



VORYS eCONTROL



DATA-DRIVEN PRECISION ENFORCEMENT:
An Enforcement Methodology for Better
Business Outcomes



With online marketplaces constantly expanding and the importance of channel control and brand protection growing, many brands try to use single-point tools against unauthorized sellers, which are tantamount to “junk mail.” Brands will hire vendors that send vast numbers of baseless boilerplate messages in an attempt to scare sellers into removing their unauthorized products and cannot do anything when the sellers refuse. Others will submit takedown requests to marketplaces claiming that the products are counterfeit (without knowing for certain that they are) and will end up getting the brand sued. Other vendors send numerous MAP “violation” notices but have no ability to deal with disruptive unauthorized sellers advertising far below MAP. In each of these scenarios, the brand spends money and time, but nothing changes.

In working with hundreds of brands, Vorys eControl learned long ago that, given the breadth and huge variety of issues that impact brands on marketplaces, these single-point approaches are too narrowly constructed and fundamentally incapable of solving brands’ problems. Worse yet, they often create enhanced legal risk. Accordingly, Vorys eControl has pursued a mission to develop and implement the most effective and efficient solutions for the challenges brands face in the age of online marketplaces. Through our journey, we have discovered and developed an enforcement approach far more effective and efficient than those described above: Data-Driven Precision Enforcement.

Data-Driven Precision Enforcement is a methodology that uses advanced data analytics and insights regarding KPIs, prioritization, and unauthorized seller attributes to determine the precise enforcement action we believe is best suited for each violating seller – one designed to achieve KPIs, rather than vanity metrics like “takedowns” or violation notices sent. We then utilize a flexible platform with a comprehensive suite of enforcement capabilities to efficiently execute the identified precision tactics for each seller segment. As was the case with data-driven precision advertising producing far better results and ROI for brands than junk mail did previously, Data-Driven Precision Enforcement produces far better results and ROI for brands seeking to exert control over online sales in a manner that can drive better business outcomes.

Information regarding the core components of a Data-Driven Precision Enforcement methodology and how this approach can address the unique online marketplace challenges in a more efficient, effective manner, producing higher ROI for brands, is set forth below.

Online Marketplaces Present Numerous, Constantly Varied Challenges For Brands – There Is No One-Size-Fits-All Tool That Works

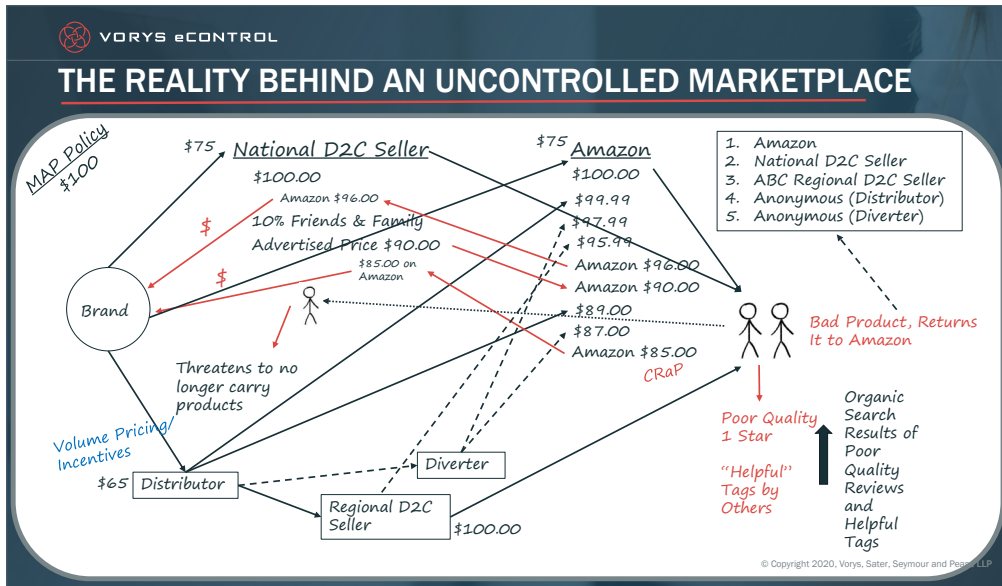
To better understand why a Data-Driven Precision Enforcement approach is necessary, it is imperative that brand leaders understand the unique challenges posed by online marketplaces.

