

BASCAP BEST PRACTICES for Removing Fakes from Online Platforms

Introduction

In March 2015, BASCAP published a major study to identify and eliminate vulnerabilities in the supply chain that enable the infiltration of counterfeit goods and copyright piracy. The report, *Roles and Responsibilities of Intermediaries – Fighting Counterfeiting and Piracy in the Global Supply Chain*, addressed a wide range of intermediary sectors involved in getting products and services to the final consumer, including suppliers of raw materials and components; transport, shipping and distribution companies; landlords and shop owners; online marketplaces, internet service providers, search engines and advertising networks, websites; credit card companies and even the popular social media sites.

The research behind this report generated valuable cross-intermediary learnings and showed that tried-and-true business practices can be effectively applied to protecting the supply chain from infiltration of counterfeit goods and copyright piracy, offline and online. These practices include: establishing and enforcing clear contract terms; knowing customers and suppliers; developing industry standards and codes of practice; identifying and guarding against high-risk behavior patterns; adopting preventive tools; and deploying technologies that improve the effectiveness of many of the already adopted practices.

Where current efforts have been inadequate in protecting against IPR infringements, BASCAP suggested better, or best, practices to help responsible intermediaries more effectively deal with vulnerabilities in their operations. These recommendations aimed to challenge the status quo and offer a roadmap for discussion, collaboration and resolution.

Over the past year, BASCAP has evolved the discussion through meetings with rights holders and intermediaries, and through further research on progress made to date.

BASCAP Best Practices for Removing Fakes from Online Platforms provide a blueprint for platform operators to effectively remove fakes from online platforms, regardless of the means or device through which they are accessed. Some of these measures already have been adopted by some platforms; others have been borrowed from effective techniques applied in other fields. Consistent and enduring application of these practices on all platforms is the best defense of the supply chain against online counterfeiting and the best protection of online shoppers from fraud.

Best practices for online platform owners

1. Outline clear *Terms of Service* prohibiting use of a platform to sell or otherwise trade in counterfeit or infringing products or services.

Such terms will enable the prompt removal of infringing products, services or content. Many online platform policies disable access to infringing materials on this basis. *Terms of Service* can also be used to incentivize trustworthy behavior in many different ways depending on the business model of the service. Model *Terms of Service* provisions would:

- Adopt clear and precise rules based on objective criteria to allow a quick, efficient and clear procedure for notice and takedowns.
- Minimize registration requirements for notice and takedown to the necessary minimum (Power of Attorney and copies of titles); accept international registrations.
- Enable all rights holders to benefit from all measures while trialing new techniques with rights holders submitting a large volume of fake listings.
- Establish common sense criteria for requiring profile owners offering large quantities of goods on consumer-to-consumer platforms to be treated as businesses.
- Provide for disclosure of data:
 - Provide contact details of infringing profile owners to rights holders.
 - Make available data on prior transactions, postings and any stock held in fulfillment centers to rights holders.
 - Inform rights holders of infringing profile owners removed through other means (e.g. law enforcement, internal audits, customer complaints).
- Include infringing username as a reason to terminate a user profile account.
- Act on all types of IPR (trademarks, designs, copyright, patents, etc.), including stylized marks.
- Include misuse of photographs, blurring of logos, external links to infringing content and “coded” messages with IPR references removed, along with offers to manufacture, as reasons to takedown postings.

2. Encourage stronger enforcement of the *Terms of Service* between platform owners and traders, with increased cooperation between service providers and rights holders.

Terms of Service agreements are only as effective as efforts made to enforce them. Platform owners must put in place mechanisms to terminate or deter repeat violators of *Terms of Service*. Upon receipt of an adequate notice from a rights holder, takedown should be implemented promptly.

- Simplify the notice process:
 - Enable automatic removal of multiple offers with identical IPR and grounds.
 - Enable removal of multiple accounts.
 - Provide Application Programming Interfaces (APIs) for monitoring (including collection of posting data and images) and takedown, along with access to a “neutral”, non-personalized search function.
 - Eliminate overly burdensome requirements to provide detailed reasons and documentary support for takedown requests.
- Action takedowns rapidly and within 24 hours of notification.
- Trust notices that are correct on their face, unless rights holders have a history of successful counterclaims or bad faith notices. Distinguish between notices about the promotion of counterfeits and wider questions of IPR misuse in determining reliability.

