

# Marketplace Accountability in a Digital World

Modernizing  
consumer product  
safety to meet the  
new e-commerce  
landscape



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## Executive Summary

The convenience of online commerce has resulted in its rapid growth over the past decade.<sup>1</sup> As the popularity of shopping online continues to grow, product liability and consumer product safety laws in the U.S. that are designed to protect shoppers have not yet caught up to the evolving marketplace, potentially leaving consumers vulnerable when they shop online.

As a result of this gap, consumers have encountered dangerous or recalled products<sup>2</sup> for sale in digital marketplaces by third-party sellers who may be unavailable or otherwise unaccountable for harms caused by their products.<sup>3</sup> In 2023, the eSAFE team at the Consumer Product Safety Commission requested the removal of more than 50,000 hazardous products found online.<sup>4</sup> A 2019 Wall Street Journal investigation found unacceptable lead levels, suffocation hazards, and other safety failings across a variety of children's products purchased on Amazon.<sup>5</sup> Similarly, CNN found that fake and dangerous products were being sold by third-party sellers on Amazon's marketplace.<sup>6</sup> With access to millions of products at any moment, consumers are more likely than before to encounter unsafe consumer products that may put them at unreasonable risk of injury and death.

Consumers should be able to buy products online that do not pose unreasonable risks to their health and safety, and digital marketplaces play a key role in making this a reality. Digital platforms that offer marketplaces should provide consumers with adequate and accurate information to help them make informed buying decisions. Platforms should also work to better ensure the safety of all of their products by thoroughly vetting and monitoring third-party sellers and their offerings. If things go wrong, platforms should also be ready to respond quickly to make consumers whole. Unfortunately, today's e-commerce ecosystem falls short of these basic expectations, but lawmakers and regulators have an opportunity to act and help create safe and fair online marketplaces.<sup>7</sup>

Today's product liability and safety laws in the U.S. can be applied to in-person and online retailer, and may hold them liable for product defects they sell directly to consumers.<sup>8</sup> However, these laws still need to be updated to clarify when digital marketplaces should be held accountable for consumer products sold by third-party sellers on these sites.<sup>9</sup>

Understandably, industry participants and policymakers may be wary of applying a one-size-fits-all legal or regulatory solution to the diverse range of existing and emerging digital marketplaces. As such, it is important that policymakers closely consider the differences among digital platforms that host third-party sellers, including the nature of the marketplace and the level of control and influence the platform exerts throughout the transaction. Policymakers should determine how to hold digital marketplaces accountable for potentially harmful products that are sold by third-party sellers.

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## Introduction

The high level of convenience and a seemingly endless number of choices for any particular consumer product have contributed to the rapid growth of online commerce over the past decade, from about 7 percent of total retail sales to about 15 percent—a trend accelerated by the COVID-19 pandemic.<sup>10</sup> In 2022, 93 percent of Americans reported that they had purchased a product online in the previous year, according to a nationally representative Consumer Reports survey of 2,324 U.S. adults.<sup>11</sup>

Yet consumers lack certain legal protections when shopping online that they do have when shopping in traditional, in-person retail environments. Broadly speaking, today's laws provide that in-person and online retailers may be responsible for the safety of products or held liable for defective products they sell directly to consumers.<sup>12</sup> However, these laws do not clearly reflect the marketplace's digital evolution and address how much liability digital marketplaces could be subject to for products sold on their websites by third-party sellers—independent sellers that are hosted by these marketplaces.<sup>13</sup>

There are two key reasons for this uncertainty. First, the product liability and consumer product safety laws lack clear definitions and guidelines about the circumstances in which digital platforms bear legal responsibility for faulty and hazardous products. Second, since 1996, the internet has operated with a law that serves as a liability shield, greatly reducing incentives for platforms to be responsible stewards.<sup>14</sup> As a result, while shopping online in digital marketplaces, consumers can encounter dangerous or recalled products<sup>15</sup> that are sold by third-party sellers who avoid accountability for the harm caused by their products.<sup>16</sup>

Such platform shortcomings can result in frustration, inconvenience, and wasted money. But they can also have more lasting and even deadly consequences: Recalled inclined sleepers, which have been linked to scores of infant deaths, have been posted for sale on Facebook Marketplace; dehumidifiers that pose fire and burn hazards were sold on multiple platforms, including eBay; and uncertified and noncompliant bike helmets have been purchased on Amazon, to name only a few examples.<sup>17</sup> In short, consumers who shop on these platforms unknowingly walk into a digital minefield of products that can put them at serious risk.