In particular, marketplace brand protection is difficult because there are many different things that can disrupt your brand's sales, pricing, reputation, product quality, marketing return and more. And, these disruptions can change daily. One day it may be unauthorized third-party sellers causing problems; the next it may be a distributor in another country selling on U.S. marketplaces; the next

Amazon is selling products purchased from one of your distributors; the next a new counterfeiter arrives on the scene; the next a seller from China is infringing your patent and taking large sales volumes; the next day you face some combination of some or all of these issues; and so on.

Complicating matters more, online marketplaces are not only disrupted by activity occurring on the platform. They are also impacted by off-platform market activity. For example, as the chart below illustrates, the brands own authorized distributors and resellers will violate brand policies by selling to professional diverters, selling themselves on marketplaces, or violating their pricing policies – all of which can cause serious disruption on marketplaces and across other channels of trade.





Given these realities, brands cannot possibly protect their brand and control their sales with single-point tools that send boilerplate scary letters to marketplace sellers or that try to bootstrap marketplace policies to achieve seller takedowns. These tactics simply are not effective, drain budgets, and often leave the brand worse off than they were before. Instead, brands need the ability to quickly identify the specific seller violations that are disrupting their own

marketplaces, prioritize which violating sellers they need to address given budgets and desired KPIs, and then efficiently apply the best enforcement tactic based on the violation type, seller attributes, and other variables.

The Data-Driven Precision Enforcement Methodology Roadmap

Vorys eControl has developed the Data-Driven Precision Enforcement methodology to address the complexities of online marketplaces in a more effective, efficient manner than the junk mail tactics promoted by so many vendors in the market today. The core components of our methodology are described below:

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- Step 1 – Establish KPIs:** The first step is to establish the KPIs most indicative of progress towards the desired commercial outcome. For some brands, it might be the percentage of sales captured by the brand's authorized seller; for others, it might be MAP compliance; while others may be focused on improvement of review scores and sentiment; and others some combination of the foregoing. Vorys eControl data platform and dedicated team aggregates data from multiple sources, then applies analytics and algorithms to establish and track the business KPIs driven through our enforcement. Aligning to business KPIs is critical to informing the precise targets and actions that will drive the maximum ROI for brands, measuring the business impact of those tactics, and ensuring that the enforcement team does not waste time and resources on meaningless sellers and actions that do not impact established KPIs.

Step 2 – Segment Offending Sellers By Violation Type: Next, offending sellers must be segmented by violation type. This is an often overlooked step that is critical to ensuring that the right enforcement tactics are applied against the right sellers. Each violation type requires a different enforcement foundation and approach. For example, counterfeits must be handled differently than gray market sales, MAP violations differently still, and resellers policy violations differently again, to name a few. The chart below shows some of the common types of seller segments that disrupt brand KPIs, with each requiring a different approach. Brands should not waste time and money applying the wrong tactics to the wrong seller segments – there is no one-size-fits-all approach. Efficient and accurate seller segmentation allows brands to ensure at the outset that the right tactics are applied to the right kinds of sellers.

Reseller Policy Violation	MAP Violation	Unauthorized Seller	Counterfeit
Marketplace Policy Violation	Quality Control Violation	Patent Infringement	Copyright Violation
Trademark Violation	False Advertisement	Low-Volume Gray Market Seller	High-Volume Gray Market Seller
Non-Impactful Sellers	Known Source Diversion	Violating Distributor	Parallel Importer

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MARKETPLACE BRAND PROTECTION IS DIFFICULT BECAUSE THERE ARE MANY DIFFERENT THINGS THAT CAN DISRUPT YOUR BRAND'S SALES, PRICING, REPUTATION, PRODUCT QUALITY, MARKETING RETURN AND MORE.



