INTA Comments on the Consultation of E-Commerce Law

August 3, 2026

The International Trademark Association (INTA) thanks the State Administration for Market Regulation (SAMR) and Ministry of Commerce (MoFCom) of China for the opportunity to provide comments on behalf of its members in response to the consultation of the E-Commerce Law.

INTA is a global not-for-profit association of more than 38,000 professionals and 6,600 member organizations from over 182 jurisdictions. INTA's members represent a broad cross section of brand owners from major corporations, small- and medium-sized enterprises, law firms, and nonprofits, as well as government agency members, professors, and law students.

The following General and Article specific comments and suggestions were prepared by INTA's Anticounterfeiting Committee and INTA staff. Our comments aim to support effective implementation while ensuring practicality and alignment with international best practices. We would welcome the opportunity to discuss these issues in depth and to answer any questions. We hope you will find our comments helpful.

General Comments

INTA commends and supports the direction of the draft to broaden the scope of regulation and increase the penalties in the fight against online counterfeiting and to enable closer cooperation between stakeholders including law enforcement, e-marketplace operators, Rights Owners and legitimate sellers.

From the perspective of rights owners, these additions will positively impact anticounterfeiting and brand protection by improving enforcement effectiveness through regular supervision and greater transparency.

For e-marketplace operators, with the growth of social media apps and platforms that have integrated e-commerce capabilities, the new draft has employed the broadened criteria of "order generation" to capture the online transaction network of operators and set forth the rules in principle that platform liability should match the type of services provided. We would welcome clarification of how the layered approach of regulation and penalties would correspond to the different services platforms perform.

We offer the following recommendations to enhance the draft provisions:

1. **Explicitly cover social media, livestreaming and content-commerce platforms** under the E-Commerce Law.
2. **Introduce stronger platform liability and deterrent penalties** where platforms knowingly or repeatedly fail to address large-scale Intellectual Property (IP) infringement.

3. **Adopt a mandatory repeat infringer policy** requiring platforms to permanently remove repeat counterfeit sellers and their associated accounts.
4. **Move beyond the notice-and-takedown model** by imposing proactive monitoring and re-listing prevention obligations on platforms.
5. **Strengthen seller identification, evidence preservation and data disclosure obligations** to support civil, administrative and criminal enforcement.

Specific Comments:

Article 5
In the second paragraph newly added to Article 5 of the current draft, which states: "E-commerce platform operators engaging in business activities shall safeguard the legitimate rights and interests of relevant operators, workers, etc., participating in e-commerce activities in accordance with the law," it is proposed to supplement and clarify that: E-commerce platform operators shall establish intellectual property infringement prevention and control mechanisms. For regulated or product listings of high-risk categories including as pharmaceuticals and medical devices, for which rights holders have provided prior warnings, platforms shall fulfill the obligation of prior verification of intellectual property ownership or confirmation of an authentic product supply chain.

Article 29
As defined in INTA's 2023 Board Resolution "*Establishing a Framework for Protecting Consumers from Third-Party Sales of Counterfeit Goods via Online Marketplaces*"[1], INTA supports robust "know your customer" obligations for sellers on e-ecommerce platforms alongside clear platform service agreements and IP protection rules.
INTA members report that counterfeit sellers deliberately de-identify their listings (including making use of blurred logos and code words/phrases) and often steer consumers to complete the sale transaction via WeChat. Members also report that platforms now require from rights owners additional chat/private messaging evidence to establish the counterfeiting activity — and even then, the evidence can be used to report only one listing at a time, not the seller's other listings or the store which is often directed to only selling counterfeit products of multiple brands.

This trend is perpetuated by marketplaces informing infringers in detail about why their listing was reported by the rights owner. INTA believes that in such instances where an offer is reported, the platform is on notice and "should have known" — it should be required to investigate and proactively remove the seller's remaining infringing offers. When rights owners have gone to considerable effort and cost to make and confirm a purchase of a counterfeit product, such test-purchase-driven complaints must be reviewed at seller level, taking into account the surrounding signals: imagery used, price anomalies, prior delistings and the use of evasion terms and tactics.