Consumers should be able to shop online confidently for products that do not pose unreasonable risks to their health and safety, and digital platforms should play a key role and be at least partially responsible for ensuring the safety of the goods they sell. In this role, platforms should provide consumers with adequate and accurate information to help them make informed buying decisions. Platforms should also work to better ensure the safety of all of their products and thoroughly vet and monitor third-party sellers. If things go wrong, platforms should also be ready to respond quickly to make consumers whole. Unfortunately, today's online commerce ecosystem falls short of these basic expectations.<sup>18</sup> Congress and other regulators have an opportunity to act and help create safe and fair digital marketplaces.

As mentioned, industry participants and policymakers may be wary of applying a one-size-fits-all legal or regulatory solution to the wide-ranging models of existing and emerging digital marketplaces. It is therefore crucial that policymakers closely consider the differences among digital platforms, including the nature of the marketplaces and the level of control and influence the platforms exert throughout buying experiences.

For that reason, this paper examines the intersection of technology, policy, and consumer rights in the rapidly changing landscape of e-commerce with a primary focus on product safety. We will focus on clearly identifying how the current e-commerce ecosystem puts consumers at unreasonable risk from unsafe products. We'll also closely explore the nuances and distinctions that should be considered when seeking to modernize laws, regulations, and best industry practices. This includes exploring the roles that today's laws and policies play in shaping the current landscape of platform accountability and how potential reforms could affect consumer protection in digital marketplaces.

## Issues Consumers Encounter When Shopping Online

Many of today's digital platforms are not adequately incentivized, legally or financially, to vet sellers and monitor listings. Moreover, today's digital marketplaces involve a diverse group of businesses and individuals, including third-party businesses, drop shippers,<sup>19</sup> and consumer sellers. For some marketplaces, like Amazon, third-party seller sales can represent more than 60 percent of the products sold.<sup>20</sup> When shopping online, consumers have a staggering number of options to choose from but often lack critical information about any given product, including its country of origin and whether it meets any safety certifications.

In addition, compared with the more curated selection of goods that we generally find in traditional retail environments, the sheer number of choices available online leaves consumers more likely to encounter potentially unsafe products that put them at risk of injury or death. These include products that have been banned or recalled, or products that are not adequately tested or do not meet established safety standards. Many digital platforms do not have adequate processes and procedures for their marketplaces to prevent or remove violative and seriously concerning products from going on sale.<sup>21</sup> As such, this has led to the sales of unsafe products that may not meet mandatory or voluntary standards, or have not been safety-tested and remain for sale long before regulators can execute any compliance or enforcement action.

In 2023, the eSAFE team at the Consumer Product Safety Commission (CPSC) requested the removal of more than 50,000 hazardous products found online.<sup>22</sup> In 2019, a CR investigation found recalled inclined infant sleepers, which now have been linked to at least 100 infant deaths, for sale on both Craigslist and Facebook Marketplace.<sup>23</sup> A 2019 Wall Street Journal investigation found unacceptable lead levels, suffocation hazards, and other safety failings across a variety of children's products purchased on Amazon.<sup>24</sup> In the same investigation, the WSJ reported that Amazon had previously shut down its testing of third-party marketplace items for lead levels.<sup>25</sup> Similarly, CNN found that fake and dangerous products were being sold by third-party sellers on Amazon's marketplace.<sup>26</sup>

In addition, consumers shopping online might have encountered misleading or inaccurate information that can lead them to purchase an unsafe product.<sup>27</sup> This could include fake product reviews designed to mislead or misinform a consumer about the quality of the product.<sup>28</sup> Despite this well-documented problem and attempts by some platforms to address fake reviews, more than half of consumers who buy products on sites with reviews say they trust those reviews at least “a little,” according to CR’s August 2022 survey.<sup>29</sup> In response to this issue, the Federal Trade Commission issued a final rule in August 2024 banning fake reviews and testimonials; prohibiting the use of deceptive practices, such as posting reviews generated by artificial intelligence; censoring honest negative reviews; and compensating third parties for positive reviews.<sup>30</sup> These regulations represent a step in the right direction and will help to address the issue of fake reviews and testimonials.

