

The Written Testimony of

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Before the House Subcommittee on Crime, Terrorism
and Homeland Security

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Mr. Chairman, Ranking Member Gohmert and members of the Committee,

My name is Edward Torpoco, and I am a Senior Regulatory Counsel for eBay Inc. I would like to thank the Committee for giving eBay this opportunity to discuss the importance of fostering real and effective solutions to the problem of retail theft, and I ask that my full statement be entered into the Committee record.

Prior to joining eBay in 2006, I was a state and federal prosecutor for seven years. During that time, I prosecuted a variety of criminal offenses, including organized crime cases. As an attorney for eBay, I now help eBay to keep the eBay marketplace a safe site for consumers and small businesses, by working with the law enforcement community, government regulators, the private sector, policymakers, and consumer protection agencies. I very much appreciate the opportunity to speak with you today on behalf of eBay about this important topic.

eBay recognizes that organized retail theft is a serious problem facing many retailers in this country. This Committee should be applauded for the commitment it has shown to addressing this problem. We believe that it is a problem that deserves serious attention by lawmakers, law enforcement and all aspects of the retail businesses impacted. eBay stands ready to work with all stakeholders on balanced and thoughtful responses, including responses that account for the Internet as one among many and varied ways that criminals attempt to sell stolen goods to unsuspecting consumers.

Let me be clear, eBay takes the problem of stolen goods, and all forms of illegal activity that can impact our users, very seriously. We have the most pro-active policies and tools to combat fraud and illegal activity of all the major internet commerce companies. This fact was recognized in a recent federal court case, where the court praised eBay for the massive resources it employs to stop the sale of illegal goods (*Tiffany v. eBay*). As we have grown as a business over the last 12 years, we have understood that our success depends on our ability to keep our platform a safe and well-lit place to do business.

At the Subcommittee's 2007 hearing on this important issue, we provided great detail on the steps eBay has taken to fight fraud and illegal activity on its website:

- Our website features a member feedback system, which enables consumers to rate publicly the performance of eBay sellers;
- We have clear policies in place about what is allowed and not allowed to be listed on the site, including a policy that specifically places our membership on notice

that we will not tolerate the sale of stolen goods on eBay, and built state-of-the-art tools to enforce those policies;

- We employ over 2000 employees around the world who work to combat all forms of on-line fraud, including the sale of stolen goods;
- We have developed advanced anti-fraud tools to identify suspicious behavior, remove members who engaged in harmful practices, and take steps to keep them from coming back on the site;
- Our teams of fraud investigators partner with law enforcement agencies around the world to prosecute Internet criminals, including criminals who sell stolen goods, and train officers around the world on how to fight Internet crime; and
- We offer consumers a safe way to pay online through PayPal.

Largely as a result of these efforts, we now have trading platforms that serve 39 markets with more than 84 million active users. At any given time, approximately 112 million items are listed for sale on eBay around the world. Millions of transactions take place everyday on eBay where both the buyer and seller walk away totally satisfied. Here in the United States, over 750,000 Americans make all or a significant percentage of their income selling items on eBay.

Our policies and commitment to combating the sale of stolen goods on eBay are straightforward. eBay is no place for the sale of stolen goods, and the transparency of our site combined with our commitment to working with law enforcement makes it an unwelcome venue for “fencing.” The reality is that eBay is the riskiest place for a criminal to try to sell stolen products over the internet. We work both reactively and proactively with law enforcement, often referring cases out to the appropriate agency when we detect illegal behavior by a seller. When any retailer presents us with specific, credible evidence that stolen property is being sold on our site, we gladly work with law enforcement and the reporting party to address the problem, including sharing information about an illegitimate seller with the appropriate law enforcement agency. This process already exists, and we believe it works well.

In addition to our work with the law enforcement community, we have been engaging manufacturers and the retail industry to find ways that we can work together to combat the sale of stolen property on eBay. We have held meetings with retailers and their trade associations all over the U.S. to hear their concerns and to explain how we can work directly with retail loss prevention teams on organized retail crime cases. And, since we last appeared before this Committee, we have acted based on what we have heard. That is why, last April, eBay introduced a new program, called PROACT, that is specifically dedicated to working with retailers to combat organized retail theft.

Retailers that are participating in the PROACT program have a streamlined, easy mechanism to submit reports to eBay’s fraud investigators concerning the suspected sale of stolen goods on eBay. The program features a dedicated fax and email hotline for the exclusive use of retail loss prevention departments. Under PROACT, eBay’s investigators leverage all internal data retained by eBay and PayPal, in combination with specific evidence submitted by the retailers, to investigate whether a member has violated

eBay policy by selling stolen goods. Where eBay finds evidence of such a policy violation, we have pledged to restrict and suspend the account at issue, in consultation with loss prevention teams and law enforcement. Moreover, where there is evidence of criminality, we will proactively refer cases to law enforcement authorities for prosecution. Under this process, we will also put retailers in contact with any law enforcement agencies to which we have made a referral and provided member records.

While the program is in its pilot phase, we have seen real success and support from those retailers who have joined the program thus far. We believe that this success will continue to grow as we work to expand the program this fall. We continue to invite additional retailers to join with us in this effort. Over the long term, we believe it is this kind of cooperation between online marketplaces and the retail industry that is the best way to combat the sale of stolen goods online.

