

**Outline of Tod Cohen,
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At the Federal Trade Commission's Workshop on
"Possible Anticompetitive Efforts to Restrict Competition on the Internet"
Overview: Industry Perspectives
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I. Introduction - eBay, Inc.

My name is Tod Cohen, and I am Associate General Counsel for Global Policy at eBay Inc. Thank you for inviting eBay to participate in this workshop on the potential negative effects that state regulations can have on the Internet. I am pleased to have the opportunity to tell you a little about how unfair and discriminatory regulations impact eBay and its community of users that is 50 million strong and growing every day.

II. State Regulation of the Sale of Goods Over the Internet

a. Prohibited/Questionable/Infringing Item

While eBay does not permit the sale of illegal goods on its site, bright lines between lawful and unlawful items are often absent and, in many instances, different jurisdictions may regulate the same items differently. eBay does allow the sale of "regulated" goods as long as these sales comply with applicable state regulations. In order to assist our sellers with the sale of such regulated items, we created a user-friendly list of "Prohibited, Questionable and Infringing Items." This list is found at www.ebay.com/help/community/png-items.html.

It includes 69 categories of goods and services that either:

(1) may not be listed on eBay ("prohibited items"), including things like new credit cards, prescription drugs, tobacco, and postage meters;

(2) may be listed under certain conditions ("questionable items"), such as event tickets, slot machines and items bearing police insignia; or

(3) may be listed unless they are in violation of certain copyrights, trademarks or other rights ("infringing items").

Furthermore, our site provides hundreds of pages of explanations of why each category is included and under what conditions, if any, certain items can be sold.

b. Event Tickets

One area where state and local laws are extremely varied, confusing to consumers, and almost impossible to monitor, is the resale of tickets to entertainment events (including sporting events, concerts, and plays). To assist users and to promote lawful ticket sales, eBay has attempted to identify the states that regulate the re-sale of event tickets and to provide its users with that information. We have identified seventeen such states.

State and local ticket regulations range from prohibitions against the sale of tickets at any price above face value to prohibitions against sales at a price of \$5 or 25% (whichever is greater) above face value. As a further complication, some states apply these restrictions to all event tickets, some only to a subset of events, such as those taking place on state property. When a

seller in one of the regulated states attempts to sell an event ticket, an automated disclaimer is added to that seller's listing explaining the applicable state regulation to potential buyers. This process is a difficult and inefficient experience for both eBay and our users. For the system to work, eBay has to try to determine both the seller and buyer's respective states of residence based on their eBay registration and their billing information. Identifying the state of residence of buyers in particular can be extremely difficult if not impossible because eBay does not require buyers to verify their location (just as offline marketplaces do not require proof of residence from a person who enters their store).

c. Wine Sales

eBay does not generally permit the sale of alcohol or wine on its site, except for collectible bottles of alcohol and pre-approved wine dealers. Unfortunately, over a dozen states make it a criminal offense for out-of-state sellers to sell alcoholic beverages directly to their citizens. Thus, an eBay user who lawfully sells wine to a user in one state could face criminal prosecution if the transaction took place in a different state. As a result, even the pre-approved wine dealers who are permitted to sell wine on eBay may not ship wine to certain states. Thus, because of inconsistent State laws and regulations regarding the sale of alcohol and wine, eBay users including licensed liquor distributors cannot generally use eBay to sell the same goods that they can legally sell in the offline world.

III. Conclusion

Wine and event tickets are just two examples of the numerous goods that are either prohibited or extremely hard to sell on the Internet simply because of inconsistent State regulations. Others include travel packages, packaged seeds and antique slot machines. In many cases, these are prime examples of sectors in which the Internet has offered a revolutionary new mode of distribution that will ultimately lead to a better experience for the consumer. We look forward to working with the FTC in the years ahead to ensure that consumers continue to have access to less costly alternative to traditional offline commerce.