2).

<sup>24</sup> 17 U.S.C. § 512.

<sup>25</sup> *Id.* § 512.

<sup>26</sup> See *infra* Part I.C.

<sup>27</sup> See generally JEFF KOSSEFF, THE TWENTY-SIX WORDS THAT CREATED THE INTERNET (2019) (describing the importance of Section 230 in the development of the Internet).

tortious user-generated content.<sup>28</sup> The Internet was a paradigm shift in information technology. Unlike paper publications, individuals publish and access millions of pieces of online content daily.<sup>29</sup> It would be impossible for services to review each of them and maintain the quantity of content available online. But some of this content would undoubtedly be tortious, and it would be socially beneficial to encourage providers to restrict its dissemination.

However, early litigation on Internet service provider liability for user-generated content resulted in the opposite incentives. In *Cubby, Inc. v. CompuServe Inc.*, the District Court for the Southern District of New York held that an electronic library service that did not review any of the content posted by users could not be held liable for that content because it did not know or have reason to know of the contents.<sup>30</sup> While that outcome benefited CompuServe, it suggested a troubling rule for future cases: if a service provider *did* review its user-generated content, it could be liable for any tortious conduct contained within.<sup>31</sup>

One court made that implication explicit four years later. In *Stratton Oakmont, Inc. v. Prodigy Services Co.*, a local New York Supreme Court held that if a service provider regulated user-generated content at all, it was liable for all uploaded content on its service that was not removed.<sup>32</sup> Therefore, Prodigy, the operator of a computer bulletin board, was potentially liable for its user's alleged libel against the plaintiff because it held itself out as curating the content of the bulletin board and was therefore akin to a publisher.<sup>33</sup> The court explicitly declined to require curation of content, but it reasoned that if one chose to curate, it opened itself to liability.<sup>34</sup>

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<sup>28</sup> See, e.g., *Long v. Dorset*, 854 F. App'x 861, 865 (9th Cir. 2021) ("Facebook has immunity from Long's tort claims under 47 U.S.C. § 230.").

<sup>29</sup> Lexie Pelchen & Samantha Allen, *Internet Usage Statistics in 2025*, FORBES (Mar. 1, 2024, at 21:32 PM ET), <https://www.forbes.com/home-improvement/internet/internet-statistics> [<https://perma.cc/R4EP-532J>].

<sup>30</sup> 776 F. Supp. 135, 140–41 (S.D.N.Y. 1991).

<sup>31</sup> Eric Goldman, *Internet Immunity and the Freedom to Code*, 62 COMM'NS OF THE ACM 22, 22–23 (2019).

<sup>32</sup> 1995 WL 323710, at \*4–\*5 (N.Y. Sup. Ct. May 24, 1995).

<sup>33</sup> *Id.* at \*4.

<sup>34</sup> *Id.* at \*5.

The following year, troubled by the outcome of *Stratton Oakmont*, Congress enacted Section 230 as part of the Communications Decency Act.<sup>35</sup> Section 230 provides two safe harbors that countered *Stratton Oakmont*. First, no interactive computer service is the “publisher or speaker” of any user-generated content.<sup>36</sup> Second, an interactive computer service is not liable for good faith efforts to restrict objectionable content (i.e., to moderate content).<sup>37</sup> The explicit purpose behind these provisions was to promote the continued development of the Internet and other interactive computer services while encouraging increased content moderation by Internet services.<sup>38</sup> According to the drafters, Senator Ron Wyden and former Representative Christopher Cox, Section 230 also intended to recognize the “sheer implausibility of requiring each website to monitor all of the user-created content that crossed its portal each day.”<sup>39</sup>

Shortly thereafter, Section 230 was put to the test. In *Zeran v. America Online, Inc.*, the plaintiff accused AOL of unreasonably delaying in removing allegedly defamatory user-generated messages from its bulletin board service.<sup>40</sup> The messages featured purported sales of t-shirts emblazoned with tasteless slogans relating to the 1995 Oklahoma City bombing.<sup>41</sup> The post directed interested parties to contact “Ken” at plaintiff Zeran’s home phone number, leading to Zeran receiving a high volume of angry messages, including death threats.<sup>42</sup> The Fourth Circuit held that Section 230 immunized AOL for the alleged defamation—even if it had notice that the content was defamatory—because AOL was immunized from liability for user-posted content under Section 230.<sup>43</sup> The court parroted the reasoning of Congress in enacting Section 230, noting that “[t]he amount of information communicated via interactive computer services

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<sup>35</sup> While most of the Communications Decency Act was found unconstitutional by the Supreme Court in *Reno v. American Civil Liberties Union*, 521 U.S. 844, 879, 885 (1997), Section 230 was not at issue and remains good law to this day.

<sup>36</sup> 47 U.S.C. § 230(c)(1).

<sup>37</sup> *Id.* § 230(c)(2).

<sup>38</sup> *Id.* § 230(b).

<sup>39</sup> Co-Authors of Section 230 of the Communications Act of 1934, Reply Comments in re Matter of National Telecommunications and Information Administration Petition for Rulemaking to Clarify Provisions of Section 230 of the Communications Act of 1934, No. RM-11862, 7–8 (F.C.C. Sept. 17, 2020).

<sup>40</sup> 129 F.3d 327, 328 (4th Cir. 1997).

<sup>41</sup> *Id.* at 329.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 332–33.

is . . . staggering. The specter of tort liability in an area of such prolific speech would have an obvious chilling effect [and] . . . liability upon notice [would] reinforce[] service providers' incentives to restrict speech and abstain from self-regulation."<sup>44</sup>

Following the seminal Section 230 decision in *Zeran*, courts across the United States have applied Section 230 to immunize online services from liability for user-generated content. Section 230 has provided a safe harbor for a wide variety of tort claims, including defamation,<sup>45</sup> invasion of privacy,<sup>46</sup> offline product injuries,<sup>47</sup> terrorism,<sup>48</sup> offline physical harms,<sup>49</sup> fraud,<sup>50</sup> negligence,<sup>51</sup> and doxing,<sup>52</sup> among many others. It has therefore served as a powerful shield for online platforms, leading to early dismissals of cases involving user-generated content.<sup>53</sup>

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<sup>44</sup> *Id.* at 331, 333.

<sup>45</sup> *See, e.g.,* Caraccioli v. Facebook, Inc., 700 F. App'x 588, 590 (9th Cir. 2017) ("The district court properly dismissed Caraccioli's defamation, libel, false light, public disclosure of private facts, intrusion upon seclusion, intentional and negligent infliction of emotional distress, negligent supervision and retention, and California's Unfair Competition Law . . . claims because . . . the claims are . . . barred by the Communications Decency Act . . .").

<sup>46</sup> *See, e.g., id.*

<sup>47</sup> *See, e.g.,* Smith v. Airbnb, Inc., 504 P.3d 646, 652 (Or. Ct. App. 2021) ("Airbnb's provision of a 'special search category' allowing users to search for and obtain results based on user-provided information about hot tubs does not make Airbnb a content provider or developer [liable for warning guests how to use the hot tub].").

<sup>48</sup> *See, e.g.,* Force v. Facebook, Inc., 934 F.3d 53, 71 (2d Cir. 2019) ("We therefore conclude from the allegations of plaintiffs' complaint that Facebook did not 'develop' the content of the Facebook postings by Hamas and that Section 230(c)(1) applies to Facebook's alleged conduct in this case.").

<sup>49</sup> *See, e.g.,* Doe v. Grindr, Inc., 709 F. Supp. 3d 1047, 1057 (C.D. Cal. 2023) ("Section 230 immunizes Grindr from Doe's claims [for defective product design, defective product manufacturing, defective product warning, negligence, and negligent misrepresentation based on sexual assault stemming from an offline meeting of parties that connected on Grindr].").

<sup>50</sup> *See, e.g.,* Rodriguez v. OfferUp, Inc., No. 8:19-CV-1290-T-30SPF, 2019 WL 13247290, at \*3 (M.D. Fla. Aug. 29, 2019) ("Applying this three-part test, the Court concludes that the CDA bars Rodriguez's claims [for fraud and negligence].").

<sup>51</sup> *See, e.g.,* Doe v. Snap, Inc., No. H-22-00590, 2022 WL 2528615, at \*13 (S.D. Tex. July 7, 2022) ("The court agrees that Doe's [negligence] claims against Snap are barred by the Communications Decency Act").

<sup>52</sup> *See, e.g.,* Couture v. Noshirvan, No. 23-cv-340-SPC-KCD, 2023 WL 8280955, at \*6 (M.D. Fla. Nov. 30, 2023) ("At bottom, TikTok's role in the alleged wrongdoing was publishing Noshirvan's content. So Section 230 bars Plaintiffs' claims [for cyberstalking, civil conspiracy, and tortious interference stemming from doxing].").

<sup>53</sup> *See* Eric Goldman, *Why Section 230 Is Better than the First Amendment*, 95 NOTRE DAME L. REV. REFLECTION 33, 39 (2019) (arguing that Section 230 enables early dismissals).

### B. *The Digital Millennium Copyright Act*

But Section 230 is not a universal shield. The statute carves out five areas of law from the confines of its safe harbor, including intellectual property laws.<sup>54</sup>

Yet liability for copyright infringement posed similar challenges to the cabined liability and proper incentives Senator Wyden and Representative Cox wished to encourage. The same year the New York state court decided *Stratton Oakmont*, Judge Ronald Whyte decided the seminal online copyright infringement case *Religious Technology Center v. Netcom On-Line Communication Services*.<sup>55</sup> In that case, the plaintiff copyright owners sued Netcom for direct copyright infringement because it provided Internet services to the online bulletin board on which a user—a former Scientology minister—posted several copyrighted Scientology texts.<sup>56</sup> Prior to *Netcom*, the few cases to decide parallel facts held the service providers liable for the infringement.<sup>57</sup> But Judge Whyte rejected the plaintiffs’ direct infringement theory, worrying that such a rule “could lead to the liability of countless parties whose role in the infringement is nothing more than setting up and operating a system that is necessary for the functioning of the Internet.”<sup>58</sup> He reasoned that if Netcom were liable at all, it should be *secondarily* liable.<sup>59</sup>

In response to the concerns raised in *Netcom* and its predecessors, Congress intervened by, ultimately, passing the Online Copyright Infringement Liability Limitation Act (“OCILLA”) as part of the Digital Millennium Copyright Act (“DMCA”) in 1998.<sup>60</sup> Codified as Section 512 of the Copyright Act, the DMCA

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<sup>54</sup> 47 U.S.C. § 230(e). The fifth exception, sex trafficking law, was only added in 2018 with the passage of FOSTA-SESTA. See Kendra Albert et al., *FOSTA in Legal Context*, 52 COLUM. HUM. RTS. L. REV. 1084, 1100–01 (2021) (explaining how FOSTA-SESTA affected Section 230).

<sup>55</sup> 907 F. Supp. 1361 (N.D. Cal. 1995).

<sup>56</sup> *Id.* at 1365–66.

<sup>57</sup> See *Playboy Enters., Inc. v. Frena*, 839 F. Supp. 1552, 1556–57 (M.D. Fla. 1993) (holding the operator of a platform liable for violating the distribution and display rights when its customers used it to disseminate infringing photographs); *Sega Enters. v. MAPHIA*, 857 F. Supp. 679, 686–87 (N.D. Cal. 1994) (holding liable a service that encouraged users to download infringing Sega games, suggesting contributory liability).

<sup>58</sup> *Netcom*, 907 F. Supp. at 1372.

<sup>59</sup> *Id.* at 1373–74.

<sup>60</sup> See generally 17 U.S.C. § 512. For a more thorough discussion of the DMCA safe harbors and their place in the history of the development of copyright’s secondary liability doctrine, see Goodyear, *supra* note 4, at 1983–90.

provides for four distinct safe harbors for different types of online service providers.<sup>61</sup> These four safe harbors provide platforms with immunity for their users' copyright infringements. Even if they cannot avail themselves of the safe harbor a rights owner would still need to affirmatively establish that the platform is liable, whether under a contributory or vicarious liability standard.

To be eligible for any of the safe harbors, a service provider must meet two threshold requirements:

1. Have, inform users of, and reasonably implement a repeat infringer termination policy; and
2. Accommodate and not interfere with standard technical measures.<sup>62</sup>

Each of the four safe harbors has slightly different additional requirements. The safe harbor that has garnered the most litigation is § 512(c), which is for user-generated content on platforms.<sup>63</sup> Section 512(c) has a host of requirements for service providers in addition to the threshold repeat infringer policy and standard technical measures requirements, including:

1. No actual knowledge that user-generated content is infringing;
2. No red flag knowledge that user-generated content is infringing;
3. Expeditiously remove infringing content once known (including in response to takedown notices);
4. Not both receive a direct financial benefit from the infringing content and have the right and ability to control it; and
5. Have a designated service agent to whom rights owners can submit takedown notices.<sup>64</sup>

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<sup>61</sup> See 17 U.S.C. § 512(a)–(d) (establishing safe harbors for transitory digital network communications; system caching; content stored at the direction of users; and information location tools).

<sup>62</sup> 17 U.S.C. § 512(i).

<sup>63</sup> Westlaw, <http://www.westlaw.com> (navigate to 17 U.S.C. § 512; select “Citing References” tab; select “Filters”; search within results for [“512 +1 sub! +1 (a)”] for § 512(a), [“512 +1 sub! +1 (b)”] for § 512(b), [“512 +1 sub! +1 (c)”] for § 512(c), and [“512 +1 sub! +1 (d)”] for § 512(d)) (last visited September 22, 2025) (yielding 144 cases for § 512(a), 36 cases for § 512(b), 459 cases for § 512(c), and 63 cases for § 512(d)).

<sup>64</sup> *Id.* § 512(c)(1)–(2).

A separate provision of the statute clarifies, however, that a service provider need not proactively monitor for infringement.<sup>65</sup> This seems to reflect Judge Whyte's concern in *Netcom*.

At the heart of the § 512(c) safe harbor is a notice and takedown system, whereby a platform is required to remove content once it learns it is infringing. Under this system, a service provider is only obligated to remove infringing content once it knows it is infringing, it gains red flag knowledge that it is infringing, or a rights owner reports that it is infringing.<sup>66</sup> This structure is premised on the belief that, as Senator Wyden and Representative Cox noted in the Section 230 context, it is infeasible for a platform to know by itself whether content is infringing.<sup>67</sup> However, once a rights owner informs the platform, it is reasonable to require the platform to act.<sup>68</sup>

To qualify as a legitimate takedown notice, the DMCA notes that a rights owner or their authorized representative must “substantially” include the following six items in their report to the designated service agent:

1. A signature by the rights owner's authorized representative;
2. The work that was infringed, or a representative list of such works if multiple were infringed;
3. The allegedly infringing material and how to locate it;
4. The reporting party's contact information;
5. A good faith statement that the use of the material is not authorized; and
6. A statement under penalty of perjury that the reporting party is authorized to act by the rights owner.<sup>69</sup>

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<sup>65</sup> *Id.* § 512(m).

<sup>66</sup> *Id.* § 512(c)(1)(A), (C).

<sup>67</sup> James Grimmelmann & Pengfei Zhang, *An Economic Model of Intermediary Liability*, 38 BERKELEY TECH. L.J. 1011, 1045 (2023).

<sup>68</sup> *Id.*

<sup>69</sup> 17 U.S.C. § 512(c)(3)(A).



If the reporting party substantially includes (2), (3), and (4), but fails to substantially include the other parts, the service provider must promptly attempt to contact the reporting party and remedy the incomplete notice.<sup>70</sup>

The DMCA also provides service providers with a liability safe harbor for removing reported material, even if it later turns out to be noninfringing, if it implements a counter notification procedure under § 512(g):

1. Notify the user when the content has been removed or disabled;
2. Notify the person who submitted a takedown notice if it receives a counter notification; and
3. Replace removed material within 10–14 days in response to a proper counter notification if it does not learn that the reporting party has filed an action in court.<sup>71</sup>

The service provider is not liable for copyright infringement for restoring the reported material if it follows these procedures.<sup>72</sup>

These various requirements for the DMCA safe harbors are a sharp departure from Section 230, which provides a general safe harbor that is not tied to notice-and-takedown procedures, repeat infringer policies, financial benefits and control, designated service agents, or these other obligations.<sup>73</sup> While these requirements are not paragons of clarity,<sup>74</sup> they do put platforms on notice that they must take a variety of specific actions to avail themselves of the safe harbors. This multitude of fact-specific DMCA requirements makes obtaining a § 512(c) safe harbor much more difficult compared to Section 230. Nonetheless, like Section 230, the DMCA—and especially § 512(c)—has helped protect online platforms from rampant liability for their users' infringements.<sup>75</sup>

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<sup>70</sup> *Id.* § 512(c)(3)(B)(ii).

<sup>71</sup> *Id.* § 512(g)(2).

<sup>72</sup> *Id.* § 512(g)(4).

<sup>73</sup> Compare 47 U.S.C. § 230(c)(1) with 17 U.S.C. § 512(c)(1), (2).

<sup>74</sup> Miquel Peguera, *Converging Standards of Protection from Secondary Liability for Trademark and Copyright Infringement Online*, 37 COLUM. J.L. & ARTS 609, 609 (2014).

<sup>75</sup> In the copyright infringement context, I have termed these types of claims architectural infringement claims, which I address in an earlier work. See generally Goodyear, *supra* note 4.

### C. *Contributory Trademark Infringement*

Unlike copyright law, which has statutory safe harbors in the form of the DMCA, trademark law instead relies on a common law notice-and-takedown mandate that gradually emerged in the courts. There was initially less concern about online trademark infringement compared to copyright infringement.<sup>76</sup> While the Internet allows infringers to directly and perfectly copy and distribute others' works in ways that were not possible before, the same is not necessarily true for trademarks.<sup>77</sup> An infringer may be able to copy a trademark more easily, but trademark infringement is based not on mere copying, but on whether the use of a trademark is likely to cause consumer confusion as to the source of a good or service.<sup>78</sup>

The Lanham Act has a limited type of safe harbor for publishers of trademark infringement. Recovery against publishers—including those of electronic communications—will be limited to injunctive relief if the publisher is an innocent infringer.<sup>79</sup> Injunctive relief will not be available where it would interfere with the publisher's normal operation.<sup>80</sup> But knowledge of specific infringements would nullify this innocent infringer defense.<sup>81</sup>

In recent years, a statutory standard for secondary trademark infringement liability has been proposed in the form of the SHOP SAFE Act.<sup>82</sup> The SHOP SAFE Act has not been enacted—indeed, it has not been passed in several

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<sup>76</sup> See Mark Bartholomew, *Copyright, Trademark and Secondary Liability After Grokster*, 32 COLUM. J.L. & ARTS 445, 462–63 (2009) (noting different concerns about online copyright and trademark infringement, including differing levels of public awareness and abilities of copyright versus trademark holders to obtain adequate relief); see also Bartholomew & Tehranian, *supra* note 4, at 1394 (examining the divergent evolution of secondary copyright and trademark infringement doctrines).

<sup>77</sup> See Bartholomew, *supra* note 76, at 464 (“Digital technology permits infringers to perfectly replicate a copyrighted item, in effect, removing all control over distribution of that expressive product from the hands of the copyright owners.”).

<sup>78</sup> 15 U.S.C. § 1114(1)(a) (defining trademark infringement as “use in commerce [of] any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive”).

<sup>79</sup> 15 U.S.C. § 1114(2).

<sup>80</sup> *Id.*

<sup>81</sup> *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d 1082, 1095 (C.D. Cal. 2001).

<sup>82</sup> SHOP SAFE Act, S. 2934, 118th Cong. (2023).

concurrent Congresses—but it has remained a specter.<sup>83</sup> The SHOP SAFE Act would make online marketplaces contributorily liable for third-party listings and sales of goods that “implicates health and safety” unless they undertake certain actions, including determining that the seller designated a registered agent in the United States, verifying the identity of the seller through governmental or other reliable documentation, and imposing certain obligations on sellers.<sup>84</sup> This is not a safe harbor like the DMCA because it would impose liability if requirements were not met rather than provide a safe harbor from liability. Dozens of trademark law professors have strongly criticized the bill for imposing stringent requirements and a new cause of action unhinged from knowledge of specific infringements.<sup>85</sup> Regardless, the SHOP SAFE Act has not been enacted.

Voluntary best practice lists exist. For example, in 2023, the International Trademark Association (“INTA”) established a framework for protecting consumers from third-party sales of counterfeit goods via online marketplaces.<sup>86</sup> In 2024, the Organization for Economic Cooperation and Development (“OECD”) completed its initial Draft Voluntary Guidelines for Countering Illicit Trade in Counterfeit Goods on Online Marketplaces.<sup>87</sup> Although these draft guidelines are not binding in their current form, they could have an effect on platforms’ practices. The U.S. Patent and Trademark Office (“USPTO”) has since solicited public comments on the OECD draft and held a public roundtable.<sup>88</sup>

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<sup>83</sup> See Eric Goldman, *SHOP SAFE Act Reintroduced, Because Some Congressmembers Really Want to Kill Online Marketplaces*, TECH. & MKTG. L. BLOG (Sept. 29, 2023), <https://blog.ericgoldman.org/archives/2023/09/shop-safe-act-reintroduced-because-some-congressmembers-really-want-to-kill-online-marketplaces.htm> [https://perma.cc/JV4E-6GXT].

<sup>84</sup> SHOP SAFE Act, S. 2934, 118th Cong. § 2(a) (2023).

<sup>85</sup> Letter from Eric Goldman, Betsy Rosenblatt, and Rebecca Tushnet to Sen. Chuck Schumer, Sen. Mitch McConnell, Rep. Nancy Pelosi, and Rep. Kevin McCarthy (Mar. 8, 2022), <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=3634&context=historical> [https://perma.cc/L8JZ-KTQR].

<sup>86</sup> International Trademark Association (INTA), *Establishing a Framework for Protecting Consumers from Third-Party Sales of Counterfeit Goods via Online Marketplaces* (Nov. 14, 2023), [https://www.inta.org/wp-content/uploads/public-files/advocacy/board-resolutions/20231114\\_Establishing-a-Framework-for-Protecting-Consumers-Final.pdf](https://www.inta.org/wp-content/uploads/public-files/advocacy/board-resolutions/20231114_Establishing-a-Framework-for-Protecting-Consumers-Final.pdf) [https://perma.cc/8SSE-2HW9].

<sup>87</sup> Draft Voluntary Guidelines for Countering Illicit Trade in Counterfeit Goods on Online Marketplaces, TAD/TC/WPCIT/RD (2024) (on file with author) [hereinafter OECD Draft Guidelines].

<sup>88</sup> 90 Fed. Reg. 21291 (May 19, 2025).

Regardless of these efforts, online trademark infringement has occurred and the law has not advanced much after the canonical case of *Tiffany v. eBay*,<sup>89</sup> raising the question of when, and under what circumstances, the hosting platform and service providers should be held liable for users' trademark infringements. As Judge Whyte noted in *Netcom*, the proper framework for determining liability of online platforms for user-generated infringements is typically secondary liability.<sup>90</sup> Secondary liability doctrine in trademark law emerged from common law principles as early as the 1920s.<sup>91</sup> The greatest risk of secondary liability for platforms is under a contributory liability theory. In *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, the Supreme Court defined contributory liability under trademark law as continuing to provide a service to one it knows is engaging in trademark infringement.<sup>92</sup>

The other theory of secondary trademark infringement is vicarious liability, but trademark law's vicarious liability test is much more stringent than under copyright law because it requires the defendant to have a high degree of control over the infringement. Vicarious trademark liability requires "a finding that the defendant and the infringer have an apparent or actual partnership, have authority to bind one another in transactions with third parties or exercise joint ownership or control over the infringing product."<sup>93</sup> Merely offering an online service is unlikely to create such an actual or apparent partnership, which is why most litigation over platform trademark infringement liability has focused on contributory liability. Therefore, the focus of trademark secondary liability cases in the online context has largely been on contributory liability, specifically knowledge acquisition and actions in response.

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<sup>89</sup> See *infra* note 104.

<sup>90</sup> *Religious Tech. Ctr. v. Netcom On-Line Commc'n Servs.*, 907 F. Supp. 1361, 1373–74 (N.D. Cal. 1995).

<sup>91</sup> See *William R. Warner & Co. v. Eli Lilly Co.*, 265 U.S. 526, 532 (1924) (finding a manufacturer contributorily liable for palming off Quin-Coco as Coco-Quinine because its salesmen induced pharmacists to fill requests for Co-Quinine with Quin-Coco); *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 854 (1982) ("[I]f a manufacturer or distributor intentionally induces another to infringe a trademark, or if it continues to supply its product to one whom it knows or has reason to know is engaging in trademark infringement, the manufacturer or distributor is contributorily [sic] responsible . . .").

<sup>92</sup> 456 U.S. 844, 854 (1982).

<sup>93</sup> *Perfect 10, Inc. v. Visa Int'l Svc. Ass'n*, 494 F.3d 788, 807 (9th Cir. 2007) (quoting *Hard Rock Café Licensing Corp. v. Concession Servs. Inc.*, 955 F.2d 1143, 1150 (7th Cir. 1992)).

The online contributory liability test started to develop in cases like *Lockheed Martin Corp. v. Network Solutions, Inc.*, in which the plaintiff sued a domain name registrar for trademark infringement.<sup>94</sup> In its decision, the Ninth Circuit expanded the Supreme Court's definition of contributory liability from *Inwood Laboratories*, noting that courts should "consider the extent of control exercised by the defendant over the third party's means of infringement" when they are analyzing a service and not a product.<sup>95</sup> Instead of determining whether the defendant "supplies a product," courts should look at whether the service had "[d]irect control and monitoring of the instrumentality used by the third party to infringe."<sup>96</sup> The court held that the defendant domain name registrar did not exercise sufficient direct control and monitoring to warrant liability because it mechanically provided domain names and was not expected to monitor the Internet for infringement.<sup>97</sup>

Following *Lockheed Martin*, the doctrine continued to develop. Due to its common law nature, contributory trademark liability evolved with slight differences and refinements. For example, in *Perfect 10, Inc. v. Visa International Service Association*, the Ninth Circuit again faced the question of whether service providers—this time, credit card companies that processed payments—could be secondarily liable for users' trademark infringements.<sup>98</sup> The *Visa* court further refined the analysis in *Lockheed Martin*, rejecting contributory liability because, among other things, "Perfect 10 has not alleged that Defendants have the power to remove infringing material from these websites or directly stop their distribution over the Internet."<sup>99</sup>

Undoubtedly the most significant case for online trademark infringement was the Second Circuit's decision in *Tiffany v. eBay*, in which it incorporated a notice-and-takedown system into the common law. In that case, jewelry company Tiffany sued e-commerce platform eBay for user listings of alleged knockoff Tiffany rings.<sup>100</sup> Convinced by similar rationales to the DMCA and applying the

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<sup>94</sup> 194 F.3d 980, 981–82 (9th Cir. 1999).

<sup>95</sup> *Id.* at 984 (citing *Hard Rock Café*, 955 F.2d at 1148–49, and *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 265 (9th Cir. 1996)).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 985.

<sup>98</sup> 494 F.3d at 806.

<sup>99</sup> *Id.* at 807.

<sup>100</sup> *Tiffany (NJ) Inc. v. eBay, Inc.*, 600 F.3d 93, 101 (2d Cir. 2010).

*Inwood Laboratories* standard, the court held that an Internet service provider can be held contributorily liable for trademark infringement only when it knows of specific instances of infringing content on its platform and fails to remove them.<sup>101</sup> Generalized knowledge of infringement somewhere on the platform, or the mere prospect of the platform being used for infringement, is insufficient.<sup>102</sup> Because eBay removed specific Tiffany-related content once it learned it was infringing, eBay was not contributorily liable.<sup>103</sup>

Other courts have subsequently adopted similar rules to those articulated in *Tiffany v. eBay*.<sup>104</sup> An important rule from these progeny is that online platforms need not proactively monitor their services for infringement.<sup>105</sup> *Tiffany v. eBay* hinted at such a rule by explaining that general knowledge of infringement existing

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<sup>101</sup> *Id.* at 107.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 109.

<sup>104</sup> See, e.g., *Rosetta Stone Ltd. v. Google, Inc.*, 676 F.3d 144, 163 (4th Cir. 2012) (“It is not enough to have general knowledge that some percentage of the purchasers of a product or service is using it to engage in infringing activities; rather, the defendant must supply its product or service to ‘identified individuals’ that it knows or has reason to know are engaging in trademark infringement.”); *1-800 Contacts, Inc. v. Lens.com, Inc.*, 722 F.3d 1229, 1252–53 (10th Cir. 2013) (citing *Tiffany v. eBay* and *Rosetta Stone v. Google*); *Y.Y.G.M. SA v. Redbubble, Inc.*, 75 F.4th 995, 1002 (9th Cir. 2023) (“We hold that willful blindness for contributory trademark liability requires the defendant to have specific knowledge of infringers or instances of infringement.”).

<sup>105</sup> See, e.g., *Y.Y.G.M.*, 75 F.4th at 1002 (“Without that [specific] knowledge, the defendant need not search for infringement.”); *Spy Phone Labs LLC v. Google Inc.*, No. 15-cv-03756-KAW, 2016 WL 6025469, at \*6 (N.D. Cal. Oct. 14, 2016) (interpreting *Tiffany v. eBay*’s rejection of generalized notice to not require platforms to “preemptively check over the goods of every vendor to ensure they are not also selling counterfeit goods”).

The Court of Justice of the European Union likewise rejected an affirmative duty to monitor for infringement. See *Joined Cases C-682/18 & C683/18, Frank Peterson v. Google LLC and Others and Elsevier Inc v. Cyando*, EU:C:2021:503, ¶ 135, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62018CJ0682> [<https://perma.cc/V3BB-ZGEH>] (“The Court has held on numerous occasions that measures that consist in requiring a service provider to introduce, exclusively at its own expense, a screening system which entails general and permanent monitoring in order to prevent any future infringement of intellectual property rights were incompatible with Article 15(1) of the Directive on Electronic Commerce.”).

However, this obligation could be implied for copyrights under Article 17 of the Digital Single Market Directive. Council Directive 2019/790, 2019 O.J. (L 130/92) Art. 17(4), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790> [<https://perma.cc/ZAY6-E6CL>]; see also Axel Metzger & Martin Senftleben, *Understanding Article 17 of the EU Directive on Copyright in the Digital Single Market – Central Features of the New Regulatory Approach to Online Content-Sharing Platforms*, 67 J. COPYRIGHT SOC’Y OF THE U.S.A. 279, 288 (2020) (“Such an interpretation [of ‘best efforts’ under Article 17 of the Directive] would entail a general monitoring obligation for all uploaded content.”).

somewhere on a platform is not enough to trigger a duty to investigate.<sup>106</sup> The DMCA has the same rule.<sup>107</sup> The district court in *Tiffany v. eBay* and some earlier court decisions had previously rejected such “an affirmative duty to take precautions against potential counterfeiters,” although the Second Circuit did not address this on appeal.<sup>108</sup>

Unlike the rule-laden DMCA, *Tiffany v. eBay* offers a fairly general liability standard. Beyond the specific knowledge and removal requirement, the Second Circuit and other courts have not defined what, if any, additional requirements should apply. As detailed in the previous Section, the DMCA safe harbor requires a panoply of features and obligations, including a repeat infringer policy, not interfering with standard technical measures, not having a right and ability to control and a direct financial benefit, expeditious removal, a designated service agent, specific requirements for a proper notice, and a counter-notice procedure.<sup>109</sup> *Tiffany v. eBay* does not explicitly require any of these for the platform to avoid contributory liability beyond specific knowledge of infringement.<sup>110</sup>

However, the defendant, eBay, went beyond the bare requirements of the Second Circuit’s decision and engaged in commendable behavior. For example, eBay spent up to \$20 million a year on trust and safety measures, including combating infringement. Its Trust and Safety department consisted of 4,000 employees, with over 200 employees working exclusively on combating infringement.<sup>111</sup> eBay also had a repeat infringer policy.<sup>112</sup> It removed specific infringements within twenty-four hours’ notice and 70-80% within twelve hours’ notice.<sup>113</sup> eBay informed the reported seller why the listing was removed.<sup>114</sup> If an

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<sup>106</sup> *Tiffany (NJ) Inc. v. eBay, Inc.*, 600 F.3d 93, 107 (2d Cir. 2010).