INTA members also report that listings often disappear before filing with test purchase evidence. For instance, a seller operates five active listings of similar products; once a test buy on one of the listings is completed, the entire listing goes inactive before the complaint can be filed. INTA

[1] https://www.inta.org/wp-content/uploads/public-files/advocacy/board-resolutions/20231114_Establishing-a-Framework-for-Protecting-Consumers-Final.pdf

members report that platforms such as Taobao insist on linking a test-purchase complaint to that specific listing — leaving rights holders unable to act against the seller's remaining listings. INTA welcomes the broadened Article 29 in the draft, under which the platform's duty attaches on discovery of an OPERATOR — not merely a listing — violating Articles 12 and 13. This should be read to require seller-level disposal, so that a verified test purchase supports action against the operator and all equivalent offers, not a single URL.

Article 85

INTA encourages the adoption of clear, enforceable standards for verifying seller identity, address, contact details, and business credentials of all platform operators to reduce the anonymity exploited by infringing entities. The strengthened investigation powers under the amended Article 85 (records access, bank and payment account inquiries) improve the authorities' reach. However, rightsholders still have no route to access the "verified" identity behind a storefront, so civil actions and offline follow-up stall for want of a true defendant.

INTA recommends introducing a qualified right of information — upon an upheld complaint supported by a test purchase, or upon a court order — the platform should disclose the operator's verified identity to the rightsholder under confidentiality undertakings, limited to enforcement use. At minimum, platforms should confirm, within a set deadline, whether verified identity information exists and should transmit it to the competent authority upon referral.

Article 89

It is proposed to supplement the extraterritorial application clause newly added to Article 89 of the current draft as follows: "Where an overseas e-commerce platform operator provides goods or services within the territory and engages in intellectual property infringement that damages the legitimate rights and interests of domestic rights holders, the competent authorities of China have the right to pursue liability in accordance with this Law; they may also require domestic institutions providing payment and logistics services to such operators to cooperate in taking necessary control measures."

SPECIAL CONSIDERATIONS

- **Live streaming regulation**

INTA members report there are three key structural gaps in current practice:

(a) no real-time takedown channel exists that can interrupt an infringing livestreaming session;

(b) there is no workable process to notarize a test buy conducted in a live environment; and

(c) there is no searchable archive of livestream content through which infringers operating live can be identified after the fact, despite the existing obligation on livestream service providers to retain published content and logs for sixty days (CAC Provisions on the Administration of Internet Live-Streaming Services, 2016, Art. 16).

It is recommended to require platforms to preserve the recording of any session that is the subject of a complaint and make it available to the complainant or the competent authority; recognize time-stamped screen recordings as valid preliminary evidence; and provide a real-time reporting channel consistent with the real-time patrol duty already imposed by the 2021 Livestream Marketing Measures.

INTA members also report that sellers and influencers increasingly use images and livestreams filmed inside brand boutiques to imply the product was purchased there, creating a false connection with the store. These complaints are currently falling between the IP channel and the consumer-report channel which causes confusion for rights owners over which to use for effective enforcement.

Article 9 of the Anti-Unfair Competition Law can be elaborated to expressly cover this conduct as false and misleading commercial publicity as to the source of goods, with platforms required to offer a complaint channel for such claims with an equivalent intake and timeline to the IP enforcement channel.

Currently, live-streaming e-commerce and short-video sales have become high-incidence scenarios for counterfeiting. If, platforms blur the lines between their identities as "content platforms" and "e-commerce platforms", the result may become to evade liability for counterfeiting. As a result, a large amount of live-streaming counterfeiting cannot be held accountable. Clarifying the rules can plug regulatory loopholes into new business formats.

- Identification and Handling of Repeat Infringer Accounts

INTA members have observed that infringing sellers increasingly avoid operating under a single storefront. The same beneficial operator will often run multiple stores and accounts in parallel, so that once one is taken down following a complaint or penalty, the operator can quickly shift to another account and continue selling the same category of goods. INTA notes that Article 14 of the Measures for the Supervision and Administration of Live-Streaming E-Commerce already sets out a reasonably well-developed blacklist system, including procedural safeguards and specific requirements to prevent evasion of sanctions through "changing accounts or re-registering new accounts." This design is a welcome development, though its scope of application remains limited.

