



December 6, 2010

U.S. Department of Commerce  
National Telecommunications and Information Administration  
1401 Constitution Avenue NW, Room 4701  
Washington, DC 20230

**Re: Global Free Flow of Information on the Internet (Federal Register Volume 75, Number 188 (Sept. 29, 2010 – Docket No. 100921457–0457–01))**

The Internet Commerce Coalition (“ICC”), a coalition of leading Internet service providers, e-commerce companies and trade associations, is pleased to respond to the Department of Commerce’s Notice of Inquiry on the Global Free Flow of Information on the Internet (“Notice”). ICC members are key players in the e-commerce arena and high-tech industries, which are huge sources of American jobs –both existing and newly created--and generate substantial economic activity that is key to the current economic recovery.

The ICC favors the development of clear, stable and predictable laws that foster the growth of the Internet economy and electronic commerce. The ICC works to promote policies that allow Internet, cable and telecommunications service providers, their customers, and consumers generally to do business on the Internet with reasonable “rules of the road” that encourage the growth of this vital medium.

The ICC believes that keeping doors open for e-commerce to flourish, combined with unfettered access to global trade and information over the Internet, empowers consumers and promotes economic development. This is particularly true for small businesses and entrepreneurs that use the Internet to reach a global audience. The Internet provides a critical means of doing business and providing valuable information to consumers. The ICC strongly believes that consumer and small business empowerment should be a driving principle of the United States government as it develops its Internet commerce policies at home and abroad.

**I. Restrictions on the Free Flow of Information on the Internet**

There are numerous examples of government regulations and commercial practices that restrict the free flow of information on the global Internet. Examples of such restrictions include restrictions on collecting, using or transferring personal data, exporting certain products and services, encryption regulations, restrictions on the collection and use of location-based information, and limitations on the use of certain Internet applications, all of which impede global trade and investment.

Some governments restrict, censor, or otherwise impede the free flow of information online for various social, economic and cultural reasons. Some governments maintain state

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control over access to the Internet and Internet content, while others deploy other techniques such as blocking certain online services or imposing strict regulations or onerous licensing regimes, particularly on foreign businesses. These actions unnecessarily impede international trade and investment.

In addition, unfair selective distribution practices in the United States and abroad are seriously hindering the continued growth of an open, global e-commerce market. Large commercial entities are seeking to regulate open e-commerce around the world to the detriment of small businesses and entrepreneurs. The ICC believes that ending commercial practices aimed at restricting and controlling e-commerce should be cornerstones of U.S. Internet policy both domestically and globally.

In an effort to resist the increased competition that e-commerce has brought to the retail market, some of the anti-consumer and anti-small business strategies adopted by manufacturers have included: (1) restricting licensed distributors from selling their products online at favorable prices; (2) prohibiting their distributors from selling certain products online or on specific online platforms; (3) imposing requirements on websites as a condition for reselling goods online; (4) requiring products to be sold at or above a pre-determined minimum price; (5) demanding that websites also have a brick-and-mortar store; and (6) promoting, defending or enforcing trademark exhaustion policies that restrict the cross-border sale of authentic goods.

These anti-competitive, selective distribution practices have, to a degree, limited some companies' ability to fully compete in certain markets and have hindered online retailers and entrepreneurs from selling certain goods and services at competitive prices to consumers. For instance, certain EU nations impose restrictions on small businesses and prohibit the sale of legitimate items that are sold outside of authorized distribution channels. These legitimate, authentic items are legally sold in the United States. However, the same authentic items are considered "counterfeit" under current European law because they are sold by an unauthorized vendor. This hinders the ability of consumers to purchase these products through e-commerce channels and impedes competition.

## **II. Impact of third party liability laws on businesses' abilities to operate in global markets**

Many e-commerce companies, including ICC members, rely on "intermediary" liability protection as fundamental to their business models. Internet intermediaries serve only as conduits for businesses and consumers to communicate and interact with each other. These Internet intermediaries depend heavily on third party liability protections, which have enabled them to grow into powerful e-commerce forces in the global economy.



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Intermediary liability protection fosters economic growth by encouraging e-commerce and Internet-based businesses to expand their enterprises without the fear of being held liable for the independent actions of third parties. In the U.S., these liability protections, such as those found in Section 230 of the Communications Decency Act of 1996<sup>1</sup> and Section 512 of the Digital Millennium Copyright Act,<sup>2</sup> have spurred rapid growth in new Internet services, products and software applications. These liability protections have also enabled the volume of e-Commerce transactions to flourish, particularly in the last several years.

### **III. Recommended Framework for Handling and Removing Objectionable Content**

In the context of online protection for copyrightable works, the ICC recommends that foreign governments adopt laws that closely follow the tenants of the Digital Millennium Copyright Act (DMCA), Pub. Law No. 105-304, codified at 17 U.S.C. 512. The ICC agrees that the DMCA, with its notice and takedown approach, strikes an appropriate balance between restricting illegal content or activity on the Internet, and encouraging continued economic growth and empowering Internet users. A more restrictive regime, where an Internet intermediary may be regularly subject to secondary liability for the activities of its users, significantly impedes economic development, restricts the market, and dampens the free flow of information.

Similarly, the ICC encourages foreign governments to promote open channels of commerce by adopting an international trademark exhaustion approach to trademark rights; where restricted, international governments should grant resellers and legitimate distributors the ability to sell legitimate, authentic items through any distribution channel, online or otherwise. Such an approach fosters free trade, competition and economic development.

We thank you for taking the ICC's views into account on these important issues.

Sincerely,

Heidi Salow and Kate Lucente  
ICC Counsel

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<sup>1</sup> Pub. Law No. 104-104, codified at 47 U.S.C. § 230.

<sup>2</sup> Pub. Law No. 105-304, codified at 17 U.S.C. § 512.