



ACCC Digital Platforms Inquiry

Facebook and IP Protection - Response to issues raised in the Preliminary Report

17 April 2019

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Introduction

Facebook takes IP rights, including copyright issues, very seriously, and has put in place numerous measures designed to assist content owners, including those in Australia, to protect their IP rights. This submission explains that:

- Contrary to the Preliminary Report’s conclusions that platforms are not incentivised to act quickly on copyright reports, we have a robust notice-and-takedown program under which our global IP Operations team promptly removes IP infringing content that is reported through our simple and publicly-accessible reporting channels.
- Going beyond notice-and-takedown, we have also built sophisticated tools such as Rights Manager to help copyright owners protect their content at scale, and deploy Audible Magic as another means for content owners to manage their assets. The Preliminary Report does not mention Audible Magic, or Rights Manager or its functionality, including its ability to automatically block infringing live content.
- Our tools were, and continue to be, developed in close collaboration with rights holders, taking into account their changing needs and new market solutions while also ensuring that users’ rights to lawful freedom of expression are protected. These tools are used frequently and successfully by rights holders in Australia. We are open to working with regulators to explain these processes.

We are concerned that the ACCC’s conclusions in its Preliminary Report do not reflect the information we have provided on this important topic, and instead appear uncritically to accept the views provided by certain commenters.

Facebook is deeply invested and incentivised to take action against IP infringement on Facebook. In addition to harming rights holders, infringing content harms the people and businesses who use and rely on our products.

Policies prohibiting infringing or unlawful content on Facebook and Instagram

Facebook’s IP protection measures begin with our [Terms of Service](#) and our [Community Standards](#), both of which prohibit users from posting content that infringes third parties’ IP rights or that is otherwise unlawful. For example, in our Terms of Service, users agree that they “*may not use our Products to do or share anything . . . that infringes or violates someone else’s rights.*” Our Community Standards, which describe what is and is not allowed on Facebook, expand on these principles.

2. What you can share and do on Facebook

We want people to use Facebook to express themselves and to share content that is important to them, but not at the expense of the safety and well-being of others or the integrity of our community. You therefore agree not to engage in the conduct described below (or to facilitate or support others in doing so):

1. You may not use our Products to do or share anything:

- That violates these Terms, our [Community Standards](#), and [other terms and policies](#) that apply to your use of Facebook.
- That is unlawful, misleading, discriminatory or fraudulent.
- That infringes or violates someone else's rights.

Respecting Intellectual Property

20. Intellectual Property

Facebook takes [intellectual property rights](#) seriously and believes they are important to promoting expression, creativity, and innovation in our community. You own all of the content and information you post on Facebook, and you control how it is shared through your privacy and application settings. However, before sharing content on Facebook, please be sure you have the right to do so. We ask that you respect other people's copyrights, trademarks, and other legal rights. We are committed to helping people and organizations promote and protect their intellectual property rights. Facebook's [Terms of Service](#) do not allow people to post content that violates someone else's intellectual property rights, including copyright and trademark. We publish information about the intellectual property reports we receive in our bi-annual Transparency Report, which can be accessed at <https://transparency.facebook.com/>

On Instagram, similar provisions are set out in the [Terms of Use](#) and [Community Guidelines](#). We maintain additional policies prohibiting IP-violating content in specific products and services that we offer, including our [Advertising Policies](#) and [Commerce Policies](#). We also provide detailed Intellectual Property Help Centers for both [Facebook](#) and [Instagram](#), where users and rights holders can learn more about intellectual property as well as our policies and procedures. All of these policies are clear and well enforced.

How content is reported to us

To ensure quick and accurate handling of IP reports, we provide dedicated channels for rights holders to report content that they believe infringes their rights, including via our online reporting

forms available for [Facebook](#) and [Instagram](#). We have custom forms dedicated to copyright,¹ trademark,² counterfeit³ and defamation issues,⁴ as well as an email address for each platform where IP reports can be submitted (ip@fb.com or ip@instagram.com).⁵

Rights holders can report different types of content they identify on either Facebook or Instagram, ranging from individual posts, photos, videos or advertisements to an entire profile, account, page, group or event, if rights holders believe the latter is infringing in its entirety.

These reporting channels are globally available, and accessible whether or not an individual has a Facebook or Instagram account. They are also easy to use, and allow for the reporting of multiple infringements in a single report.