INTA recommends that the E-Commerce Law introduce a mechanism to identify and collect information on repeat infringers and maintain a list of “prohibited sellers”, where platforms may draw on the operator identity and transaction information already in their possession to place those repeat infringers. Platforms should also strengthen their management of identified platform-based operators and take necessary measures to prevent such operators, while identified as “prohibited sellers”, from evading sanctions or re-committing infringement by changing accounts or re-registering new accounts.

- Notice and takedown procedure

INTA has a number of specific comments related to notice and take-down procedures within Article 42.

- The statutory sequence in Articles 42–43 is measures first, moderation second — yet in practice listings frequently remain live (or are reinstated) while the counter-notice is processed, allowing the seller to continue selling throughout the dispute window. It is recommended that Article 42 shall state expressly that the listing remains inactive while the seller exercises the right to counter a complaint, until the statutory termination conditions in Article 43 are met. These actions can be limited to claims of counterfeit products that impact public health and safety. Platforms should also be required to preserve and share the sales data of the seller's store for the disputed period, enabling the rightsholder to assess the scale of infringement and decide whether to pursue the case offline.

- At the same time, INTA members report that counter-notices are frequently subject to procedural abuse in practice: a seller only need to submit a boilerplate statement or unverifiable proof of purchase to demand that a listing be restored, and platforms—seeking to limit their own exposure to disputes—often restore the listing quickly, turning the counter-notice into a tool by which infringing operators resume sales. Article 8 of the Supreme People's Court's 2020 Guiding Opinions on the Trial of Civil Cases Involving Intellectual Property on E-Commerce Platforms already treats "issuing a statement (counter-notice) where the original notice was accompanied by an effective judgment or administrative decision" as a factor in determining a "bad-faith statement (counter-notice)." INTA therefore recommends clarifying that, upon receiving a counter-notice, the e-commerce platform should bring effective judgments of the People's Courts, penalty decisions of administrative authorities, and any record of repeated complaints handled against the seller within the scope of its substantive seller review, and should not restore the listing on the basis of a formalistic counter-notice.

- In the copyright infringement scenario, INTA members report that the evidentiary requirements are inconsistently applied across platforms. For instance, Alibaba accepts a source-image comparison to process a copyright complaint, whereas platforms such as Douyin and JD require proof of ownership of the underlying content—for example, raw material and evidence from the photo shoot. The same infringement therefore succeeds on one platform and fails on another. Even where a complaint is upheld, the only remedy applied is removal of the infringing image. The listing continues to trade with substitute imagery, and no strike or sanction attaches to the seller.

  Copyright theft must be treated as an infringement in its own right. Where the infringer's commercial activity continues unchecked, the platform's response is difficult to reconcile with the "necessary measures" defined in Article 42. Therefore, INTA recommends establishing a consistent, published guideline on what constitutes preliminary evidence for a copyright complaint, applicable across platforms; and upheld copyright complaints should count toward the seller's violation record on equal footing with trademark complaints.

- The "necessary measures" set out in Articles 42 and 45 are currently limited to deletion, blocking, disconnection of links, and termination of transactions and services. INTA members have observed that platforms, in practice, commonly interpret "necessary measures" as amounting to no more than the minimal technical act of taking down a listing. Even when an infringing link is removed, the seller can still regain customers quickly through the platform's own traffic tools and credit mechanisms — for repeat or willful infringers in particular, the mere deletion of a link no longer provides an effective deterrent.

  INTA recommends that "necessary measures" be clarified and are commensurate with the platform's actual control capabilities and the severity of the infringement. In addition to deletion, blocking, and disconnection of links, such measures could, depending on the circumstances, extend to restricting search visibility and recommendation exposure of the seller, restricting participation in promotional campaigns, and suspending settlement or freezing security deposits, with escalated disposal measures applied to repeat infringers. This approach is consistent with the overall direction of the current amendment, which emphasizes that platforms should bear obligations commensurate with the type of services they provide.

INTA appreciates your consideration of its comments and would like to thank the State Administration of Market Regulation (SAMR) of China again for the opportunity. If you have any questions or concerns, please do not hesitate to contact INTA's Director of Anti-counterfeiting, Alastair Gray at agray@inta.org or Chief Representative of China, Monica Su at msu@inta.org.