



November 1, 2021

The Honorable Dick Durbin
Chairman
U.S. Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
U.S. Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

We write in advance of the November 2 hearing, “Cleaning Up Online Marketplaces: Protecting Against Stolen, Counterfeit, and Unsafe Goods,” to share the views of the retail industry on this critical topic. In sum, the National Retail Federation commends Chairman Durbin and the committee for your attention to the burgeoning problem of retail theft, and the infrastructure that organized retail crime provides for the sale of stolen and counterfeit products. Solutions to this endemic problem, which threatens the health and safety of consumers as well as the millions of retail employees throughout the country, are in reach, and they require a multi-stakeholder approach. We explore them in more detail, below.

NRF’s members engage in commerce through all channels – in-person and online, through traditional sales as well as through marketplaces and drop-shipping models. To that end, NRF, the world’s largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation’s largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

This letter focuses primarily on the relationship between loss prevention and marketplace transparency. We have previously [expressed](#) our views on how to curb the sale of counterfeits, and continue to work with our members to develop best practices for identifying counterfeits before they make it to market, to exercise inventory control, and to help law enforcement intercept counterfeit goods at US entry points.

Loss prevention is a continuous source of concern for retailers, and NRF surveys its members annually to examine the state of loss prevention through theft and fraud from all angles. Our 2021 survey showed that members are increasingly concerned about not just the prevalence of organized retail crime, but about the steady pace of “shrinkage” as a whole and the impact that COVID-19 has had on the risk vectors for retailers.

While more than two-thirds of the survey's respondents (69 percent) said the pandemic resulted in an increase in overall risk for their organization, respondents specifically mentioned the impact on workplace violence (61 percent) and organized retail crime (57 percent).

Moreover, mandated store shutdowns and other shopping restrictions that occurred throughout 2020 had an impact on where fraudulent activity occurred. More than one-third (39 percent) of respondents said they saw the greatest increase in fraud in multichannel sales channels such as buy online pick up in store, up from 19 percent the year before. In contrast, just 28 percent said the greatest increase in fraud came from in-store-only sales, down from 49 percent the year before. The percent of those who pointed to online-only sales fraud remained flat.

The survey found that while the overall shrink rate remained relatively steady compared with 2019, it remains above the average of the last five years. Respondents reported an average shrink rate of 1.6 percent, unchanged from last year's high.

Other observations include:

- Apprehensions and prosecutions of dishonest employees are down compared with last year and with the five-year average. However, the cost per dishonest employee case is increasing. Half (50 percent) of respondents reported an average dollar loss of at least \$1,000 compared with 29 percent in 2019.
- As additional threats emerge, retailers are investing in more resources to safeguard their customers, employees and operations. Half (53 percent) of retailers said their companies are allocating additional technology resources and another 50 percent said they are allocating additional capital specific to LP equipment. In a shift from the last few years, there was a significant increase in those reporting they would dedicate additional staffing resources.
- Robberies are delivering tremendous windfalls to criminals. The average robbery costs a retailer \$7500 – a figure not seen since 2015.

As for ORC in particular, the majority of retailers (65 percent) agree that ORC gangs are exhibiting higher levels of aggression and violence than they did the year before. Retailers cited COVID-19, policing and changes to sentencing guidelines, and the growth of online marketplaces as top reasons behind the increase in ORC activity.

ORC gangs target a variety of stolen items including designer clothing (reported by 22 percent of retail respondents), laundry detergent (17 percent), designer handbags, allergy medicine, razors and high-end liquor (tied at 15 percent each), pain relievers (13 percent) and infant formula and teeth whitening strips (tied at 11 percent each).

The top five cities for ORC in the past year in order were Los Angeles, San Francisco/Oakland, Chicago, New York and Miami.

With the size and scope of these threats continuing to grow, it is clear retailers need support from additional external resources, including lawmakers and law enforcement.