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Step 3 - Determine Marketplace Disruption Score: The next step in our methodology is to assign each unauthorized seller a proprietary marketplace disruption score, which allows us to effectively prioritize sellers for enforcement based on the quantity of business harm they cause. Vorys eControl data science and analytics team works with brands to conform our algorithms and scoring models to the brand's desired KPIs. We then leverage our Advanced Prioritization Application and scoring models to determine which sellers are having the biggest impact on established KPIs. This allows us to queue sellers for enforcement that are most disruptive and not waste resources on sellers and tactics that will have no meaningful impact on the business' desired KPIs.

Step 4 – Use Advanced Seller Insights Application To Determine Precise Enforcement Approach: Once sellers have been segmented and prioritized by disruptiveness, the next step is to analyze seller-specific data to determine the precise enforcement action that should be taken against



them. Our Precision Enforcement Database contains contact information on over 1,100,000 marketplace sellers across more than 35 international marketplaces, as well as additional specific attributes regarding many sellers, such as known product sources, results of prior enforcement actions taken against them, prior storefronts, known affiliations and more. We aggregate data from this database and other brand-specific data to surface unique insights that inform the precise enforcement approach for each selected seller. For example, is this a seller likely to go away in response to a letter? Will enforcement resources be better spent locating and shutting down their supply? Will they likely want to negotiate a quick settlement? Will they require some form of escalated action? These seller-specific insights further refine the most accurate, effective, and lowest cost approach to be taken for each prioritized seller.

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Step 5 – Take Precision Enforcement Action: Next, it is time to execute the Precision Enforcement tactic determined by the above methodology. To enable the efficient execution of these various tactics, Vorys eControl has built a suite of technologies, tools and services, including an entire technology-powered, in-house enforcement center. This platform of capabilities allows our team and our brand clients to efficiently execute a wide range of enforcement tactics for each of the different seller segments described above, as well as to flexibly change tactics as new and different challenges emerge. Some of these tactics include:

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- Legal C&D Letter
- MAP Enforcement
- Enhanced Seller Investigations
- Product Test Buys
- Reseller Policy Enforcement
- Marketplace Policy Violation Takedowns
- Removal from Marketplaces Based on IP Violations
- Diversion Diagnostics and Root Cause Determinations
- Counterfeit Enforcement
- Marketplace Patent Enforcement
- Escalated Legal Enforcement

With instant access to all of these technologies, tool and services, Vorys eControl can quickly apply the precise action best suited to each seller segment, and the specific sellers at issue within each segment, rather than trying to apply a one-tool, junk-mail approach that will not work.

Step 6 – Measure and Report KPI Impact: The final step is to measure and report the KPI impact of enforcement actions taken. This allows us to continuously ensure that enforcement is driving established commercial KPIs, that any tactics not driving these metrics can be abandoned, and that tactics can be properly flexed and iterated to drive better commercial results in an ever-changing environment. This is the critical final step towards ensuring optimized ROI for our clients.



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The Benefits of Data-Drive Precision Enforcement To Your Brand – Getting The Most Out Of Your Enforcement Budget:

In our experience, brands can often achieve far more ROI within existing enforcement budgets when they pivot to our Data-Driven Precision Enforcement methodology. By leveraging data to uncover important information needed to determine the precise tactics that will have the most impact on brand KPIs, and then efficiently applying the right tactics against the right seller at the right time, we can often drive a much higher ROI within the same or similar budgets. Below are several additional reasons why the Data-Driven Precision Enforcement approach provides more value for brands.