<sup>107</sup> 17 U.S.C. § 512(m).

<sup>108</sup> *Tiffany (NJ) Inc. v. eBay, Inc.*, 576 F. Supp. 2d 463, 515 (S.D.N.Y. 2008); *see also* *Lockheed Martin Corp. v. Network Sols., Inc.*, 985 F. Supp. 949, 967 (C.D. Cal. 1997) (“While the landlord of a flea market might reasonably be expected to monitor the merchandise sold on his premises, NSI cannot reasonably be expected to monitor the Internet.”), *aff’d*, 194 F.3d 980, 985 (9th Cir. 1999); *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d 1082, 1095 (C.D. Cal. 2001) (“[E]Bay has no affirmative duty to monitor its own website for potential trade dress violation.”).

<sup>109</sup> *See supra* Part I.B.

<sup>110</sup> 600 F.3d at 107.

<sup>111</sup> *Id.* at 98.

<sup>112</sup> *Id.* at 109.

<sup>113</sup> *Id.* at 99.

<sup>114</sup> *Id.*

auction or sale had not ended, eBay cancelled bids; if it had, eBay retroactively cancelled the transaction and refunded the fees it had collected.<sup>115</sup> eBay had a set procedure for receiving trademark infringement reports called a “Notice of Claimed Infringement,” or NOCI.<sup>116</sup> Although it is not required under the DMCA either, eBay implemented a “fraud engine” to automatically search and filter listings that were likely to infringe or otherwise violate eBay policies.<sup>117</sup>

The Second Circuit did not base its decision on any of these aspects of eBay’s actions.<sup>118</sup> eBay had gone above and beyond the notice-and-takedown requirement the Second Circuit adopted. However, scholars cautioned that *Tiffany v. eBay* left open the possibility of finding a service provider willfully blind if it had a less legitimate business model than eBay—even if the infringing content were removed upon notice.<sup>119</sup> Some thought that, in trademark infringement secondary liability cases post-*Tiffany v. eBay*, “what matters most . . . is whether the court believes in the defendant’s essential legitimacy and good faith.”<sup>120</sup> Yet subsequent court decisions do not seem to have imposed requirements commensurate with eBay’s actions in the *Tiffany v. eBay* litigation.<sup>121</sup> Without a statutory safe harbor, it is possible that the trademark contributory liability standard may shift to incorporate new requirements at common law. It could even draw requirements from the contributory liability standard for copyright infringement, which is currently before the Supreme Court.<sup>122</sup>

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<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 98–99.

<sup>118</sup> *Id.* at 109 (affirming that eBay was not contributorily liable because it either only received general knowledge that Tiffany trademark-infringing goods were on its e-commerce platform or it removed such goods upon learning of those specific listings).

<sup>119</sup> Dinwoodie, *supra* note 8, at 475; *see also* Thomas C. Rubin, *Leveraging Notice and Takedown to Address Trademark Infringement Online*, 37 COLUM. J.L. & ARTS 585, 586 (2014) (“eBay went further than typical notice and takedown best practices . . . . These are precisely the kinds of actions that brand owners want to encourage platforms to take, and the court’s holding rewarded eBay for taking them.”).

<sup>120</sup> Dogan, “*We Know It When We See It*”, *supra* note 8, at 2; *see also* Dogan, *Principled Standards*, *supra* note 8, at 517 (“Other opinions follow a similar contextual analysis of contributory infringement, refusing to find liability that might interfere with legitimate operations but imposing it against parties that appear eager to promote or ignore infringement.”).

<sup>121</sup> *See supra* note 105. While it was in dicta, in *Y.Y.G.M. SA v. Redbubble, Inc.*, the Ninth Circuit favorably mentioned removing repeat infringers, citing *Tiffany v. eBay*. *Y.Y.G.M.*, 75 F.4th at 1003.

<sup>122</sup> *Cox Comm’n’s, Inc. v. Sony Music Ent.*, No. 24-171 (U.S. 2025); *see also* Christopher A. Cotropia & James Gibson, *Convergence and Conflation in Online Copyright*, 105 IOWA L. REV. 1027, 1064 (2020)



So far, in the wake of *Tiffany v. eBay*, the industry standard for platforms appears to be having a notice-and-takedown procedure for trademark infringements.<sup>123</sup> Yet *Tiffany v. eBay* provides little guidance on what is required beyond removal of infringing content upon learning of it. While some commentators have advocated for a legislative notice-and-takedown regime like the DMCA,<sup>124</sup> such a statute has not emerged and *Tiffany v. eBay* remains the standard. This leaves an open question of what additional items, if any, platforms need to employ in order to avail themselves of trademark liability safe harbors.

While the caselaw is lacking in detail, in future cases, courts and Congress may look to private ordering to determine what is reasonable to require of platforms. Custom and industry norms often have a significant influence on practice and the development of intellectual property law. For example, informal norms by copyright and trademark owners have influenced industry practice and even the law.<sup>125</sup>

Studies about the role of private ordering are replete in the intellectual property literature. Several scholars have examined intellectual property-like norms that have emerged in intellectual property's so-called "negative spaces," where intellectual property protections are lacking yet creativity has

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(describing how the copyright secondary liability standards at common law have partially converged with those requirements under the DMCA).

<sup>123</sup> Dinwoodie, *supra* note 8, at 478; Rubin, *supra* note 119, at 587.

<sup>124</sup> See, e.g., Frederick W. Mostert & Martin B. Schwimmer, *Notice and Takedown for Trademarks*, 101 TRADEMARK REP. 249, 265 (2011) (proposing that "[t]he better course [for trademark law] is to utilize a legislatively structured process employing structured notices and responses to such notices").

<sup>125</sup> Jennifer E. Rothman, *The Questionable Use of Custom in Intellectual Property*, 93 VA. L. REV. 1899, 1903–04 (2007). This reality of private ordering arising in the shadow of the law has not gone uncriticized. For example, scholars have questioned the optimality of custom-driven solutions for intellectual property and the Internet due to, among other things, the outsized impact of relationship preservation, pressure to avoid litigation, reactive customs to single legal decisions, slippery slopes that harm free speech, market inequities, inflexible norms that ignore technological and social change, and ignorance of externalities. *Id.* at 1951–61; Mark A. Lemley, *The Law and Economics of Internet Norms*, 73 CHI.-KENT L. REV. 1257, 1266–84 (1998).

proliferated.<sup>126</sup> These studies include stand-up comedy,<sup>127</sup> roller derby,<sup>128</sup> drag,<sup>129</sup> tattoos,<sup>130</sup> fan fiction,<sup>131</sup> recipes,<sup>132</sup> pornography,<sup>133</sup> and jam bands.<sup>134</sup> Other literature has examined industries where intellectual property law may apply, yet informal norms still play an important role, such as photography and craft beer.<sup>135</sup>

The rest of this Article explores how online platforms have structured their notice-and-takedown regimes under the general standard of trademark common law rather than the DMCA's statutory rules. This is a distinct question from many prior studies on intellectual property norms and private ordering, which examined creativity norms where intellectual property law does not exist or norms that differed from the law. This study instead asks how private ordering develops where the law only offers a general standard. This Article's findings could, in turn, influence common law developments by showing the current state of private ordering among platforms.

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<sup>126</sup> Kal Raustiala & Christopher Sprigman, *The Piracy Paradox: Innovation and Intellectual Property in Fashion Design*, 92 VA. L. REV. 1687, 1764 (2006).

<sup>127</sup> Dotan Oliar & Christopher Jon Sprigman, *There's No Free Laugh (Anymore): The Emergence of Intellectual Property Norms and the Transformation of Stand-Up Comedy*, 94 VA. L. REV. 1787 (2008).

<sup>128</sup> David Fagundes, *Talk Derby to Me: Intellectual Property Norms Governing Roller Derby Pseudonyms*, 90 TEX. L. REV. 1093 (2012).

<sup>129</sup> Eden Sarid, *Don't Be a Drag, Just Be a Queen—How Drag Queens Protect Their Intellectual Property Without Law*, 10 FIU L. REV. 133 (2014).

<sup>130</sup> Aaron Perzanowski, *Tattoos and IP Norms*, 98 MINN. L. REV. 511 (2013).

<sup>131</sup> Rebecca Tushnet, *Economics of Desire: Fair Use and Marketplace Assumptions*, 51 WM. & MARY L. REV. 513 (2009).

<sup>132</sup> Christopher J. Buccafusco, *On the Legal Consequences of Sauces: Should Thomas Keller's Recipes Be Per Se Copyrightable?*, 24 CARDOZO ARTS & ENT. L.J. 1121 (2007).

<sup>133</sup> Kate Darling, *IP Without IP? A Study of the Online Adult Entertainment Industry*, 17 STAN. TECH. L. REV. 655 (2014); Kal Raustiala & Christopher Jon Sprigman, *The Second Digital Disruption: Streaming & the Dawn of Data-Driven Creativity*, 94 N.Y.U. L. REV. 1555 (2019).

<sup>134</sup> Mark F. Schultz, *Fear and Norms and Rock & Roll: What Jambands Can Teach About Persuading People to Comply with Copyright Law*, 21 BERKELEY TECH. L.J. 651 (2006).

<sup>135</sup> See, e.g., Jessica Silbey, Eva E. Subotnik & Peter C. DiCola, *Existential Copyright and Professional Photography*, 95 NOTRE DAME L. REV. 263 (2019); Zahr K. Said, *Craft Beer and the Rising Tide Effect: An Empirical Study of Sharing and Collaboration Among Seattle's Craft Breweries*, 23 LEWIS & CLARK L. REV. 355 (2019).

## II

## ONLINE TRADEMARK POLICY STUDY AND METHODOLOGY

In order to understand how online trademark law norms have developed since *Tiffany v. eBay*, I undertook an empirical study of websites' trademark infringement policies. This follows a long tradition of empirical studies investigating the edges of trademark law, including on bars to registration,<sup>136</sup> whether we are running out of trademarks,<sup>137</sup> how courts employ likelihood of confusion analyses,<sup>138</sup> whether investors value trademark enforcement actions,<sup>139</sup> the success of women and racial minorities at securing trademark registrations,<sup>140</sup> the registration of sounds as trademarks,<sup>141</sup> the registration of colors as trademarks,<sup>142</sup> and the use of fraudulent U.S. trademark specimens of use by applicants from China.<sup>143</sup>

This Article seeks to add to this empirical literature on trademark law by furthering our understanding of how online platforms engage in private ordering in light of the general trademark contributory liability standard at common law. Like many previous empirical studies of trademark law, I crafted a bespoke list to

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<sup>136</sup> See, e.g., Michael P. Goodyear, *Queer Trademarks*, 2024 U. ILL. L. REV. 163 (2024); Vicki Huang, *Trademarks, Race and Slur-Appropriation: An Interdisciplinary and Empirical Study*, 2021 U. ILL. L. REV. 1605 (2021); Barton Beebe & Jeanne C. Fromer, *Immoral or Scandalous Marks: An Empirical Analysis*, 8 N.Y.U. J. INTELL. PROP. & ENT. L. 169 (2019); Megan M. Carpenter & Mary Garner, *NSFW: An Empirical Study of Scandalous Trademarks*, 33 CARDOZO ARTS & ENT. L.J. 321 (2015); Anne Gilson LaLonde & Jerome Gilson, *Trademarks Laid Bare: Marks That May Be Scandalous or Immoral*, 101 TRADEMARK REP. 1476 (2011); Vincenc Feliu, *The F Word - An Early Empirical Study of Trademark Registration of Scandalous and Immoral Marks in the Aftermath of the In re Brunetti Decision*, 18 J. MARSHALL REV. INTELL. PROP. L. 404 (2019).

<sup>137</sup> Barton Beebe & Jeanne C. Fromer, *Are We Running Out of Trademarks? An Empirical Study of Trademark Depletion and Congestion*, 131 HARV. L. REV. 945 (2018).

<sup>138</sup> Barton Beebe, *An Empirical Study of the Multifactor Tests for Trademark Infringement*, 94 CALIF. L. REV. 1582 (2006); Daryl Lim, *Trademark Confusion Revealed: An Empirical Analysis*, 71 AM. U. L. REV. 125 (2022).

<sup>139</sup> Jessica M. Kiser, Sean P. Wright & Benjamin P. Edwards, *Of Marks and Markets: An Empirical Study of Trademark Litigation*, 75 S.C. L. REV. 1 (2023).

<sup>140</sup> W. Michael Schuster, Miriam Marcowitz-Bitton & Deborah R. Gerhardt, *An Empirical Study of Gender and Race in Trademark Prosecution*, 94 S. CAL. L. REV. 1407 (2021).

<sup>141</sup> Deborah R. Gerhardt & Jon J. Lee, *Sound Marks*, 108 MINN. L. REV. 2339 (2024).

<sup>142</sup> Deborah R. Gerhardt & Jon McClanahan Lee, *Owning Colors*, 40 CARDOZO L. REV. 2483 (2019).

<sup>143</sup> Barton Beebe & Jeanne C. Fromer, *Fake Trademark Specimens: An Empirical Analysis*, 120 COLUM. L. REV. F. 217 (2020).

examine.<sup>144</sup> It would be practically impossible to categorize every online policy that addresses trademark infringement. Instead, I created a sample of forty-five online platforms. I drew this list from four types of online platforms that are more likely than most to have user-generated trademark infringement: social media, blogging and review websites, e-commerce, and print-on-demand. These websites involve vast quantities of user posts, photos, and listings, raising the chance of trademark infringement occurring. Furthermore, trademark owners have sued these types of platforms for their users' infringements in the past.<sup>145</sup> Therefore, these platforms would seem to be especially incentivized to have robust trademark infringement policies to avoid liability.

The platforms that were included in the study are listed in Table 1. This sample of platforms contains the largest companies by market capitalization and user base, as well as some smaller companies to diversify the dataset. The largest platforms are well-resourced and likely to use highly sophisticated legal counsel. Smaller companies usually have fewer and less specialized attorneys. Companies in this dataset include ones worth over one trillion dollars, like Amazon, to those valued in the double-digit millions, like Redbubble.<sup>146</sup>

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<sup>144</sup> See, e.g., Goodyear, *supra* note 136 (making a lexicon of anti-LGBTQ+ slurs); Huang, *supra* note 136 (compiling a lexicon of racial slurs); Carpenter & Garner, *supra* note 136 (examining trademark applications involving a bespoke list of potentially offensive terms); Feliu, *supra* note 136 (using seven vulgar words).

<sup>145</sup> See, e.g., Car-Freshner Corp. v. Meta Platforms, Inc., No. 22-CV-1305 (MAD/ML), 2023 WL 7325109, at \*20–\*21 (N.D.N.Y. Nov. 7, 2023) (alleging trademark infringement claims against Meta for the presence of air fresheners and T-shirts on its Facebook Marketplace and Instagram services that allegedly infringed Plaintiff's Little Trees marks); Ascentive, LLC v. Opinion Corp., 842 F. Supp. 2d 450, 470 (E.D.N.Y. 2011) (alleging that review website PissedConsumer contained advertisements that infringed their trademarks); Milo & Gabby, LLC v. Amazon.com, Inc., No. C13-1932RSM, 2015 WL 4394673, at \*3 (W.D. Wash. July 16, 2015) (claiming that Amazon should be liable for allegedly counterfeit listings on its e-commerce platform); Atari Interactive, Inc. v. Redbubble, Inc., 515 F. Supp. 3d 1089, 1108 (N.D. Cal. 2021) (alleging contributory liability against print-on-demand service Redbubble for user product listings that allegedly infringed Atari's trademarks).

<sup>146</sup> See *Leaders in the World of E-Commerce*, TRADINGVIEW, <https://www.tradingview.com/markets/world-stocks/worlds-largest-e-commerce-companies> [<https://perma.cc/7LTP-VXHX>] (last visited July 17, 2025) (listing Amazon as the world's largest e-commerce company, with a market capitalization of 2.37 trillion); *Redbubble*, PITCHBOOK, <https://pitchbook.com/profiles/company/93087-19#stock> [<https://perma.cc/G7TY-R5R6>] (last visited Oct. 2, 2025) (listing Redbubble as having a market capitalization of \$61.2 million).

TABLE 1: ONLINE PLATFORMS REVIEWED

<b>Social Media</b>	<b>Blog/Review</b>	<b>E-Commerce</b>	<b>Print-on-Demand</b>
Beli	Foursquare	AliExpress <sup>147</sup>	Gelato
BeReal	Medium	Amazon	Gooten
Bluesky	TripAdvisor	Craigslist	Printful
Discord	Tumblr	eBay	Printify
Facebook	Weebly	Etsy	Redbubble
Fishbowl	Wix	Rakuten	Sellfy
Flickr	WordPress	Shopee	Society6
LinkedIn	Yelp	Shopify	TeePublic
Mastodon		Temu	Zazzle
Pinterest		Walmart	
Reddit			
Snapchat			
Telegram			
TikTok			
Twitch			
YouTube			
WeChat			
X (Twitter)			

The platforms referenced their policies and practices regarding user trademark infringement in different documents. Some had specific intellectual property or even specific trademark policies. Others included this information in more general Terms of Use. Many had their policies spread across multiple documents. To best capture all the available information, this study searched the platforms' respective websites for any references to trademarks or counterfeits, as well as using an external search engine to find any hidden information. Relevant pages and questions were often only accessible through user accounts or by partially completing

<sup>147</sup> AliExpress is included in this study because it is Alibaba's largest international consumer e-commerce platform, which connects Chinese sellers to consumers around the globe. Alibaba.com is aimed at business-to-business wholesale purchases, and other leading Alibaba e-commerce platforms, Taobao and Tmall, are primarily aimed at Chinese consumers. Alibaba Grp. Holding Ltd., Annual Report (Form 20-F), at 88, 121 (May, 23, 2024), <https://www.alibabagroup.com/en-US/ir-filings-sec> [<https://perma.cc/86LT-QNB9>].

takedown forms. Therefore, accounts were created where they were required and a takedown report was completed for each platform that accepted such reports through online forms, up until the point of submission. No report was submitted.

Selecting what data to include in this study naturally required some subjectivity. Some of the platforms' policies were quite detailed, while others contained practically no information. My research assistants initially collected and coded the policies for each platform. I reviewed each entry to reduce inconsistencies. For transparency, the Appendix included with this Article contains a chart with the compiled data.

The data collected from these policies largely drew from five unique aspects of trademark law and parallel requirements under the DMCA. First, the study confirmed that the platform prohibited trademark infringement and determined whether counterfeits are treated differently from trademark infringement, given that the Lanham Act treats them as distinct.<sup>148</sup> Second, to determine how much trademark policies mirror the DMCA requirements, the study looked at the platforms' requirements for reporting infringement. Third, it determined whether each platform has a repeat infringer policy. Fourth, it identified any takedown-plus policies that give certain rights owners superior advantages over standard notice-and-takedown procedures. Finally, it examined whether platforms have a counter-notice procedure for trademark infringement reports.

Other trademark liability laws around the world could also influence platforms' practices. Nonetheless, U.S. law has had a significant impact on the development of Internet service provider practices worldwide.<sup>149</sup> One of the most significant regulatory regimes outside of the United States is the European Union. Yet neither the European Union's E-Commerce Directive nor its more recent Digital Services Act provide more than the knowledge and duty standard under *Tiffany v. eBay* in the United States.<sup>150</sup> EU law furthers this distinction between

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<sup>148</sup> Compare 15 U.S.C. § 1127 (defining counterfeits as identical or substantially indistinguishable from a registered trademark) with 15 U.S.C. § 1114 (explaining that trademark infringement only requires a use in commerce that is likely to cause confusion); see also 15 U.S.C. § 1117(b) (providing treble damages for counterfeiting).

<sup>149</sup> Graeme B. Dinwoodie, *Private Ordering and the Creation of International Copyright Norms: The Role of Public Structuring*, 160 J. INST. & THEORETICAL ECON. 161, 173 (2004).

<sup>150</sup> Directive 2000/31/EC, art. 14(1), 2000 O.J. (L 178) 13 (EC); Regulation (EU) 2022/2065, art. 6(1), 2022 O.J. (L 277) 6, 7 (EU).

private ordering under general standards for trademark law and more rule-laden regimes like the DMCA.

This study primarily focuses on platforms' practices relating to reporting trademark infringement, which can be gleaned from the platforms' policies. Platforms' policies and other publicly available documents shed some light on platforms' private ordering around takedown practices, including repeat infringer policies and counter-notice procedures, under the general trademark common law contributory liability standard. Further qualitative work is needed, however, to determine the exact contours of platforms' takedown practices. For example, platforms may not always honor facially valid infringement reports, treat reports differently, or ask for additional information before a takedown occurs. Even such qualitative work would necessarily be limited because there is no guarantee platforms would reveal all of their internal practices, especially when the law does not compel it.

Despite its limitations, this study analyzes a meaningful dataset that offers insights into how online trademark infringement policies have developed in the absence of binding law. In particular, the findings in Part III show that the DMCA strongly influences platforms' trademark infringement policies. It also shows where practices regarding users' trademark infringements diverge from the DMCA and how industry norms are starting to align in the absence of explicit law.

### III

#### ILLUMINATING TRADEMARK NOTICE-AND-TAKEDOWN

The limited requirements of trademark law's common law notice-and-takedown regime under *Tiffany v. eBay* allow platforms flexibility to craft their own bespoke policies and practices. This study of forty-five platforms' trademark notice-and-takedown policies illustrates where private ordering in trademark notice-and-takedown diverges from the strictures of the DMCA. It also shows where some soft law norms are emerging in certain markets. At a high level, there is significant convergence between platforms' trademark notice-and-takedown policies. Underneath, however, there is considerable experimentation and variance on the specific requirements. In turn, this Part discusses findings relating to platforms' prohibitions on trademark infringement and counterfeiting, reporting requirements, repeat infringer policies, takedown-plus policies, and counter-notice procedures.

A. *Prohibiting Trademark Infringement and Counterfeiting*

Platforms' Terms of Use and related user policies can suggest whether platforms are aware of the possibility of trademark infringement and related counterfeiting issues that could bedevil their platforms. The DMCA does not explicitly require platforms to prohibit copyright infringement in their Terms of Use, although in practice most platforms seem to remove infringing content to comply with the DMCA.<sup>151</sup> Nonetheless, user policies offer insights into platforms' practices.

As shown in Table 2, the vast majority (88.89%) of the forty-five platforms included in this study explicitly prohibit trademark infringement in their Terms of Use, community guidelines, or other user policies. As a threshold matter, these prohibitions suggest that the platforms are at least aware of the possibility of users infringing trademarks on their websites or mobile applications. While trademark infringement is mentioned fewer times than copyright infringement, platforms seem to be largely aware of the problem. Only five platforms do not explicitly prohibit trademark infringement. Telegram, LinkedIn, Wix, and Shopify do not explicitly prohibit trademark infringement, including counterfeiting. Mastodon prohibits infringements of its own trademarks, but does not mention infringement of others' trademarks.<sup>152</sup> However, LinkedIn, Mastodon, Wix, and Shopify impliedly prohibit trademark infringement because they provide instructions for reporting trademark infringement.<sup>153</sup>

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<sup>151</sup> See JENNIFER M. URBAN, JOE KARAGANIS & BRIANNA L. SCHOFIELD, NOTICE AND TAKEDOWN IN EVERYDAY PRACTICE 41 (2017) ("Most OSPs reported acting conservatively in order to avoid liability, opting to take down content even when they are uncertain about the strength of the underlying claim.").

<sup>152</sup> *Trademark Policy*, MASTODON, <https://joinmastodon.org/trademark> [<https://perma.cc/CU8P-TV8R>] (last updated Dec. 21, 2022) [hereinafter *Mastodon Trademark Policy*].

<sup>153</sup> *Reporting a Trademark Infringement Form*, LINKEDIN, <https://www.linkedin.com/help/linkedin/ask/TS-NTMI> [<https://perma.cc/AP72-YR97>] (last visited Nov. 8, 2024) [hereinafter *LinkedIn Reporting*]; *Mastodon Trademark Policy*, *supra* note 152; *Trademark Infringement*, WIX, <https://www.wix.com/about/trademarkform> [<https://perma.cc/A84C-P4ZR>] (last visited Nov. 15, 2024); *Reporting Trademark or Trade Dress Infringement or Responding to a Trademark or Trade Dress Notice*, SHOPIFY, <https://help.shopify.com/en/manual/compliance/intellectual-property/trademark-trade-dress-policy> [<https://perma.cc/X8A9-65JC>] (last visited Nov. 8, 2024) [hereinafter *Shopify Reporting*].



TABLE 2: PROHIBITED TRADEMARK INFRINGEMENT AND COUNTERFEITING

Requirement	Social Media	Blog/ Review	E-Commerce	Print-on-Demand	Total
Prohibits Trademark Infringement	15/18	7/8	9/10	9/9	40/45
Prohibits Counterfeiting	10/18	1/8	8/10	6/9	25/45

A slightly separate question is the issue of counterfeiting. The Lanham Act prohibits different types of infringement, while the DMCA only targets the more uniformly defined copyright infringement.<sup>154</sup> The Lanham Act notably distinguishes counterfeiting as a particularly egregious type of trademark infringement. Counterfeits are spurious marks that are indistinguishable from the real thing.<sup>155</sup> Rights owners can recover treble damages compared to regular trademark infringement or statutory damages of up to \$2,000,000 per counterfeit mark per type of goods or services.<sup>156</sup>

Over half (55.56%) of the platforms in this study explicitly address counterfeiting. However, platforms typically do not define counterfeiting, and they could be defining it differently than the Lanham Act does.<sup>157</sup> Like with prohibitions on trademark infringement, explicit prohibitions of counterfeiting are contained not just in the Terms of Use, but also other user policies, including community guidelines, and policies for user safety and illegal activities. In practice, however, few platforms impose substantive requirements that distinguish trademark infringement from counterfeiting, as will be discussed below in Part III.B. on reporting requirements for proper takedown notices.

### B. Reporting Requirements

Unlike the rule-laden DMCA, the common law notice-and-takedown system under *Tiffany v. eBay* only formally requires removal upon knowledge of an infringement.<sup>158</sup> This section examines what platforms have required for takedown

<sup>154</sup> Compare 15 U.S.C. §§ 1114, 1125, with 17 U.S.C. § 512.

<sup>155</sup> 15 U.S.C. § 1127.

<sup>156</sup> 15 U.S.C. § 1117(b), (c).

<sup>157</sup> Cf. Sarah Fackrell, *The Counterfeit Sham*, 138 HARV. L. REV. 471, 473–74 (2024) (describing the overuse of “counterfeiting” terminology in the litigation context).

<sup>158</sup> *Tiffany (NJ) Inc. v. eBay, Inc.*, 600 F.3d 93, 107 (2d Cir. 2010).

notices under the general common law standard. Platforms may treat valid notices differently after they have received them, but that qualitative research is beyond the scope of this article. Instead, this section focuses on the notice portion of notice-and-takedown because knowledge of infringement is what triggers an obligation to act to avoid being held contributorily liable. This sheds light on platforms' private ordering, which in turn could influence common law standards for notice-and-takedown by showing what is customary in the industry.

Somewhat surprisingly, out of the forty-five platforms investigated, only thirty-eight have requirements for takedown notices.<sup>159</sup> Seven platforms do not have any requirements for trademark infringement takedown notices: five social media apps (Beli, Bluesky, Fishbowl, Mastodon, and Telegram); one review website (Trip Advisor); and one print-on-demand service (Gooten).<sup>160</sup> They may remove reported infringements in practice, but it would be more difficult for rights owners to report infringements because they do not, at least in the first instance, know what they must include in a report. Similar concerns about the difficulty of finding information about how to report infringing content were expressed by copyright owners in comments responding to a notice of inquiry from the U.S. Copyright Office on the effectiveness of the DMCA.<sup>161</sup> The undisclosed notice requirements are somewhat surprising since the Second Circuit in *Tiffany v. eBay*

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<sup>159</sup> This is, however, higher than in a prior study of e-commerce platforms, which only found 50% of the platforms in that study to have a reporting mechanism for intellectual property rights owners. Shepherd et al., *supra* note 9, at 19.

<sup>160</sup> BeReal's Intellectual Property Policy only directs rights owners to a generic reporting tool for any inappropriate content rather than trademark infringement specifically, but it is included here with other platforms' trademark infringement reporting requirements for completeness. *Intellectual Property*, BeREAL., <https://help.bereal.com/hc/en-us/articles/10268238855965-Intellectual-Property> [<https://perma.cc/4XRV-XXUU>] (last updated Apr. 24, 2023); *see also Submit a Request*, BeREAL., [https://help.bereal.com/hc/en-us/requests/new?ticket\\_form\\_id=9858160221213](https://help.bereal.com/hc/en-us/requests/new?ticket_form_id=9858160221213) [<https://perma.cc/K85G-JJPC>] (last visited Nov. 8, 2024) (presenting the form for reporting inappropriate content, including infringements).

<sup>161</sup> *See, e.g.*, U.S. COPYRIGHT OFFICE, SECTION 512 STUDY PUBLIC ROUNDTABLE ON 05-12-2016, 19–20 (2016), [https://www.copyright.gov/policy/section512/public-roundtable/transcript\\_05-12-2016.pdf](https://www.copyright.gov/policy/section512/public-roundtable/transcript_05-12-2016.pdf) [<https://perma.cc/LKC8-WJG3>] [hereinafter SECTION 512 ROUNDTABLE] (Devon Weston, Digimarc, remarking on “the incredible inefficiency that comes along with the diversity of submission forms . . . you have to conform to every single different website’s takedown operation . . . . Others require captchas, different sort of very manual procedures that sort of preclude anyone doing this at scale for copyright holders . . . it varies tremendously.”); John Slempe, First Round Comments on Digital Millennium Copyright Act Safe Harbor Provisions (Apr. 7, 2016), <https://www.regulations.gov/comment/COLC-2015-0013-85948> [<https://perma.cc/2V5D-NGPY>] (“Tracking down the correct contact information to send the ‘Take Down’ notice to has been extremely frustrating, not to mention time consuming.”).

seemed to favor a reporting process.<sup>162</sup> This lack of disclosure is also not consistent with platforms' copyright practices. Six of the seven platforms have DMCA takedown procedures.<sup>163</sup> The lack of any posted trademark notice procedures could even suggest a lack of notice-and-takedown procedures altogether, although further qualitative research is needed to draw such a conclusion.

This rest of this section discusses the practices of those thirty-eight platforms that have takedown notice policies for trademark infringement. Despite the paucity of guidance on what a formal takedown notice should require, platforms have adopted a wide variety of requirements. Perhaps unsurprisingly, the six requirements for a takedown notice under the DMCA are generally required for trademark takedown notices too. Yet these are not the only requirements; the platforms investigated in this study utilize, in total, thirty-three additional requirements and requests for information.