Digital platforms themselves may also mislead consumers through their product endorsement or apparent endorsement displays. Endorsement examples include Etsy’s “Etsy’s Picks” and Amazon’s “Amazon’s Choice” designations. Looking at platform endorsements, consumers may need to make assumptions on how a platform endorses products, and whether it is by algorithm or by human experts. For example, it is unclear exactly how Amazon weighs different factors in determining its “Amazon’s Choice” labeling, leaving consumers to make their own assumptions.<sup>31</sup> CR’s August 2022 survey found that of the 74 percent of online shoppers who say they have seen the label, 62 percent think it means the product is a bestseller in its category, 50 percent think it means the product gets high reviews, 30 percent believe it means Amazon experts say the product is good, 22 percent believe it means the item will ship quickly, and 20 percent think it indicates that Amazon itself manufactured the product.<sup>32</sup>

Another issue that may confuse consumers is that on many digital platforms, it may not always be easy to identify who is selling you the product. Moreover, relatively few Americans realize that retailers may also host third-party sellers on their websites. CR’s August 2022 survey found that 43 percent of Americans who had shopped online in the past year were unaware that the websites of some brick-and-mortar retailers host third-party sellers.<sup>33</sup> Consumers should be able to know who they are buying from, and they should be able to trust that what they buy is safe. When consumers don’t fully understand their relationship with the seller or platform, it can also be frustrating and challenging to seek recourse if something goes wrong.

## Product Liability and Safety Laws: Who Is Responsible?

Under product liability laws, manufacturers, distributors, and retailers can be held responsible for injuries caused by the products they bring to market.<sup>34</sup> This area of the law was largely created in response to consumer harms resulting from large-scale technological and industrial shifts that increased the scale and speed of manufacturing and sales of consumer products during the mid-20th century.<sup>35</sup> These laws were meant to provide incentives for every party in the distribution chain to be vigilant about defective products and to act swiftly when such products are uncovered.<sup>36</sup> Product liability laws also help to ensure that consumers who are harmed will be made whole by at least one of the parties in the distribution chain.

In addition, product safety laws hold manufacturers, distributors, and retailers accountable for the safety of the products that enter the marketplace. First enacted in 1972, the CPSA established the laws and the federal agency charged with protecting the public from unreasonable risks of injury through “a blend of consumer monitoring, research, investigations, safety standard-setting, and enforcement powers.”<sup>37</sup> The CPSA has been amended a number of times since 1972, but these updates do not directly address the role of e-commerce in product safety.<sup>38</sup> As a result, today’s product safety laws lack clear definitions and guidelines for when digital platforms should bear legal responsibility for faulty and hazardous consumer products.

Today’s product liability and safety laws have not kept up with the emergence of online marketplaces and do not contemplate the magnitude of the internet’s impact on the consumer product marketplace.<sup>39</sup> While these laws can be applied when a platform is the seller of a product, they do not make clear what a platform’s responsibility should be for third-party sellers hosted on their platform.<sup>40</sup> With little clarity in the law on the question of responsibility, as it relates to online commerce platforms, some of these platforms have attempted to avoid accountability.<sup>41</sup> They have argued that because they merely host third-party sellers, they are not manufacturers or sellers or distributors, and are “neutral” platforms—mere conduits where transactions take place.<sup>42</sup> In this context, it is crucial that Congress work to update our laws to ensure that all parties in the online chain of commerce can be held responsible for consumer safety.

While digital platforms continue to argue neutrality, attempts are being made to clarify when platforms may be held accountable for the safety of products being sold on their marketplaces. In 2021, the CPSC initiated an administrative enforcement proceeding against Amazon regarding products sold and distributed through its Fulfilled by Amazon program.<sup>43</sup> In January 2022, the administrative law judge presiding over the case sided with the agency, holding that the company meets the Consumer Product Safety Act’s definition of “distributor” because the company not only receives, holds, and transports consumer products but also provides customer service, processes returns, and “retains some authority over the prices” of all Fulfilled by Amazon products.<sup>44</sup> Amazon continued to reject this designation and appealed the judge’s decision.<sup>45</sup> In July 2024, the CPSC decided, in a unanimous vote, that Amazon is a “distributor” under federal law and may be held responsible for distributing unsafe products sold on its platform by third parties.<sup>46</sup> As a result, the CPSC held that Amazon bears legal responsibility for recalling more than 400,000 product units that are defective or noncompliant. In response, Amazon said that it planned to appeal the decision in court.<sup>47</sup>