¹ <https://www.facebook.com/help/contact/1758255661104383> (or <https://www.facebook.com/help/contact/copyrightform>); <https://help.instagram.com/contact/552695131608132> (or <https://help.instagram.com/contact/instagramcopyrightform>).

² <https://www.facebook.com/help/contact/1057530390957243> (or <https://www.facebook.com/help/contact/trademarkform>); : <https://help.instagram.com/contact/230197320740525> (or <https://help.instagram.com/contact/instagramtrademarkform>).

³ <https://www.facebook.com/help/contact/628238764025713> (or <https://www.facebook.com/help/contact/counterfeitform>); <https://help.instagram.com/contact/751729384978711> (or <https://help.instagram.com/contact/instagramcounterfeitform>).

⁴ <https://www.facebook.com/help/contact/732748663560891>.

⁵ The Preliminary Report suggests that for platforms headquartered in the United States, such as Facebook, registering a designated agent for purposes of accepting copyright take-down reports results in delays or other unspecified difficulties for Australian copyright owners. To the contrary, these email addresses provide yet another channel, over and above our dedicated reporting forms, for rights holders around the world to contact Facebook and Instagram to report infringing content.

The screenshot shows the Facebook interface with the 'Desktop Help' tab selected. On the left is a navigation menu with links: Creating an Account, Friending, Your Home Page, Messaging, Photos, Videos, Pages, Groups, Events, and Apps and Games. The main content area is titled 'Reporting a Violation or Infringement of Your Rights'. It contains a search bar at the top with the text 'How can we help?'. Below the title, there is a section 'What right is being violated or infringed?' with two radio button options: 'Copyright' and 'Trademark'. A paragraph of text follows: 'If you believe content on Facebook violates our Community Standards (ex: bullying, harassment, or hate speech), please visit our Help Center to learn about reporting it to us.' At the bottom right of the form is a blue 'Send' button. The language is set to 'English (US)'.

The screenshot shows the Facebook interface with the 'Help Center' tab selected. On the left is a navigation menu with links: Creating an Account, Friending, Your Home Page, Messaging, Photos, Videos, Pages, Groups, and Events. The main content area is titled 'Counterfeit Report Form'. It contains a search bar at the top with the text 'How can we help?'. Below the title, there is a radio button option: 'I understand and I wish to continue'. A paragraph of text follows: 'A counterfeit product is an unauthorized imitation or reproduction of a product bearing the trademark of the original rights owner. These products are intended to cause confusion as to the source, sponsorship and affiliation of the products and, as such, to commercially benefit from the trademark owner's reputation.' At the bottom right of the form is a blue 'Submit' button. The language is set to 'English (US)' with an 'Edit ...' dropdown menu.

Each report submitted by a rights holder is processed by our IP Operations team, which is a global team of approximately 200 trained professionals who provide around-the-clock coverage from several offices around the world. If the report is complete and valid, the team will promptly remove the reported content—*typically within a day or less, and in many cases within a matter of hours or even minutes*—and confirm that action with the rights holder that reported it.⁶

While the Preliminary Report concludes that Facebook has no incentive to—and therefore does not—act on copyright reports, the data demonstrates otherwise. As previously explained to the ACCC, our data shows that Facebook received 2,963 reports of copyright infringement from Australian content creators during the calendar year 2017, with an action rate of 65.60%. For this period, 11,631 pieces of content reported by Australian content creators were removed in response to these reports. In the first half of 2018 our data shows that Facebook had a removal

⁶ The Preliminary Report suggests that the global nature of our IP Operations team leads to slower turnaround times, particularly during special live events. To the contrary, the global nature of our team leads to the expeditious removal of reported content, and we have dedicated resources to handle particularly time-sensitive reports, such as those against live content. Moreover, we frequently work with rights holders who make us aware of special live events, such as sporting events, to accommodate their needs for expedited processing times, and put in place additional special coverage resources aimed at prioritising reports of this nature during these events. We welcome the opportunity to continue to collaborate with rights holders in this regard.

rate of 66% on the 1,535 copyright reports received from Australian content creators, with a total of 5,480 pieces of content being removed.⁷

Each report that we receive is individually assessed by our IP Operations team for completeness and validity. For any reports where content was not ultimately removed, this means that the team determined either that the report lacked the information needed to support the rights holder's claim, or that it failed to make out a valid claim of copyright infringement, such as in the case of a fair dealing or other exception to copyright.