- Balance Counter-Notice and Redress systems:
 - Keep offers suspended during dispute resolution.
 - Set out clear timeframes for actions.
 - Recognize and weed out resubmitted materials that were previously rejected.
 - Examine the record of profile owners, including their postings, takedown records, identification documents, consumer feedback etc.
- Require first-time infringers to undertake additional obligations as a condition to continued use of the platform.
- Accelerate handling of second and subsequent infringements.
- Suspend the account following a second infringement to allow for an explanation.
- Terminate accounts on a third infringement and prevent re-registration.
- Notify customers of a profile owner along with authorities when counterfeits have been sold.
- Hold any monies or stock in payment or fulfillment systems pending refunds, compensation and destruction of further counterfeits.
- Require profile owners to refund test purchase costs directly or from funds held in escrow.
- Allocate dedicated and specific contacts to maintain consistency, develop cooperation, and share information by informing rights holders whenever a post is removed.
- Notify users, when searching for brand names, about the need to check the authenticity of the product with the profile owner.

3. Implement due diligence checks by platform owners to ensure a basic understanding of who is trading on their platform, including contact information listing true name and street address, as well as banking details or other identity checks and verification practices. These steps could form part of wider verification programs to identify and prevent other illegal activities such as credit card fraud.

- Suspend accounts if information is wrong or bot-generated, including on notification from a third party.
- Require profile owners to reveal to the platform any connected accounts when applying for additional ones. As an alternative, prohibit duplicate accounts.
- Verify that the profile owner has not already been excluded before.
- Re-verify the identity of all profile owners that have been or are the subject of takedown requests.
- Use modern techniques such as machine learning and big-data analysis to identify higher risk profile owners, looking for patterns of unusual trading and connections between apparently unrelated profile owners.
- Base risk scores on historical records and other data points (such as random purchase surveys, takedown records, use of “drop shippers”, a wide variety of potential data points such as IP, postal and email addresses, bank account details, keystroke patterns and mouse movements of profile owners).
- Require additional information from profile owners regarding their identity and the source of their goods where risk analysis identifies higher risk cases.
- Establish a robust audit program for profile owners, concentrating on those exhibiting higher risk scores.

4. Adopt automated risk management tools appropriate to the business to identify high-risk behaviors and potential red flags. Given the magnitude of Internet transactions and postings, and the wide variation in online business models, appropriate automated technologies are essential to enable platform owners and rights holders to identify infringing activities and to undertake fair and rapid processes for preventing continued infringements.

Business rules driven by machine learning from big data and deeper analysis can bring the challenge to manageable levels for both platforms and brands. The most successful platform programs identify and prevent risky listings. They combine data from rights holders and the platform to build algorithms that avoid false-positives but leave a manageable amount of manual review.

- Prioritize risk review of offers optimized for the top 5 to 10 pages of search results.
- Automatically block high risk postings regarding articles obviously used to promote counterfeits such as labels, packaging, or invoices in the name of a famous company.
- Automatically block high risk postings containing known contact details that are frequently used to promote infringing products and services (e.g. block use of known WeChat/WhatsApp IDs).
- Establish business rules to filter or require additional verification from profile owners, depending on the risk, based on data from rights holders:
 - Keywords (e.g. knock-off, replica, imitation...) and brand names, collection names or common misspellings; prices; quantities.
 - Pictures, blurred images etc. which are used repeatedly to sell infringing products or services.
 - Categories of products: such as goods and models not manufactured by the brands.
- Prevent the use of autocomplete in searches for specific keywords (e.g. [Brand] replica).

In order to evaluate approaches currently undertaken by online platforms to protect against counterfeiting and piracy, BASCAP and IACC (IP Owner Category) member companies are invited to share their views and experiences on *the BASCAP survey of Best Practices for removing fakes from online platforms* at: www.bascap.net



Counterfeiting and piracy have become a global epidemic, leading to a significant drain on businesses and the global economy, jeopardizing investments in creativity and innovation, undermining recognized brands and creating consumer health and safety risks. In response, the ICC launched BASCAP to connect and mobilize businesses across industries, sectors and national borders in the fight against counterfeiting and piracy; to amplify the voice and views of business to governments, public and media; and to increase both awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm. Visit BASCAP on the web at: www.iccwbo.org/bascap