Adding another layer of complexity is the impact of Section 230 of the Communications Decency Act (Section 230), a 1996 law that protects online services and users from a wide swath of civil liability claims.<sup>48</sup> The application of Section 230 to digital platforms remains a contentious and evolving area of law.<sup>49</sup> The main Section 230 argument in product liability claims in courts has been that in order to be held liable for a product liability claim, platforms would have to be treated as the “publisher or speaker” of information contained in a product listing posted by a third-party seller.<sup>50</sup> While some courts have agreed with platforms on this



interpretation of Section 230, others have rejected this argument, holding that marketplaces are intertwined into the chain of commerce.<sup>51</sup> However, we argue that extending Section 230 protections to physical products sold online was never the intent of the law and could leave consumers without recourse for dangerous products. Because of these inconsistent rulings, consumers continue to shop in an online ecosystem that provides limited and unclear protections.

This combination of outdated product liability and consumer product safety legal regimes, and Section 230, has resulted in unresolved questions around what role these digital platforms play in third-party seller transactions, especially as platforms assume different roles, like shipper or customer servicer, in different transactions. As a result, this could create confusion and distrust for consumers shopping online.

Many people seem to recognize that digital platforms do not necessarily protect consumers to the extent that they should. While 67 percent of consumers who purchased products online in the year leading up to August 2022 believe a platform such as Amazon *should* contact them if a product they purchased from a third-party seller is later recalled, only 29 percent believe that such a website actually *would* contact them, according to CR's August 2022 nationally representative survey.<sup>52</sup>

## Platform Attributes and Actions That Should Determine Accountability

Just as traditional in-person marketplaces range from informal yard sales to national big-box chains, the digital marketplace also includes many different types of sellers. In general, this includes traditional retailers, like Macy's, that sell the same products found in their brick-and-mortar outlets; and platforms such as Etsy and Temu, which only host third-party sellers. Also included are peer-to-peer platforms such as eBay and Facebook Marketplace, which enable individual consumers to buy and sell products to one another; and hybrid marketplaces such as Amazon and Walmart, which act as both traditional retailers and third-party platforms.

Different risks and challenges that consumers encounter are inherent in these different types of entities. For example, recalled products are an especially significant concern on peer-to-peer marketplaces such as Facebook Marketplace and eBay because individuals may not know that products they're selling have been recalled and that these marketplaces tend to lack strong systems or processes for preventing the sale of recalled products.<sup>53</sup> When it comes to hybrid marketplaces, consumers may not be able to trust all the third-party sellers, leaving them to navigate seemingly countless options where small or unnoticeable distinctions between retailers may have large consequences.

Therefore, it is crucial that policymakers closely consider the differences among digital platforms, with a focus on two criteria in particular: 1) the nature of the marketplace; and 2) the level of control and influence the platform exerts throughout a given transaction.



## Criterion 1: The Nature of the Marketplace

Consumers generally expect the products they buy to be safe,<sup>54</sup> and as online shopping continues to grow in prominence and importance, digital platforms should do more to meet consumer expectations. However, these expectations may differ depending on the nature of the marketplace, the type of goods being sold, and the relationship between buyer and seller, and it follows that the responsibilities of digital platforms should also vary depending on those factors.

The nature of the marketplace is an important criterion to consider in determining whether a platform should be held accountable if a consumer is harmed by a product bought on the marketplace. When evaluating the purpose and nature of a marketplace, a key consideration is the role a marketplace plays in the broader e-commerce ecosystem. That includes evaluating both *what* is being sold (the type of goods, whether they are primarily new or used, etc.) and between *whom* the goods are being transferred (from a craftsperson to a consumer, a wholesaler to a retailer, a drop shipper to a homeowner, etc.).

Product liability law is clearest on who would be responsible if a consumer was harmed by a consumer product sold directly by the retailer or platform. When the retailer or platform sells a product, new or used, directly to the consumer, the law makes clear that the retailer or platform can be held responsible for any injury caused by a consumer product because such sales are similar to traditional brick-and-mortar sales. Similarly, platforms could be subject to federal product safety laws when they act as the manufacturer, retailer, or distributor of a product.

These laws are less clear when trying to determine a platform's responsibility when the consumer uses the platform to buy a product from a third-party seller and the third-party seller refuses to take responsibility. Accountability is also unclear for platforms like Etsy and Poshmark that do not sell products directly but host third-party sellers ranging from individual craftspeople and curators to mass production manufacturers that may misrepresent themselves to consumers as a craftsperson, an artisan, or an independent curator. While platforms may have policies against such practices, there is little legal incentive for marketplaces to ensure consumers are protected.