One fruitful avenue to address the rising incidence of organized retail crime is the INFORM Act (“Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act”). NRF is in strong support of transparency in marketplace sales, and our members are in favor of a tailored approach that provides consumers and law enforcement with verified information about high-volume sellers. We believe that the House bill, introduced by Representatives Schakowsky and Bilirakis (H.R. 5502), strikes the appropriate balance between requiring marketplaces to verify the identities of their biggest sellers, without impeding the flow of legal and legitimate commerce. The House bill provides more time for marketplaces to verify the identity of high-volume sellers once such a seller is covered by the Act, and allows marketplaces to verify the identity of individual high-volume sellers in ways other than asking for a government-issued ID. The House bill also provides privacy protections for high-volume sellers, while maintaining the goal of increased transparency. Finally, and most important to NRF members, H.R. 5502 provides for federal preemption of conflicting state laws. As more and more of NRF’s members use marketplaces as one of many channels through which they provide consumers with innovative goods, it is critical that both marketplaces and sellers are subject to a uniform and predictable set of rules. Conflicting rules from multiple jurisdictions are simply not workable for a marketplace that allows its sellers to reach consumers in every state in the nation.

But marketplace transparency alone will not curb the incentive for organized criminals to take expensive goods by force and resell them, either on marketplaces or, more frequently, on the street. Organized crime is, by definition, sophisticated and highly responsive to attempts to thwart it. Without more, regulating marketplaces will result in a cat-and-mouse game, in which, for example, organized sellers of stolen goods could structure their sales to fall below the high-volume seller threshold, and sell across multiple marketplace platforms. Consequently, NRF believes that increased enforcement – to include data-sharing across law enforcement agencies and increased resources to fight the scourge of robbery – is critical to reducing the incidence of organized retail crime.

NRF has been working to develop new policy options to help address the challenge of organized retail crime. Our recommended policy focuses on remediating three key challenges associated with national efforts to counter organized retail crime:

- The lack of prioritization of organized retail crime within federal law enforcement – there is no single agency that has this as a high-priority mission, with respect to investigative coordination, developing intelligence on ORC groups, and engagement with state, local and tribal law enforcement;

- The lack of coordination among federal law enforcement agencies that have authorities related to organized retail crime – include the FBI, ICE Homeland Security Investigations, CBP, the Secret Service, and the US Postal Inspection Service; and
- That state, local and tribal law enforcement agencies frequently have insufficient resources and training to engage effectively in ORC investigations – to work with retailers and build complex cases that District Attorneys will take for prosecution.

To address these challenges, NRF is in favor of Congressional action that would accomplish the following:

- Establish a new federal Organized Retail Crime Coordination Center, located within ICE Homeland Security Investigations and staffed by other key federal law enforcement partners. Our initial assessment is that this is the best fit, given their trade and customs enforcement authorities and the fact that the Intellectual Property Rights Center – which has a related mission – is located within ICE HSI. State, local and tribal law enforcement agencies could detail officers to the Center, and they and the private sector would also have formal roles as advisors with respect to the Center
- Give the Center clear responsibilities to lead on ORC activities, including by developing national-level ORC intelligence picture, coordinating information-sharing and cross-agency investigations, and serving as a center of expertise for training and technical assistance
- Establish regional federal, state, local and tribal law enforcement task forces at several ICE HSI field offices, as a pilot project before considering whether to expand more broadly
- Require DHS and DOJ to leverage and expand the focus of existing law enforcement grant, training and technical assistance programs so that they more actively prioritize organized retail crime

NRF believes that legislation like this – if appropriately funded and implemented – could make a significant difference in the fight against organized retail crime. Namely, such legislation would make it easier to move upstream and build cases against the leaders of the organized crime groups. And, importantly, the legislation would also improve understanding of the linkages between ORC and other types of organized crime.

NRF looks forward to continuing to work with the INFORM Act sponsors, the committee, and all interested lawmakers in both chambers, to address this very important issue and make sure that marketplaces remain safe for consumers to take advantage of the innovation, speed, and selection that the marketplace shopping experience continues to provide.

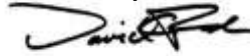
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Thank you very much for your attention to this issue and your continued support for legitimate retailers.

Sincerely,

A handwritten signature in black ink, appearing to read "David French".

David French
Senior Vice President
Government Relations

cc: The Honorable Frank Pallone, Jr.
The Honorable Cathy McMorris Rodgers
The Honorable Janice D. Schakowsky
The Honorable Gus M. Bilirakis