In the case where the IP Operations team responds to a report requesting additional information to fully assess a claim, rights holders can communicate directly with the team via email to clarify their report.

We believe this manual processing is important in order to ensure that content is removed only in response to complete and valid reports and to balance this against users' rights to speak freely and openly.

Repeat infringement

In addition to removing reported content, we disable the accounts of repeat infringers in appropriate circumstances. Our repeat infringer policy applies to IP violations committed via Facebook profiles and Instagram accounts, including copyright, trademark and counterfeit. We also take action against other sources of content that may be engaging in repeat or blatant infringement, such as via Facebook Pages, video-related actions, and so on. In addition to outright removals, actions against repeat or blatant infringement may include other restrictions, including prohibiting the posting of content for a set period of time.

But rights holders do not need to wait for repeated offences by an account to have that account removed in its entirety. If a rights holder identifies an entire account as being dedicated to IP infringement, they can report it to us. If the report is complete and valid, Facebook and Instagram will remove the entire account based on that first report. Facebook and Instagram also have measures in place to remove an entire account even when a rights holder reports just a single piece of content on the account—in short, we make it as easy as possible for rights holders to remove accounts dedicated to infringement.

Rights Manager, Audible Magic and Commerce & Ads IP Tool

We offer a number of targeted tools to help rights holders manage and protect their content at scale on Facebook and Instagram—and, in some instances, to eliminate the need for them to report any content at all. The Preliminary Report does not mention these tools.

⁷ These numbers represent the total number of copyright reports submitted through Facebook's online reporting forms in the relevant periods. However, these numbers exclude reports submitted through other channels (including reports emailed to ip@fb.com or sent by other means such as fax or mail), which may or may not relate to copyright issues (or copyright issues in Australia), and comprise a small proportion of total reports in comparison to those submitted through our online forms. Duplicate reports and non-copyright reports that were filed through the copyright reporting forms are also excluded. With respect to action rate, a single report can identify a single piece of infringing content or multiple pieces. The action rate covers all reports for which at least one piece of content was removed. The amount of content actioned reflects the total amount of content that was removed based on a copyright report from an Australian content creator. This can include different types of content, from individual posts, photos, videos or advertisements, to profiles, pages, groups and events. Not all content contained in a report will be infringing.

Both [Rights Manager](#) and the [Commerce & Ads IP Tool](#), were developed based on feedback from rights holders. This collaboration has resulted in numerous enhancements to Facebook's policies and procedures over the years. In fact, our relationships with rights holders in Australia and around the world are central to our approach to IP infringement, as we prioritise direct engagements with them and other stakeholders to help shape the enforcement measures we build.

Rights Manager is a video-matching tool that identifies videos on Facebook and Instagram, including live videos, that match rights holders' copyrighted content. Participating rights holders can upload reference files into the tool and, when a match is detected, decide what action they want to take on the content. These actions include blocking the video from being viewed by anyone other than the uploader. If a rights holder chooses to block all videos matching certain criteria, then this action eliminates the need for the rights holder to submit future reports, subject to users' ability to dispute blocks if they have the necessary rights. Additional options include choosing to claim available ad earnings (allowing the video to stay posted and claiming a share of ad revenue), monitoring the video (tracking metrics like views), or reporting the video for removal on grounds of IP infringement.

We routinely collaborate with rights holders on Rights Manager functionality to explore ways in which it can continually improve and increasingly meet their needs. This includes having multiple meetings with Australian rights holders about current Rights Manager functionality and desired product improvements.

We also make use of a third-party service, Audible Magic, which flags uploaded videos and prevents them from being viewed by others when an audio match is detected based on content provided by rights holders, covering copyrighted music, TV, and film content.

Audible Magic operates on Facebook and Instagram at no cost to rights holders, as another means for content owners to manage how their content is being used.

Match Comparison

Manual review • Apr 10, 2017 3 of 1337 Actions

Jasper's Market
Jan 15, 2017 •

You deserve this exotic selection of winter recipes.

About Matching Video View Post

1 Views
5 Follow this Page
6:29 / 6:29 matches (100%)

Your Reference File
You're really going to enjoy this winter...

Notes Write an explanation about the action you are choosing to take with this video. This will only be visible to admins of this Page (optional). 0 / 200

Video	Views	Date	Duration	Status	Ref
Vinita Test	3	Jun 27, 2017	0:48	Manually review	29 days
[FB-Only] Lss Dimple	3	Jun 26, 2017	0:11	Manually review	29 days

In addition, our Commerce & Ads IP Tool, provides rights holders with a streamlined means to identify and enforce their rights against infringing advertisements, Marketplace posts and group sale posts on Facebook. The tool allows rights holders to search across these types of content for instances of their registered word trademark and then surfaces the search results in an easy-to-use dashboard from which rights holders can report any content they believe is infringing.