To complicate matters more, consumers sell to other consumers on digital platforms like Craigslist, eBay, Facebook Marketplace, and Mercari. These platforms are analogous to classified ads and garage sales but can also host businesses that are looking to reach consumers in these less formal retail environments. The nature of these marketplaces typically leads to relatively little incentive to proactively mitigate the spread of recalled products and scams. Consumers who purchase goods via these types of digital platforms are less likely to expect that the goods will have been carefully vetted by the platform.

## Criteria 2: The Platform's Control and Influence Over Transactions

Digital platforms are often the primary interface with consumers and the final step in the chain of commerce before a product arrives in a consumer's home. The relationship between platforms and consumers can encompass shipping, payment, customer service (including returns and refunds), and communications with the seller. The depth and complexity of this relationship can compound over time, to the point where the platform may be inextricably tied to the products purchased. In fact, companies like Amazon take pride in and rely on their customer service, which gives them control over large portions of the customer's experience. When it suits them, marketplaces even impose stringent standards on the third-party sellers that sell on their platforms.<sup>55</sup>

Where platforms have this level of control over the sales process, and especially when consumers associate the platform brand with the transaction, platforms should be required to take responsibility for resulting harm associated with the products. Some courts have agreed with this argument and with the notion that greater involvement of a digital platform in each node in the chain of commerce should factor into the degree of responsibility the platform must assume.<sup>56</sup>

When determining the best course of action for holding e-commerce marketplaces accountable, policymakers should assess several ways in which platforms exert control or influence over transactions.

**Physical control**, specifically, the fact that many platforms take physical possession of a product and thereby become inextricable from the transaction. This sometimes takes the form of warehousing the product in a distribution facility or providing "last mile" delivery services for the third-party seller. Some platforms may even penalize third-party sellers that do not store products at the platform's warehouses.<sup>57</sup> Platforms that take control in such a manner should assume at least some responsibility, especially given the extent to which many platforms make their role inextricable from the transaction.

**Consumer awareness of operational control**, specifically, the extent to which consumers understand who is selling a given product. If consumers are primarily interacting with the platform throughout the purchase process for a third-party seller's product, they may reasonably but mistakenly conclude that the platform is the seller. This reality is reflected in CR's 2022 nationally representative survey, in which about 1 in 4 Americans (24 percent) who had purchased something online in the year leading up to August 2022 said they were unsure if they had purchased anything on a marketplace from a third-party seller.<sup>58</sup> In some cases, such misunderstandings are a direct result of platform policies. For example, when platforms manage communications with consumers, require consumers to return products directly to the platform, or handle refunds (sometimes in the form of platform credits), the platform has asserted greater control over and made itself inextricable from the transaction, and therefore should bear more liability.

**Platform product curation, endorsements, and recommendations**, specifically, the extent to which a platform endorses, recommends, or promotes products, which could involve a platform-branded recommendation label, prominent display on the website, or the use of algorithmic placement and suggestions like “frequently bought together” and “similar products.” Such endorsements and recommendations on platforms are popular tools: About three-quarters (74 percent) of Americans who purchased a product online in the prior year had seen an “Amazon’s Choice” label, according to CR’s 2022 survey.<sup>59</sup> These types of efforts can drive consumers to purchase labeled or curated goods over others, placing the platforms squarely in the stream of commerce. In such cases, the platform should bear more liability.<sup>60</sup>

**Display algorithms**, specifically, the extent to which platform-designed algorithms control how and whether products are shown to consumers. Display algorithms can take on an extraordinarily powerful role in choosing which products consumers see and can be coded to function as de facto recommendations. This is particularly important when consumers shop on their mobile devices, where they typically see fewer products on smaller screens.

**Platform-driven pricing schemes**, specifically, a platform’s ability to influence or control the price of third-party products. Platforms may offer services that automatically adjust product pricing in response to competition or other factors.<sup>61</sup> This also could include potentially implementing AI-driven dynamic pricing algorithms that present a complex challenge for consumer fairness.<sup>62</sup> While they can optimize market efficiency, they also risk perpetuating existing inequalities or creating new ones.