Of those thirty-eight platforms, the vast majority (81.58%) request that rights owners report trademark infringements via a specific form.<sup>164</sup> The dominance of online forms for reporting trademark infringement is likely because of the ease of completing and receiving them and the ability of platforms to require reporting parties to complete certain parts of the form. The remaining seven platforms (five of which are print-on-demand services) request the information via email and do not have an online form.

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<sup>162</sup> *Tiffany*, 600 F.3d at 109; *see also* *Academy of Motion Picture Arts & Scis. v. GoDaddy.com, Inc.*, No. CV 10-03738 AB (CWx), 2015 WL 5311085, at \*29 (C.D. Cal. Sept. 10, 2015) (favorably noting that “[b]y adopting a DMCA-style notice and takedown procedure to help address alleged instances of trademark infringement, GoDaddy filled the gap left by Congress”).

<sup>163</sup> Only Mastodon does not explicitly mention such a policy. However, because content moderation is based on Mastodon instance rather than across the platform, it is possible that Mastodon does not have a formalized policy because it leaves all takedown decisions to instance administrators. *Moderation Actions*, MASTODON, <https://docs.joinmastodon.org/admin/moderation> [<https://perma.cc/UV4J-BW23>] (last visited Feb. 3, 2025).

<sup>164</sup> Society6 refers to a trademark infringement notice form, but the form does not seem to exist. *Society6, LLC Copyright and Trademark Policy, IP Takedown Procedure, Copyright (DMCA) Infringements & Trademark Infringements*, SOCIETY6, <https://society6.com/pages/copyright> [<https://perma.cc/3R3Z-6VCA>] (last updated Apr. 4, 2023) [hereinafter *Society6 Takedown Procedure*].

TABLE 3: SEPARATE COPYRIGHT AND TRADEMARK REPORTING PROCEDURES

	Social Media	Blog/ Review	E-Commerce	Print-on-Demand	Total
Separate Copyright and Trademark Reporting Procedures	12/13	6/7	7/10	2/8	27/38

As shown in Table 3, most of the platforms (71.05%) have separate reporting forms or procedures for copyright and trademark infringements. For example, here is how Facebook's intellectual property report page begins.<sup>165</sup>

The screenshot displays the 'Intellectual Property Reporting Center' on Facebook. On the left, a sidebar contains the Meta logo, the center's name, a description, a 'Login' link, and sections for 'Manage Reports' (with a 'Submit a report' button and a 'View reports' link) and 'Resources' (with links for 'What is Copyright?', 'What is Trademark?', 'What is Counterfeit?', and the 'Intellectual Property Help Center'). The main content area is titled 'Submit a report' and features three distinct sections: 'Copyright' (with a 'Report' button), 'Trademark' (with a 'Report' button), and 'Counterfeit' (with a 'Report' button).

The remaining nine platforms have combined forms for copyright and other intellectual property infringements, including trademark infringement. This combined form is particularly prevalent with print-on-demand services, where only

<sup>165</sup> *Intellectual Property Reporting Center*, FACEBOOK, <https://www.facebook.com/help/ipreporting> [<https://perma.cc/S57Z-GQWE>] (last visited Feb. 19, 2025).

Printify and Society6 have separate trademark reporting mechanisms.<sup>166</sup> For an example of a combined form, see this image of Yelp's reporting form.<sup>167</sup>

The image shows the Yelp Support Center interface. At the top, there's a navigation bar with the Yelp logo and 'Support Center' on the left, and a 'Return to yelp.com' link on the right. Below the navigation bar is a search bar with the placeholder text 'What can we help you with?' and a red 'Search Support' button. To the left of the search bar is an illustration of a dog sitting at a desk with a computer monitor. Below the search bar is a 'Support Center' button. The main heading is 'Copyrights/trademark infringement'. Below this heading is a paragraph: 'We do not take kindly to those who abuse the intellectual property rights of others. If you believe that your copyright or trademark is being infringed on Yelp, please let our Support team know using the form below.' There are two numbered steps: 1. 'Identification of the copyrighted or trademarked work that you claim has been infringed:' followed by a large text input field; 2. 'Identification of the allegedly infringing content, and information reasonably sufficient to permit Yelp to locate it on the Site (e.g., the URL for the web page on which the content appears):' followed by another large text input field.

TABLE 4: DMCA REQUIREMENTS FOR TRADEMARK TAKEDOWNS

Requirement	Social Media	Blog/ Review	E-Commerce	Print-on-Demand	Total
Signature	8/13	4/7	7/10	7/8	26/38
Intellectual property	12/13	7/7	8/10	8/8	35/38
Identify infringing material	12/13	7/7	10/10	8/8	37/38
Contact information	13/13	7/7	10/10	8/8	38/38
Good faith belief that the use is unauthorized	10/13	4/7	8/10	7/8	29/38
Penalty of perjury statement that report is true and authorized to act	10/13	4/7	9/10	8/8	31/38

<sup>166</sup> *Printify Trademark Violation Form*, Printify, <https://printify.typeform.com/to/pEcir4?typeform-source=printify.com> [<https://perma.cc/7LXM-WYNS>] (last visited Feb. 3, 2025) [hereinafter *Printify Trademark Form*]; *Society6 Takedown Procedure*, *supra* note 164.

<sup>167</sup> *Copyrights/Trademark Infringement*, YELP SUPPORT CENTER, <https://www.yelp.com/support/contact/copyright-trademark> [<https://perma.cc/87AB-8W88>] (last visited Feb. 19, 2025).

The most common requirements for trademark infringement takedown notices are the six requirements under the DMCA. As shown in Table 4, the most common DMCA requirements for trademark reports are providing contact information (100%), identifying the infringing material (97.37%), and stating the intellectual property at issue (92.11%). This could be a sign of doctrinal creep from the statutory DMCA into trademark common law.<sup>168</sup> The more likely explanatory, however, is that it would be difficult for a platform to consider whether reported content is infringing without the reporting party's information, the location of the alleged infringement, and the trademark at issue. Practically, any takedown notice would need these three things.

Most platforms have the other three DMCA requirements too, but they are noticeably less universal. Only 81.58% of platforms require a penalty of perjury statement that the report is true and the reporting party is authorized to act. Only 76.32% require a statement of good faith belief that the use is unauthorized. Finally, only 68.42% require a signature. These lower rates of adoption could suggest that some platforms view these requirements as merely procedural rather than substantive. Indeed, all three requirements could be presumed by the filing of a takedown notice in the first place. None help resolve whether there is trademark infringement. However, platforms do not necessarily eschew all three requirements. For example, WeChat has a good faith statement requirement, but eschewed a signature and penalty of perjury statement.<sup>169</sup> LinkedIn has a signature requirement, but does not require a good faith statement and a penalty of perjury statement.<sup>170</sup> Medium and Rakuten only require a penalty of perjury statement, not a signature or good faith statement.<sup>171</sup> Shopee, Tumblr, and Twitch eschew all three requirements.<sup>172</sup>

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<sup>168</sup> Cf. Cotropia & Gibson, *supra* note 122, at 1064 (describing doctrinal creep from the DMCA to contributory liability in copyright law).

<sup>169</sup> *WeChat Personal User Infringement Complaint Guidelines*, WECHAT, [https://support.weixin.qq.com/cgi-bin/mmsupport-bin/readtemplate?t=page/security\\_center\\_personal\\_infringement](https://support.weixin.qq.com/cgi-bin/mmsupport-bin/readtemplate?t=page/security_center_personal_infringement) [<https://perma.cc/NA5Q-RSFG>] (last visited Nov. 8, 2024) [hereinafter *WeChat Infringement Guidelines*].

<sup>170</sup> *LinkedIn Reporting*, *supra* note 153.

<sup>171</sup> *Report a Trademark Violation*, MEDIUM, [https://help.medium.com/hc/en-us/requests/new?ticket\\_form\\_id=4422743654679&form=true](https://help.medium.com/hc/en-us/requests/new?ticket_form_id=4422743654679&form=true) [<https://perma.cc/LB68-SS3U>] (last visited Nov. 8, 2024); *Infringement Report Form*, RAKUTEN, <https://ichiba.faq.rakuten.net/form/rightsmanagement-post-en> [<https://perma.cc/AME3-669U>] (last visited Nov. 8, 2024).

<sup>172</sup> *Shopee Brand IP Portal User Guide*, SHOPEE, [https://deo.shopeemobile.com/shopee/cms.cdn.bucket/19477d85a3da44ab8f1b2b43c646a5fc\\_%5bFor%20external\\_public%5d%20User%20Guide%20\(SEH](https://deo.shopeemobile.com/shopee/cms.cdn.bucket/19477d85a3da44ab8f1b2b43c646a5fc_%5bFor%20external_public%5d%20User%20Guide%20(SEH)

The prevalence of these requirements in platforms' policies suggests that platforms are already coalescing around perceived best (or necessary) practices. For example, the OECD Draft Guidelines encourage highly similar requirements as the DMCA for counterfeit takedown notices.<sup>173</sup> Yet some practices, such as these, seem to already be organically emerging among platforms.

Out of these platforms, print-on-demand platforms seem particularly likely to adopt the six takedown requirements of the DMCA, even though they adopt few other requirements (as shown below). As 75% of the print-on-demand platforms had combined reporting procedures for copyright and trademark infringements (see Table 3 above), this is likely simply a matter of following the requirements of the DMCA for ease rather than any deeper reason. However, it is possible that some of this caution around experimentation and having combined practices could stem from some print-on-demand services having been held *directly* liable for trademark infringement, rather than secondarily liable, due to sometimes being involved in the creation of the infringing product.<sup>174</sup> That said, courts such as the one in *Tiffany v. eBay* viewed additional actions beyond the bare floor of knowledge favorably,<sup>175</sup> so these platforms likely could add additional requirements without facing an increased liability risk.

Platforms have also adopted a wide variety of additional requirements for trademark infringement reports. These thirty-three additional requirements across thirty-eight platforms largely relate to seven areas: (1) the reporting user's account; (2) information about the rights owner; (3) trademark registration information; (4) information about the trademark; (5) information about the alleged infringement; (6) alternative dispute resolutions; and (7) administrative requirements.

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%20-%20Brand%20IP%20Portal%20.pdf [https://perma.cc/NZ58-UTCQ] (last updated Jan. 2024) [hereinafter *Shopee Brand IP Portal*]; *Trademark Infringement*, TUMBLR, https://www.tumblr.com/abuse/trademark [https://perma.cc/3GJK-ALAT] (last visited Nov. 8, 2024) [hereinafter *Tumblr Trademark Infringement*]; *Trademark Policy*, TWITCH, https://www.twitch.tv/p/en/legal/trademark-policy [https://perma.cc/SC7G-YKTF] (last updated Aug. 10, 2023) [hereinafter *Twitch Trademark Policy*].

<sup>173</sup> OECD Draft Guidelines, *supra* note 87, at ¶ 32.

<sup>174</sup> See, e.g., *H-D U.S.A., LLC v. SunFrog, LLC*, 311 F. Supp. 3d 1000, 1036 (E.D. Wisc. 2018) (“[B]ecause SunFrog advertises and sells infringing products, operates printers that print the products, packs them for shipping, ships them, and then processes payment, it is directly liable.”); *Atari Interactive, Inc. v. Redbubble, Inc.*, 515 F. Supp. 3d 1089, 1104–05 (N.D. Cal. 2021) (denying summary judgment because it was unclear if Redbubble was involved enough with the allegedly infringing products to warrant being held directly liable).

<sup>175</sup> See *supra* notes 111–117.

TABLE 5: ACCOUNT REQUIREMENTS FOR TRADEMARK TAKEDOWNS

Requirement	Social Media	Blog/ Review	E-Commerce	Print-on-Demand	Total
<b>Requires an account and having uploaded intellectual property information</b>	0/13	0/7	3/10	0/8	3/38
<b>Must be signed in</b>	0/13	0/7	6/10	0/8	6/38
<b>Are you a seller on the platform?</b>	0/13	0/7	1/10	0/8	1/38
<b>False report could lead to account suspension or termination</b>	0/13	0/7	2/10	0/8	2/38

As Table 5 summarizes, the account requirements for reporting trademark infringement are fairly rare overall, but they are more common on e-commerce platforms. These sign-in requirements can be more burdensome for rights owners, which would have to create accounts even if they would not otherwise use the e-commerce service. Sixty percent of the e-commerce platforms in this study—Amazon, eBay,<sup>176</sup> Etsy, Shopify, Temu, and Shopee—require reporting parties to sign in to their platforms to submit a report. Half of these (Etsy, Temu, and Shopee) also require rights owners to have uploaded information about their intellectual property in advance.<sup>177</sup>

The similarity of these requirements across e-commerce platforms may demonstrate the sociological concept of institutional isomorphism, or how businesses in an industry tend to develop similar norms and practices.<sup>178</sup> Standard requirements can spread across platforms due to a desire for perceived legitimacy

<sup>176</sup> To report trademark infringements on eBay's website, a rights owner must sign into eBay first. *Reporting a Product that Violates an eBay Policy*, EBAY CUSTOMER SERVICE, <https://www.ebay.com/help/policies/member-behavior-policies/reporting-product-violates-ebay-policy?id=4838> [<https://perma.cc/XJX2-99KC>] (last visited Nov. 8, 2024) [hereinafter *eBay Reporting*]. However, members of eBay's Verified Rights Owner (VeRO) program, who must be owners of intellectual property that have provided proof of ownership to eBay, can submit a Notice of Claimed Infringement (NOCI) by email instead. *Notice of Claimed Infringement*, EBAY, <https://ir.ebaystatic.com/pictures/aw/pics/pdf/us/help/community/EN-NOCI.pdf> [<https://perma.cc/8X8L-E5VS>] (last visited Nov. 8, 2024).

<sup>177</sup> *Etsy Reporting Portal*, ETSY, <https://www.etsy.com/ipreporting> [<https://perma.cc/L7JB-Q4EA>] (last visited Nov. 8, 2024) [hereinafter *Etsy Reporting Portal*]; *Report Infringement*, TEMU, <https://www temu.com/intellectual-property-complaint.html> [<https://perma.cc/66LA-RJW8>] (last visited Nov. 8, 2024) [hereinafter *Temu Reporting*]; *Shopee Brand IP Portal*, *supra* note 172.

<sup>178</sup> Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147, 150 (1983).



and associated coercive, mimetic, and normative pressures.<sup>179</sup> There may be an associated perceived benefit of avoiding liability by being in lockstep with competitors' practices. They may also spread through shared legal representation or business management. In-house counsel may move to other platforms and share their expertise, which is informed by their prior employer. Employees on the business side may also migrate their practices from employer to employer. Platforms may also have the same outside counsel, who are likely to advise them in a similar manner on notice-and-takedown practices.

Other account-related trends are less common, but still cabined to the e-commerce space. Amazon asks whether the reporting party is a seller on the platform.<sup>180</sup> Amazon and Walmart also note that by submitting the report, the reporting party understands that if the report is false, the platform may suspend or terminate their account.<sup>181</sup> It is surprising that more platforms do not mention consequences for submitting false reports. The DMCA provides damages for material misrepresentations in copyright infringement reports.<sup>182</sup> While this provision of the DMCA has been roundly criticized as being ineffective,<sup>183</sup> platforms could—like Amazon and Walmart—adopt their own false report policies that could be more effective by suspending or terminating user accounts.

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<sup>179</sup> See *id.* at 150–54 (describing these three mechanisms of institutional isomorphic change).

<sup>180</sup> *Report Infringement*, AMAZON, <https://www.amazon.com/report/infringement> [<https://perma.cc/24CH-GNSP>] (last visited Nov. 8, 2024) [hereinafter *Amazon Reporting*].

<sup>181</sup> *Id.*; *Claims of Intellectual Property Infringement*, WALMART, <https://www.walmart.com/help/article/claims-of-intellectual-property-infringement/6171b9ac00384f3f920aa14a9c08bdac> [<https://perma.cc/6UB6-LNSM>] (last visited Nov. 8, 2024) [hereinafter *Walmart Claims*].

<sup>182</sup> 17 U.S.C. § 512(f).

<sup>183</sup> SECTION 512 OF TITLE 17: A REPORT OF THE REGISTER OF COPYRIGHTS, U.S. COPYRIGHT OFFICE 146–47 (May 2020), <https://www.copyright.gov/policy/section512/section-512-full-report.pdf> [<https://perma.cc/2Q6T-ZQA6>] (discussing criticism of § 512(f) from scholars, nonprofits, and online service providers).

TABLE 6: RIGHTS OWNER REQUIREMENTS FOR TRADEMARK TAKEDOWNS

Requirement	Social Media	Blog/ Review	E-Commerce	Print-on-Demand	Total
Rights owner's name and information	8/13	3/7	6/10	1/8	18/38
Rights owner's website	3/13	3/7	0/10	0/8	6/38
Is the reporting party or rights owner in the EU?	1/13	0/7	0/10	0/8	1/38
Relationship to the rights owner	7/13	5/7	6/10	2/8	20/38
Proof of authorization by rights owner	3/13	0/7	1/10	0/8	4/38

Table 6 shows that the practice of requiring the rights owner's name and information (52.63%) and relationship to the rights owner (47.37%) in a takedown notice is prevalent across roughly half of the platforms in the study. Both requirements are most prevalent on social media (53.85% and 61.54%) and e-commerce platforms (60%), and print-on-demand services require them the least (25% and 12.5%). The prevalence on social media and e-commerce platforms (and to a lesser extent blog and review websites) may further suggest growing industry norms for requiring information on rights owners and the relationship with the reporting party. Other requirements relating to rights owners are far less common. Only six platforms require the rights owner's website (Facebook, Pinterest, LinkedIn, Wix, Medium, and Foursquare). Only four platforms (TikTok, WeChat, LinkedIn, and Temu) require proof of authorization by the rights owner, which is an additional hurdle for the reporting party, albeit not as onerous as the sign-in requirement discussed above.<sup>184</sup> Only Discord asks whether the reporting party or rights owner is located in the European Union, demonstrating the potential impact of laws from other jurisdictions.<sup>185</sup>

<sup>184</sup> *Report Trademark Infringement*, TIKTOK, <https://www.tiktok.com/legal/report/Trademark?lang=en> (last visited Nov. 8, 2024) [<https://perma.cc/4EKM-RMJX>] [hereinafter *TikTok Reporting*]; *WeChat Infringement Guidelines*, *supra* note 169; *LinkedIn Reporting*, *supra* note 153; *Temu Reporting*, *supra* note 177.

<sup>185</sup> *Submit a Request*, DISCORD, [https://support.discord.com/hc/en-us/requests/new?ticket\\_form\\_id=22016357318039](https://support.discord.com/hc/en-us/requests/new?ticket_form_id=22016357318039) [<https://perma.cc/D4Y7-2FUV>] (last visited Nov. 8, 2024) [hereinafter *Discord Request*].

TABLE 7: REGISTRATION REQUIREMENTS FOR TRADEMARK TAKEDOWNS

Requirement	Social Media	Blog/ Review	E-Commerce	Print-on-Demand	Total
Trademark registration required	5/13	5/7	5/10	1/8	16/38
Documentation of registration	9/13	5/7	2/10	3/8	19/38
Is your trademark registered?	2/13	3/7	0/10	0/8	5/38
Registration number (overall)	8/13	6/7	8/10	1/8	23/38
Registration number (registration not required)	4/13	1/7	3/10	1/8	9/38
Registration office/jurisdiction	11/13	3/7	6/10	0/8	20/38
Location of use	1/13	0/7	0/10	0/8	1/38

The DMCA does not require that a rights owner have registered their copyright prior to reporting the alleged infringement.<sup>186</sup> As a practical matter, however, a copyright owner in the United States can only pursue litigation once there has been a final adjudication on their registration application.<sup>187</sup> Yet, as Table 7 shows, 42.11% of the platforms in this study require the trademark to be registered before one can file an infringement report. 50% of platforms also ask for documentation of registration, although this does not encompass all of the platforms that require trademark registration. Foursquare, eBay, Shopify, and Shopee require only the registration number and jurisdiction, not documentation to verify the registration.<sup>188</sup> Facebook, YouTube, WeChat, Discord, Mastodon, Tumblr, and Printify ask for documentation of registration, if applicable, but do not require registration.<sup>189</sup>

<sup>186</sup> 17 U.S.C. § 512 (not mentioning registration).

<sup>187</sup> Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC, 586 U.S. 296, 309 (2019).

<sup>188</sup> *Trademark Infringement*, FOURSQUARE, <https://location.foursquare.com/legal/terms/trademark-infringement-policy> [<https://perma.cc/Z8QG-588C>] (last updated Jan. 6, 2021) [hereinafter *Foursquare Trademark Infringement*]; *eBay Reporting*, *supra* note 176; *Shopify Reporting*, *supra* note 153; *Shopee Brand IP Portal*, *supra* note 172.

<sup>189</sup> *Trademark Report Form*, FACEBOOK, <https://www.facebook.com/help/ipreporting/report/trademark> [<https://perma.cc/4WWM-3HUT>] (last visited Nov. 8, 2024) [hereinafter *Facebook Reporting*]; *Trademark Complaint*, YOUTUBE, [https://support.google.com/youtube/contact/trademark\\_complaint?sjid=2061788999678753500-NA](https://support.google.com/youtube/contact/trademark_complaint?sjid=2061788999678753500-NA) [<https://perma.cc/FNY2-LY42>] (last visited Nov. 8, 2024) [hereinafter *Youtube Trademark Complaint*]; *WeChat Infringement Guidelines*, *supra* note 169; *Discord Request*, *supra* note 185; *Mastodon Trademark Policy*, *supra* note 152; *Tumblr Trademark Infringement*, *supra* note 172; *Printify Trademark Form*, *supra* note 166.

The registration requirement can be an arduous condition that is a stark break from the DMCA precedent. Not only do trademark applications with the U.S. Patent and Trademark Office cost more than copyright applications with the U.S. Copyright Office (\$250 or \$350 per class, compared to as low as \$45),<sup>190</sup> but trademark registrations require maintenance fees of \$525 per class every ten years.<sup>191</sup> While copyright applications are relatively straightforward and the barriers to registration are fairly low, the greater complexity of trademark applications may, in effect, require applicants to retain legal counsel, adding additional cost.<sup>192</sup> On average, a trademark registration also takes longer than a copyright registration: seven-and-a-half months compared to as low as one month.<sup>193</sup>

This requirement is somewhat surprising given that, unlike copyright law, trademark owners can bring actions for false designation or origin or false advertising based on common law trademark usage without a federal (or state) registration.<sup>194</sup> This increases the chance of a rights owner with a viable trademark-related claim being unable to avail themselves of notice-and-takedown. However, while an unregistered copyright is likely valid in most cases due to the low threshold for qualifying for a copyright,<sup>195</sup> the validity of an unregistered putative trademark is unclear without more since a bona fide trademark comes from use

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<sup>190</sup> *Compare How Much Does It Cost?*, U.S. PAT. & TRADEMARK OFF., <https://www.uspto.gov/trademarks/basics/how-much-does-it-cost> [<https://perma.cc/9LAR-ZJ75>] (last visited Nov. 8, 2024), *with Fees*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/about/fees.html> [<https://perma.cc/EEL2-72XU>] (last visited Nov. 8, 2024).

<sup>191</sup> *How Much Does It Cost?*, *supra* note 190.

<sup>192</sup> For example, copyright subsists in any original work that is fixed in a tangible medium. 17 U.S.C. § 102(a). Trademark registration, however, requires the mark to be used in commerce to distinguish one's goods or services from others', and cannot fall within the many exceptions to trademark registration under the Lanham Act. 15 U.S.C. § 1052.

<sup>193</sup> *Compare Trademark Processing Wait Times*, U.S. PAT. & TRADEMARK OFF., <https://www.uspto.gov/trademarks/application-timeline> [<https://perma.cc/9ARU-QYWG>] (last updated Sept. 2024), *with Registration Processing Times*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/registration/docs/processing-times-faqs.pdf> [<https://perma.cc/F9Z7-UFA4>] (last updated Sept. 2024).

<sup>194</sup> See 15 U.S.C. § 1125(a) (listing the requirements for false designation of origin and false advertising cases, which do not contain a registration requirement).

<sup>195</sup> See *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991) (finding that the "requisite level of creativity is extremely low; even a slight amount will suffice").

in commerce and consumer recognition rather than merely being creative.<sup>196</sup> Therefore, platforms may be reluctant to evaluate common law trademarks.

For example, Society6 explicitly notes that it is “not in a position to evaluate the validity of trademark rights asserted as a state trademark registration, as a common law (use-based) mark, or as a mark registered in another country.”<sup>197</sup> It is unclear how a court would view this trademark registration requirement when determining whether a platform could be held secondarily liable for a user’s misuse of a trademark, although at least some courts have held that notice of infringement and continuing to provide a service is sufficient to be held contributorily liable.<sup>198</sup>

Other trademark infringement notice requirements also suggest a preference for trademark registrations. A further 13.16% of platforms ask whether the trademark at issue has been registered, although they do not require registration. 60.53% of platforms ask for a trademark registration number, although not all of these platforms require trademark registration. Facebook, YouTube, Pinterest, Flickr, Tumblr, Amazon, Etsy, Temu, and Printful do not require trademark registration, but they request the trademark registration number, if applicable.<sup>199</sup> It is unclear from the public policies alone whether these platforms treat reports with registered trademarks differently from ones with non-registered trademarks. Meanwhile, TikTok, LinkedIn, and Society6 do not require the trademark registration number as a discrete requirement, but the required trademark registration would contain the number so it would effectively be duplicative.<sup>200</sup>

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<sup>196</sup> See 15 U.S.C. § 1052(f) (requiring distinctiveness of the source rather than creativity).

<sup>197</sup> *Society6 Takedown Procedure*, *supra* note 164.

<sup>198</sup> See, e.g., *Coach, Inc. v. Goodfellow*, 717 F.3d 498, 506 (6th Cir. 2013) (upholding a finding of contributory liability where “Goodfellow had actual notice of ongoing infringing activity . . . [and] [d]espite such knowledge, Goodfellow continued to facilitate the infringing activity by providing space and facilities at his flea market to infringing vendors.”).

<sup>199</sup> *Facebook Reporting*, *supra* note 189; *YouTube Trademark Complaint*, *supra* note 189; *Trademark Infringement Notification*, PINTEREST, <https://www.pinterest.com/about/trademark> [<https://perma.cc/ZL9V-QHVA>] (last visited Nov. 8, 2024) [hereinafter *Pinterest Infringement Notification*]; *Amazon Reporting*, *supra* note 180; *Etsy Reporting Portal*, *supra* note 177; *Temu Reporting*, *supra* note 177; *DMCA Notice Form*, PRINTFUL, <https://www.printful.com/policies/dmca> [<https://perma.cc/Y6LN-2BZ8>] (last visited Nov. 8, 2024).

<sup>200</sup> *TikTok Reporting*, *supra* note 184; *LinkedIn Reporting*, *supra* note 153; *Product Guidelines*, SELLFY HELP CENTER, <https://docs.sellfy.com/article/24-product-guidelines> [<https://perma.cc/V9VE-HCFN>] (last visited Nov. 8, 2024).

Twitch is the only platform to explicitly ask for either a registration *or* application number for the trademark at issue.<sup>201</sup>

A majority of platforms (52.63%) also require information relating to the jurisdiction in which the trademark is registered or used. This makes intuitive sense given that trademarks are territorial and most of these platforms are available in multiple jurisdictions, if not worldwide (or close thereto).<sup>202</sup> Twitch asks not only for the jurisdiction in which the trademark is registered, but also where the rights owner uses the mark, presumably to capture common law usage in other jurisdictions.<sup>203</sup>

TABLE 8: TRADEMARK INFORMATION REQUIREMENTS FOR TRADEMARK TAKEDOWNS

Requirement	Social Media	Blog/ Review	E-Commerce	Print-on-Demand	Total
Goods/services class	5/13	3/7	4/10	0/8	12/38
Type of trademark (word, logo, both)	2/13	1/7	0/10	0/8	3/38
First date of use (if not registered)	0/13	0/7	2/10	0/8	2/38
In use prior to alleged infringement?	0/13	1/7	0/10	0/8	2/38

Unlike the more commonplace registration requirements for trademark takedown notices, platforms generally do not require much additional information about the trademarks themselves. As shown in Table 8, most commonly, 31.58% of these platforms request information about the goods or services classes of the trademarks. This requirement makes sense because trademarks are registered on the basis of the specific class of goods or services for which they are used in commerce.<sup>204</sup> This relates to the odds of trademark infringement, which is

<sup>201</sup> *Twitch Trademark Policy*, *supra* note 172.

<sup>202</sup> See Paris Convention for the Protection of Industrial Property, July 14, 1967, 21 U.S.T. 1583 (requiring that a “mark duly registered in a country of the Union shall be regarded as independent of marks registered in other countries of the Union”); *see also* Abitron Austria GmbH v. Hetronic Int’l, Inc., 600 U.S. 412, 427 (2023) (noting that trademark rights are territory-specific).

<sup>203</sup> *Twitch Trademark Policy*, *supra* note 172.

<sup>204</sup> *Goods and Services*, U.S. PAT. & TRADEMARK OFF., <https://www.uspto.gov/trademarks/basics/goods-and-services> [<https://perma.cc/ZZP5-ZRX5>] (last visited Nov. 8, 2024).

determined based on a holistic examination of several factors that could suggest a likelihood of confusion between the use and the trademark owner.<sup>205</sup> Several of these factors touch upon the class of goods or services, including proximity of the goods and likelihood of expansion.<sup>206</sup> Less relevant is the type of trademark, which 7.89% of these platforms request, which asks whether the trademark at issue is a wordmark, a logo, or both. Future qualitative work could help reveal how the class affects platforms' processing of infringement reports.

Only a few platforms seem to explicitly consider common law trademark usage, compared to the many platforms that require registration. Amazon and Temu request the first date of use of the trademark if it is not registered.<sup>207</sup> Foursquare asks whether the trademark was used prior to the alleged infringement.<sup>208</sup>

TABLE 9: INFRINGEMENT REQUIREMENTS FOR TRADEMARK TAKEDOWNS

Requirement	Social Media	Blog/ Review	E-Commerce	Print-on-Demand	Total
Description of infringing use	13/13	6/7	8/10	4/8	31/38
Type of content at issue	7/13	0/7	4/10	1/8	12/38
Was the content taken from your page?	1/13	0/7	0/10	0/8	1/38
Related to counterfeit goods	6/13	0/7	3/10	0/8	9/38
Did you conduct a test purchase?	0/13	0/7	2/10	0/8	2/38
Link to example of genuine goods	1/13	0/7	2/10	0/8	3/38

As summarized in Table 9, some platforms also inquire into more specific details about the alleged infringement. The vast majority (81.58%) of surveyed platforms request that the reporting party describe the infringing use. This information can better assist the platforms in determining whether trademark infringement has occurred, especially given the multi-factor tests that trademark law uses to determine likelihood of confusion.<sup>209</sup> About a third (31.58%) of these

<sup>205</sup> See *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348–49 (9th Cir. 1979) (listing the eight *Sleekcraft* factors for likelihood of confusion used in the Ninth Circuit).

<sup>206</sup> *Id.*

<sup>207</sup> *Amazon Reporting*, *supra* note 180; *Temu Reporting*, *supra* note 177.

<sup>208</sup> *Foursquare Trademark Infringement*, *supra* note 188.