This Committee has done significant work developing a record about the nature and scope of organized retail theft. Your March 2005 Committee Report listed the following major venues as places where stolen items are illegitimately re-sold: small shops (including beauty shops, gas stations, music stores, bars and gyms), flea markets, pawn shops, local fences, truck stops, newspaper ads, overseas buyers, and yes, the Internet through all types of web sites and chat forums. The Committee report also described how unscrupulous middlemen sell significant volumes of stolen goods back to traditional retailers blended in with legitimate products, at times in re-packaged form.

My point in mentioning the Committee's prior findings is to highlight an important fact that must underpin any legislative solutions to the problem of organized retail theft: most of the ways that stolen goods are fenced are decidedly low-tech in nature. While some tech savvy criminals are finding ways to abuse internet technologies, serious and effective solutions to this problem must address the entire range of distribution methods that can be exploited by criminals, not disproportionately focus on one method or business model.

Many large manufacturers and retailers have a negative view of the eBay marketplace because eBay empowers small businesses and consumers by providing an incredibly efficient secondary market for the sale of high demand goods. Our sellers are perceived by some retailers as competition that drives down prices – good for consumers, good for small business sellers who gain access to consumers, but bad for big established retailers. One way for large retailers to attack efficient secondary market competitors that sell goods at low prices is to suggest that there is something shady about those sales. And they are actively engaged in such an effort.

Inventory shrinkage is a massive problem for retailers, but Internet marketplaces are not the cause of it. By far, most inventory loss, according to the retailers' own studies, are attributable to causes such as employee theft, administrative error, vendor fraud, and non-professional shoplifting. Organized retail theft is, by comparison, a small subset of inventory shrinkage, and the online fencing of stolen goods is a further subset. We are concerned that currently proposed legislative solutions, which single out internet

marketplaces for regulation, would make only a small dent in a much larger problem, while placing disproportionate burdens on lawful small businesses and consumers that rely on internet marketplaces.

The Internet is central to the survival of small retailers in a world otherwise increasingly dominated by massive retail giants. Many small retailers use “online marketplaces” to reach customers on a much larger scale than would otherwise be possible if left to their own devices. By imposing new investigation and disclosure burdens on these marketplaces, Congress would inevitably force new costs onto small businesses already struggling to survive, thereby raising the cost of competing with retail giants. When considering bills to address the problem of retail theft, we ask Congress to take care to protect the kind of competition that is so valuable to both small businesses and consumers alike.

In addition, the Internet community as a whole has raised concerns that these bills would undermine a fundamental concept that has been key to the Internet’s success – that Internet Service Providers like eBay should not be held liable for content posted by third parties – in this case, eBay’s members. Creating new liability standards for Internet Service Providers that operate online marketplaces erodes this critical legal protection, which Congress extended to Internet Service Providers out of desire to ensure that the internet would flourish unhindered to the benefit of all Americans. Contrary to this Congressional intent, one of the proposed bills would hold online marketplaces to higher liability standards than a person actually engaged in the theft of retail goods. Other proposals create invitations for endless lawsuits by exposing internet marketplaces to new civil liability regimes.

As Congress debates legislation to combat stolen goods, it is also important to note the importance of consumer privacy. Some of the proposals that we have seen would force online marketplaces to release private member data directly to unaffiliated third party competitors. This type of information sharing would pose a significant threat to individual privacy and security, which will ultimately reduce the appeal of the Internet for consumers. Even the proposed creation of new government data warehouses should be considered very carefully and should be reserved for instances where there is concrete evidence of illegality, not mere suspicion.

If there is a place for legislation on this subject, the first step this Committee should take is to increase the criminal penalties for the criminals who are actually selling stolen goods in interstate commerce. If these crimes are currently classified as misdemeanors, upgrade them to felonies. If the jail sentences tied to these crimes are too short, lengthen them. We have supported legislation in a number of states calling for tougher penalties, mandatory sentences and higher priority prosecutions of these criminals. We would support the same at the federal level. These steps will make these cases more attractive to law enforcement and will make judges more likely to put these criminals in jail rather than giving them probation. If these thieves make the unwise choice to use eBay to try and sell their stolen goods, we don’t just want them off of eBay, we want them to see the inside of jail cell.

If I could leave this Committee with one message concerning efforts to combat organized retail theft, it is that legislation alone cannot and will not solve this problem. Any legislative solution must be considered in tandem with cooperative private sector efforts to stop retail thieves. That is why eBay takes its PROACT program so seriously. It is our hope that these types of coordinated efforts between the retail and Internet communities will finally get the word out to retail criminals that if they try to sell stolen goods on the Internet, they will get caught.

We look forward to working with this Committee on ways to effectively empower law enforcement to fight the problem of organized retail theft. We stand ready to do our part to combat the long-term problem of retail theft in a balanced and responsible way. We are committed to protecting the privacy and rights of law-abiding citizens and small business people. We want to work with this Committee so that the Internet can continue to thrive as a place that benefits consumers, especially in these tough economic times, and allows small businesses to compete on the level playing field with the biggest retail giants.