Rights holders can also save their contact and trademark registration information, making the reporting process quick and efficient. While the tool is largely intended as an anti-counterfeiting mechanism, it also works to address copyright and trademark infringements.

Going beyond notice-and-takedown

In addition to these steps and tools, we continue to work closely with rights holders to further

enhance our enforcement measures. While this work continues to rapidly evolve, we have taken a number of important steps recently. In particular:

- We are working to take action on Pages and groups that appear to be dedicated to copyright piracy and other IP infringements, and we expect more progress on this front over the coming months with the aim of reducing the need for rights holders to submit reports targeting this content.
- We maintain policies that prohibit content offering or promoting set-top devices that are intended for infringement, and we remove content that violates these policies both on a proactive basis and when it is the subject of an IP report from a rights holder.
- We review ads and Marketplace content before they go live, using machine learning to incorporate signals such as brand names, logos, keywords and other suspicious indicators to detect and prevent content that may be offering counterfeit goods.
- Finally, we have observed that content that implicates IP might also violate other Facebook policies, such as our policies against spam or malicious activity. When these issues arise, we work closely with the teams specialising in these types of violations to facilitate the removal of violating content.

Transparency and reporting

Our latest [Intellectual Property Transparency Report](#) reconfirms our commitment to taking copyright and other intellectual property rights seriously across Facebook and Instagram. Indeed, people use our services to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them—and we want people to do so while having confidence that the content they are engaging with does not violate IP rights.

As our transparency report shows, for the first six months of 2018, across Facebook and Instagram, we took down 2,999,278 pieces of content based on 466,810 copyright reports, 203,375 pieces of content based on 69,756 trademark reports, and 641,059 pieces of content based on 29,828 counterfeit reports. These numbers reflect the deep investments we have made to help third parties address IP violations, consistent with our efforts to foster a safe and trusted community that encourages people to share lawful content.