**Financial stake**, specifically, whether a platform’s business model and revenue sources create any disincentives for it to vigilantly monitor for dangerous or recalled products and remove them from the marketplace. Heightened liability for a platform would be appropriate in cases where such disincentives increase the likelihood of consumer harm. Examples of this include platforms that accept payments, commissions, or referral fees from sellers to boost or promote a product’s listing to consumers in search results. By contrast, heightened liability would be less appropriate in cases where a platform accepts standard listing fees from sellers.

## Policy Recommendations

Consumers should be able to rely on some baseline standards for digital platforms with respect to transparency, the handling of recalled and dangerous products, and accountability when something goes wrong. The current digital marketplace ecosystem often fails consumers, and too many accountability issues plaguing consumers have yet to be addressed.

The current legal regime governing digital marketplace accountability for product safety and liability is a highly complex and incomplete patchwork of court cases applying different federal product safety laws and state liability laws, and interpretations of Section 230. That said, this area of the law took an important step forward in December 2022 with the passage of the INFORM Consumers Act.<sup>63</sup> This federal law requires digital platforms to ensure that for their

marketplaces' consumers can contact third-party sellers, clarify when third-party sellers have used a separate distributor to fulfill an order, and take more responsibility for verifying third-party seller information.<sup>64</sup> These are welcome first steps in what should ultimately be a broader effort to increase platform accountability.

As policymakers consider next steps to ensure stronger protections for consumers, they should examine certain elements from previous federal legislation that would further improve transparency and consumer trust in digital marketplaces.<sup>65</sup> This includes provisions that would give platforms an incentive to maintain best practices, like retaining the information necessary to hold third-party sellers accountable, screening for previously terminated third-party sellers that attempt to rejoin under a different identity or alias, or taking reasonable proactive measures to screen products before they go on sale to the public.<sup>66</sup> Policymakers should also consider potential updates to the Consumer Product Safety Act that could provide greater clarity to a digital platform's responsibility for the safety of products sold by third-party sellers. These kinds of requirements and updates would be an important step for some platforms, especially for the major ones in the marketplace today.

Some degree of liability for harms resulting from unsafe product sales seems warranted when, for example, platforms: 1) actively choose to insert themselves into or exert greater control over the chain of commerce—such as by shipping goods or facilitating a purchase; 2) opaquely control how products are presented or priced to consumers, through the use of proprietary algorithms that assess and rank products, for example; or 3) incentivize or require third-party sellers to use the distribution or programs, such as Fulfilled by Amazon and Walmart Pro Sellers.

The intricate nature of the e-commerce ecosystem necessitates an approach that is holistic and nuanced but also establishes a baseline of expectations for all online marketplaces. It will be important to create a system that can adapt to the nature of the marketplace and the level of influence and control the marketplace exerts on third-party seller transactions.

At a minimum, all platforms that host third-party sellers should be responsible for fulfilling at least the following baseline expectations:

- Clearly and conspicuously indicating whether a product is sold by a third-party seller
- Ensuring inclusion of accurate and adequate information about the product
- Removing listings for recalled or banned products in a timely fashion
- Notifying consumers who previously purchased a recalled product in a timely fashion

Even when platforms control relatively few components of the transactions conducted and mainly facilitate consumer-to-consumer transactions, they should be required to live up to these baseline expectations. These types of platforms do not control or influence the different touchpoints of a transaction that would make them inextricable, like the buying process or product shipment. The interactions on these platforms would most closely resemble the

classified sections of newspapers, where it is more about providing a forum to share information.

In cases when platforms control some, but not all, important components of the transaction, they should not only meet the baseline expectations outlined above but also be required to do more than simply notify customers when a third-party seller's product is potentially harmful. For example, a platform might control the buying process and business-to-consumer interactions but not storage, distribution, and pricing. In such cases, the platform may not be inextricable from the transaction, yet it wields enough influence and control over a third-party seller's sales that the consumer is likely to be confused about whether the platform or the third-party seller is selling the product. In addition to meeting the baseline expectations, these platforms should also do what the Consumer Product Safety Act requires retailers to do, including reporting unsafe, hazardous, and noncompliant products, and conducting recalls of such products when necessary to keep consumers safe. For these instances, the success of any product liability claim will rely heavily on the facts of the case, including the nature and role of the marketplace and the application of the relevant product liability laws.