- Allows Vorys eControl and brands to tailor enforcement activities more closely to the brand's particular KPIs and nuances associated with each seller.
- Can increase a brand's chances of success by determining and applying the approaches that work best for each of the seller segments impacting the brand's business.
- Saves resources for the brand by not wasting time and money pursuing sellers and utilizing tactics that do not impact business KPIs.
- Mitigates legal risk by applying the right tactics with an appropriate legal basis to the specific seller's violation, rather than sending baseless junk mail.

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- Allows brand representative to achieve and demonstrate business ROI to internal stakeholders, instead of creating reports with meaningless takedown numbers and other vanity metrics that have little-to-no commercial significance.

To further discuss how your brand can benefit from a Data-Driven Precision Enforcement strategy, please contact **Daren Garcia** at dsgarcia@vorys.com.

This document is intended to serve as a general discussion for brand leaders on online sales control. This document is not a substitute for individual legal advice appropriate for your brand and does not establish an attorney-client relationship or an attorney-prospective client relationship with Vorys, Sater, Seymour and Pease LLP. Results vary and every company's situation is different.

About Vorys eControl

Vorys eControl is an interdisciplinary team of lawyers, executive-level business practitioners, investigators, technologists and data analysts that designs, implements and executes online sales control solutions to protect brand equity and support long-term brand growth.

Vorys eControl created the eControl category. We have served approximately 500 brands, including some of the world's largest, and have the largest dedicated team with over 50 professionals. We regularly speak around the world educating companies and service providers regarding innovative solutions to challenges involved in controlling sales across online and in brick-and-mortar channels.

Vorys eControl leverages a wide array of tools, services and professionals to deliver unique business value by identifying and neutralizing issues arising from unauthorized sales, channel conflict, MAP violations, brand equity erosion, product diversion and quality control issues, among others.

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Whitney is partner and chair of the nationally recognized Vorys eControl group. He and the firm's team have developed cutting-edge, yet cost-effective, solutions to help brands control their sales in the digital age. Whitney has developed custom programs for companies confronting unauthorized sales, gray market sales, counterfeit sales, channel conflict and other online sales issues. The team combines legal, technological and investigative tools and services.

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Daren is a partner in the Vorys Cincinnati office and dedicates his practice to the development and implementation, both domestically and internationally, of strategies and enforcement systems designed to protect brand value in the digital world. Daren has counseled hundreds of brands and manufacturers confronting unauthorized sellers, channel conflict and other online sales challenges. Daren also regularly leads litigation matters against gray market sellers disrupting brand value for Vorys' clients.

Vorys eControl Data Team

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Justin is Chief Product and Data Officer for Vorys eControl. He and his team focus on delivering data-driven strategies and capabilities to help brands control their eCommerce sales. Justin joined eControl in 2020 and brings with him over 15 years of experience in data science, analytics, and CRM for Fortune 500 companies.

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Meera is the Director of Data Science and Analytics for Vorys eControl. Meera and her team deliver cutting-edge analyses that enable brands to efficiently and proactively control and grow their online marketplace sales. Meera received her bachelor's degree in mathematics from the University of Oxford and her MBA (majoring in Data Analytics and Finance) from The Ohio State University. Prior to joining Vorys, Meera worked for a leading multinational bank where she specialized in client and portfolio analyses and for an international retailer where she developed an HR analytics function.

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Jennifer is the Chief Integration Officer for the Vorys eControl group. She has led organizations through business transformation utilizing Lean Six Sigma and Agile approaches. Jennifer has developed programs to help those organizations grow revenue by focusing on the value created for customers while also cutting costs to deliver those same services. She has also led teams through digital transformation, changing how organizations use technology to solve business problems and leverage data to grow their business.

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Amanda is a Project and Process Manager for Vorys eControl. She supports the group's initiatives related to building a solutions-based practice encompassing technology, data, and professional services. Amanda holds a Lean Six Sigma Black Belt certification and has 16 years of experience spanning project management, process improvement, planning, change management and Agile methodologies with a global footprint.



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