<sup>209</sup> *Sleekcraft*, 599 F.2d at 348–49.

platforms also ask what type of content—such as username, post, image, video, or listing—is being reported. The options vary by platform because the possible types of user-generated content are platform-specific. Knowing the content at issue, such as whether the reported content is a post or an advertisement, may also help determine the type of use and whether it is a use in commerce, which is required for trademark infringement.<sup>210</sup> TikTok also asks whether the reported content was taken from the reporting party’s page, which may suggest greater likelihood of confusion or possible copyright infringement.<sup>211</sup>

These requirements may help platforms understand whether trademark infringement has occurred. While the DMCA requires a takedown in response to a valid infringement report, *Tiffany v. eBay* instead seems to turn on a more abstract requirement of knowledge.<sup>212</sup> Contributory infringement in copyright law is also premised on knowledge, but the platform could not avail itself of the DMCA safe harbor in the first instance if it does not remove content in response to a takedown notice.<sup>213</sup> Therefore, platforms may have more room to push back on reports that do not sufficiently substantiate the alleged trademark infringement.

The remaining requirements related to infringement information seem to address concerns about counterfeits, although they are only sporadically adopted by platforms. As explained above in Part III.A., 56.52% of these platforms explicitly address counterfeits in their Terms of Use. 23.68% of platforms that have takedown policies for trademark infringement also address counterfeits in their takedown requirements, either as separate reporting forms or as questions embedded in a trademark infringement form. Facebook, YouTube, Snapchat, and X have separate reporting forms for counterfeiting.<sup>214</sup> TikTok, Pinterest, Amazon,

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<sup>210</sup> 15 U.S.C. § 1114.

<sup>211</sup> TikTok Reporting, *supra* note 184.

<sup>212</sup> Compare 17 U.S.C. § 512(c)(1)(C), with 600 F.3d 93, 107 (2d Cir. 2010).

<sup>213</sup> Compare 17 U.S.C. § 512(c)(1)(C), with *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1172 (9th Cir. 2007).

<sup>214</sup> *Counterfeit Report Form*, FACEBOOK, <https://www.facebook.com/help/contact/628238764025713> [<https://perma.cc/5SUC-XRZM>] (last visited Nov. 15, 2024); *Counterfeit*, YOUTUBE HELP, [https://support.google.com/youtube/contact/counterfeit\\_complaint](https://support.google.com/youtube/contact/counterfeit_complaint) [<https://perma.cc/25C2-UVQH>] (last visited Nov. 15, 2024); *Report Trademark Infringement*, SNAPCHAT, [https://help.snapchat.com/hc/en-us/requests/new?co=true&ticket\\_form\\_id=360000005946](https://help.snapchat.com/hc/en-us/requests/new?co=true&ticket_form_id=360000005946) [<https://perma.cc/MEJ3-HWNE>] (last visited Nov. 15, 2024) [hereinafter *Snapchat Reporting*]; *Help with Intellectual Property Issues*, X, <https://help.x.com/en/forms/ipi/counterfeit> [<https://perma.cc/M5E8-SBH4>] (last visited Nov. 15, 2024) [hereinafter *X Reporting*].



eBay, and Walmart ask in their trademark infringement form whether the issue is related to counterfeits.<sup>215</sup> Amazon and Walmart also ask about whether the reporting party has conducted a test purchase, in order to ascertain whether the listed item is actually infringing or a counterfeit.<sup>216</sup> It makes sense that e-commerce platforms would ask this question, as they are more likely to have users selling counterfeit goods than social media or blogging platforms, whose primary purposes are not selling products. Finally, Snapchat requests a link to an example of genuine goods, which is also focused on ascertaining whether the reported content is actually counterfeit.<sup>217</sup>

TABLE 10: ALTERNATIVE DISPUTE RESOLUTION REQUIREMENTS FOR TRADEMARK TAKEDOWNS

Requirement	Social Media	Blog/ Review	E-Commerce	Print-on-Demand	Total
Have not been able to contact user or user refused to comply	0/13	1/7	0/10	0/8	1/38
Would modification of infringing words from name address the issue?	0/13	0/7	0/10	1/8	1/38

An uncommon category for trademark takedown notice requirements is related to alternative dispute resolution. Foursquare asks whether the reporting party had previously tried to contact the allegedly infringing user or whether the user refused to comply.<sup>218</sup> Redbubble asks whether modifying the listing description or name would address the reporting party's trademark-related concerns.<sup>219</sup> While these are outliers, they demonstrate that some platforms may be using the generality of the *Tiffany v. eBay* framework to help parties consider alternative resolutions to wholesale removal of the content.

<sup>215</sup> *TikTok Reporting*, *supra* note 184; *Pinterest Infringement Notification*, *supra* note 199; *Amazon Reporting*, *supra* note 180; *eBay Reporting*, *supra* note 176; *Walmart Claims*, *supra* note 181.

<sup>216</sup> *Amazon Reporting*, *supra* note 180; *Walmart Claims*, *supra* note 181.

<sup>217</sup> *Snapchat Reporting*, *supra* note 214.

<sup>218</sup> *Foursquare Trademark Infringement*, *supra* note 188.

<sup>219</sup> *Submit a Request*, REDBUBBLE, [https://help.redbubble.com/hc/en-us/requests/new?ticket\\_form\\_id=360000954531](https://help.redbubble.com/hc/en-us/requests/new?ticket_form_id=360000954531) [<https://perma.cc/9JZL-MTT8>] (last visited Nov. 15, 2024).

TABLE 11: ADMINISTRATIVE REQUIREMENTS FOR TRADEMARK TAKEDOWNS

Requirement	Social Media	Blog/ Review	E-Commerce	Print-on-Demand	Total
Report may be shared with third parties	8/13	5/7	2/10	1/8	16/38
Contact information for reported party	0/13	0/7	1/10	0/8	1/38
Agree to bear all legal consequences of the report	1/13	0/7	0/10	0/8	1/38
Supporting documentation	4/13	2/7	1/10	0/8	7/38
Documentation to confirm identity	1/13	0/7	1/10	0/8	2/38
Subject line	4/13	0/7	2/10	0/8	6/38

Beyond these more specific categories of requirements for trademark takedown notices, some platforms request additional information that is often more administrative. 42.11% of these platforms require the reporting party to acknowledge that their report may be shared with third parties. This requirement may also show institutional isomorphism because practices are converging, likely due to coercive, mimetic, and normative pressures.<sup>220</sup> AliExpress asks whether the reporting party has contact information for the user they are reporting, which may be unusual but could allow an additional line of contact with the user.<sup>221</sup> TikTok asks the reporting party to agree to bear all legal consequences of the report.<sup>222</sup> 18.42% of surveyed platforms offer reporting parties the option of providing supporting documentation or attachments related to the alleged infringement. Most platforms do not publicly provide further information about what would be helpful documentation, but Snapchat specifically references images of the original work, screenshots of the infringing content, and registration certificates.<sup>223</sup> X and AliExpress request documentation in the form of a valid government-issued photo ID to confirm the identity of the reporting party or, for AliExpress, an operation license or business registration certificate where the reporting party is a corporate

<sup>220</sup> DiMaggio & Powell, *supra* note 178, at 150.

<sup>221</sup> *Online Submission for Claims of Intellectual Property Rights Infringement*, ALIBABA INT'L IP PROTECTION PLATFORM, <https://ipp.aidcgroup.net/complaint/onlineForm/online.htm?spm=a2o2l.10374942.0.0.c05e7a202FCRvW> [<https://perma.cc/5PV5-7LJS>] (last visited Nov. 15, 2024) [hereinafter *AliExpress Reporting*].

<sup>222</sup> *TikTok Reporting*, *supra* note 184.

<sup>223</sup> *Snapchat Reporting*, *supra* note 214.

or business entity.<sup>224</sup> 10.52% of these platforms also ask the reporting party to include a subject line in their report.

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Overall, while platforms have varying practices regarding reporting trademark infringement, there are four salient trends worth noting: a reliance on the DMCA, experimentation, similar adoption among industry competitors, and heightened reporting requirements for trademark takedowns.

First, the DMCA has a dominant influence on reporting requirements. A supermajority of these platforms has adopted all six requirements for valid takedown notices under the DMCA. Platforms are especially likely to adopt the three substantive requirements from the DMCA: stating the intellectual property at issue, identifying the infringing material, and providing the reporting party's contact information. This information would likely be needed at the bare minimum to act on any takedown notice. Expanding on the second requirement, platforms are requiring a description of the infringing use, which especially makes sense in the trademark context where a likelihood of confusion must be determined based on a holistic review of several factors.

Second, the more open standard of *Tiffany v. eBay* allows for some experimentation by platforms. This undoubtedly contributed to these platforms having varying selections of thirty-nine unique requirements for reporting trademark infringements. Some platforms are also imposing additional requirements for copyright infringement notices,<sup>225</sup> although these requirements are arguably riskier from a legal standpoint due to the strictures of the DMCA, which require acceptance of any notice with substantially all six elements.<sup>226</sup>

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<sup>224</sup> *X Reporting*, *supra* note 214; *AliExpress Reporting*, *supra* note 221.

<sup>225</sup> See, e.g., *How to Report Intellectual Property Infringement*, ETSY, <https://help.etsy.com/hc/en-us/articles/360000344448-How-to-Report-Intellectual-Property-Infringement%23> [https://perma.cc/R3HM-K9AJ] (last visited Feb. 27, 2025) (also requiring copyright owners to register an account before submitting an infringement notice); *Request Video Removal*, YOUTUBE, <https://support.google.com/youtube/answer/2807622> [https://perma.cc/VZK5-3TAL] (last visited Mar. 1, 2025) (requesting information about the relationship of the reporting party to the rights owner, providing options for immediate removal or a seven-day delayed removal following notice to the reported party, and notifying reporting parties that abuse of the reporting tool may lead to account termination).

<sup>226</sup> 17 U.S.C. § 512(c)(1)(C).

These thirty-nine requirements cover a diverse range of topics. Although they are rare, some platforms have encouraged rights owners to conduct test purchases, try and resolve the issue directly with the allegedly infringing user, or consider alternative fixes that would not require deleting all the reported party's content. Others have threatened to impose consequences for bad faith takedown notices, including suspension or termination of accounts. Some have also required more information about the relationship of the reporting party and the rights owner to confirm they are authorized to act.

Together, these and other requirements explored in this section suggest that platforms are using the space provided by common law notice-and-takedown to experiment with different practices to achieve their goals. Private ordering can provide an attractive alternative to blunt default rules of trademark law.<sup>227</sup> At minimum, platforms could act as laboratories in which they can determine which norms and practices are optimal for them and for trademark and user protection.<sup>228</sup>

The breadth of different requirements suggests that trademark's common law notice-and-takedown regime may not suffer from the perceived risk of rule-laden safe harbors converting floors into ceilings.<sup>229</sup> Instead, *Tiffany v. eBay* is operating as a floor on which many platforms are experimenting to craft optimal frameworks for themselves, rights owners, and their users. This may lead platforms to a virtuous place where they seek to draw an appropriate balance between imposing obligations on trademark owners and over-enforcing their rights.

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<sup>227</sup> Cf. Dinwoodie, *supra* note 149, at 168 (making the same point about copyright law).

<sup>228</sup> Cf. *id.* at 165 (making a similar point about nations in the international copyright law context).

<sup>229</sup> See James Gibson, *Risk Aversion and Rights Accretion in Intellectual Property Law*, 116 YALE L.J. 882, 938 (2007) (expressing concern about how the DMCA safe harbors may convert floors into ceilings); Molly Shaffer Van Houweling, *Safe Harbors in Copyright* 11 (July 31, 2006) (unpublished manuscript), <https://www.law.berkeley.edu/files/VanHouweling.pdf> [<https://perma.cc/SYS2-SZGF>] (describing how the DMCA has been criticized for encouraging platforms "to adopt overly conservative practices that unnecessarily stifle ... internet communications"); Alfred C. Yen, *Internet Service Provider Liability for Subscriber Copyright Infringement, Enterprise Liability, and the First Amendment*, 88 GEO. L.J. 1833, 1891 (2000) (worrying that "ISPs will become increasingly conservative and routinely comply with the safe harbor because the certain cost of compliance is preferable to the unknown, yet potentially significant, costs imposed by underlying law"). But see Gideon Parchomovsky & Kevin A. Goldman, *Fair Use Harbors*, 93 VA. L. REV. 1483, 1524 (2007) (rejecting the concern because "copyright holders, users, and judges are all perfectly capable of understanding the plain meaning of the language").

However, as commentators have warned in the copyright context, too diverse a range of takedown procedures can cause inefficiencies for rights owners.<sup>230</sup> Indeed, a list of best DMCA notice-and-takedown practices developed by stakeholders and the U.S. Department of Commerce encouraged platforms to use industry-standard features to streamline the submission of takedown notices by rights owners.<sup>231</sup>

An additional concern is that the common law does not necessarily mandate the best practices. Optimal practices that have been adopted by some platforms are often far from universal. For example, despite sound reasons for imposing consequences for bad faith takedown notices, only two platforms explicitly mention these in the trademark context. Some platforms may instead adopt requirements that unfairly favor platforms and users over rights owners. Some of these more troubling requirements are discussed on the next page.<sup>232</sup> Such policies could impede justice and undermine balance in trademark law. Yet the law could ultimately correct for this through Congress adopting statutory requirements, like the DMCA, or courts considering the reasonableness of these requirements in relation to industry norms. Platforms' experimentation with requirements may help inform the industry, policymakers, and courts about which requirements are optimal and ultimately lead to their wider adoption.

Third, there seem to be some similar (albeit not universal) adoptions of requirements among close peer-competitors. This again suggests institutional isomorphism and the presence of coercive, mimetic, and normative pressures that cause convergence among industry members.<sup>233</sup> For most of these requirements, the majority of adoptees are in the same industry. For example, all six platforms that require the reporting party to be signed into the system prior to reporting infringement are e-commerce platforms. Most of the social media and e-commerce platforms ask about the registration office or jurisdiction, while fewer blogging sites

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<sup>230</sup> See, e.g., SECTION 512 ROUNDTABLE, *supra* note 161, at 19–20 (Devon Weston, Digimarc, remarking on “the incredible inefficiency that comes along with the diversity of submission forms . . . you have to conform to every single different website’s takedown operation . . . Others require captchas, different sort of very manual procedures that sort of preclude anyone doing this at scale for copyright holders . . . it varies tremendously.”).

<sup>231</sup> U.S. DEP’T OF COM., NAT’L TELECOMMS. & INFO. ADMIN., DMCA NOTICE-AND-TAKEDOWN PROCESSES: LIST OF GOOD, BAD, AND SITUATIONAL PRACTICES, (2015), at 2, [https://www.ntia.gov/sites/default/files/publications/dmca\\_good\\_bad\\_and\\_situational\\_practices\\_document\\_0.pdf](https://www.ntia.gov/sites/default/files/publications/dmca_good_bad_and_situational_practices_document_0.pdf) [<https://perma.cc/X5R3-KMKW>] [hereinafter NTIA DMCA LIST].

<sup>232</sup> See *infra* notes 234–236 and accompanying text.

<sup>233</sup> DiMaggio & Powell, *supra* note 178, at 150.

and no print-on-demand sites inquire. Mostly social media platforms ask what type of content is at issue and whether it is related to counterfeit goods.

Finally, there is a worrying trend of platforms imposing additional, onerous requirements on rights owners to report trademark infringement. Nearly a majority of these platforms have trademark registration requirements, and only a few ask about first use instead. This trend is potentially counterintuitive due to the lack of a registration requirement for bringing claims under the Lanham Act compared to the Copyright Act, which requires registration to sue but not to file a report under the DMCA. There is also a small but seemingly growing trend of platforms requiring reporting parties to have an account in advance before reporting infringement. Requiring an account may make sense for larger rights owners, but can add a laborious step for smaller rights owners who are only infrequently filing notice-and-takedown reports. Indeed, a list of best DMCA notice-and-takedown practices developed by stakeholders and the U.S. Department of Commerce noted that certain security measures can slow down the notice submission process.<sup>234</sup> The Department of Homeland Security's "best practices" for e-commerce platforms with third-party sellers also proposed minimal registration requirements for rights owners to report counterfeits.<sup>235</sup> Some other platforms have made accounts optional, such as Meta's Intellectual Property Reporting Center, which can provide benefits for larger rights owners without requiring as much investment from smaller rights owners.<sup>236</sup> Platforms may choose to impose these more onerous requirements to differentiate themselves in the market by being seen as supporting users' content. We should be cautious about motivation to please consumers rather than achieve balance between free speech and rights owners' interests. These trends suggest that the vacuity of common law notice-and-takedown could lead to converging industry norms that are commonplace but normatively undesirable due to the extra hurdles imposed in some cases.

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<sup>234</sup> NTIA DMCA List, *supra* note 231, at 7.

<sup>235</sup> U.S. DEP'T OF HOMELAND SEC., OFFICE OF STRATEGY, POLICY & PLANS, COMBATTING TRAFFICKING IN COUNTERFEIT AND PIRATED GOODS: REPORT TO THE PRESIDENT OF THE UNITED STATES (2020), at 37, [https://www.dhs.gov/sites/default/files/publications/20\\_0124-plcy\\_counterfeit-pirated-goods-report\\_01.pdf](https://www.dhs.gov/sites/default/files/publications/20_0124-plcy_counterfeit-pirated-goods-report_01.pdf) [<https://perma.cc/UT8F-8PHX>]. Curiously, of the platforms in this study, only e-commerce platforms—despite the recommendations of the Department of Homeland Security report—required having an account and uploading intellectual property rights in advance or being signed in to an account. *See supra* Part III.B.

<sup>236</sup> *About Meta's Intellectual Property Reporting Center*, META BUS. HELP CTR., <https://www.facebook.com/business/help/1864640093938889> [<https://perma.cc/D3WF-MW5D>] (last visited Feb. 27, 2025).

### C. Repeat Infringers

Some platforms have adopted repeat infringer policies for trademark infringements despite the lack of a formal requirement. A threshold requirement for the DMCA safe harbor is to have adopted, reasonably implemented, and informed users of the existence of a repeat infringer policy.<sup>237</sup> *Tiffany v. eBay* does not require a repeat infringer policy, although eBay had such a policy.<sup>238</sup> As shown in Table 12 below, 48.89% of platforms mentioned terminating user accounts in certain circumstances after repeated infringements.<sup>239</sup> Other platforms could also have repeat infringer policies but not inform their users of the existence of such a policy, which would also be required under the DMCA.<sup>240</sup> Of the twenty-two platforms that did not have a specific trademark repeat infringer policy, most (69.57%) had a repeat infringer policy for copyright violations, as is required by the DMCA.<sup>241</sup> This suggests that platforms are already voluntarily coalescing around certain practices that policy documents such as the OECD Draft Guidelines are now encouraging.<sup>242</sup>

Trademark repeat infringer policies were especially prevalent among the e-commerce and print-on-demand platforms. This may be due to these platforms involving the sale of goods, potentially raising the chance of infringements (and thus repeat infringers). It may also suggest institutional isomorphism and that these platforms are influenced by the policy practices of others in their industry.<sup>243</sup>

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<sup>237</sup> 17 U.S.C. § 512(i)(1)(A).

<sup>238</sup> *Tiffany (NJ) Inc. v. eBay, Inc.*, 600 F.3d 93, 109 (2d Cir. 2010).

<sup>239</sup> This is more than in a prior study of e-commerce platforms, which only found 30% of the platforms in that study to identify repeat infringers. Shepherd et al., *supra* note 9, at 19.

<sup>240</sup> 17 U.S.C. § 512(i)(1)(A).

<sup>241</sup> As mentioned above, Mastodon may not itself have a repeat infringer policy because it has the administrators of each Mastodon instance moderate content instead. *See supra* note 163. The remaining five platforms that appear not to mention a repeat infringer policy at all are Telegram, Snapchat, BeReal, Sellfy, and Gooten.

<sup>242</sup> OECD Draft Guidelines, *supra* note 87, at ¶¶ 35–36.

<sup>243</sup> DiMaggio & Powell, *supra* note 178, at 150.

TABLE 12: REPEAT INFRINGER POLICIES FOR TRADEMARK INFRINGEMENTS

	Social Media	Blog/ Review	E-Commerce	Print-on-Demand	Total
<b>Publicly Disclosed that Platform Has a Repeat Infringer Policy</b>	7/18	3/8	6/10	6/9	22/45

Despite the existence of repeat infringer policies, only five platforms share any details about what those policies entail. Weebly has a three-strike account termination policy.<sup>244</sup> Gelato requires the account to be subject to at least two trademark infringement reports.<sup>245</sup> TikTok has a three-strike policy, but accrued strikes expire after ninety days.<sup>246</sup> These policies are not surprising given that courts have consistently upheld three-strike repeat infringer policies under the DMCA.<sup>247</sup> However, courts have not squarely ruled on resetting strikes in the DMCA context. In *BMG Rights Management (US) LLC v. Cox Communications, Inc.*, the Fourth Circuit did not find Cox’s repeat infringer policy—which included a six-month strike-reset—satisfactory, but Cox’s policy suffered from other issues that made the policy not reasonably implemented, including a thirteen-strike policy, restricting the number of notices it will process from a rights owner in a single day, and suspending but never terminating subscribers.<sup>248</sup>

AliExpress and Shopee provide the most detail about their policies. AliExpress imposes different penalties depending on whether the infringement is “serious” (i.e., counterfeiting) or “general.”<sup>249</sup> For serious trademark

<sup>244</sup> *Global Copyright and Trademark Policy*, BLOCK, <https://block.xyz/legal/copyright> [<https://perma.cc/ZJ4A-G5C3>] (last visited Nov. 18, 2024).

<sup>245</sup> *Gelato Terms of Service*, GELATO, <https://www.gelato.com/legal/api-terms> [<https://perma.cc/G2XD-AWRE>] (last updated Nov. 5, 2024).

<sup>246</sup> *Trademark and Counterfeiting*, TIKTOK, <https://support.tiktok.com/en/safety-hc/account-and-user-safety/trademark-and-counterfeiting%237> [<https://perma.cc/9K96-VPS7>] (last visited Nov. 18, 2024).

<sup>247</sup> See, e.g., *Rosen v. eBay, Inc.*, No. CV 16-9183-MWF (Ex), 2018 WL 4802101, at \*6 (C.D. Cal. Jan. 24, 2018); *Viacom Int’l Inc. v. YouTube, Inc.*, 718 F. Supp. 2d 514, 527 (S.D.N.Y. 2010), *remanded on different grounds*, 676 F.3d 19 (2d Cir. 2012); *Capitol Records, LLC v. Vimeo, LLC*, 972 F. Supp. 2d 500, 516–17 (S.D.N.Y. 2013). Compare with *Disney Enters., Inc. v. Hotfile Corp.*, No. 11-20427-CIV, 2013 WL 6336286, at \*21 (S.D. Fla. Sept. 20, 2013).

<sup>248</sup> 881 F.3d 293, 299 (4th Cir. 2018).

<sup>249</sup> *Update of Enforcement Actions for Intellectual Property Rights*, ALIEXPRESS PLATFORM RULES, <https://rule.aliexpress.com/rule-channels/49971998/173237285> [<https://perma.cc/QNV7-KETH>] (last updated Mar. 5, 2025).



infringements, AliExpress has a three-strike policy.<sup>250</sup> For general trademark infringements, AliExpress does not impose a penalty for the first violation but imposes six penalty points per each subsequent violation, with forty-eight points resulting in account termination.<sup>251</sup> This is, effectively, a nine-strike policy for general trademark infringements. Penalties and penalty points reset after 365 days.<sup>252</sup>

Shopee imposes up to six penalty points per infringement or counterfeit listing.<sup>253</sup> Different numbers of penalty points can lead to different consequences, including exclusion from marketing campaigns, demotion of listings, and suspension of ability to list new products or update existing listings.<sup>254</sup> Shopee will ultimately freeze the account after it has accumulated fifteen penalty points.<sup>255</sup> This is effectively a three-strike policy, although there seems to be discretion over how many penalty points Shopee imposes per infringement. Shopee's penalties last twenty-eight days, and Shopee resets accounts' penalty points each quarter.<sup>256</sup>

While AliExpress and Shopee's repeat infringer policies are more complex, courts could still find them to be reasonably implemented because no court has ruled that only a three-strike or lower policy qualifies as reasonable. Indeed, the lack of definition of a repeat infringer policy under the DMCA is meant to give platforms the necessary flexibility to craft an appropriate policy given their unique circumstances.<sup>257</sup>

#### *D. Takedown-Plus Policies*

In the copyright context, several prominent platforms have offered improved notice-and-takedown policies and additional benefits for certain groups of rights

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<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> *How Are Penalty Points Issued?*, SHOPEE SELLER EDUCATION HUB (Sept. 19, 2024), <https://seller.shopee.sg/edu/article/187/calculate-seller-penalty-points-issued> [https://perma.cc/H2LT-76LP].

<sup>254</sup> *What Are the Penalties?*, SHOPEE SELLER EDUCATION HUB (May 30, 2025), <https://seller.shopee.sg/edu/article/720/seller-penalty-points-tier-punishment> [https://perma.cc/NJ4A-7J42].

<sup>255</sup> *Id.*

<sup>256</sup> *How Long Do the Penalties Last?*, SHOPEE SELLER EDUCATION HUB (Aug. 17, 2020), <https://seller.shopee.sg/edu/article/2454/how-long-seller-penalty-points-period> [https://perma.cc/E65F-ACGG].

<sup>257</sup> 17 U.S.C. § 512(i)(1)(A).

owners. Prior literature has termed these “DMCA-plus” agreements because these private agreements between rightsholders and platforms involve platforms undertaking more duties than strictly required under the DMCA, including, but not necessarily limited to, proactively screening for infringements.<sup>258</sup> For example, YouTube’s Content ID is available exclusively to those who “own exclusive rights to a substantial body of original material that is frequently uploaded to YouTube.”<sup>259</sup> The tool proactively identifies prospective matches between uploaded content and the rights owner’s copyrighted content.<sup>260</sup> Meta’s Rights Manager tool is available for its family of apps to manage and proactively screen potentially infringing content, but is only available to a subset of rights owners that meet certain criteria based on their intellectual property rights, size of their content catalog, and history of past infringement notifications.<sup>261</sup> Although algorithmic filtering technologies have existed in some form for over two decades, they have significantly advanced and online platforms are increasingly using them to detect trademark infringements.<sup>262</sup>

Policies like these are not exclusively creatures of copyright law but also exist in the trademark context. In a prior study, Jeanne Fromer and Mark McKenna examined the ways in which Amazon offers expanded protections for certain groups of trademark owners through its Brand Registry program.<sup>263</sup> Fromer and McKenna focused on Amazon’s impact on the trademark system due to its market dominance.<sup>264</sup> However, Amazon is not alone in having a DMCA-plus-like program for trademarks. Table 13 shows that 20% of the platforms in this study have what this Article more generally terms takedown-plus policies, where platforms

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<sup>258</sup> Sag, *supra* note 4, at 538; *see also* URBAN, KARAGANIS & SCHOFIELD, *supra* note 151, at 55–61 (describing different DMCA plus practices).

<sup>259</sup> *How Content ID Works*, YOUTUBE HELP, <https://support.google.com/youtube/answer/2797370?hl=en> [<https://perma.cc/4YN8-LGMD>] (last visited Nov. 18, 2024).

<sup>260</sup> *Id.*

<sup>261</sup> *Rights Manager Eligibility*, META BUSINESS HELP CTR., <https://www.facebook.com/business/help/705604373650775?id=237023724106807> [<https://perma.cc/XK7W-25LS>] (last updated Aug. 16, 2023).

<sup>262</sup> Dev S. Gangjee, *Panoptic Brand Protection? Algorithmic Ascendancy in Online Marketplaces*, EUR. INTEL. PROP. REV., (forthcoming) (manuscript at 5–11); *see also* Shepherd et al., *supra* note 9 (finding that 34% of e-commerce platforms in their study undertook active monitoring for counterfeits, but only 18% used machine learning or AI).

<sup>263</sup> Fromer & McKenna, *supra* note 17, at 1193–96.

<sup>264</sup> *Id.* at 3.

undertake extra duties for certain rightsholders.<sup>265</sup> Most of these platforms are e-commerce platforms like Amazon, and 60% of the e-commerce platforms in this study have a takedown-plus policy. In addition, the three social media platforms to have a takedown-plus policy—Meta, TikTok, and WeChat—also have e-commerce features, including Facebook Marketplace, TikTok Shop, and WeChat shops.<sup>266</sup> The prevalence of takedown-plus policies among e-commerce-related services again suggests the role of institutional isomorphism.<sup>267</sup>

TABLE 13: TAKEDOWN-PLUS POLICIES FOR TRADEMARK INFRINGEMENTS

	Social Media	Blog/ Review	E-Commerce	Print-on-Demand	Total
<b>Takedown-Plus Policy</b>	3/18	0/8	6/10	0/9	9/45

These takedown-plus policies for trademark infringement can vary in complexity, falling into four categories. First, on the simpler side are platforms that offer reporting management tools. Walmart’s Brand Portal is available to rights owners with registered trademarks and offers a tool for managing brands, intellectual property claims, and authorized representatives.<sup>268</sup> Shopee’s Brand IP Portal provides owners of registered intellectual property with a centralized management system for intellectual property registrations and reports and a simplified reporting process.<sup>269</sup> The TikTok Shop Intellectual Property Protection Centre (“IPPC”)—which is exclusively for the TikTok Shop product—also offers a tool for uploading different intellectual property documentation and managing complaints, including appeals from reported parties.<sup>270</sup>

<sup>265</sup> Etsy also has its Reporting Portal, but unlike these other platforms, all rights owners are required to use it. *Etsy Reporting Portal*, *supra* note 177. Therefore, this study does not count it as a takedown-plus policy because the benefits are the same for everyone engaging in notice-and-takedown for trademark infringements.

<sup>266</sup> *Marketplace*, FACEBOOK, <https://www.facebook.com/marketplace> [<https://perma.cc/AH4R-8LSG>] (last visited July 17, 2025); *TikTok Shop*, TIKTOK, <https://www.tiktok.com/shop> [<https://perma.cc/5RNZ-GGQL>] (last visited July 17, 2025); Thomas Graziani, *How to Use WeChat for Business*, SHOPIFY (Dec. 9, 2022), <https://www.shopify.com/blog/sell-on-wechat> [<https://perma.cc/2ZSX-S6SJ>].

<sup>267</sup> DiMaggio & Powell, *supra* note 178.

<sup>268</sup> *Walmart Brand Portal*, WALMART BRAND PORTAL, <https://brandportal.walmart.com/> [<https://perma.cc/6SZE-9EHR>] (last visited Nov. 19, 2024).

<sup>269</sup> *Shopee Brand IP Portal*, *supra* note 172.

<sup>270</sup> *TikTok Shop IPPC User Manual*, TIKTOK (October 2024) <https://lf16-ippc.tiktokglobalshop.com/obj/ippc-home-static-sg/part2/pdf/IPPC-User-Guide.pdf> [<https://perma.cc/7TKS-U2U6>].

Next, some platforms offer expedited review of takedown notices. eBay's Verified Rights Owner ("VeRO") program is open to intellectual property owners who provide proof of ownership.<sup>271</sup> VeRO grants rights owners the ability to submit infringement reports as a streamlined Notice of Claimed Infringement ("NOCI") and eBay will remove listings reported by VeRO members as soon as possible.<sup>272</sup> VeRO members may also create a profile page on eBay that allows them to share information about their intellectual property with the eBay community.<sup>273</sup>

At the third level of complexity, there are platforms that offer proactive filtering of user-generated content that may infringe a trademark owner's rights. Temu's Brand Registry offers an infringement reporting feature, the ability to track complaint progress, and proactive filtering of likely infringements for rights owners with registered trademarks.<sup>274</sup> Meta's Brand Rights Protection is open to rights owners with a Business Manager account, who own a registered text- or image-based trademark, and have no history of intellectual property violations on Meta's platforms.<sup>275</sup> Meta's practices echo the list of best DMCA notice-and-takedown practices developed by the U.S. Department of Commerce and stakeholders, which noted that a trusted submitter program could improve efficiency for large volume reporting parties.<sup>276</sup> Brand Rights Protection provides rights owners with improved search and reporting functions, takedown metrics and reports, and proactive infringement detection on Meta's family of apps, including Facebook and Instagram.<sup>277</sup> WeChat offers its Brand Protection Platform ("BPP") to brand owners who have applied (which requires trademark registration materials, applicable authorized representative materials, and notarization and Chinese translations) and been approved.<sup>278</sup> The BPP allows users to alert brand

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<sup>271</sup> *Verified Rights Owner Program*, EBAY, <https://www.ebay.com/sellercenter/ebay-for-business/verified-rights-owner-program> [<https://perma.cc/T4ME-Z7RB>] (last visited Nov. 19, 2024).