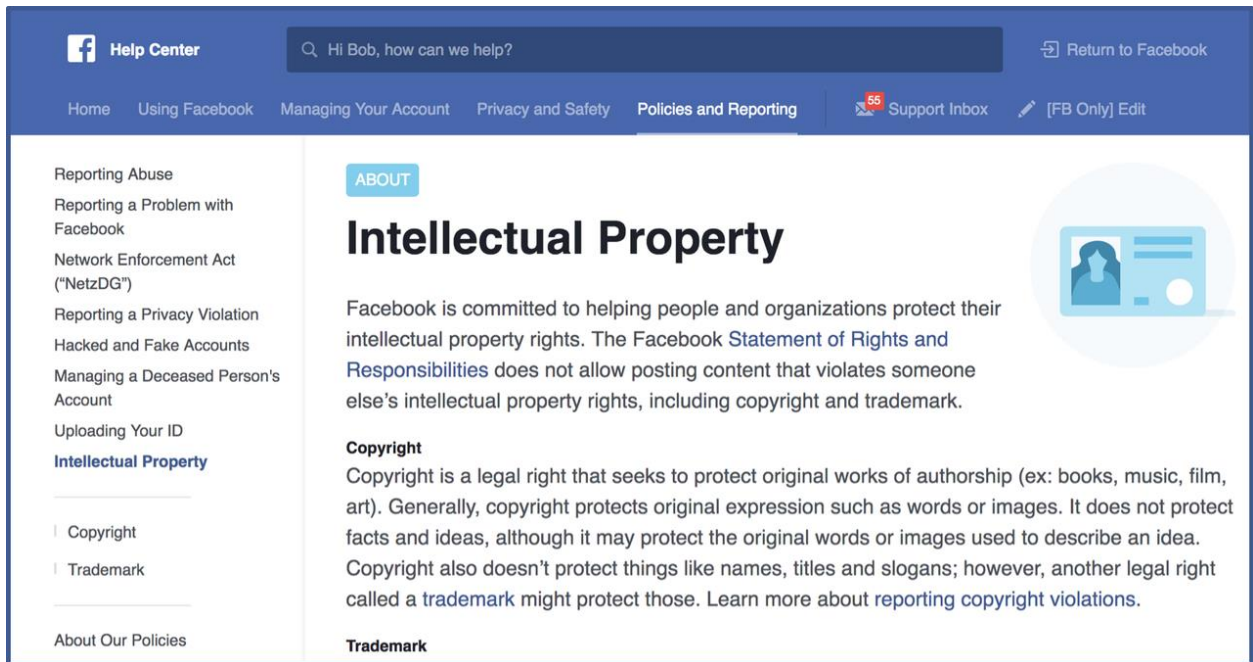
Educating people who use our services

While devoting significant resources to assisting rights holders in combating IP infringement, we also continue to invest in efforts to educate our users about IP and help them avoid committing IP infringements. For example, we have developed a robust system for educating affected users at the time we remove content in response to an IP report.

When we remove content, we send a notification to the reported users informing them that their content was removed and providing information about the report and reporting party. Users are also told how to contact the reporting party if they wish to resolve the matter going forward and, where applicable, are provided information about how to contest the removal.

In these notifications, users are also informed of our repeat infringer policy and are told that if they continue to post infringing content, further actions will be taken, including potentially disabling their account in its entirety.

In addition, our Intellectual Property Help Centers provide information concerning copyright, trademark and other aspects of IP law. We continue to update these resources to make them even more helpful for users, adding material that addresses commonly asked questions on various issues (for example: [How can I make sure the content I post to Facebook doesn't violate copyright law?](#)).



Partnering with rights holders

Our IP protection measures work in tandem with our partnerships with rights holders, and we encourage creativity and culture online, consistent with our view that Facebook and Instagram empower content creators of all types. To facilitate this creativity, we have a dedicated global Partnerships team whose mandate is to work with publishers, artists, creators and others to help them maximise the value they get from Facebook and Instagram by reaching new audiences, engaging directly with fans, and promoting their work around the world. Some examples include the following:

- Rights holders use our products—including Facebook Pages and Facebook Live—to connect with their audiences and to promote their content. [Musicians, for example, use Facebook in many ways](#) to expand their reach and connect with fans. Nearly 2 out of 3 people discover new artists on social media. (MusicWatch Inc., ‘Music Scores a Gold Record on The Social Media Charts’).
- Many of our partnerships have resulted in new features. For example, we worked with news publishers to test new monetisation structures and provide [support for their subscription-based models](#). And we have helped public media companies [tap into new revenue streams outside their home markets](#), and also enabled new “born-digital” media companies [gain visibility and grow](#).

- We are also focused on [supporting emerging creators](#), and we have worked closely with them to understand what they need to be successful on Facebook and Instagram. Our efforts have included helping creators engage and grow their community, manage their presence, and build their businesses on our platforms.
- We have also signed [new partnerships](#) with members of the music industry that will enable new music-related experiences for users, artists and songwriters on Facebook and Instagram. This includes a major multi-territorial licensing program that currently covers over 15 major music markets, including the United States, the United Kingdom, France, Germany, and Australia—and is growing.

Looking forward and comments on a mandatory takedown standard

We remain committed to helping rights holders protect their IP on our platforms and to partnering with them to maximise the opportunities for sharing their content across Facebook and Instagram. Our efforts in this area are constantly evolving and are dependent on close collaboration with rights holders and all others with an interest in how IP is used and protected online. We look forward to continuing to engage with everyone in the community to ensure that these efforts are as effective and robust as possible.

For these reasons alone, there is no need to impose a mandatory takedown standard for copyright reports in Australia. Instead, as this response demonstrates, voluntary self-regulation has led to industry-leading takedown procedures and leaves room for flexibility to continue to improve and develop those IP protection measures as technologies and risks evolve over time. Rigid requirements around the turnaround time for such reports are relatively unprecedented in the copyright space and, as described above, are unnecessary where platforms such as Facebook have a significant incentive to promptly remove infringing content.

Indeed, a mandatory takedown standard would depart from established standards for issuing take-down notices in the copyright arena—including in Asia-Pacific countries such as Japan, South Korea, Singapore, and the United States. These regimes broadly require digital platforms to respond “expeditiously” to material that is claimed to be infringing—but importantly embed these requirements in a system of intermediary safe harbours (and containing a number of other features) which incentivise cooperation between rights holders and intermediary platforms—something that is called for under the Australia-U.S. Free Trade Agreement, including Article 17.11.29 of that agreement, which provides a balanced intermediary safe harbours regime.