The highest expectations and greatest responsibilities should apply to platforms that are inextricable from the chain of commerce and/or have heightened financial stakes in transactions. As appropriate to the role or roles that they play, these platforms should be subject to the same product safety and product liability laws that manufacturers, retailers, and distributors must follow. To achieve this, Congress should consider legislation to clarify that Section 230 does not apply to product liability claims involving physical goods sold on digital marketplaces. This clarification would ensure that platforms cannot use Section 230 as a shield against liability for unsafe products sold by third-party sellers on their sites.

Additionally, it may also be appropriate to pass a law that does for product safety what the Digital Millennium Copyright Act does for intellectual property.<sup>67</sup> Such a law would recognize a platform's responsibility for product liability claims that may arise with online transactions, while providing a clear framework for platforms to address safety concerns proactively.

## Conclusion

Americans rely more on online shopping today than ever. Yet consumers' relationships with the products they buy online and the sellers who sell them are more tenuous than in the traditional marketplace. As such, the risk for consumer harm and the lack of legal recourse are greater. The current legal paradigm for product liability and consumer product safety is woefully outdated and should be updated to meet consumers' needs today, especially when a defective or dangerous product puts them or their families at risk of injury or death. Policymakers can and must fix this problem. Policymakers should regulate these marketplaces, accounting for the different variety of marketplaces consumers utilize. As policymakers grapple with updating laws for the digital age, they must carefully consider the role of laws like Section 230 and strike a balance between fostering innovation and ensuring consumer protection in online marketplaces. Consumers deserve the same baseline assurances of a safe, effective, legitimate product when

purchased online as they can expect if they bought the same item at their local brick-and-mortar store.

**Future-proofing consumer protection in digital marketplaces.** As technology continues to advance, new challenges and opportunities for consumer protection emerge. Consumer Reports continues to work on and address issues, ongoing and emerging, as they relate to digital marketplaces. The issues include the following.

- Virtual and augmented reality (VR and AR) shopping: As immersive shopping experiences become more common, regulations should address potential issues such as deceptive virtual environments and the collection of biometric data.
- Voice commerce: With the rise of smart speakers and voice assistants, clear standards for voice-based transactions, including verification and disclosure requirements, are necessary.
- Decentralized marketplaces: As blockchain-based, peer-to-peer marketplaces grow, regulatory frameworks will need to adapt to environments where traditional centralized enforcement may not be feasible.
- Artificial intelligence (AI) integration: As AI systems are further integrated and used in digital marketplaces, mandatory impact assessments for high-risk AI systems and clear guidelines on the use of consumer data in AI models are necessary.
- Internet of things (IoT) device safety: As more products become smarter and connected to the internet, it will be critical to establish clear liability frameworks for security vulnerabilities in smart products.
- Data accessibility and portability for consumers: Platforms already collect incredible amounts of data on their users, and it is critical that they be required to provide users with their purchase history and product interaction data in a standardized, machine-readable format and facilitate easy transfer of consumer data between competing platforms.

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<sup>1</sup> “Quarterly Retail E-Commerce Sales 2nd Quarter 2023” (U.S. Census Bureau News Release), *U.S. Department of Commerce*, August 17, 2023, [https://www.census.gov/retail/mrts/www/data/pdf/ec\\_current.pdf](https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf).

<sup>2</sup> “Remarks of Chair Alexander D. Hoehn-Saric International Consumer Product Health and Safety Organization (ICPHSO) 2024 Annual Symposium,” *Consumer Product Safety Commission*, February 20, 2024, <https://www.cpsc.gov/About-CPSC/Chairman/Alexander-Hoehn-Saric/Speech/Remarks-of-Chair-Alexander-D-Hoehn-Saric-International-Consumer-Product-Health-and-Safety-Organization-ICPHSO-2024-Annual-Symposium>; Jenny Cowley, Asha Tomlinson, and Nelisha Vellani, “We Bought Dozens of Products from Aliexpress, Amazon, Ebay, Walmart and Wish. Over Half Were Suspected Fakes,” *CBC News*, February 21, 2020, <https://www.cbc.ca/news/business/marketplace-counterfeits-fakes-online>.



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<sup>3</sup> Bolger v. Amazon.com, LLC, 53 Cal. App. 5th 431 (2020), 2, <https://law.justia.com/cases/california/court-of-appeal/2020/d075738.html>; see also Oberdorf v. Amazon.com Inc, 930 F.3d 136 (2019), <https://law.justia.com/cases/federal/appellate-courts/ca3/18-1041/18-1041-2019-07-03.html>.

<sup>4</sup> CPSC, supra note 2.

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