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> *Temu Reporting*, *supra* note 177. *Protecting Your Intellectual Property*, TEMU INTELLECTUAL PROPERTY PROTECTION, <https://www temu.com/intellectual-property-overview.html> [<https://perma.cc/HC5C-XBV2>] (last visited Sep. 30, 2025).

<sup>275</sup> *About Brand Rights Protection*, META BUS. HELP CTR., <https://www.facebook.com/business/help/828925381043253?id=4533021280101097> [<https://perma.cc/8SUB-B7KJ>] (last visited Nov. 19, 2024).

<sup>276</sup> NTIA DMCA LIST, *supra* note 231, at 6.

<sup>277</sup> *Id.*

<sup>278</sup> *Access Guidelines for the Weixin Brand Protection Platform*, WEIXIN, [https://weixin110.qq.com/security/readtemplate?t=fake\\_report/brand\\_join](https://weixin110.qq.com/security/readtemplate?t=fake_report/brand_join) [<https://perma.cc/8QYZ-468M>] (last visited Oct. 21, 2024).

owners to counterfeiting, expedites the infringement reporting process, collects statistics on infringement reporting, and allows brand owners to submit keywords that WeChat uses to proactively filter infringing content.<sup>279</sup>

Finally, the most robust takedown-plus programs involve all of the above, plus collaborative joint enforcement of trademark rights between the platform and the rights owner. The most prominent program is Amazon's Brand Registry, which is available to rights owners with registered word- or image-based trademarks or pending trademark applications filed through Amazon's IP Accelerator in certain countries.<sup>280</sup> The rights owner must also provide product categories, product images, and manufacturing and distribution information.<sup>281</sup> Brand Registry provides rights owners with automated infringement detection and advanced reporting tools.<sup>282</sup> Rights owners with registered trademarks can also use further Amazon offerings: Transparency, Project Zero, and the Counterfeit Crimes Unit. Transparency provides unique codes to identify individual units and allows customers to confirm a product is genuine.<sup>283</sup> Project Zero proactively removes suspected counterfeits and allows rights owners to immediately remove other counterfeits.<sup>284</sup> Amazon's Counterfeit Crimes Unit works together with the rights owner to identify and prosecute counterfeiters.<sup>285</sup>

Alibaba offers two takedown-plus programs at different levels for its AliExpress, Alibaba.com, Lazada, and Miravia platforms.<sup>286</sup> The IP Protection Platform (IPP), like Walmart's Brand Portal and Shopee's Brand IP Portal, offers advanced tools for submitting and monitoring intellectual property enforcement activities and is available to intellectual property owners who verify their

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<sup>279</sup> *Id.*

<sup>280</sup> *Amazon Brand Registry*, AMAZON, <https://sell.amazon.com/brand-registry> [<https://perma.cc/G6DV-EEFN>] (last visited Nov. 19, 2024).

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> *Transparency*, AMAZON, <https://sell.amazon.com/brand-registry/transparency> [<https://perma.cc/AAP8-QQZ2>] (last visited Nov. 19, 2024).

<sup>284</sup> *Project Zero*, AMAZON, <https://sell.amazon.com/brand-registry/project-zero> [<https://perma.cc/HB6F-5CR3>] (last visited Nov. 19, 2024).

<sup>285</sup> *Amazon Counterfeit Crimes Unit (CCU)*, AMAZON, <https://trustworthyshopping.aboutamazon.com/counterfeitcrimesunit> [<https://perma.cc/63G9-KGD2>] (last visited Nov. 19, 2024).

<sup>286</sup> *IP Protection Platform*, ALIBABA INT'L, [https://ipp.aidcgroup.net/index.htm?language=en\\_US%23/ippHome](https://ipp.aidcgroup.net/index.htm?language=en_US%23/ippHome) [<https://perma.cc/WN4E-S5LP>] (last visited Nov. 19, 2024).

identity.<sup>287</sup> The Alibaba Anti-Counterfeiting Alliance (AACA) is an invitation-only program for rights owners with a strong record of protecting their intellectual property through the IPP.<sup>288</sup> The AACA is more akin to Amazon's Brand Registry and offers greater collaboration between Alibaba and rights owners, including proactive monitoring for infringements, product authentication, and coordinated offline counterfeiting investigations.<sup>289</sup>

These findings build on Fromer and McKenna's work on Amazon's reshaping of the U.S. trademark system by demonstrating that Amazon is not alone in offering robust trademark infringement protection for rights owners.<sup>290</sup> While Amazon may have an outsized impact on the trademark system due to its market dominance, it is not alone in driving the attractiveness of trademark registrations for online enforcement. As explained above in Part III.B., a majority of the platforms in this study require trademark registration information to submit a proper trademark infringement takedown notice. The findings in this section magnify this trend by underlining the importance of trademark registration to receive the greater benefits of takedown-plus programs.

### *E. Counter-Notice Procedures*

This study also examined the availability of counter-notice procedures for trademark infringement reports. The DMCA provides a detailed, burden-shifting counter-notice procedure for platforms to avail themselves of a liability safe harbor for removing content.<sup>291</sup> The platform must notify the reported party of the infringement and restore the content if it receives a counter-notice within ten to fourteen business days, unless the rights owner files litigation seeking to enjoin

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<sup>287</sup> *Id.*

<sup>288</sup> *AACA Practices*, AACA, <https://aaca.alibabagroup.com/%23/practices> [https://perma.cc/WXU6-CPP6] (last visited Nov. 19, 2024).

<sup>289</sup> *Id.*

<sup>290</sup> Fromer & McKenna, *supra* note 17, at 1197.

<sup>291</sup> 17 U.S.C. § 512(g). In an early study, Jennifer Urban and Laura Quilter found that reported parties rarely file counter-notices under the DMCA. Jennifer M. Urban & Laura Quilter, *Efficient Process or "Chilling Effects"? Takedown Notices Under Section 512 of the Digital Millennium Copyright Act*, 22 SANTA CLARA COMPUTER & HIGH TECH. L.J. 621, 679–80 (2006). *But see* Mostert & Schwimmer, *supra* note 124, at 259–60 (questioning the methodology and potential selection bias in that study).

the reported party and notifies the platform within that period.<sup>292</sup> The DMCA also states what content should be contained within a counter-notice to be effective.<sup>293</sup>

Although *Tiffany v. eBay* and its progeny do not require a counter-notice procedure for trademark infringements, Table 14 shows that 37.78% of the platforms in this study have counter-notice procedures for content reported for trademark infringement. Counter-notice procedures are especially likely for print-on-demand services (66.67%) and social media platforms (38.89%). Yet in the e-commerce space, only AliExpress had such a policy.<sup>294</sup> This is unexpected, as it would seem more likely that defenses such as licenses, fair use, expressive use, and non-commercial use would apply to social media and blog posts, and e-commerce listings, than print-on-demand listings.

The common law not mandating a counter-notice procedure could explain the lower adoption. Society6 specifically notes that “U.S. law does not include a trademark takedown process or procedure analogous to the DMCA. Society6’s decision to offer a trademark takedown procedure is a voluntary undertaking, to be of better service to our community members and website visitors.”<sup>295</sup> This suggests that some platforms may not offer counter-notice procedures due to the administrative burden and the law not explicitly requiring it. Yet of the twenty-eight platforms that did not have a specific trademark counter-notice policy, 60.71% had one for copyright violations, as is required by the DMCA.<sup>296</sup> However, counter-notice procedures could create a risk of liability for trademark infringement. While the DMCA provides that complying with the statutory counter-notice procedure does not lead to infringement liability,<sup>297</sup> trademark law has no such safe harbor.

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<sup>292</sup> 17 U.S.C. § 512(g)(2).

<sup>293</sup> 17 U.S.C. § 512(g)(3).

<sup>294</sup> *IPP Platform Instructions*, ALIBABA INT’L IP PROTECTION PLATFORM, [https://ipp.aidcgroup.net/index.htm?language=en\\_US%23/instruction/part2](https://ipp.aidcgroup.net/index.htm?language=en_US%23/instruction/part2) [<https://perma.cc/6HEL-89VY>] (last visited Nov. 19, 2024).

<sup>295</sup> *Society6 Takedown Procedure*, *supra* note 164.

<sup>296</sup> As mentioned above, Mastodon may have a policy at the Instance level and Rakuten may also have a repeat infringer policy, but its website is primarily in Japanese. *See supra* notes 163, 241. The remaining nine platforms that appear not to mention a counter-notice policy at all are Telegram, Snapchat, BeReal, Bluesky, Fishbowl, Shopee, Craigslist, Sellfy, and Gooten.

<sup>297</sup> 17 U.S.C. § 512(g)(4).

TABLE 14: COUNTER-NOTICE FOR TRADEMARK INFRINGEMENTS

	Social Media	Blog/ Review	E-Commerce	Print-on- Demand	Total
Counter-Notice	7/18	3/8	1/10	6/9	17/45

The lack of a counter-notice procedure could facilitate overbroad policing of trademark rights by rights owners. Without the ability to provide their own side of the story, users' content will be removed even where the use is lawful, such as for nominative fair use.<sup>298</sup> Legal scholars have long lauded the adversarial system as a way to help establish the truth.<sup>299</sup> Not adopting a counter-notice procedure for trademark takedown notices therefore undermines the ability of the platform to ascertain the truth and act accordingly, exacerbating overdeterrence.<sup>300</sup> The rampant abuse of notice-and-takedown procedures by reporting parties amplifies these concerns.<sup>301</sup> The legal risk of maintaining reported content pursuant to a counter-notice may suggest that statutory protections could be necessary, yet a sizeable population of platforms have nonetheless adopted counter-notice procedures. Courts may consider broad-based industry adoption to weigh in favor of not holding platforms liable when they are engaging in bona fide counter-notice procedures.

#### F. (Un)Transparent Takedowns

Finally, not all platforms are transparent about their takedown practices, although there will likely always be some ambiguity about how platforms individually respond to notices. Transparency about takedown practices is desirable

<sup>298</sup> See *Toyota Motor Sales, U.S.A., Inc. v. Tabari*, 610 F.3d 1171, 1175–76 (9th Cir. 2010).

<sup>299</sup> See, e.g., Edward F. Barrett, *The Adversary System and the Ethics of Advocacy*, 37 NOTRE DAME L. REV. 479, 478–80 (1962). The viability of a true adversarial system in U.S. law has, however, been questioned. See, e.g., Keith A. Findley, *Adversarial Inquisitions: Rethinking the Search for the Truth*, 56 N.Y.L. SCH. L. REV. 911, 912 (2011/12) (concluding that the “adversary process [is] so compromised by imbalance between the parties—in terms of resources and access to evidence—that true adversary testing is virtually impossible”).

<sup>300</sup> Mark A. Lemley, *Rationalizing Internet Safe Harbors*, 6 J. TELECOMM. & HIGH TECH. L. 101, 116 (2007).

<sup>301</sup> See, e.g., Shreya Tewari, *Over Thirty Thousand DMCA Notices Reveal an Organized Attempt to Abuse Copyright Law*, LUMEN (Apr. 22, 2022), [https://lumendatabase.org/blog\\_entries/over-thirty-thousand-dmca-notices-reveal-an-organized-attempt-to-abuse-copyright-law](https://lumendatabase.org/blog_entries/over-thirty-thousand-dmca-notices-reveal-an-organized-attempt-to-abuse-copyright-law) [https://perma.cc/6PA5-C497] (detailing 30,000 abusive takedown notices); Daniel Seng, *Copyrighting Copywrongs: An Empirical Analysis of Errors with Automated DMCA Takedown Notices*, 37 SANTA CLARA HIGH TECH. L.J. 119, 164 (2021) (finding that up to 9.8% of notices exhibited functional errors).



for efficiency. For example, a list of best DMCA notice-and-takedown practices, developed by stakeholders and the U.S. Department of Commerce, encouraged platforms to have clear notice-and-takedown policies, including making them easy to find, listing the required information for a takedown, and including what additional information, if submitted, can facilitate a takedown.<sup>302</sup> Yet some platforms did not have any publicly available notice-and-takedown procedures. Others have fairly barebones policies.

The public trademark policies themselves only provide limited insights into platforms' takedown practices. The policies provide a picture of what platforms require for knowledge acquisition.<sup>303</sup> What is required for a takedown is somewhat less clear. There are some aspects that might be public, such as the repeat infringer policies, takedown-plus policies, and counter-notice procedures discussed above.<sup>304</sup> The notice requirements may also be sufficient for a takedown, but some platforms may undertake additional practices beyond what is written in public policies. For example, it is unclear whether anything else may be required for a platform to undertake a takedown or if any additional information could help facilitate a takedown.

There has been an increase in platforms providing annual transparency reports on their takedowns, but these are focused on high-level statistics and initiatives rather than the granular process from notice to takedown. One of the more detailed transparency reports comes from Meta. Meta disaggregates the number of reports submitted per month for copyright, trademark, and counterfeit.<sup>305</sup> In December 2023, there were 342,000 reports of copyright infringement, 50,600 of trademark infringements, and 25,000 of counterfeits.<sup>306</sup> During that same month, 83.19% of content identified as infringement of copyrights was removed, 58.82% of alleged trademark-infringing content, and 81.95% of alleged counterfeits.<sup>307</sup> Meta also includes statistics on what percentage of removed content it had proactively

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<sup>302</sup> NTIA DMCA LIST, *supra* note 231, at 1–2.

<sup>303</sup> See *supra* Part III.B.

<sup>304</sup> See *supra* Parts III.C–E.

<sup>305</sup> *Intellectual Property 2023 Report*, META, <https://transparency.meta.com/reports/intellectual-property> [https://perma.cc/58YK-4AME] (last visited Feb. 28, 2025).

<sup>306</sup> *Notice and Takedown*, META, <https://transparency.meta.com/reports/intellectual-property/notice-and-takedown/facebook/> [https://perma.cc/8D8G-2MDG] (last visited Feb. 28, 2025).

<sup>307</sup> *Id.*

identified as infringing copyrights or being counterfeit.<sup>308</sup> Meta also provides some insights into its takedown practices, explaining that “[i]f the report is complete and valid, the team will promptly remove the reported content, typically within a day or less, and confirm that action with the rights holder that reported it (or its authorized representative). If any information is missing or if the team needs to clarify anything, more information may be requested.”<sup>309</sup> Even here, it is unclear what might need to be clarified and whether there are standard rules for this sort of conversation with the reporting party.

TikTok’s transparency report reveals that in the first half of 2024, it received 28,733 trademark infringement reports and that 61.1% of the reported content was removed.<sup>310</sup> TikTok’s transparency report also cites to the platform’s Intellectual Property Policy, which explains that lawful uses of a trademark include parody, criticism, comparisons, and descriptions.<sup>311</sup> This might suggest—although it never explicitly says—that TikTok substantively evaluates the report and only removes reported content when it determines that it contains trademark infringement.

Other platforms’ transparency reports tend to provide statistics on the number of notices and takedowns, but did not necessarily disaggregate trademark infringements from other infringements and provided less information on the platform’s takedown practices. For example, a 2023 report from Etsy noted that the platform processed 122,927 alleged infringement reports and removed a total of 1.2 million listings.<sup>312</sup> In its 2023 transparency report, eBay explained that it removed 24,562 listings in response to infringement notifications through its portal.<sup>313</sup> Snapchat’s first half of 2024 transparency report says that Snapchat took 9,698,368

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<sup>308</sup> *Proactive Enforcement*, META, <https://transparency.meta.com/reports/intellectual-property/proactive-enforcement/facebook> [<https://perma.cc/Y9BC-UYL3>] (last visited Feb. 28, 2025).

<sup>309</sup> *How We Protect Intellectual Property (IP) Rights*, META, <https://transparency.meta.com/reports/intellectual-property/protecting-intellectual-property-rights> [<https://perma.cc/QW77-UCQP>] (last visited Feb. 28, 2025).

<sup>310</sup> *Intellectual Property Removal Requests Report*, TIKTOK TRANSPARENCY CTR. (Dec. 18, 2024), <https://www.tiktok.com/transparency/en/intellectual-property-removal-requests-2024-1> [<https://perma.cc/L2KZ-EE5X>].

<sup>311</sup> *Intellectual Property Policy*, TIKTOK (March 27, 2025), <https://www.tiktok.com/legal/page/global/copyright-policy/en> [<https://perma.cc/W4XN-Z3PJ>].

<sup>312</sup> *Etsy 2023 Transparency Report*, ETSY (2023), [https://storage.googleapis.com/etsy-extfiles-prod/2023-Transparency\\_Report.pdf?ref=news](https://storage.googleapis.com/etsy-extfiles-prod/2023-Transparency_Report.pdf?ref=news) [<https://perma.cc/3ZEG-HKRR>].

<sup>313</sup> *eBay 2023 Global Transparency Report*, EBAY (May 2024), <https://static.ebayinc.com/assets/Uploads/Documents/eBay-2023-Global-Transparency-Report.pdf> [<https://perma.cc/7E5D-DSHK>].

enforcement actions, but does not separate infringement reports, compared to other reasons such as child sexual exploitation, harassment and bullying, and drugs, which constituted the bulk of enforcement actions.<sup>314</sup>

Some platforms have revealed further information about their takedown practices through responses to government comment periods or requests. For example, in 2024, Alibaba filed comments with the Office of the U.S. Trade Representative (“USTR”) in response to a request for nominations and comments for the annual Review of Notorious Markets for Counterfeiting and Piracy (“Notorious Markets List”).<sup>315</sup> Alibaba explained that, for example, in June 2023, 95% of successful takedowns were based on a review of the initial notice alone, and that its Global IP Enforcement team regularly meets with rights owners to discuss issues with reporting infringements on its platforms or direct them to resources.<sup>316</sup> Meta explained in its own comment to the USTR that if a report is complete and valid, it promptly removes the reported content, but that Meta regularly audits takedown requests and may consider additional (unnamed) factors to determine eligibility.<sup>317</sup>

Often, platforms’ practices only come to light through litigation. For example, some platforms have highlighted their proactive enforcement mechanisms in the course of infringement litigation.<sup>318</sup> Others have explained how they consider and terminate repeat infringers.<sup>319</sup>

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<sup>314</sup> *Transparency Report January 1, 2024 – June 30, 2024*, SNAP PRIVACY, SAFETY, & POL’Y HUB (Dec. 5, 2024), <https://values.snap.com/privacy/transparency-h1-2024> [<https://perma.cc/6B96-BH5B>].

<sup>315</sup> Alibaba Int’l Digit. Com. Grp., Comment Letter on U.S. Trade Representative 2024 Review of Notorious Markets for Counterfeiting and Piracy (Oct. 17, 2024), <https://www.regulations.gov/comment/USTR-2024-0013-0051> [<https://perma.cc/ZEP9-ZCKV>].

<sup>316</sup> *Id.* at 11.

<sup>317</sup> Meta, Comment Letter on U.S. Trade Representative 2024 Review of Notorious Markets for Counterfeiting and Piracy (Oct. 17, 2024), <https://www.regulations.gov/comment/USTR-2024-0013-0045> [<https://perma.cc/CN5C-HUQ4>].

<sup>318</sup> *See, e.g., Tiffany*, 576 F. Supp. 2d at 492–93 (explaining how eBay implemented anti-fraud measures such as filters after 2006); *H-D U.S.A., LLC v. SunFrog, LLC*, 311 F. Supp. 3d 1000, 1022 (E.D. Wisc. 2018) (describing how SunFrog engaged in keyword blocking).

<sup>319</sup> *See, e.g., Cap. Recs., LLC v. Escape Media Grp., Inc.*, No. 12-CV-6646 (AJN), 2015 WL 1402049, at \*6 (S.D.N.Y. Mar. 25, 2015) (showing that the defendant had adopted a one-strike policy); *BMG Rts. Mgmt. (US) LLC v. Cox Comm’n’s, Inc.*, 881 F.3d 293, 299 (4th Cir. 2018) (explaining that Cox adopted a limited automated system to process notifications of infringement and a thirteen-strike repeat infringer policy).

Despite this additional information on platforms' takedown practices in response to notice of infringement, questions remain. There is almost necessarily some ad hoc judgment in takedown practices. Unlike, say, requirements for valid infringement notices, there might be fact-specific questions about how to address individual reported content. For example, a reported use could perhaps be a lawful nominative fair use. Some platforms might choose to remove first and ask questions later, whereas others are willing to substantively evaluate and remove only if it finds a strong case of infringement. More transparency into these takedown practices—and what information rights owners can include to achieve a takedown based on their initial report alone—could help rights owners. If publicly revealed, best practices might also become more common across the industry through institutional isomorphism. However, platforms likely wish to maintain some level of discretion to address diverse cases on their own facts. In Jennifer Urban, Joe Karaganis, and Brianna Schofield's study of DMCA practices, some platforms undertook substantive review—despite its associated liability risks—because “they feel obliged to combat abuse of the notice system . . . [and] enable[e] transformative use, re-use, and creative appropriation of cultural materials[, which is] deeply intertwined with expressive right.”<sup>320</sup> Similarly, platforms may maintain a degree of opacity around their takedown practices to better respond to illegitimate or anticompetitive takedown requests.<sup>321</sup> They may even be more willing to risk liability for trademark infringement because of the potentially higher bar for knowledge in trademark law<sup>322</sup> and because there are no statutory damages except for counterfeits, unlike copyright law, where each allegedly infringed copyright could lead to \$150,000 in damages.<sup>323</sup> Regardless of the potential amelioration of concerns, the presence of liability risk means there should be a balance between providing more insights into the takedown process while recognizing that a complete picture is likely elusive due to the diversity of reported content.

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<sup>320</sup> URBAN, KARAGANIS, & SCHOFIELD, *supra* note 151, at 52.

<sup>321</sup> See Seng, *supra* note 301, at 164 (finding up to 9.8% of takedown notices lacked functional information).

<sup>322</sup> See *supra* note 212 and accompanying text.

<sup>323</sup> 17 U.S.C. § 504(c)(2).

## IV

## FUTURE DIRECTIONS IN COMMON LAW NOTICE-AND-TAKEDOWN

The findings in Part III contribute to our understanding of how notice-and-takedown regimes can develop under a general liability standard rather than detailed rules. While existing rules for other areas of law, such as the DMCA, can influence this development, platforms also experiment and craft bespoke requirements within the space afforded by common law notice-and-takedown under *Tiffany v. eBay* that are attuned to their own interests and experiences. The resulting policies are mixed. The lack of formal legal obligations can permit platforms to provide improved tools and policies for rights owners, but they can also lead to platforms imposing onerous requirements on rights owners to achieve a takedown.

The emergence of private ordering among online platforms may influence courts in determining what is reasonable to require under common law notice-and-takedown. If courts endorse beneficial private ordering-based practices, especially those that have been more widely adopted, they could be implemented into the common law. Therefore, the experimentation in the shadow of the common law may inform more detailed common law developments in the future. Where problematic norms become entrenched in common law, legislative intervention may become necessary.

These findings suggest that there may be a role for statutory trademark safe harbor rules in the future. Even without legislation, trademark common law has effectively created a safe harbor of sorts. Platforms have engaged in private ordering under the general *Tiffany v. eBay* standard to craft notice-and-takedown regimes of varying robustness. Without a statutory safe harbor, however, there is the risk that other developments at common law may negatively affect platforms' liability exposure for users' trademark infringements. For example, even if the Supreme Court significantly changes contributory liability under copyright law in the upcoming *Cox* case, the DMCA will operate as a safe harbor just as it did before.<sup>324</sup> Trademark law, however, only has the contributory liability standard, so platform liability—and practices—are more vulnerable to change.<sup>325</sup>

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<sup>324</sup> *Cox Comm'n's, Inc. v. Sony Music Ent.*, No. 24-171 (U.S. 2025).

<sup>325</sup> *Tiffany (NJ) Inc. v. eBay, Inc.*, 600 F.3d 93, 107 (2d Cir. 2010).

Therefore, at least a limited safe harbor could be beneficial for trademark law. However, such a safe harbor should be mindful of the existing benefits and costs of private ordering.<sup>326</sup> Any legislation should require certain beneficial practices that have emerged among some platforms, such as encouraging direct communication between reporting and reported parties, verifying authorization to act on behalf of the rights owner, and imposing consequences on those who abuse the notice-and-takedown system. It should also prohibit poor practices, such as requiring trademark registration and creating an account to submit a takedown notice. Over twenty years of private ordering within the space afforded by common law should inform any future statutory safe harbor.

In addition to these findings' insights for trademark law, their impact could extend into other legal realms in the near future. Trademark law has served as the primary common law notice-and-takedown regime for the past two decades. However, common law notice-and-takedown may expand to other legal doctrines due to two trends: possible resolution of a circuit split over the relationship between Section 230 and the right of publicity and other state intellectual property rights, and increased calls to restrict or repeal Section 230.

While federal copyright and trademark infringement are clearly excluded from the protections of Section 230, it is unclear how Section 230 relates to *state* law intellectual property claims, especially the right of publicity. The vast majority of states recognize a right of publicity, either by statute or under common law.<sup>327</sup> But Section 230 says, rather generically, that “[n]othing in [Section 230] shall be construed to limit or expand any law *pertaining to intellectual property*.”<sup>328</sup>

This ambiguity over what constitutes “intellectual property” has led to a growing division between courts that consider the right of publicity to be an intellectual property right for purposes of Section 230 and those that do not. On the one side, the Ninth Circuit kept the right of publicity within Section 230’s confines,

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<sup>326</sup> Van Houweling, *supra* note 229, at 9 (suggesting a mixed regime that “allows regulated entities to sort themselves”).

<sup>327</sup> See Jennifer E. Rothman, *Copyright Preemption and the Right of Publicity*, 36 U.C. DAVIS L. REV. 199, 203 (2002) (detailing which states have recognized a right of publicity by statute and common law). For more details on specific states, Jennifer Rothman maintains information on each state’s right of publicity statutes and jurisprudence. See Jennifer E. Rothman, *ROTHMAN’S ROADMAP TO THE RIGHT OF PUBLICITY*, <https://rightofpublicityroadmap.com> [<https://perma.cc/C6CS-VYTN>] (last visited Mar. 30, 2024).

<sup>328</sup> 47 U.S.C. § 230(e)(2) (emphasis added).

ruling that intellectual property only means “federal intellectual property.”<sup>329</sup> In addition, a court in the Southern District of New York held that Section 230 immunized platforms from right of publicity claims under New York Civil Rights Law Sections 50 and 51 because they provide for “injury to the person not to the property,” so the claim sounded in privacy, not intellectual property law.<sup>330</sup> On the other side, courts in the Third Circuit, District of New Hampshire, Southern District of Ohio, and Southern District of Florida explicitly held that Section 230 did not apply to federal or state intellectual property laws, including the right of publicity.<sup>331</sup>

A resolution to the circuit split could lead to the emergence of common law notice-and-takedown for right of publicity misappropriations. At least in the latter jurisdictions, platforms could face liability for users’ misappropriations of others’ rights of publicity. However, the split authority on the right of publicity and Section 230 has somewhat dampened the impact of these cases on platforms’ practices. Nonetheless, if a growing number of jurisdictions hold the right of publicity outside of Section 230’s protections, or if this circuit split is eventually resolved in that direction, platforms may face secondary liability for users’ misappropriations.<sup>332</sup> However, even jurisdictions like the Third Circuit have not indicated what would be required of platforms to avoid secondary liability in these cases. Therefore, common law notice-and-takedown would likely once again fill the gap, at least in the short term, allowing platforms to experiment and craft their own policies until courts or Congress impose stricter rules like those in the DMCA.<sup>333</sup>

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<sup>329</sup> Perfect 10, Inc. v. CCBill LLC, 488 F.3d 1102, 1118–19 (9th Cir. 2007).

<sup>330</sup> Ratermann v. Pierre Fabre USA, Inc., 651 F. Supp. 3d 657, 668–69 (S.D.N.Y. 2023).

<sup>331</sup> See Hepp v. Facebook, 14 F.4th 204, 212 (3d Cir. 2021) (“[A] state law [including right of publicity claims, such as those at issue in the case] can be a ‘law pertaining to intellectual property’ . . . .”); Doe v. Friendfinder Network, Inc., 540 F. Supp. 2d 288, 302 (D.N.H. 2008) (“§ 230(e)(2) applies simply to ‘any law pertaining to intellectual property,’ not just federal law.”); Ohio State Univ. v. Skreened Ltd., 16 F. Supp. 3d 905, 918 (S.D. Ohio 2014) (holding that Section 230’s “immunity provision does not apply . . . in the context of a state law right of publicity claim.”); Albert v. Tinder, Inc., No. 22-60496-CIV-COHN/STRAUSS, 2022 WL 18776124, at \*11 (S.D. Fla. Aug. 5, 2022) (“At this juncture, the Court finds persuasive the reasoning of other jurisdictions that have applied the CDA intellectual property exception to state law claims, barring immunity from those claims.”).

<sup>332</sup> In another article, I propose the right of publicity should be considered intellectual property for purposes of Section 230 to counter the harms of deepfakes. See Goodyear, *supra* note 20, at 46–49.

<sup>333</sup> *Id.* at 49–53 (explaining in further detail how this notice-and-takedown process for right of publicity misappropriations would work).

In addition, Congress is considering proposed legislation that could exclude platform liability for deepfakes (rooted in the right of publicity) from the protections of Section 230. The NO FAKES Act, for example, specifically provides a digital replica right.<sup>334</sup> It would term the right an intellectual property right so as to avoid falling within the confines of Section 230.<sup>335</sup> The NO FAKES Act provides a statutory safe harbor for platforms hosting user-uploaded deepfakes so long as they adopt a notice-and-takedown procedure and notify the reported user that the content has been removed.<sup>336</sup> The NO FAKES Act incorporates many aspects of the DMCA almost verbatim, including a repeat infringer policy, removal upon notice, have a designated agent, and similar requirements for a valid takedown notice.<sup>337</sup> A significant difference is for knowing material misrepresentations, for which the NO FAKES Act would provide for statutory damages of \$25,000 per notification or actual damages, including costs and attorney's fees.<sup>338</sup>

However, there may be some benefits to permitting common law notice-and-takedown, at least for certain components of the notice-and-takedown regime, in order to watch private ordering develop viable practices. In this case, if Congress enacts the NO FAKES Act or a similar bill that would only provide a general standard of liability, the findings in Part III could help shed light on what common law notice-and-takedown for digital replica or right of publicity violations might engender in the market. Platforms may rely on principles that have emerged in the trademark context or could adopt bespoke practices attuned to the unique aspects of the right of publicity. Courts could look to private ordering among these platforms to determine reasonable legal requirements under common law notice-and-takedown, and Congress could later intervene to mandate certain beneficial practices.

Beyond the narrow category of the right of publicity, there have been growing calls from across the political spectrum to amend or repeal Section 230. President Trump's first administration issued an executive order criticizing the use of Section

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<sup>334</sup> S. 4875, 118th Cong. § 2(c) (2025).

