

January 27, 2022

The Honorable Nancy Pelosi
Speaker of the House
United States House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

The Honorable Steny Hoyer
Majority Leader
United States House of Representatives
Washington, DC 20515

The Honorable Steve Scalise
Minority Whip
United States House of Representatives
Washington, DC 20515

Dear Madam Speaker, Leader McCarthy, Leader Hoyer and Minority Whip Scalise,

The undersigned organizations representing companies, start-ups, millions of American small individual sellers, small businesses, and civil interest groups are writing today in strong opposition to H.R. 5374, the SHOP SAFE Act being included within the recently introduced America COMPETES Act of 2022. While we greatly appreciate the effort that Members and staff have undertaken to better understand the complex issues that the SHOP SAFE Act purports to address, we must oppose this legislation as it is far from ready to become law.

While consumer protection and safety is a goal we all share, we are concerned that the SHOP SAFE Act, as currently drafted, misses the mark on protecting consumers, and instead will punish small businesses, stifle competition, limit artistic expression and cause economic disruption at a time when consumers need certainty more than ever.

Rather than bringing stakeholders together to address the complex issue of counterfeit products holistically, the SHOP SAFE Act appears to be a Trojan Horse for policies that the biggest brands in the world, including many European and global brands, will use to drive American small businesses out of business. Instead of supporting a balanced approach to counterfeit prevention that brings all parties, including platforms, users, retailers, rights holders, law enforcement, and third parties together, the bill puts all of the responsibility on American sellers - no matter how small they are. As a result, many small businesses and individual sellers will be targeted by some of the best resourced legal teams in the world, resulting in litigation, and ultimately less competition online and fewer choices for consumers.

Additionally, this legislation would force onerous, impractical, and unnecessary requirements on online sellers, including small businesses and individuals. In addition to the costs and risks the legislation levies on small businesses, it also raises serious privacy concerns, forcing Americans to choose between protecting their identity and making a living. Overtly punitive requirements like a "three strikes" policy may interfere with legitimate artistic self-expression where allegations are not always clear or appropriate. The direct result would be censorship of our most creative makers and the repression of their businesses and livelihoods. With so many American small businesses still struggling as a result of the COVID pandemic and ongoing supply chain issues, now is not the time to make it even harder to run a business.

While many of these concerns were raised by members on both sides of the aisle during the Judiciary Committee markup of the SHOP SAFE Act, no changes have been made to the bill. Unlike other pieces of legislation that are committed to protecting consumers from the risk of unsafe counterfeits, SHOP SAFE has been rushed through a legislative process that has not adequately addressed the many concerns that have been raised by the practitioners of the online community responsible for implementing the bill.

While we support efforts to protect consumers from counterfeits, we feel that this legislation creates a harmful imbalance which will hurt American consumers and small businesses, stifle competition, and result in higher prices and less choice for consumers. We ask you to take these comments into consideration and remove SHOP SAFE from the final text of the America COMPETES Act.

Sincerely,

Coalition to Protect America's Small Sellers (PASS Coalition)
National Association for the Self Employed
Small Business and Entrepreneurship Council
Engine
Computer and Communications Industry Association (CCIA)
TechNet
TechNYC
NetChoice
Electronic Frontier Foundation
Re:Create
R Street
Chamber of Progress
The Organization for Transformative Works

Cc The Honorable Frank Pallone
 The Honorable Cathy McMorris Rodgers
 The Honorable Jerry Nadler
 The Honorable Jim Jordan