<sup>335</sup> S. 4875, 118th Cong. § 2(g) (2025).

<sup>336</sup> S. 4875, 118th Cong. § 2(d) (2025).

<sup>337</sup> S. 4875, 118th Cong. § 2(d) (2025).

<sup>338</sup> S. 4875, 118th Cong. § 2(d)(4) (2025).



230 to stifle diverse (particularly conservative) viewpoints.<sup>339</sup> In 2021, House Republicans introduced over thirty bills to reform Section 230, largely to defend against what they saw as an incursion on free speech.<sup>340</sup> That same year, Senate Democrats criticized Section 230 for facilitating the spread of public health misinformation and proposed a bill that would exclude health misinformation during a public health crisis from the law.<sup>341</sup> In 2022, the Biden White House reiterated its desire to repeal Section 230.<sup>342</sup> For the past several years, Congress has considered various bills that seek to limit or repeal Section 230.<sup>343</sup> For example, one current bipartisan draft bill would sunset Section 230 at the end of 2025.<sup>344</sup> Many legal commentators and scholars have defended Section 230 or criticized

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<sup>339</sup> Exec. Order No. 13925, 85 Fed. Reg. 34,079 (June 2, 2020), *revoked by* Exec. Order No. 14029, 86 Fed. Reg. 26,621 (May 14, 2021).

<sup>340</sup> Mike Masnick, *House Republicans Introduce Ridiculous, Contradictory, Unconstitutional Package of 32 Bills About Section 230 and Content Moderation*, TECHDIRT (July 29, 2021, at 9:25 ET), <https://www.techdirt.com/2021/07/29/house-republicans-introduce-ridiculous-contradictory-unconstitutional-package-32-bills-about-section-230-content-moderation> [https://perma.cc/8H6F-V792].

<sup>341</sup> Shannon Bond, *Democrats Want to Hold Social Media Companies Responsible for Health Misinformation*, NPR, <https://www.npr.org/2021/07/22/1019346177/democrats-want-to-hold-social-media-companies-responsible-for-health-misinformat> [https://perma.cc/KQ3J-RZ6E] (last updated July 22, 2021, at 15:59 ET).

<sup>342</sup> Rebecca Kern, *White House Renews Call to ‘Remove’ Section 230 Liability Shield*, POLITICO (Sept. 9, 2022, at 12:29 ET), <https://www.politico.com/news/2022/09/08/white-house-renews-call-to-remove-section-230-liability-shield-00055771> [https://perma.cc/WY7X-PY7J].

<sup>343</sup> See, e.g., S. 1993, 118th Cong. (2023); S. 2972, 117th Cong. (2021); H.R. 5596, 117th Cong. (2021); H.R. 3827, 117th Cong. (2021).

<sup>344</sup> *Legislative Proposal to Sunset Section 230 of the Communications Decency Act*, CONGRESS.GOV (May 22, 2024, at 10:00 ET) <https://www.congress.gov/event/118th-congress/house-event/117342> [https://perma.cc/Z548-8H89].

these efforts for not actually achieving their desired goals.<sup>345</sup> However, other scholars have endorsed amending or repealing Section 230.<sup>346</sup>

Bipartisan support for changing Section 230 could lead to common law notice-and-takedown replacing it. Section 230 has served as a blanket immunity shield for online platforms for a wide panoply of tort claims, from defamation to fraud.<sup>347</sup> Courts have not had to consider whether a platform could be liable under these particular legal doctrines because Section 230 has mooted the questions. Without Section 230, however, courts will need to consider under what circumstances a platform should be liable for a user's defamation, fraud, or other tort. These doctrines may develop their own common law notice-and-takedown structures premised on knowledge, and private ordering will undoubtedly occur within those developed standards.

Courts and the broader legal community can look to trademark law as an early example of common law notice-and-takedown. Trademark law shows how common law regimes may emerge and offer an alternative to rule-laden statutes. The DMCA may continue to have an outsized impact on the development of

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<sup>345</sup> See, e.g., Eric Goldman, *Dear President Biden: You Should Save, Not Revoke, Section 230*, BULLETIN OF ATOMIC SCIENTISTS (Jan. 12, 2021), <https://thebulletin.org/premium/2021-01/dear-president-biden-you-should-save-not-revoke-section-230> [<https://perma.cc/N2V8-R4MW>]; Mike Masnick, *Hello! You've Been Referred Here Because You're Wrong About Section 230 of the Communications Decency Act*, TECHDIRT (June 23, 2020), <https://www.techdirt.com/2020/06/23/hello-youve-been-referred-here-because-youre-wrong-about-section-230-communications-decency-act> [<https://perma.cc/DA5F-5ZDU>]; Jeff Kosseff, *A User's Guide to Section 230, and a Legislator's Guide to Amending It (or Not)*, 37 BERKELEY TECH. L.J. 757, 788–801 (2022); Aaron Mackey & Joe Mullin, *Sunsetting Section 230 Will Hurt Internet Users, Not Big Tech*, ELEC. FRONTIER FOUND. (May 20, 2024), <https://www.eff.org/deeplinks/2024/05/sunsetting-section-230-will-hurt-internet-users-not-big-tech> [<https://perma.cc/9QJJ-4GLL>].

<sup>346</sup> See, e.g., Danielle Keats Citron & Mary Anne Franks, *The Internet as a Speech Machine and Other Myths Confounding Section 230 Reform*, UNIV. CHI. LEGAL F. 45, 74 (2020) (“Reforming Section 230 is long overdue.”); Matthew P. Bergman, *Assaulting the Citadel of Section 230 Immunity: Products Liability, Social Media, and the Youth Mental Health Crisis*, 26 LEWIS & CLARK L. REV. 1159, 1202 (2023) (“Section 230 can no longer be used as a citadel to protect social media companies from the foreseeable harms and known consequences of their deliberate design decisions.”); Maddie Futch, *Symposium Explores Social Media's Impact on Society, Politics, and National Security*, FORDHAM LAW NEWS (Nov. 15, 2024), <https://news.law.fordham.edu/blog/2024/11/15/symposium-explores-social-medias-impact-on-society-politics-and-national-security> [<https://perma.cc/M5YD-G5JD>] (“[Gaia] Bernstein advocated for a direct liability model for tech companies that profit from keeping users online longer while harvesting their data.”).

<sup>347</sup> See *supra* notes 45–53.

common law notice-and-takedown as platforms implement existing copyright practices on adjacent fields. Nonetheless, the findings in this Article suggest that a general liability standard at common law allows platforms to experiment with different policies and practices. While this can lead to more onerous requirements for takedowns, it can also encourage platforms to more actively try to protect user rights and reach compromises between parties. These private ordering developments may, in turn, influence how courts refine common law notice-and-takedown. The law can learn from the experimentation of platforms and perhaps eventually impose particularly desirable requirements to ensure platforms' policies are in the best interests of everyone.

### CONCLUSION

While the DMCA provides strict rules for what copyright law notice-and-takedown requires for a safe harbor, trademark law has no such statutory equivalent. Instead, the common law notice-and-takedown doctrine from *Tiffany v. eBay* and its progeny requires only the general standard of removal of content upon knowledge that it is infringing. In the absence of formal law, platforms have engaged in private ordering, crafting their own policies and practices around users' trademark infringement. This Article revealed emerging private ordering within the space afforded by the general common law notice-and-takedown standard by examining a subset of platforms in trademark-sensitive markets such as social media and e-commerce. Revealing trends such as how some platforms are user-focused, how others are streamlining reporting procedures, and how others are imposing onerous trademark registration requirements can help inform future notice-and-takedown law at both the legislative and judicial level.

These findings raise questions for future research. Comparisons of the DMCA and trademark common law notice-and-takedown could provide an improved approach that incorporates the best of both regimes. This research could inform how platforms should adopt their own notice-and-takedown practices. Other areas of law may likewise learn from the trademark experience of platforms and courts to better inform notice-and-takedown regimes in emerging fields of platform secondary liability. Especially as interest in platform liability for digital replicas and amending or repealing Section 230's broad liability safe harbor grows, the reality and lessons from trademark law's common law notice-and-takedown regime could be influential.

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APPENDIX: ONLINE PLATFORMS’ TRADEMARK INFRINGEMENT POLICIES

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Facebook	<p>Yes. “You may not use our Products to do or share anything . . . [t]hat infringes or violates someone else’s rights, including their intellectual property rights (such as by infringing another’s copyright or trademark, or distributing or selling counterfeit or pirated goods), unless an exception or limitation applies under applicable law.”</p> <p><a href="#">Terms of Service.</a></p>	<p>Yes, separate reporting forms.</p>	<p><a href="#">Trademark form</a></p> <p><a href="#">Counterfeit form</a></p>	<ul style="list-style-type: none"><li>Relationship to the rights owner (I am the rights owner, I am reporting on behalf of my organization or client, I am reporting on behalf of someone else)</li><li>Contact information (full name, mailing address, email address)</li><li>Name of rights owner</li><li>Link to rights owner’s official online presence</li><li>What is the trademark</li><li>Where is the trademark registered</li><li>What are the trademark registration numbers (if applicable)</li><li>Scanned copy of trademark registration certificate</li><li><u>Counterfeit only:</u> what type of content are you reporting? (Photo, video or post; ad; page, group or profile; other)</li><li><u>Trademark only:</u> Why do you believe this content infringes rights owner’s trademark rights? (This photo, video, post or story uses rights owner’s trademark, this ad is using rights owner’s trademark, rights owner’s trademark is used in the username, other)</li><li>Please provide links (URLs) leading directly to the specific content you are reporting</li><li>Any additional information</li><li>Good faith belief that the use is not authorized and the information in the report is accurate</li><li>Under penalty of perjury, authorized to act on behalf of the rights owner</li><li>Electronic signature</li></ul>	<p>Yes, there is a general “intellectual property” <a href="#">repeat infringer policy</a>.</p>	<p>Yes, <a href="#">Brand Rights Protection</a>.</p> <p>Requirements:</p> <ul style="list-style-type: none"><li>Business Manager account</li><li>Own a registered trademark that is text- or image-based</li><li>No history IP violations</li><li>Employee of brand or business</li></ul> <p>Advantages:</p> <ul style="list-style-type: none"><li>Search function, plus seamless reporting</li><li>Reports and metrics for takedowns</li><li>Automatic ad, content, and page detection</li></ul>	<p>Yes, reported parties can appeal a trademark takedown decision via a <a href="#">form</a>. <a href="#">How Do I Appeal the Removal of Content on Facebook for Trademark Reasons?</a></p>

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
YouTube	<p>Implied yes, but does not explicitly refer to trademark infringement. “[T]he Content you submit must not include third-party intellectual property (such as copyrighted material) unless you have permission from that party or are otherwise legally entitled to do so. You are legally responsible for the Content you submit to the Service. We may use automated systems that analyze your Content to help detect infringement and abuse, such as spam, malware, and illegal content.” <a href="#">Terms of Service – Your Content and Conduct</a></p> <p>YouTube’s <a href="#">trademark policy</a> says: “YouTube policies prohibit videos and channels that infringe trademarks.”</p>	<p>Yes, separate reporting forms.</p> <p>YouTube has a <a href="#">counterfeit policy</a>: “Google prohibits the sale or promotion for sale of counterfeit goods in its products, including YouTube.”</p>	<p><a href="#">Trademark form</a></p> <p><a href="#">Counterfeit Form</a></p> <p>Can also submit “free-form trademark [or counterfeit] complaints submitted by email, fax, and mail.” <a href="#">Legal Policies</a>.</p>	<p><u>Trademark</u></p> <ul style="list-style-type: none"><li>• Name, email address, title, company name</li><li>• <u>Counterfeit only</u>: country</li><li>• Trademark owner and relationship to trademark owner</li><li>• <u>Trademark only</u><ul style="list-style-type: none"><li>– How many trademarks would you like to report</li><li>– Wordmark, logo, or wordmark &amp; logo</li><li>– Registered? (optional, reporter may claim use rights instead)</li><li>– Jurisdiction, registration number, and supporting documents of ownership</li></ul></li><li>• <u>Counterfeit only</u><ul style="list-style-type: none"><li>– Trademark</li><li>– Application or registration number</li><li>– Trademark owner’s website</li><li>– Identify the product at issue and how it is being counterfeited</li></ul></li><li>• Type of infringing content (video, channel, video and channel, other)</li><li>• URL for the infringing content</li><li>• <u>Trademark only</u>: Describe how trademark is being infringed</li><li>• Good faith belief that trademark use is unauthorized</li><li>• <u>Trademark only</u>: represent that information is true and authorized to act on behalf of the trademark owner</li><li>• <u>Trademark only</u>: Consent to complaint being forwarded to the reported user</li><li>• <u>Counterfeit only</u>: Agree to provide the reported party with contact details</li><li>• Electronic signature</li></ul>	<p>Trademark repeat infringer policy is not mentioned. There are three strike termination policies for copyright infringement and Community Guidelines violations within 90 days.</p> <p><a href="#">Copyright Enforcement</a></p>	<p>Yes for copyright in <a href="#">Content ID</a>. Not for trademarks.</p>	<p>Seemingly no. YouTube stresses that it will not “mediate trademark disputes between creators and trademark owners.” YouTube does not say it will remove reported content automatically, but rather “YouTube is willing to perform a limited review of reasonable complaints and will remove content in clear cases of infringement.” <a href="#">Trademarks</a>. For counterfeits, “[o]ur team will investigate your complaint and remove the content if it violates Google counterfeit policy.” <a href="#">Counterfeits</a>.</p>

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
TikTok	<p>Yes. “You may not: . . . any material which does or may infringe any copyright, trademark, or other intellectual property or privacy rights of any other person.”</p> <p><a href="#">Terms of Service</a> “Our Terms of Service and Community Guidelines do not allow posting, sharing, or sending any content that violates or infringes upon another party’s copyrights, trademarks or other intellectual property (IP) rights.”</p> <p><a href="#">Trademark and counterfeiting.</a> “TikTok Shop does not tolerate counterfeit or knockoff products.”</p> <p><a href="#">Anti-Counterfeit and Knock Off Policy.</a></p>	<p>Yes, trademarks and counterfeits are separately addressed in TikTok’s <a href="#">Account and User Safety section</a>, but the reporting form is the same. The reporting form does ask if the issue is related to counterfeits, but this does not trigger any further or different questions.</p>	<p><a href="#">Online trademark form</a> or on app under the “Share” button on the side of the video you’d like to report.</p> <p>Form requires a verified email to submit.</p> <p>There is a separate but mostly identical <a href="#">form</a> for reporting (copyright or trademark) infringement in advertisements.</p>	<ul style="list-style-type: none"><li>• Contact info (name, address, phone number, email)</li><li>• Name of trademark owner</li><li>• Is this issue related to counterfeit goods</li><li>• Relationship to trademark owner (I am the trademark owner; I am a host, officer, or director of the trademark owner; I am legal counsel to the trademark owner; I am an employee of the trademark owner; and I am an authorized agent of the trademark owner)</li><li>• Proof of authorization</li><li>• Trademark registration information (trademark, jurisdiction, registration number (required), goods and service class, scan of registration certificate, URL of your trademark record (optional))</li><li>• Infringing content URL(s)</li><li>• Was the reported content taken from your personal TikTok account?</li><li>• Description of how the content has infringed your trademark</li><li>• Good faith belief that the reported use is not authorized</li><li>• Information is accurate and, under penalty of perjury, I am the rights owner or authorized to act on their behalf</li><li>• Notification may be forwarded to the reported user</li><li>• Electronic signature</li></ul>	<p>Three strike limit for trademark infringements, after which account is banned. Trademark and copyright strikes are counted separately. Accrued strikes expire after 90 days, and also can be removed if the trademark infringement report is retracted or the reported party’s appeal is approved.</p> <p><a href="#">Trademark Strikes.</a></p>	<p>Yes, for TikTok Shop there is the <a href="#">TikTok Shop Intellectual Property Protection Centre (“IPPC”)</a>.</p> <p>Requirements:</p> <ul style="list-style-type: none"><li>• Set up an account for your organization and users, including assigning roles</li><li>• Verify your identity with documentation, namely a business license for an enterprise and an ID for an individual</li><li>• Upload IP documents, including trademark certificates</li></ul> <p>Advantages:</p> <ul style="list-style-type: none"><li>• Streamline submissions by having IP information uploaded in advance</li><li>• Can search products in reporting feature by keyword or image</li><li>• Complaint management page for tracking submitted complaints, including reported parties’ appeals</li></ul>	<p>TikTok permits counter notifications for trademark infringement reports.</p> <p><a href="#">Trademark and counterfeiting.</a></p>



Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
WeChat (Weixin)	No. Only addresses copyright infringement. “If you have an intellectual property rights-related complaint about any content posted in WeChat, please follow the instructions set out in our Copyright Policy.” <a href="#">Terms of Service</a> . But the <a href="#">Community Guidelines</a> prohibit both trademark infringement and counterfeiting.	Yes, the <a href="#">IP infringement terms</a> under the Community Guidelines have a separate section for counterfeit goods.	On the app, go to the “Details” page of the account you are reporting for counterfeit goods and select “Complain.” <a href="#">Brand Protection Guidelines</a> .  There is also an <a href="#">app reporting mechanism</a> in an individual chat.	<ul style="list-style-type: none"><li>• Name, contact information, address, business license/ID card, relevant authorization certifications, and other materials providing the rightsholder’s status</li><li>• If acting on behalf of the rightsholder, a letter of authorization and the agent’s name, title, contact information, address, business license/ID card, and other material proving the agent’s qualifications</li><li>• Identify the infringing account</li><li>• Describe the complaint</li><li>• Provide evidence of infringement, including (1) proof of ownership of the rights held by the rightholder (does not specify if registration is required); and (2) evidence that the reported party is infringing</li><li>• Agree that the statements in the complaint are true, valid, and legal, and bear all legal consequences arising from the complaint.</li></ul> <a href="#">User Infringement Complaint Guidelines</a> .	Yes, mentions repeat infringer practices for brands. <a href="#">Weixin Brand Protection 2022 Updates &amp; Analysis</a> .	<a href="#">Weixin Brand Protection Platform</a> (“BPP”) Requirements: <ul style="list-style-type: none"><li>• Brand owners</li><li>• Must submit application containing:<ul style="list-style-type: none"><li>– Brand name</li><li>– Name and contact information of the company</li><li>– Name, contact information, and qualifications (business license, power of attorney, and trademark license, if applicable) of authorized representative (if applicable)</li><li>– Appoint a liaison person for the BPP, must be a regular employee of the company</li><li>– Trademark information, including registration number and expiration date</li><li>– Liaison’s contact email</li><li>– Weixin ID for platform access</li><li>– Trademark logo</li><li>– Signed and stamped Statement that the brand owner requests Weixin to process the application</li><li>– Notarized materials and qualified Chinese translations together with a statement confirming that the copy is identical to the original</li></ul></li></ul> Advantages: <ul style="list-style-type: none"><li>• Allows users to alert participating brand owners to counterfeiting</li><li>• Can report infringing accounts through the BPP</li><li>• Fast lane for infringement complaints</li><li>• Collect statistics on infringement reporting</li><li>• Priority access to record keywords into the Weixin brand database to receive proactive filtering</li></ul>	Reported party can appeal (implied counter notice). <a href="#">Brand Protection Guidelines</a> .



Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Telegram	No. No mention of trademark in the <a href="#">terms of service</a> , or the <a href="#">terms of service for Telegram Stars</a> (which are used to purchase digital goods and services inside the app).	No.	Seemingly no reporting mechanism for trademark infringements. When a sticker set, channel, or bot is infringing on copyright, users must email <a href="mailto:dmca@telegram.org">dmca@telegram.org</a> . The instructions state to submit requests only if you are the copyright owner or an authorized agent. <a href="#">FAQ</a> .	N/A	No.	No.	No.

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Snapchat	Yes. “You therefore may not use the Services, or enable anyone else to use the Services, in a manner that violates or infringes someone else’s rights of publicity, privacy, copyright, trademark, or other intellectual property right. When you submit content to the Services, you agree and represent that you own that content, or that you have received all necessary permissions, clearances, and authorizations in order to submit it to the Services (including, if applicable, the right to make mechanical reproductions of the musical works embodied in any sound recordings, synchronize any compositions to any content, publicly perform any compositions or sound recordings, or any other applicable rights for any music not provided by Snap that you include in your content) and grant the rights and licenses contained in these Terms for your content.” <a href="#">Terms of Service</a>	There is a counterfeit specific reporting form but it is accessed through the <a href="#">trademark reporting</a> link.	There is a <a href="#">form</a> .	<ul style="list-style-type: none"><li>• Contact info (name, organization (optional), email, phone number, name of rights holder)</li><li>• Type of content you are reporting (story content, username, Counterfeit product, Snap Ad, filter, or lens)</li><li>• Description of trademark or design mark</li><li>• Trademark registration number (required)</li><li>• Trademark jurisdiction</li><li>• Link to official online trademark registration record or certificate</li><li>• <u>Counterfeits only</u>: Link to example of genuine goods</li><li>• Location of infringing content</li><li>• Description of infringing content</li><li>• Supporting documentation, if applicable</li><li>• Confirmation of statements (good faith belief that the content is not authorized; information is accurate and reporter is owner or authorized representative; and consent to forward complaint to alleged infringer)</li><li>• Electronic signature</li></ul>	No.	No.	No mention of counter notices, although the report form says information in the complaint may be forwarded to the reported party. <a href="#">Form</a> .

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Pinterest	Yes. The <a href="#">general terms of service</a> direct people to the <a href="#">trademark</a> and <a href="#">copyright</a> policies. “Pinterest has adopted and implemented the Pinterest Copyright Policy and the Pinterest Trademark Policy in accordance with applicable intellectual property laws. For more information, please read our Copyright Policy and Trademark Policy.” “You will only post User Content that you have the rights to post, and you won’t post User Content that infringes the intellectual property rights of others (e.g., copyright infringement, trademark infringement or counterfeit).”	Yes, in the <a href="#">general terms of service</a> : “You will only post User Content that you have the rights to post, and you won’t post User Content that infringes the intellectual property rights of others (e.g., copyright infringement, trademark infringement or counterfeit).” Yes, also in the <a href="#">Trademark</a> policy: “Pinterest prohibits users from selling or promoting the sale of counterfeit goods on Pinterest. Counterfeit goods are goods that are promoted, sold, or distributed using a trademark that is identical to, or substantially indistinguishable from, another’s trademark, without authorization from the trademark owner.”	Single <a href="#">form</a> for trademark infringement and counterfeiting. You can also send an email to <a href="mailto:trademark@pinterest.com">trademark@pinterest.com</a> for trademark infringement or counterfeiting. <a href="#">Trademark</a> <a href="#">policy</a> .	<ul style="list-style-type: none"><li>• Select from: report counterfeit goods; username transfer request; report specific content that you believe infringes your trademark; report business impersonation; other.</li><li>• What is the trademark</li><li>• If applicable, the registration number (optional)</li><li>• Jurisdiction(s) in which the trademark is registered</li><li>• Trademark owner or trademark agent</li><li>• Name, company name (optional), phone number, email address, address</li><li>• Counterfeit Goods/Specific Content:<ul style="list-style-type: none"><li>– Material type (pin, board, profile image)</li><li>– URL</li><li>– Additional details</li></ul></li><li>• Username:<ul style="list-style-type: none"><li>– URL of claimed username</li><li>– URL of your current username</li><li>– Additional details</li></ul></li><li>• Business impersonation:<ul style="list-style-type: none"><li>– URL of profile</li><li>– Additional details</li></ul></li><li>• Confirmations (good faith belief that the reported use is infringing; information is accurate and authorized to act on behalf of relevant trademark owner; consent to send a copy to reported party)</li><li>• Electronic signature</li></ul>	Yes, but specifics are not mentioned. In the <a href="#">trademark policy</a> page, Pinterest mentions its repeat infringer policy. “It’s our policy—in appropriate circumstances and at our discretion—to suspend or terminate the accounts of people who repeatedly infringe trademark rights or are repeatedly charged with infringing trademarks or other intellectual property rights. Actions against such users may also include temporary suspension of their ability to post content, among other things.”	No.	Pinterest has a counter notice procedure for trademarks. “If your content is removed based on a counterfeit report, you can contest it by emailing trademark@pinterest.com and by letting us know why you think the report is invalid. Please include the report reference number. If you want us to forward the information from the report, let us know by emailing trademark@pinterest.com with the report reference number. We'll be happy to send it along (though we may remove personal contact information).” <a href="#">Trademark</a> <a href="#">policy</a> .

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
LinkedIn	Not in the <a href="#">Service Terms</a> .	No.	There is a <a href="#">trademark form</a> .	<ul style="list-style-type: none"><li>• Declare under penalty of perjury that reporter either is the trademark owner or works directly for the trademark owner, or is an authorized agent on behalf of the owner.</li><li>• Name and email</li><li>• Trademark name</li><li>• Registration country</li><li>• Trademark holder company name</li><li>• Company website (optional)</li><li>• Contact name (optional)</li><li>• Contact email address (optional)</li><li>• Reported content location, including a URL</li><li>• Infringement description</li><li>• Copy of trademark registration and authorization (required)</li><li>• Electronic signature</li></ul>	No.	No.	LinkedIn has a <a href="#">counter-notice</a> procedure for trademark infringement claims.

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
X (Twitter)	Yes, in the <a href="#">terms of service</a> . “We reserve the right to remove Content that violates the User Agreement, including for example, copyright or trademark violations or other intellectual property misappropriation, impersonation, unlawful conduct, or harassment.” There is also a specific <a href="#">trademark policy</a> as well.	Yes, there is a <a href="#">counterfeit policy</a> .	There is a <a href="#">trademark form</a> . There is also a <a href="#">counterfeit form</a> .	<ul style="list-style-type: none"><li>Relationship with the trademark owner<ul style="list-style-type: none"><li>– Trademark owner or employee</li><li>– Representative</li><li>– Someone else</li></ul></li><li>Name</li><li>Email address</li><li>Trademark holder’s information<ul style="list-style-type: none"><li>– Name</li><li>– Address</li><li>– Country</li><li>– Website</li><li>– Twitter username</li></ul></li><li>Trademark information<ul style="list-style-type: none"><li>– Mark</li><li>– Registration number (required)</li><li>– Goods and service class</li><li>– Registration office</li></ul></li><li>Confirmation statements<ul style="list-style-type: none"><li>– Twitter may provide report to third parties and/or reported user but will not disclose contact information</li><li>– Authorized to act on behalf of trademark holder</li><li>– Declare under penalty of perjury that information is accurate</li></ul></li></ul> <p>Trademark only</p> <ul style="list-style-type: none"><li>Job title</li><li>Phone number</li><li>Documentation to confirm identity</li><li>The account being reported<ul style="list-style-type: none"><li>– Platform (Twitter or Periscope)</li><li>– Username</li><li>– More details</li></ul></li><li>Direct link to trademark record or trademark search page</li></ul> <p>Counterfeit only</p> <ul style="list-style-type: none"><li>Location of issue<ul style="list-style-type: none"><li>– Twitter account</li><li>– Twitter shopping product</li><li>– Community</li></ul></li><li>More details about the issue</li><li>Trademark location (jurisdiction of registration)</li><li>Confirmation statements<ul style="list-style-type: none"><li>– I have a good faith belief that the accounts and/or Tweets described above are selling counterfeit products.</li></ul></li></ul>	Yes, but no specifics are mentioned.  “We take action to suspend an account if we determine that a user has engaged in repeated violations of our policies and/or violated specific policies that cause significant risk to X (i.e. posting illegal content, attempts to manipulate our platform or spam users, using our platform to incite violence, etc.) or pose a threat to our users (fraud, user privacy violations, violent threats, targeted harassment, etc.).”  <a href="#">Enforcement options</a>	No.	No.

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Reddit	<p>Yes, in the <a href="#">user agreement</a>. “Reddit respects the intellectual property of others and requires that users of our Services do the same. We have a policy that includes the removal of any infringing material from the Services and for the termination, in appropriate circumstances, of users of our Services who are repeat infringers.”</p> <p>There is a separate <a href="#">trademark policy</a> found in the help section.</p> <p>“Reddit respects the intellectual property of others, including trademarks, and expects our users to do the same. Do not make unauthorized use of another’s trademark in a way that may confuse or mislead others about the source of goods or services, or affiliation with the trademark owner.”</p>	<p>Yes, in the <a href="#">trademark policy</a>, counterfeits are mentioned as an example of trademark infringements.</p> <p>“Selling or promoting the sale of counterfeit goods A luxury fashion accessories brand has a trademark for their logo. A Reddit user makes a post offering counterfeit purses for sale that copy the luxury brand’s trademarked logo and design.”</p>	<p>There is a <a href="#">trademark form</a> and the option to contact a “Copyright Agent” at <a href="mailto:copyright@reddit.com">copyright@reddit.com</a>, according to the <a href="#">user agreement</a>.</p>	<ul style="list-style-type: none"><li>• Email address</li><li>• Consent that Reddit may provide third parties with a copy of the report</li><li>• Subject of Inquiry</li><li>• Reporter’s full name</li><li>• Trademark owner’s name</li><li>• Relationship to trademark owner<ul style="list-style-type: none"><li>– Self</li><li>– Employee</li><li>– Client</li><li>– Not associated</li></ul></li><li>• Description of trademark at issue</li><li>• Trademark registration number (required)</li><li>• URL to trademark registration (optional)</li><li>• Country/ jurisdiction of registration</li><li>• Description of goods/services covered by trademark (optional)</li><li>• Type of content reported<ul style="list-style-type: none"><li>– Username</li><li>– Subreddit</li><li>– Profile image</li><li>– Post</li><li>– Comment</li><li>– Ad</li></ul></li><li>• Links to content being reported</li><li>• Details of inquiry</li><li>• Represent and warrant that reporter is rights holder or authorized to act on behalf of holder</li><li>• Represent and warrant that information is accurate and use of IP is not authorized by rights holder</li><li>• E-signature</li><li>• Attachments</li></ul>	<p>Yes, in the <a href="#">trademark policy</a>, but no specifics are mentioned.</p> <p>“Under certain circumstances, Reddit may ban users who repeatedly violate Reddit’s Trademark Policy. We may also ban subreddits after multiple removals of violative content or where it is clear that the subreddit is dedicated to violative content.”</p>	No.	No.



Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Twitch	Yes, in the <a href="#">terms of service</a> . “You are solely responsible for your User Content and the consequences of posting or publishing it. You represent and warrant that: (1) you are the creator or own or control all rights in and to the User Content or otherwise have sufficient rights and authority to grant the rights granted herein; (2) your User Content does not and will not: (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right, or (b) defame any other person.”	In the <a href="#">community guidelines</a> , counterfeiting is not listed under intellectual property rights but rather under “Breaking the Law.”  “For the safety of our community, we require users to respect all applicable local, national, and international laws while using our services. Any content or activity featuring, encouraging, offering, or soliciting illegal activity is prohibited and may be reported to law enforcement. For example, you may not ... buy or sell illegal drugs, firearms, or counterfeit goods on Twitch.”	You may report trademark infringement by email at <a href="mailto:trademarkclaims@twitch.tv">trademarkclaims@twitch.tv</a> . <a href="#">Trademark policy</a> .	The <a href="#">trademark policy</a> lists the requirements for reporting an infringement. <ul style="list-style-type: none"><li>• Contact information (name, company name, email, address, telephone number)</li><li>• Whether reporter is the trademark owner or an authorized agent</li><li>• Trademark allegedly being infringed</li><li>• Trademark’s registration or application number (if applicable)</li><li>• Where the trademark is registered</li><li>• Goods or services used in connection with mark</li><li>• Where you use your trademark</li><li>• Location of infringing activity on Twitch (e.g., channel name or link) and description of violation</li><li>• Mentions that Twitch may share all above information with reported account holder</li></ul>	No, aside from <a href="#">general enforcement actions</a> .  “Depending on the nature of the violation, we take a range of actions including a warning, a temporary suspension, and for more serious offenses, an indefinite suspension. Violations may result in loss of privileges, such as being featured on the home page, or in marketing campaigns, participation in programs and events, and/or access to features such as automated emote approvals.”	No.	The <a href="#">trademark policy</a> suggests that there is a counternotice procedure. “If we take action based on a report, we may provide the impacted account holder with the report so they can respond to the claim. In certain cases, we may also give the impacted account holder an opportunity to comply with our policies or file an appeal. Any appeal must include an explanation of their side of the situation, along with any relevant materials for us to review. A successful appeal will likely result in restoration of the content or account.”

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
BeReal	<p>The <a href="#">Terms</a> do not explicitly refer to trademark infringements.</p> <p>“We do not tolerate harassment, intimidation, defamation, threats, hateful content, child sexual exploitation, sexual abuse, promotion of suicide or self harm, intellectual property theft, or other illegal activities.”</p> <p>The <a href="#">Intellectual Property policy</a> explicitly prohibits trademark infringement.</p> <p>“You may not share content that violates others’ intellectual property. ... Content that uses another’s trademark in a way that may mislead or confuse people about their affiliation to the trademark owner or content that uses another party’s copyrighted material without their permission or legal justification.”</p>	BeReal lists counterfeits as prohibited under the <a href="#">Illegal Activity policy</a> .	There is a reporting tool in the app as well as a <a href="#">web form for inappropriate content or behavior</a> . <a href="#">Intellectual Property policy</a> .	<p>The <a href="#">web form</a> does not have a specific option to report content for violating intellectual property rights. The appropriate option is likely “Report inappropriate content or behavior”</p> <ul style="list-style-type: none"><li>• Email address</li><li>• What is being reported (account, post, RealMoji, something else)</li><li>• Reason (likely Illegal activity or Other)</li><li>• First name</li><li>• Last name</li><li>• Age</li><li>• Username of reported account</li><li>• Subject</li><li>• Description</li></ul>	No.	No.	No.



Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Flickr	Yes, in the <a href="#">Terms</a> . “You are solely responsible for the User Content that you post or transmit using the Services and you agree not to post, transmit or otherwise publish through the Services any of the following . . . User Content that may infringe or violate any patent, trademark, trade secret, copyright or other intellectual or other proprietary right of any party; User Content that impersonates any person or entity or otherwise misrepresents your affiliation with a person or entity.”	No.	There is a <a href="#">trademark form</a> as well as an email, <a href="mailto:dmca@flickr.com">dmca@flickr.com</a> , to contact Flickr’s Intellectual Property Agent. <a href="#">Copyright and Intellectual Property Policy</a> .	<ul style="list-style-type: none"><li>• Email address</li><li>• Name</li><li>• Username</li><li>• Your Flickr account URL</li><li>• Device type (optional)</li><li>• Subject</li><li>• Description</li><li>• Who owns the trademark</li><li>• Phone number</li><li>• Street address</li><li>• Full name of trademark owner (optional)</li><li>• Job title of trademark owner (optional)</li><li>• List of trademarked words or symbols (including a URL)</li><li>• Trademark registration numbers (optional)</li><li>• Jurisdiction where trademark is registered</li><li>• Identification of infringing material on Flickr (in most circumstances, a URL)</li><li>• Good faith belief that use of trademark is not authorized by owner, its agent, or the law</li><li>• Statement that information is accurate and reporter is authorized to act on behalf of trademark owner under penalty of perjury</li><li>• Understanding that the mark owner’s name, email address, and nature of report is shared with the infringer</li><li>• Electronic signature</li><li>• Attachments (optional)</li></ul>	No. Repeat infringer warning only for content you do not own. <a href="#">Uploading Content to Flickr that You Do Not Own</a> .	No.	Flickr has a counternotice procedure for copyright reports, but does not mention a similar procedure for trademark reports. <a href="#">File a Counter Notification</a> .

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Bluesky	Yes, in the <a href="#">Community Guidelines</a> .  “Don’t use Bluesky Social to break the law or cause harm to others. For example, do not ... infringe other’s copyrights, trademarks and/or other intellectual property.”	No.	Bluesky only mentions the reporting procedure for copyright infringements, not trademark infringements. <a href="#">Copyright Policy</a> .	<ul style="list-style-type: none"> <li>N/A</li> </ul>	No.	No.	No.

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Mastodon	No. Only as to Mastodon’s own trademarks. <a href="#">Trademark Policy</a> .	No.	The <a href="#">Trademark Policy</a> provides an email for reporting infringement, <a href="mailto:trademark@joinmastodon.org">trademark@joinmastodon.org</a> , but only of Mastodon’s own trademarks.	N/A	No.	No.	No.

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Discord	<p>The <a href="#">Terms of Service</a> implicitly include trademarks: “We respect the intellectual property of others, and expect our users to do the same.”</p> <p>The <a href="#">Copyright &amp; IP Policy</a> explicitly prohibits trademark infringement: “If you believe someone is infringing your trademark rights, let us know via the procedure below.”</p>	The <a href="#">Community Guidelines</a> separately prohibit coordinated efforts to sell counterfeit goods.	There is a <a href="#">trademark form</a> .	<ul style="list-style-type: none"><li>• Email address</li><li>• Subject</li><li>• Description</li><li>• Name of rights holder</li><li>• Relationship to rights holder (self, authorized representative, neither)</li><li>• Your name</li><li>• Physical address</li><li>• Phone number</li><li>• Whether reporter or rights holder is a resident or a business established in the EU/EEA</li><li>• Do you have a registered trademark? (if the reporter lacks a registered trademark but believes they have a valid claim, they are directed to email to provide supporting information)</li><li>• Country of registration</li><li>• Trademark name/title</li><li>• Proof of trademark registration or application (URL to trademark at the national trademark office website)</li><li>• Type of trademark (word mark, logo, both)</li><li>• Trademark class (goods, services, both)</li><li>• Location of alleged infringement (user profile, server)</li><li>• Good faith belief that use is not authorized by trademark owner, its agent, or the law</li><li>• Statement that information is accurate, it may be shared with the alleged infringer, and, under penalty of perjury, that reporter is authorized to act on behalf of the rights owner</li><li>• Electronic signature</li><li>• Attachments (optional)</li></ul>	<p>Yes, in the <a href="#">Copyright &amp; IP Policy</a>, but no details are provided.</p> <p>“If we determine that you violated our trademark policy, we may terminate your account. It is our policy to terminate account holders who we determine to be repeat infringers, and it is within our discretion to ban an account upon receiving a single valid complaint.”</p>	No.	<p>There is a counternotice procedure for trademark reports. “Trademark appeals. The user will have 7 days to respond (or longer if required by law) and make a good faith representation that they have a legally defensible claim to use the mark.</p> <p>Complaint resolution. If we do not receive a response from the subject of the complaint, the content will remain down. If we receive a valid counter-notice, we will inform the complainant. It will be the responsibility of the complainant to seek alternative methods to enforce their trademark rights.” <a href="#">Copyright &amp; IP Policy</a>.</p>

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Fishbowl	Yes, in the <a href="#">Terms of Service</a> . “You agree that you will not . . . violate the privacy, publicity, copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights of any third-party.”	No.	The <a href="#">Terms of Service</a> suggest that the same policy should apply for copyright and trademark infringements. “Please see our Copyright Complaint Policy for information about copyright and trademark disputes.” But the <a href="#">Copyright Policy</a> only refers to copyrights, not trademarks.  The report should be sent to Fishbowl’s Copyright Agent via mail or email to <a href="mailto:DMCA@fishbowlapp.com">DMCA@fishbowlapp.com</a> .	The requested information in the <a href="#">Copyright Policy</a> is only for reporting copyright infringements.	The <a href="#">Copyright Policy</a> refers to a repeat infringer policy, but it is unclear if it applies to trademarks too because the <a href="#">Terms of Service</a> suggests that the same policy should apply to trademarks too. “It is our policy to terminate membership privileges of any Member who repeatedly infringes copyright upon prompt notification to us by the copyright owner or the copyright owner’s legal agent.”	No.	No.

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Beli	<p>Yes, in the <a href="#">Terms of Use</a>.</p> <p>“You promise to abide by all copyright notices, trademark rules, information, and restrictions contained in any Content you access through the Services, and you won’t use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell, commercialize or otherwise exploit for any purpose any Content not owned by you, (i) without the prior consent of the owner of that Content or (ii) in a way that violates someone else’s (including Beli Technologies’) rights.”</p> <p>“You agree that you will not post, upload, share, store, or otherwise provide through the Services any User Submissions that: (i) infringe any third party's copyrights or other rights (e.g., trademark, privacy rights, etc.).”</p>	No.	There is no mechanism to report trademark infringement; there is only a DMCA procedure for reporting copyright infringements. <a href="#">Terms of Use</a> .	N/A	No. A “repeat offender” policy is mentioned for copyright infringement only. <a href="#">Terms of Use</a> .	No.	No.

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
WordPress	<p>Yes, implicitly in the <a href="#">Terms of Service</a>.</p> <p>“Using our Services doesn’t grant you any right or license to reproduce or otherwise use any Automattic or third-party trademarks.”</p> <p>WordPress separately has a <a href="#">Trademark Infringement</a> policy that describes how to report trademark infringement.</p>	No.	A <a href="#">trademark form</a> .	<ul style="list-style-type: none"> <li>• Name</li> <li>• Contact information</li> <li>• Trademark being infringed</li> <li>• URL of WordPress.com site being reported</li> <li>• Exact content/aspect of the site being reported</li> <li>• Official trademark registration details, including the registration number and a link to this information (required)</li> <li>• Explanation of how the reported content infringes the trademark</li> <li>• Statement of good faith belief that use of trademark is infringement</li> <li>• Consent to forward trademark complaint to the reported party</li> <li>• Signature</li> </ul>	There is a copyright repeat infringer policy, but WordPress does not mention one for trademark infringement. <a href="#">Our DMCA Process</a> .	No.	<p>WordPress mentions a DMCA counter-notice procedure, but not one for trademark reports. <a href="#">Countering a DMCA Notice</a>.</p> <p>However, when determining whether to take action in response to a trademark infringement notice, WordPress will evaluate the likelihood of confusion using the Ninth Circuit’s eight-factor <i>Sleekcraft</i> test. <i>AMF Inc. v. Sleekcraft Boats</i>, 599 F.2d 341, 348-49 (9th Cir. 1979).</p>

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Wix	<p>The <a href="#">Terms of Use</a> do not explicitly prohibit trademark infringement, but they prohibit removing trademark insignia.</p> <p>“You agree and undertake not to . . . remove or alter any copyright notices, watermarks, restrictions and signs indicating proprietary rights of any of our licensors, including copyright mark [©], Creative Commons [(cc)] indicators, or trademarks [® or ™] contained in or accompanying the Wix Services and/or Licensed Content.”</p> <p>The <a href="#">Reporting Trademark Infringement</a> page explicitly prohibits trademark infringement.</p> <p>“Wix.com takes trademark violation very seriously and opposes any unauthorized infringement of trademark rights.”</p>	No.	There is a <a href="#">trademark form</a> or you can report the infringement to a <a href="#">chat bot</a> .	<ul style="list-style-type: none"><li>• Are you the trademark owner or authorized to act on their behalf?</li><li>• Name of trademark owner</li><li>• Organization or client (if applicable)</li><li>• Name</li><li>• URL to trademark owner’s website</li><li>• Email address</li><li>• Address</li><li>• Phone number</li><li>• Trademark details</li><li>• Is your trademark registered? (required)</li><li>• Country of registration</li><li>• Trademark registration number</li><li>• URL to trademark registration</li><li>• Registration category and description of the products and/or services protected by the trademark</li><li>• A copy of the registration certificates or a screenshot of the website or database of the relevant IP office</li><li>• URL to the specific page allegedly infringing the trademark</li><li>• Identify and describe what content is infringing</li><li>• Sworn statement that good faith belief that the use of the trademark is infringement</li><li>• Sworn statement that I understand and agree that a copy of this report may be provided to the reported party</li><li>• Signature</li></ul>	There is a <a href="#">repeat infringer policy</a> for copyright infringements, but Wix does not mention one for trademark infringement.	No.	No.



Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Weebly	<p>Yes, in the <a href="#">Terms of Service</a>.</p> <p>“Except where prohibited by law, you will not ... upload, post, transmit or otherwise make available any Content that ... infringes any patent, trademark, trade secret, copyright, rights of privacy or publicity, or other proprietary rights of any party (e.g., music, movies, images, e-books, or games you do not own the rights to).”</p>	<p>The <a href="#">Terms of Service</a>. Prohibit the sale of commercial products that “are illegal or potentially illegal, including those that are counterfeited.” You will also not “fail to comply with export and import regulations of the U.S. and other countries ... [including] counterfeit or ‘knock off’ products appearing to be another brand.”</p>	<p>There is a <a href="#">trademark reporting form</a> for Weebly accessible through Block, Inc., which is the company that owns Weebly.</p> <p>The physical mailing address for <a href="#">DMCA complaints</a> also refers to the “Copyright/ Trademark Agent.”</p>	<ul style="list-style-type: none"><li>• Whether reporter is the trademark owner or authorized representative</li><li>• Name</li><li>• Job title</li><li>• Company name</li><li>• Address</li><li>• Email</li><li>• Phone number</li><li>• Trademark owner’s information</li><li>• Trademarked word/design</li><li>• Registration number(s) (required)</li><li>• Trademarked goods and services class(es)</li><li>• Country or jurisdiction of registration</li><li>• URL to trademark record</li><li>• Identification of disputed material (e.g., URL)</li><li>• Description of infringement</li><li>• Attachment (optional)</li><li>• Good faith belief that use of material is not authorized by owner or agent or the law</li><li>• State under penalty of perjury that information is accurate and reporter is the owner or authorized agent</li><li>• Acknowledge that the report may be forwarded to the affected user or other third parties</li><li>• Electronic signature</li></ul>	<p>Block, Weebly’s parent company, has a repeat infringer policy that applies to copyright and trademark infringements and is typically a three-strikes policy.</p> <p>“Block’s policy is to suspend or terminate the accounts of repeat infringers. The manner in which we apply that policy may depend on relevant aggravating or mitigating circumstances, if any, but generally we will terminate an account if it is the subject of three valid infringement notices.”</p> <p><a href="#">Block Global Copyright and Trademark Policy</a>.</p>	No.	<p>Block, Weebly’s parent company, has a counter-notice procedure for both copyright and trademark infringement notices.</p> <p><a href="#">Block Global Copyright and Trademark Policy</a>.</p>

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Medium	<p>Yes, implicitly in the <a href="#">Terms of Service</a>.</p> <p>“These Terms don’t grant you any right, title or interest in the Services, other users’ content on the Services, or Medium trademarks, logos or other brand features.”</p> <p>The <a href="#">Medium Rules</a> explicitly prohibit trademark infringement.</p> <p>“We do not allow posts or accounts that engage in the following restricted categories of activity: . . . Facilitation of copyright or other intellectual property violation”</p> <p>“Respect the copyrights and trademarks of others. Per our Terms of Service, we require users to have permission to post the content they publish on Medium. Additionally, we have specific policies around plagiarism, to which all Medium accounts are held. Users found in violation of our copyright rules are not eligible for warning, appeal, or restoration. Deletion of copyright violations is not grounds for reinstatement.”</p> <p><a href="#">Medium’s Trademark Policy</a> also prohibits infringement.</p> <p>“What Medium doesn’t allow is using someone else’s trademark in a way likely to confuse people.”</p>	No.	There is a <a href="#">trademark form</a> .	<ul style="list-style-type: none"><li>• Email address</li><li>• Trademarked word or symbol</li><li>• Trademark registration number (application numbers are insufficient) (required)</li><li>• Trademarked goods and services class</li><li>• Direct link to trademark record or trademark search page</li><li>• URL of infringing account, post, or content</li><li>• Name</li><li>• Name of trademark holder</li><li>• Website of trademark holder</li><li>• Reporter’s company</li><li>• Report’s phone number</li><li>• I am an authorized representative of the claimed trademark</li><li>• I understand that Medium will forward details of this report</li><li>• I declare under penalty of perjury that all of the information provided above is accurate</li><li>• Description of request</li><li>• Attachment (optional)</li></ul>	No.	No.	No.  However, Medium notes that it will not remove a trademark if it is not likely to confuse anyone as to the source or it is a nominative or descriptive fair use. <a href="#">Medium’s Trademark Policy</a> .

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Tumblr	<p>Yes, in the <a href="#">User Guidelines</a>.</p> <p>“Respect the copyrights and trademarks of others. If you aren’t allowed to use someone else’s copyrighted or trademarked work (either by license or by legal exceptions and limitations such as fair use), don’t post it.”</p>	No.	There is a <a href="#">trademark form</a> .	<ul style="list-style-type: none"><li>• Are you the trademark owner or an authorized representative?</li><li>• Name</li><li>• Company (optional)</li><li>• Email address</li><li>• Other contact info (optional)</li><li>• Trademark</li><li>• Type of trademark</li><li>• Jurisdiction</li><li>• Registration number (if not granted) (optional)</li><li>• Serial number (optional)</li><li>• Registration documentation</li><li>• URL of the content being reported</li><li>• Explanation of how content is infringing trademark</li><li>• I understand a copy of this notice will be forwarded to the reported party</li></ul>	<p>Tumblr mentions a three-strike system in the <a href="#">User Guidelines</a> for copyright infringement, but it does not include trademark infringement.</p> <p>“With regard to repeat copyright infringement, we use a three-strike system to evaluate the standing of a user's account, where, generally, each valid copyright infringement notice constitutes a strike, and three strikes results in the termination of a user's account. When a user submits a valid DMCA counter-notification, we remove the associated strike from their record.”</p> <p>The <a href="#">User Guidelines</a> do refer to termination of accounts of repeat violators of the Guidelines more generally, which would presumably include trademark infringement.</p>	No.	<p>Tumblr has a counternotice procedure for trademark infringement notices. “With regard to trademark claims, the posting user can send us an appeal explaining their side of the situation, along with any relevant materials we should look at. A successful trademark appeal will also result in restoration of the content at issue.” <a href="#">User Guidelines</a>.</p> <p>Tumblr’s reporting <a href="#">form</a> notes that it is not trademark infringement if “a website [is] using the name of your business in the context of reviewing your products or even criticizing your brand.”</p>

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Yelp	<p>Yes, in the <a href="#">terms of service</a>.</p> <p>“You represent that you own or have the necessary permissions to use and authorize the use of Your Content as described herein. You may not imply that Your Content is in any way sponsored or endorsed by Yelp. You may expose yourself to liability if, for example, Your Content contains material that is false, intentionally misleading, or defamatory; violates any third-party right, including any copyright, trademark, service mark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; contains material that is unlawful, including illegal hate speech or pornography; exploits or otherwise harms minors; violates or advocates the violation of any law or regulation; or violates these Terms.”</p> <p>“You also represent and warrant that you will not, and will not assist, encourage, or enable others to use the Service to: . . . Violate any third party’s rights, including any breach of confidence, copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right.”</p>	No.	There is a <a href="#">copyright/trademark form</a> or you can report by mail or fax to Yelp’s Copyright Agent. <a href="#">Infringement Policies</a> .	<ul style="list-style-type: none"><li>• Identification of trademark you claim has been infringed</li><li>• Identification of the allegedly infringing content, and information reasonably sufficient to permit Yelp to locate it (e.g., URL)</li><li>• Good faith belief that use of content is not authorized by owner, agent, or the law</li><li>• Attests, under penalty of perjury, that information in the report is accurate and that reporter is the rights holder or an authorized agent</li><li>• Physical or electronic signature</li><li>• Contact information (address, telephone number, email address)</li></ul>	<p>Yes, for both copyright and trademark infringement.</p> <p>“We also reserve the right to terminate a user’s account if the user is determined to be a repeat infringer.” <a href="#">Infringement Policies</a>.</p>	No.	Yelp provides a counternotice procedure for trademark infringement notices. <a href="#">Infringement Policies</a> .

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Trip Advisor	<p>Yes, in the <a href="#">terms of service</a>.</p> <p>“You expressly agree not to post, upload to, transmit, distribute, store, create or otherwise publish through the Services any Content of yours that: . . . May infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party. In particular, content that promotes an illegal or unauthorised copy of another’s copyrighted work, such as providing pirated computer programs or links to them, providing information to circumvent manufacturer-installed copy-protect devices, or providing pirated music or links to pirated music files.”</p>	No.	<p>There is no trademark reporting mechanism. There is only a copyright reporting procedure. <a href="#">Copyright Complaint Policy</a>.</p>	N/A	<p>A repeat infringer policy is only mentioned for the DMCA and copyrights. <a href="#">Copyright Complaint Policy</a>.</p>	No.	<p>A counternotice procedure is only mentioned for copyrights under the <a href="#">Copyright Complaint Policy</a>.</p>



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Foursquare	<p>The <a href="#">Terms and Policies</a> do not explicitly prohibit trademark infringement, but link to Foursquare’s <a href="#">Trademark Infringement</a> page, which provides a reporting policy.</p> <p>“As a courtesy to trademark owners, we are willing to perform a limited investigation of reasonable complaints of trademark infringement.”</p>	No.	There is a <a href="#">Google trademark form</a> or you can mail a notice to Foursquare’s general counsel. <a href="#">Trademark Infringement</a> .	<p><u>Mail communication</u></p> <ul style="list-style-type: none"><li>• A physical or electronic signature of an authorized party</li><li>• List of trademarks at issue</li><li>• Countries where trademarks are registered</li><li>• Registration number of trademarks at issue (required)</li><li>• Identification of material alleged to be infringing, including location and details</li><li>• Contact information, including address, telephone number, and email address (if applicable).</li><li>• If reporter is not the trademark owner, a description of relationship to the trademark owner</li><li>• Statement representing that trademark was registered and in use prior to alleged infringement</li><li>• Statement detailing why alleged infringing use creates consumer confusion</li><li>• Statement representing that the owner has done an investigation of infringement but has not been able to locate the alleged infringer or that the owner has contacted the alleged infringer who has refused to comply with the requests</li><li>• I represent that the information in this notification is true and correct and that I am authorized to act on behalf of the trademark owner.</li></ul> <p><u>Online Form</u></p> <ul style="list-style-type: none"><li>• Trademark</li><li>• Registration or application serial number (required)</li><li>• Registration jurisdiction</li><li>• Was the trademark in use prior to the alleged infringement?</li><li>• Name</li><li>• Email address</li><li>• Company name</li><li>• Job title</li><li>• Relationship with the trademark owner (work directly for the company, authorized representative)</li><li>• Check all that apply:<ul style="list-style-type: none"><li>– I have conducted an investigation of the infringement, and have not been able to locate the alleged infringer</li><li>– I have contacted the alleged infringer who has refused to comply with my requests</li></ul></li><li>• Trademark owner’s name</li><li>• Company website</li><li>• Address</li><li>• URL of allegedly infringing material</li><li>• Provide your reasons for submitting this trademark issue</li><li>• Represent that the information is true and correct and I am authorized to act on behalf of the trademark owner</li></ul>	<p>Yes, on the <a href="#">Trademark Infringement</a> page.</p> <p>“Additionally, in appropriate circumstances (as determined by Foursquare in its sole discretion), Foursquare will terminate repeat trademark infringers. If you believe a user is a repeat infringer, please follow the instructions above to contact Foursquare and provide sufficient information for Foursquare to verify that the user is a repeat infringer.”</p>	No.	Foursquare mentions a counternotice procedure for copyright infringement notices, but not trademark infringement notices. <a href="#">Copyright Infringement Policy</a> .

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Amazon	<p>Amazon’s <a href="#">Conditions of Use</a> mentions trademark infringement and reporting it but do not outright prohibit it.</p> <p>The Conditions state that “Amazon respects the intellectual property of others. If you believe that your intellectual property rights are being infringed, please follow our <a href="#">Notice and Procedure for Making Claims of Copyright Infringement</a>.” Below, it says “This form may be used to report all types of intellectual property claims including, but not limited to, copyright, trademark, and patent claims.”</p>	<p>Amazon has a separate <a href="#">Amazon Associates Anti-Counterfeit Policy</a>, but counterfeits are not mentioned in the Conditions of Use.</p> <p>Under the “trademark infringement” option on the <a href="#">Report Infringement Tool</a>, there are options for counterfeit and trademark.</p>	<p>There is a single <a href="#">form to report IP infringement</a>. You select between “copyright infringement,” “other IP infringement,” “patent infringement,” and “trademark infringement.”</p>	<p>Must be signed into Amazon to submit a report of infringement.</p> <ul style="list-style-type: none"><li>The infringing product (identified by Amazon Standard Identification Numbers (ASINs), ISBN-10s, or product URLs)</li><li>Select whether the issue is: (1) a product detail page is unlawfully using my trademark; (2) a product or its packaging has my trademark on it; (3) a product is counterfeit.</li><li>What brand owns the intellectual property in this report?</li><li>Trademark:<ul style="list-style-type: none"><li>Is the trademark registered? (Trademark registration is not required)<ul style="list-style-type: none"><li>* Yes. What is the registration number?</li><li>* No. Date of the mark’s first use in commerce</li></ul></li><li>* No. Provide an example of the mark as used in commerce</li><li>* No. Provide details about the goods/ services for which the mark is used</li></ul></li><li>Trademark on Page:<ul style="list-style-type: none"><li>What best describes the products in your report: Your brand’s authentic product is being imitated; or the product doesn’t exist in your brand’s catalog</li></ul></li><li>Trademark on Product:<ul style="list-style-type: none"><li>Have you bought the item and confirmed that the product or its packaging has your trademark on it?<ul style="list-style-type: none"><li>* Yes. What is the order ID number?</li></ul></li></ul></li><li>Counterfeit:<ul style="list-style-type: none"><li>What is the registration number? (required)</li><li>What best describes the products in your report: Your brand’s authentic product is being imitated; or the product doesn’t exist in your brand’s catalog</li><li>Have you bought the item and confirmed that it is a counterfeit?<ul style="list-style-type: none"><li>* Yes. What is the order ID number?</li></ul></li></ul></li><li>Please provide more information to help us understand your issue</li><li>Primary contact information</li><li>Are you the rights owner or an agent?</li><li>Are you a seller on Amazon?</li><li>Secondary contact information to be shared with party you’re reporting</li><li>By submitting:<ul style="list-style-type: none"><li>You have a good faith belief the reported content violate(s) my right(s)</li><li>I declare, under penalty of perjury, that the information is accurate and I am the owner or agent of the owner of the rights</li><li>If accepted, the information will be shared with all the reported sellers</li><li>I understand that submitting false or inaccurate complaints may result in the suspension or termination of my Amazon selling privileges</li></ul></li></ul>	<p>Amazon states that “We respond quickly to the concerns of rights owners about any alleged infringement, and we terminate repeat infringers in appropriate circumstances.” <a href="#">Copyright Trademark Patent Policies</a>.</p>	<p>Yes. <a href="#">Amazon Brand Registry</a>.</p> <p>Requirements:</p> <ul style="list-style-type: none"><li>Registered trademark in certain countries or pending trademark application filed through Amazon IP Accelerator or a subset of trademark offices</li><li>Trademark must be a word mark or image-based mark with words, letters, or numbers</li><li>Provide product categories</li><li>Provide product images</li><li>Provide manufacturing and distribution information</li></ul> <p>Advantages:</p> <ul style="list-style-type: none"><li>Automated protections</li><li>Report a violation</li><li>For registered trademark only:<ul style="list-style-type: none"><li><a href="#">Transparency</a> (unique codes that identify individual units and allow customers to confirm authenticity)</li><li><a href="#">Project Zero</a> (proactively remove suspected counterfeits and immediately remove counterfeits)</li><li><a href="#">Counterfeit Crimes Unit</a> (work together with Amazon to identify and prosecute counterfeiters)</li></ul></li></ul> <p><a href="#">IP Accelerator</a>: made for small and medium businesses to work with vetted IP law firms to help register trademarks and protect your brand</p> <p>Requirements: <a href="#">Must</a> have a Seller Central account.</p>	No.

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
eBay	eBay’s <a href="#">User Agreement</a> prohibits all IP infringement: “In connection with using or accessing our Services you agree to comply with this User Agreement, our policies, our terms, and all applicable laws, rules, and regulations, and you will not: (...)infringe any Intellectual Property Rights that belong to third parties affected by your use of our Services or post content that does not belong to you.”	eBay has a separate <a href="#">Counterfeit Item Policy</a> .	An IP rights holder can submit an <a href="#">online copyright/trademark report</a> from the listing page. For VeRO members, submit a <a href="#">NOCI</a> , or Notice of Claimed Infringement, by email to <a href="mailto:vero@ebay.com">vero@ebay.com</a> or by fax.	Online report must include: <ul style="list-style-type: none"><li>• Must be signed in to report</li><li>• Report category: copyright and trademark</li><li>• Select reason for report: bootleg records or unauthorized media, counterfeit item or authenticity disclaimer, descriptions that encourage infringement, enabling duplication of copy-protected materials, other copyright and trademark concerns, eBay item infringes on IP rights</li><li>• Select detailed reason from drop-down menu based on reason for report</li><li>• Provide a brief description</li></ul> <a href="#">NOCI</a> must include: <ul style="list-style-type: none"><li>• Name and title</li><li>• Company name</li><li>• Mailing address</li><li>• Email address</li><li>• Phone number</li><li>• Declaration that a good faith belief that the reported material was not authorized, that the NOCI is accurate, and, under penalty of perjury, authorized to act on behalf of the IP Owner.</li><li>• Signature and date</li><li>• Allegedly infringing item number and product URL</li><li>• Reason code from list<ul style="list-style-type: none"><li>– Options are trademark item infringement (counterfeit), trademark listing content infringement, copyright item infringement, copyright listing content infringement, the infringement (including patents, design rights, right of publicity, and store name or User ID infringing on a trademark), or other.</li></ul></li><li>• Description of why the listing(s) infringes on right</li><li>• Registration info and jurisdiction</li></ul>	Yes. “Sellers who continue to violate intellectual property rights may be subject to a range of consequences, from selling restrictions to full suspension from the site.” <a href="#">VeRO policy</a> .	Yes, the <a href="#">Verified Rights Owner (VeRO) Program</a> .  Requirements: <ul style="list-style-type: none"><li>• Owner of intellectual property</li><li>• Provide proof of IP ownership</li></ul> Advantages: <ul style="list-style-type: none"><li>• Submit infringement report as a <a href="#">NOCI</a> or Notice of Claimed Infringement.</li><li>• Reported listings removed as soon as possible.</li></ul> Can create a profile page that allows you to share information about your IP with the eBay community.	Counternotices can only be submitted for copyright infringements in the US. <a href="#">VeRO policy</a> .



Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
AliExpress	Yes, <a href="#">Terms of Use</a> §5.4 states that “Each Member represents, warrants and agrees that ... (b) any User Content that you submit, post or display does not infringe or violate any of the copyright, patent, trademark, trade name, trade secrets or any other personal or proprietary rights of any third party.”	§5.4 also address counterfeits: “Each Member represents, warrants and agrees that ... (d) neither the Member nor any of its related persons, have been banned or removed from any major e-commerce platforms, or otherwise implicated in selling counterfeit or pirated products online.”	<a href="#">Trademark form</a> for non-IPP members.  Or submit through the <a href="#">IP Protection Platform (IPP)</a> .	Non-IPP Form: <ul style="list-style-type: none"><li>• Are you the IPR owner or authorized agent?</li><li>• Name, Contact email, Contact number (optional)</li><li>• IPR type: trademark, copyright, patent</li><li>• Complaint reason</li><li>• Aliexpress.com or Alibaba.com reported listing</li><li>• Description</li><li>• Upload proof of infringement (optional)</li><li>• Trademark registration number (required)</li><li>• IPR name/description, Place of IPR registration, Upload IPR document</li><li>• Upload identity proof of complainant</li><li>• Email address and contact person for reported seller</li><li>• Declaration that, under penalty of perjury, the complaint is filed with good faith, and the information is true, accurate, and valid.</li><li>• Signature</li></ul> Submission through the IPP requires account registration.	Yes, listed under the <a href="#">Enforcement Actions for Intellectual Property Rights (IPR) Infringement Claims on AliExpress</a> : separates patent, copyright, serious trademark (i.e., counterfeit), and general trademark violations. Trademark rights infringement serious violation: “[m]embership termination upon three violations.” Trademark rights infringement general violation: “(1) No penalty point incurred for the first violation; (2) 6 penalty points incurred for each repeat violation; (3) 48 penalty points cumulatively incurred results in membership termination.” “All violations shall be recorded for 365 days from the date of penalty imposed.”	Yes, the <a href="#">IP Protection Platform (IP)</a> . Requirements: <ul style="list-style-type: none"><li>• Identity verification of individual or enterprise.</li><li>• Intellectual property holder or representative</li></ul> Advantages: <ul style="list-style-type: none"><li>• Platform for submitting and monitoring enforcement activities.</li></ul> <a href="#">Alibaba Anti-Counterfeiting Alliance (AACA)</a> Requirements: <ul style="list-style-type: none"><li>• Invitation-only for rights holders</li><li>• Demonstrating a strong track record of protecting IP through dedicated accounts on Alibaba’s Intellectual Property Protection (IPP) platform</li></ul> Advantages: <ul style="list-style-type: none"><li>• Work collaboratively with Alibaba to counter infringement</li><li>• Proactive monitoring for infringement</li><li>• Product authentication</li></ul> Coordinated offline counterfeiting investigations	Has a counter-notice procedure for trademarks. “Once the takedown request is verified, we will take down the corresponding listing and notify owners of the removal. If any counter-notification is received, it will be forwarded for your response.” <a href="#">IPP</a> .

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Walmart	Yes, in the <a href="#">Terms of Use</a> under C. Prohibited Content, Walmart users agree to not “make available Content in connection with the Walmart Sites that: ... is protected by or would infringe on the rights of others (including Walmart), including any patent, copyright, trademark, trade secret, right of publicity or privacy, or any other proprietary right, without the express prior written consent of the applicable owner.”	Under the <a href="#">Claims of Intellectual Property Infringement</a> page, counterfeits are addressed separately from trademarks.	One can submit an <a href="#">IP Claim Form</a> or through the <a href="#">Brand Portal</a> .	<p>The IP Claim Form requires including:</p> <ul style="list-style-type: none"><li>Reporter information (rights owner, third party, or customer)</li><li>Rights Owner Information, including IP Owner Name, IP Company name, address, phone number</li><li>Select patent, copyright, trademark infringement, or counterfeit</li><li>Reason (trademark):<ul style="list-style-type: none"><li>Use of registered trademark in the product title and/or description</li><li>Use of a registered trademark in an image</li><li>Use of a registered trademark on the product and/or packaging</li><li>Item is materially different from the original product due to lack of warranty</li></ul></li><li>Reason (counterfeit):<ul style="list-style-type: none"><li>This product does not exist and/or is not manufactured in certain colors, sizes, etc.</li><li>Packaging is incorrect or different</li><li>Brand owner has received customer complaints regarding counterfeit items purchased</li></ul></li><li>Brand Name</li><li>Order number (optional)</li><li>Item URL</li><li>Seller name</li><li>Attach documents (optional)</li><li>Comments</li><li>I have a good faith belief that the use is not authorized</li><li>Under penalty of perjury, I am authorized to act on behalf of the owner of the exclusive right</li><li>I understand that abuse of this tool will result in termination of my Walmart account</li><li>Digital signature</li></ul> <p>Reporting through the Walmart Brand Portal requires creation of an account.</p>	<p>Yes, under the <a href="#">Claims of Intellectual Property Infringement</a> page: “Walmart takes appropriate action against parties it categorizes as repeat infringers. A repeat infringer includes, but is not limited to, anyone who qualifies as such under the DMCA or who receives multiple claims of IP infringement and such claims are determined by Walmart to be valid. Action may include, but is not limited to, removal of listings and suspension or termination of any relationship with Walmart.”</p>	<p><a href="#">Walmart Brand Portal</a></p> <p>Requirements:</p> <ul style="list-style-type: none"><li>Rights owners with registered trademarks.</li></ul> <p>Advantages:</p> <p>Portal for managing brands, intellectual property claims, and authorized representatives</p>	Only mentions <a href="#">counter notices</a> in relation to the DMCA.

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Etsy	Etsy’s <a href="#">Terms of Use</a> impliedly prohibit trademark infringement: “You represent that you have all necessary rights to all parts of Your Content and that you’re not infringing or violating any third party’s rights by posting it.” “If Your Content is alleged to infringe another person’s intellectual property, we will take appropriate action, such as disabling it if we receive a report of infringement that complies with our policies, or terminating your account if you are found to be a repeat infringer. We’ll notify you if any of that happens.”	Etsy treats trademark infringement as one for purposes of reports, but has a separate <a href="#">Prohibited Items Policy</a> which addresses counterfeit goods: “Unauthorized replicas or copies of items, and patterns or designs enabling their creation, are prohibited on Etsy. We consider counterfeit or unauthorized goods to be items that imitate an authentic good, particularly by using a brand’s name, logo, or protected design without the brand owner’s consent. Additionally, we may consider up-cycled or re-purposed items, even if using authentic materials, to be counterfeit if they are making use of a brand’s name, logo, or protected design without their permission. Examples of prohibited counterfeit or unauthorized goods include replica luxury and non-luxury items like bags and branded apparel.”	Etsy has a <a href="#">Reporting Portal</a> that is the only way to submit reports.	<p>The Reporting Portal requires you to be a rights owner, be signed in, and have uploaded information about the IP before reporting.</p> <p>Pre-Reporting:</p> <ul style="list-style-type: none"><li>• Whether you own the rights or are an authorized representative</li><li>• Name, address, contact information</li><li>• What is the trademark</li><li>• Is it registered? (registration not required)<ul style="list-style-type: none"><li>– Yes. Trademark registration number, jurisdiction, and classes of goods or services</li><li>– An application is pending. Trademark registration number, jurisdiction, and classes of goods or services, legal basis for claiming the rights, and first year of use</li><li>– Another basis for the claimed right. Legal basis for claiming the rights, is the mark text and/or design, first year of use, and jurisdiction</li></ul></li></ul> <p>Report:</p> <ul style="list-style-type: none"><li>• Intellectual property owner</li><li>• Intellectual property (including trademark)</li><li>• Infringing listing</li><li>• Good faith belief that the reported material is not authorized</li><li>• Information is accurate and swear under penalty of perjury that I am authorized to make the complaint on behalf of the IP owner</li></ul> <p>Electronic signature</p>	Yes, the <a href="#">Terms of Use</a> briefly mention repeat infringers. “If Your Content is alleged to infringe another person’s intellectual property, we will take appropriate action, such as disabling it if we receive a report of infringement that complies with our policies, or terminating your account if you are found to be a repeat infringer. We’ll notify you if any of that happens.” The <a href="#">Intellectual Property Policy</a> does as well. The IP Policy states that “Etsy terminates selling privileges of members who are subject to repeat or multiple notices of intellectual property infringement in appropriate circumstances and at Etsy’s discretion. If we believe a member has attempted to open a new shop after termination of the initial account, we reserve the right to refuse all services to that member. These actions apply to any accounts we believe are associated with or operated by the affected member. Per our <a href="#">Terms of Use</a> , Etsy reserves the right to terminate account privileges at any time, for any reason, and without advance notice.”	No.	Only mentions <a href="#">counter-notices</a> for the DMCA.

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Shopify	No, the <a href="#">Terms of Service</a> do not prohibit trademark infringement. The terms only mention copyright infringement and the DMCA.	No.	Shopify has an online <a href="#">Trademark or Trade Dress Infringement Notice form</a> .	<div>Must be signed in to submit an infringement notice.<ul style="list-style-type: none"><li>• Select trademark or trade dress infringement</li><li>• Are you the trademark owner or authorized representative?</li><li>• Name and contact information</li><li>• Identify your trademarks or trade dress (description, country where registered, registration number, and category of products/services covered by the trademark) (registration required)</li><li>• Description and direct links to infringing content</li><li>• Declaration that all of the information in the report is accurate, I have a good faith belief that the use of the content is not authorized, and I swear under penalty of perjury that I am the trademark owner or authorized to act on their behalf.</li></ul>Electronic signature</div>	Only for copyright infringement. <a href="#">Reporting Copyright Infringement or Responding to a Copyright Notice</a> .	No.	<a href="#">Counter-notice</a> only mentioned in regard to copyright infringement and the DMCA.

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Rakuten	Yes. The <a href="#">Terms &amp; Conditions</a> § 6.1 that users will not “infringe any third party’s patent, copyright, service mark, trademark or other intellectual property right of any kind or misappropriate the trade secrets of any third party in connection with your use of the Program or the Company Properties.”	Yes.  Rakuten addresses counterfeits on the pages <a href="#">About Information Security</a> .  The <a href="#">Infringement Report Form</a> has an option for counterfeits when selecting the reason for alleging infringement.	There is an <a href="#">Infringement Report Form</a> .	User must provide: <ul style="list-style-type: none"><li>• If this is a new notification of infringement or an ongoing issue</li><li>• Name of the IP owner</li><li>• Whether you are the IP owner or an agent</li><li>• If applicable, your shop URL</li><li>• First and last name</li><li>• Email address</li><li>• Phone number</li><li>• The right being infringed (trademark, design right, patent, or copyright)</li><li>• Request to Rakuten: to delete the product page, to delete the text on the product page, to delete the image on the product page</li><li>• Reason for alleging infringement: counterfeit, unauthorized use of trademark(s), unauthorized use of copyrighted image(s), other</li><li>• Further comments on reason for alleging infringement</li><li>• Number of URLs of allegedly infringing products</li><li>• URLs of the allegedly infringing products</li><li>• Trademark registration number (required)</li><li>• Goods and services</li><li>• Proof of trademark rights and screenshots of infringing pages</li><li>• I agree to the following:<ul style="list-style-type: none"><li>– All the contents registered in this form and attached materials are facts and authentic.</li><li>– Rakuten Group, Inc., may notify the claimed shop of the registered contents and attached materials on this form.</li><li>– I will be charged with perjury, in case I make a false allegation.</li><li>– Rakuten Group, Inc., may not be able to handle the following cases:<ul style="list-style-type: none"><li>* In case the registra-tion details/ attached materials are incompl-ete or insuffici-ent.</li><li>* In case there’s suspicion that you/your client are the right owner.</li></ul></li></ul></li></ul> In case your request is due to commercial distribution problems (resale).	No.	No.	No.



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Temu	Yes. “You acknowledge and agree that all materials displayed, performed, or available on or through the Services, including, but not limited to, text, graphics, data, articles, photos, images, illustrations and User Submissions (collectively, “Content”) are protected by copyright and/or other intellectual property laws throughout the world. You undertake to comply with all copyright notices, trademark rules, information, and restrictions contained in the Content, and not to copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell, or otherwise use for any purpose any Content not owned by you without the prior consent of the owner of that Content.” <a href="#">Terms of Use</a> .	No.	<a href="#">Trademark Notice of Infringement of Your Rights</a> .	<p>You must be signed in to report infringement.</p> <ul style="list-style-type: none"><li>Type of user complaint: Patent, Copyright, or Trademark</li><li>URL of each infringement that is to be removed and reasonably sufficient information to locate each one</li><li>Which statement describes your problem:<ul style="list-style-type: none"><li>My trademark is used on the product title</li><li>My trademark is used on the product description</li><li>My trademark is used on the product carousel</li><li>My trademark is used on the product or product package</li><li>My trademark is used in marketing materials or advertisements</li></ul></li><li>Additional information to help us understand your issues</li><li>Is the trademark registered? (registration not required)<ul style="list-style-type: none"><li>Yes<ul style="list-style-type: none"><li>* Registration number</li><li>* Name of rights’ holder</li><li>* Jurisdiction</li></ul></li><li>No<ul style="list-style-type: none"><li>* Date of first use in commerce</li><li>* An example of a use in commerce</li><li>* Provide details about the goods/ services for which the mark is used</li></ul></li></ul></li><li>What brand owns the intellectual property in this report?</li><li>Are you the rights owner or agent?<ul style="list-style-type: none"><li>For the agent, upload authorization</li></ul></li><li>Contact information of complainant</li><li>Good faith belief that the reported use is not authorized</li><li>Under penalty of perjury, acknowledge that (i) the information in the notice is accurate; and (ii) I am the rights owner or authorized to act on their behalf</li></ul> <p>Digital signature</p>	No. Repeat infringers are only mentioned in reference to copyright infringement. <a href="#">Intellectual Property Policy</a> .	Temu has <a href="#">Brand Registry</a> .  Requirements: <ul style="list-style-type: none"><li>IP holder contact information</li><li>Trademark registration information</li></ul> Benefits: <ul style="list-style-type: none"><li>Can report infringements</li><li>Use the “complaint” feature to track report progress</li></ul> Proactive protections	Counter-notice are only mentioned in regard to copyright infringement. <a href="#">Intellectual Property Policy</a> .

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Shopee	Yes. Shopee users agree not to “upload, email, post, transmit or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party” or “list items which infringe upon the copyright, trademark or other intellectual property rights of third parties or use the Services in a manner which will infringe the intellectual property rights of others.” <a href="#">Terms of Service</a> § 6.	The <a href="#">Listing Violation Guide</a> says that “[t]he sale of counterfeit items is strictly prohibited and will be deleted.”	After you have registered your intellectual property, you can report an infringement through the <a href="#">Brand IP Portal</a> .	Must be signed in to report infringement. <ul style="list-style-type: none"><li>• Contact information (when registered for Brand IP Portal)</li><li>• Jurisdiction</li><li>• Brand</li><li>• Type of IP</li><li>• IP registration number (required)</li><li>• A .xlsx file containing the URL(s) of the product(s) you want to report, with a maximum of 200 listings</li><li>• Grounds for complaint</li></ul> (Optional) additional proof of infringement	Yes. Up to six penalty points assigned per intellectual property infringements or listing counterfeit products. <a href="#">How Are Penalty Points Issued?</a>  These penalty points can lead to consequences. Three-five points lead to exclusion from marketing campaigns, Six-eight penalty points lead to removal of shipping rebates and moderate deboosting of listings. Nine-eleven points leads to severe listings deboosts. Twelve-fourteen points leads to suspension of listing creation and updates. Fifteen points and above leads to an account freeze. <a href="#">What Are the Penalties?</a>  Penalties last twenty-eight days, and penalty points reset each quarter. <a href="#">How Long Do the Penalties Last?</a>	<a href="#">Brand IP Portal</a>  Requirements: <ul style="list-style-type: none"><li>• Must have registered intellectual property</li></ul> Advantages: <ul style="list-style-type: none"><li>• Centralized management of registrations and reported infringements</li><li>• Simplified reporting processes</li><li>• Report tracking</li></ul>	No.

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Craigslist	Implicitly yes. Users “agree not to use CL or the API in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.” <a href="#">Terms of Use.</a>	Craigslist bans counterfeits on its <a href="#">Prohibited</a> page.	Email <a href="mailto:legal@craigslist.org">legal@craigslist.org</a> or send copyright or other intellectual property report to physical address for Copyright Agent. <a href="#">Notification of Claims of Infringement of Copyright or Other Intellectual Property.</a>	<ul style="list-style-type: none"><li>• Infringed rights, or a representative list thereof</li><li>• Infringing listings, with Craigslist posting ID and/or URL</li><li>• Good faith belief that the reported use is not authorized</li><li>• Penalty of perjury that the information is accurate and that you are the intellectual property owner or an authorized representative</li><li>• Contact information</li></ul> Signature	It is mentioned after a sentence referring to the DMCA so it is unclear if Craiglist maintains a repeat infringer policy for trademark infringements. <a href="#">Notification of Claims of Infringement of Copyright or Other Intellectual Property.</a>	No.	No.



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Printful	Yes. “Printful respects your work and empowers you to express your voice and ideas. We ask that you respect the work and creative rights of others. You need to either own the Content you post to Printful, or have the express authority to post it. Content must comply with right of publicity, trademark and copyright laws, and all other applicable national, state, and federal laws. . . . Likewise, by accepting this Agreement and using our Services, you agree and represent that you own or have permissions to use all copyrights, trademarks, service marks, trade dress, and trade names incorporated into the Content you post or use in connection with any Content and the Services provided under this Agreement.” <a href="#">Terms of Service.</a>	Yes. Counterfeit products are prohibited under the <a href="#">Warehousing &amp; Fulfillment Terms.</a>	The <a href="#">Takedown Notice</a> form only applies to copyright. The <a href="#">DMCA policy</a> seems to suggest that an email can be sent to <a href="mailto:content@printful.com">content@printful.com</a> for other intellectual property violations.	<ul style="list-style-type: none"><li>• A link to the original content</li><li>• A description of the infringed-upon rights</li><li>• Registration information (optional)</li><li>• A description of the infringing content and links or other details about where the content is available</li><li>• Your contact information</li><li>• Whether you own the content or are authorized to act on behalf of the rights holder</li><li>• A statement, made under penalty of perjury, confirming that (i) the information is accurate; and (ii) you own the copyright or are authorized to act on behalf of the rights holder and have made sure the owner hasn’t previously approved the content’s use</li><li>• Electronical or physical signature</li></ul>	Yes, under “Trademarks and Infringement of Intellectual Property” in the <a href="#">Terms of Service</a> it says: “Printful may terminate account privileges of Members that are subject to repeat notices of intellectual property infringement as determined by Printful at its sole discretion.”	No.	Printful informs reported parties of the notice, but only has counter-notice procedures for copyright. “When Printful removes, blocks or disables access in response to such a notice, Printful makes a reasonable attempt to contact the allegedly infringing party, provide information about the notice and removal, and, in cases of alleged copyright infringement, provide information about counter notification.” <a href="#">Terms of Service.</a>

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Printify	Users may not “post or upload Content that infringes on the copyright or trademarks of others.” <a href="#">Terms of Service</a> .	Yes. Printify’s <a href="#">Intellectual Property Policy</a> prohibits the sale of counterfeit goods.	<a href="#">Trademark Violation Form</a>	<ul style="list-style-type: none"><li>• Name, email address, company (if applicable), and address</li><li>• Trademark owner or their representative?</li><li>• URLs of the unauthorized content</li><li>• URL of the original trademark</li><li>• Proof of ownership (optional)</li><li>• Detailed explanation of how the content is violating the trademark in question and creates consumer confusion</li><li>• Good faith belief that the use of the trademark is not authorized</li><li>• Swear, under penalty of perjury, that the information is accurate, and that I am the trademark owner or an authorized representative</li><li>• Acknowledge that this notice and contact information may be provided to the reported party</li><li>• Electronic signature</li></ul>	Yes, implied that a repeat infringer policy exists for trademark infringements. “It is our practice—in appropriate circumstances and at our discretion—to either disable or terminate the accounts of Users who infringe or are repeatedly charged with infringing copyrights or other intellectual property rights of others.” <a href="#">Intellectual Property Policy</a> .	No.	There is a counter-notice procedure for trademark infringement. “If You received a trademark complaint notification from Us, You can contest it by emailing <a href="mailto:copyright@printify.com">copyright@printify.com</a> and letting Us know why You think the complaint is invalid. Please include the trademark complaint reference number from the notification. If You want Us to forward the info from the trademark complaint notification, let Us know and We’ll be glad to send it along although We may remove personal information.” <a href="#">Intellectual Property Policy</a> .

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Gelato	Yes. Users cannot “upload or seek printing of any User Content that infringes any third party’s intellectual property or other rights (including without limitation copyrights, trademarks, rights of publicity and rights of privacy) or violates applicable law or any jurisdiction.” <a href="#">Terms of Service.</a>	No.	Email report to <a href="mailto:copyright@gelato.com">copyright@gelato.com</a> for all intellectual property rights-related complaints. <a href="#">Terms of Service.</a>	<ul style="list-style-type: none"><li>• Electronic or physical signature</li><li>• A description of the protected content or intellectual property right</li><li>• A description of the content you are reporting and where it is located on the platform</li><li>• Your address, telephone number, and email address</li><li>• Statement that you have a good faith belief that the use of those materials is not authorized</li><li>• A statement that the information is accurate and that, under penalty of perjury, you are the rights owner or authorized to act on their behalf.</li><li>• <a href="#">Terms of Service.</a></li></ul>	Yes. “Gelato will promptly terminate without notice the accounts of Customers that are determined by Gelato to be “Repeat Infringers.” A Repeat Infringer is a user who has been notified of infringing activity or has had Digital Assets or other materials removed from the Platform at least twice.” <a href="#">Terms of Service.</a>	No.	Has a counter-notification procedure for all intellectual property. “If Gelato receives a notification of claimed infringement regarding your uploaded content, we will notify you at the email address associated with your account. It’s your responsibility to keep your contact information current. If you believe the notification is in error, you can submit a counter-notification following the procedures outlined in our Terms of Service.” <a href="#">What Are Gelato’s Content and Intellectual Property Policies?</a>

Platform	Do the Terms prohibit trademark infringement?	Are counterfeits separately addressed anywhere?	Is the reporting mechanism a form or email?	What is the requested information to report an infringement?	Is a repeat infringer policy mentioned and, if so, are its parameters disclosed?	Does it have any advanced enforcement policies for certain groups of rights owners?	Does it mention a counter-notice procedure for trademark infringement reports?
Redbubble	Yes. “[I]nappropriate Content includes, but is not limited to, Content that infringes the copyright, trademark or other intellectual property rights of any person or company.” <a href="#">User Agreement</a> .	No.	<a href="#">Intellectual Property Form</a> .  Can also submit report via email: <a href="mailto:dmca@redbubble.com">dmca@redbubble.com</a> .	<ul style="list-style-type: none"><li>• Name</li><li>• Rights holder name</li><li>• (Optional) Redbubble username</li><li>• Email address</li><li>• (Optional) Physical address</li><li>• URLs of the infringing listings</li><li>• Description of the intellectual property that you believe in good faith has been infringed</li><li>• (Optional) Supporting files, such as trademark registrations</li><li>• Describe where within each listing the claimed infringement is located (e.g., image, title, tag, or description)</li><li>• Would moderating the allegedly infringing words from the listing’s title, tags and/or description address your IP complaint?</li><li>• Additional information</li><li>• Good faith belief that the reported listings are unauthorized</li><li>• Under penalty of perjury, I own the infringed rights or am an authorized representative</li></ul>	Yes. “If an account is found to be in violation of any of our content or account policies, including the User Agreement, Community and Content Guidelines, and IP/Publicity Rights Policy or is otherwise being used for purposes Redbubble was not designed for, such account will be subject to account-level action under our repeat infringer policy and our other policies, up to and including immediate and permanent disablement of the account.” <a href="#">IP/Publicity Rights Policy</a> .	No.	There is a general intellectual property counternotice policy in the <a href="#">IP/Publicity Rights Policy</a> and a <a href="#">Counter Notice Form</a> .  “If after 14 days [of submitting the counter notice] the complainant has not taken legal action against you, you may contact us to request that we reinstate your work.” <a href="#">IP/Publicity Rights Policy</a> .

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Sellfy	Yes. The <a href="#">Terms and Conditions</a> define Intellectual Property to include, <i>inter alia</i> , trademarks, and require that Users' sales and advertisements not "infringe any Intellectual Property Rights."	Yes, <a href="#">Terms and Conditions</a> state that "the User is prohibited to disseminate and distribute . . . . Counterfeited and any other illegal products, including, but not limited to, those infringing Intellectual Property Rights."	According to the <a href="#">Product Guidelines</a> , users are to email <a href="mailto:support@sellfy.com">support@sellfy.com</a> with a DMCA takedown notice for potential copyright and trademark violations.	The <a href="#">Product Guidelines</a> do not provide specific requirements for the takedown notice, but provide a link to the Copyright Alliance's webpage on " <a href="#">How to Send a DMCA Takedown Notice</a> ." This webpage includes the six requirements mandated by the DMCA: <ul style="list-style-type: none"> <li>• Signature</li> <li>• Copyrighted work being infringed</li> <li>• Identify and provide sufficient location to locate the infringing activity</li> <li>• Email address and contact information</li> <li>• Statement that you have a good faith belief that the use is unauthorized</li> <li>• Statement that the information is accurate and, under penalty of perjury, that you are authorized to act</li> </ul>	No.	No.	No.



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Society6	Yes. “You acknowledge and agree that you are solely responsible for any User Content that you make available on or through the Services. You represent and warrant that: (i) you are the sole and exclusive owner of all User Content that you make available on or through the Services or that you have all rights, licenses, consents, and releases that are necessary to make available such User Content and to grant all rights and licenses in such User Content as granted under these Terms; and (ii) neither the User Content nor your making available any User Content on the Services nor any use of any User Content as permitted under these Terms will infringe, misappropriate, or violate any third party’s patent, copyright, trademark, trade secret, moral rights, or other intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.” <a href="#">Terms of Service</a> .	Counterfeits are addressed in the <a href="#">Terms of Service</a> : “With respect to these Works, you represent and warrant that ... the Works do not offer or disseminate or fraudulent or counterfeit goods, products, services, or schemes, or promotions.”	The <a href="#">Copyright and Trademark Policy</a> indicates that there is both a Trademark Takedown Notice form and the option to email a takedown notice to <a href="mailto:Trademark@society6.com">Trademark@society6.com</a> or mail a takedown notice to Society6’s Designated Trademark Agent. However, the form does not currently exist.	<ul style="list-style-type: none"><li>• Must have a live federal trademark registration for the allegedly infringed mark</li><li>• Name and signature</li><li>• Trademark and federal trademark registrations alleged to have been infringed, plus a copy of the Trademark Status Document Retrieval page from the USPTO showing the current status of each federal trademark registration (required)</li><li>• The allegedly infringing content and information reasonably sufficient to locate it, along with a request that Society6 remove or disable access to the reported content</li><li>• Contact information</li><li>• Statement that you have a good faith belief that the reported use is not authorized</li><li>• Statement that the information is accurate and, under penalty of perjury, that the reporting party is authorized to act</li></ul>	Yes. “Society6’s policy provides for the termination in appropriate circumstance of selling privileges or accounts who are repeat infringers or are the subject of repeat or multiple Trademark Takedown Notices.” <a href="#">Copyright and Trademark Policy</a> .	No.	<p>There is a trademark counter-notice procedure. The counter-notice must be emailed to <a href="mailto:Trademark@society6.com">Trademark@society6.com</a>. The counter-notice must include:</p> <p>“After receiving a copy of the Trademark Counter-Notice, the Submitter has ten (10) business days to notify Society6’s Designated Trademark Agent that the Submitter has filed an action seeking a court order to restraint the Contributor from engaging in trademark infringement related to the Flagged Content. If Society6 receives no notice that an action has been filed, then Society6 may, but is not legally obligated to, replace and cease disabling access to the Flagged Content.” <a href="#">Copyright and Trademark Policy</a>.</p> <p>Society6 specifically notes that “U.S. law does not include a trademark takedown process or procedure analogous to the DMCA. Society6’s decision to offer a trademark takedown procedure is a voluntary undertaking, to be of better service to our community members and website visitors.” <a href="#">Copyright and Trademark Policy</a>.</p>

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TeePublic	The <a href="#">Terms &amp; Conditions</a> do not specifically prohibit infringing others’ trademarks, but notes that “[i]nappropriate content includes, but is not limited to, content that infringes the copyright or other intellectual property rights of any person or company.”	No.	Email <a href="mailto:legal@teepublic.com">legal@teepublic.com</a> for all intellectual property violations. <a href="#">Intellectual Property Policy</a> .	The <a href="#">Intellectual Property Policy</a> lists the DMCA requirements but says that this is the required information for all intellectual property violations: <ul style="list-style-type: none"><li>• Signature</li><li>• Intellectual property you claim to be infringed</li><li>• Describe the allegedly infringing material and sufficient information to locate the material</li><li>• Your address, telephone number, and email address</li><li>• Statement that you have a good faith belief that the reported use is unauthorized</li><li>• Statement that the information is accurate and, under penalty of perjury, you are authorized to act on behalf of the rightsholder</li></ul>	Yes. “Note that TeePublic will terminate rights of subscribers and account holders in appropriate circumstances if they are determined to be repeat infringers.” <a href="#">Intellectual Property Policy</a> .	No.	TeePublic uses the DMCA § 512(g) counter-notice procedure for all intellectual property. “Unless the copyright or intellectual property owners files an action seeking a court order against the allegedly infringing user in connection with the matter described to TeePublic’s Legal Department (the designated agent), the removed material may be replaced (or access to it restored) in approximately 10 business days after receipt of the Counter Notice, in the sole discretion of TeePublic’s Legal Department.” <a href="#">Intellectual Property Policy</a> .

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Zazzle	Yes. Users agree to not “upload, download, post, email, message or otherwise transmit any Content that may violate or infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party.” <a href="#">User Agreement</a> .	No.	Zazzle has a designated Copyright Agent that can be reached at <a href="mailto:copyright@zazzle.com">copyright@zazzle.com</a> or by mail. While this is Zazzle’s “Copyright” Agent, the <a href="#">Zazzle Copyright Policy</a> suggests that all intellectual property infringements should be reported to this email or address. “If you are an intellectual property owner and you believe that your intellectual property has been used or copied in a way that constitutes copyright and/or trademark infringement, please provide a notice containing the following information to Zazzle’s Copyright Agent.”	The <a href="#">Zazzle Copyright Policy</a> requires the same requirements for trademark reports as under the DMCA: <ul style="list-style-type: none"><li>• Signature</li><li>• Description of the intellectual property you claim has been infringed</li><li>• Description of where the material you claim is infringing is located</li><li>• Your name, address, telephone number, and email address</li><li>• A statement that you have a good faith belief that the reported use is not authorized</li><li>• A statement, made under penalty of perjury, that the information is accurate and that you are authorized to act on the rightsholder’s behalf</li></ul>	Only copyright repeat infringers are mentioned. “It is Zazzle’s policy ... in appropriate circumstances, to terminate the accounts of those who we suspect to be repeatedly or blatantly infringing copyrights.” <a href="#">User Agreement</a> Section 27.9.	No.	Zazzle has a counter-notice procedure, seemingly for all intellectual property takedown notices.  “Unless the intellectual property owner commences suit against the Zazzle Creator, Zazzle will decide, in its sole discretion, whether or not it will allow the Creator to re-post the design.” <a href="#">Zazzle Copyright Policy</a> .



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Gooten	Yes. “For each piece of User Generated Content that you submit, you represent and warrant that ... the User Generated Content does not infringe, violate or misappropriate any third party’s rights, including any copyrights, trademarks or other intellectual property rights and privacy rights.” <a href="#">Terms of Service</a> .	No.	There is no reporting mechanism for trademark infringement, only copyright infringement. <a href="#">Terms of Service</a> Section 15.	N/A	No.	No.	No.