

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

NETCHOICE, LLC d/b/a NETCHOICE, a
501(c)(6) District of Columbia organization; and
COMPUTER & COMMUNICATIONS
INDUSTRY ASSOCIATION d/b/a CCIA, a
501(c)(6) non-stock Virginia corporation,

**Civil Action No.
4:21-cv-00220-RH-MAF**

Plaintiffs,

v.

ASHLEY BROOKE MOODY, in her official
capacity as Attorney General of the State of
Florida; JONI ALEXIS POITIER, in her official
capacity as Commissioner of the Florida
Elections Commission; JASON TODD ALLEN,
in his official capacity as Commissioner of the
Florida Elections Commission; JOHN MARTIN
HAYES, in his official capacity as
Commissioner of the Florida Elections
Commission; KYMBERLEE CURRY SMITH,
in her official capacity as Commissioner of the
Florida Elections Commission; and PATRICK
GILLESPIE, in his official capacity as Deputy
Secretary of Business Operations of the Florida
Department of Management Services,

Defendants.

PLAINTIFFS' NOTICE OF FILING DECLARATION
OF CORINNE PAVLOVIC
(Etsy)

The undersigned, on behalf of Plaintiffs, NetChoice, LLC d/b/a NetChoice
and Computer & Communications Industry Association d/b/a CCIA, hereby files

this Declaration of Corinne Pavlovic, Vice President of Etsy in support of Plaintiffs'
Motion for Preliminary Injunction.

Dated: June 3, 2021

Respectfully submitted,

/s/ Douglas L. Kilby

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CERTIFICATE OF SERVICE

Counsel certifies that the foregoing document was electronically served on all counsel of record via the CM/ECF system on this 3rd day of June, 2021. In addition, because counsel for Defendants have not yet appeared in this case, I caused a copy of this filing to be delivered today via e-mail to the following, by agreement with counsel:

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Respectfully submitted,

/s/ Douglas L. Kilby

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capacity as Commissioner of the Florida
Elections Commission; KYMBERLEE
CURRY SMITH, in her official capacity
as Commissioner of the Florida
Elections Commission; BARBRA
STERN, in her official capacity as
Commissioner of the Florida Elections
Commission; and PATRICK
GILLESPIE, in his official capacity as
Deputy Secretary of Business Operations
of the Florida Department of
Management Services.

Defendants.

Civil Action No.:

DECLARATION OF ETSY, INC
IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION

I, Corinne Pavlovic, declare as follows:

1. I am Corinne Pavlovic and serve as Vice President for Trust & Safety at Etsy, Inc. (“Etsy”). I have worked at Etsy for over ten years, and I have served in several roles focusing on leading our Trust & Safety programs. As VP for Trust & Safety, I oversee Etsy’s team that protects the integrity of Etsy’s platform. The team guards our community from risks, such as fraud, prohibited and unlawful items, and taking appropriate action when someone fails to comply with our policies and applicable law.

2. Etsy, Inc. (“Etsy”) operates www.etsy.com and the Etsy app, a global marketplace where independent sellers of unique and creative goods and buyers around the world connect. Etsy is an online forum that enables users to buy and sell a wide variety of “special, extraordinary items, from unique handcrafted pieces to vintage treasures”¹ Many goods sold on Etsy are one-of-a-kind items created by individuals. According to Etsy’s 2019 Global Seller Census that surveyed almost 7,000 Etsy sellers from six core geographies, 80% of Etsy sellers are small

¹ <https://www.etsy.com/about?ref=fttr> (“About Etsy”).

businesses of one and 97% operate out of their homes, and 54% consider themselves part of the independent workforce.² In addition, per Etsy's 2020 10-K filed with the Securities and Exchange Commission, 87% identify as women, 97% operate out of their homes, and 65% started their Etsy shop as a way to supplement income.³ Etsy sellers range from those who rely on Etsy as their principal income and those who use it to engage their creative talents and supplement their income.

3. Our website explains our "mission to keep human connection at the heart of commerce" by empowering a large community of sellers (many of them individuals) to "turn their ideas into successful businesses."⁴ Our platform connects these small businesses with "millions of buyers looking for an alternative" to mass-produced items—"something special with a human touch."⁵ Our sellers include designers and "makers" who "are literally making their items with their own hands (or tools)."⁶

4. Individuals who seek to sell an item may post it in the Etsy online marketplace for a flat 20 cent fee.⁷ Etsy also offers additional optional services, such as on-site advertising services, which enable Etsy sellers to bid for prominent

² https://extfiles.etsy.com/advocacy/Etsy_GlobalSellerCensus_4.2019.pdf ("2019 Global Census.")

³ <https://investors.etsy.com/financials/sec-filings/default.aspx> ("Etsy 2020 10-K").

⁴ See About Etsy.

⁵ *Id.*

⁶ <https://www.etsy.com/legal/handmade/?ref=list> ("Handmade Policy").

⁷ <https://www.etsy.com/legal/fees/> ("Fees and Payments Policy")

placement of their listings alongside search results.⁸

5. Etsy (1) is an incorporated business entity, (2) doing business in Florida, (3) that permits users to post or upload content, and (4) it had revenues in excess of \$100 million in 2020 and anticipates revenues in excess of that amount in 2021.

6. Generally, for a seller to list an item on Etsy, it must meet Etsy's Handmade Policy, Vintage Policy or be a craft supply.⁹ In addition, via Etsy's Prohibited Items Policy, Etsy prohibits certain types of items from our platform because they are inconsistent with Etsy's values and "the spirit of Etsy," including items that are high risk, potentially harmful to our members, or unlawful.¹⁰ At Etsy, we have a "zero tolerance policy for prohibited items, particularly those that promote, support or glorify hatred, those that promote, support or glorify violence, or are unlawful." Any sellers deemed by Etsy to have violated this policy are subject to Etsy's Terms of Use and Seller Policy, and may receive a warning, item takedowns, immediate account suspension or termination.¹¹

7. Etsy's Prohibited Items Policy provides rules and guidance for sellers, explaining, for example, the types of items that are not permitted in the following

⁸ <https://www.etsy.com/legal/advertising/> ("Advertising and Marketing Policy")

⁹ See Handmade Policy, <https://www.etsv.com/legal/policy/vintage-items-on-etsy/242665563649> ("Vintage Policy"), and <https://www.etsy.com/legal/policy/craft-supplies/239327031264> ("Craft Supplies Policy.")

¹⁰ <https://www.etsy.com/legal/prohibited> ("Prohibited Items Policy.")

¹¹ <https://www.etsy.com/legal/terms-of-use> ("Terms of Use.")

categories:

- a. “Alcohol, Tobacco, Drugs, Drug Paraphernalia, and Medical Drugs;”
- b. “Animal Products and Human Remains;”
- c. “Dangerous Items: Hazardous Materials, Recalled Items, and Weapons;”
- d. “Hate Items: Items that Promote, Support, or Glorify Hatred;”
- e. “Illegal Items, Items Promoting Illegal Activity, and Highly Regulated Items;”
- f. “Internationally Regulated Items;”
- g. “Pornography and Mature Content;” and
- h. “Violent Items: Items that Promote, Support, or Glorify Violence.”¹²

8. Per Etsy’s 2020 Transparency Report, Etsy received more than 4 million flags on content that potentially violated our policies, including the Prohibited Items Policy.¹³ We will not post content such as, for example: (1) items that promote, support or glorify hatred toward people or otherwise demean people based upon: race, ethnicity, national origin, religion, gender, gender identity, disability, or sexual orientation; (2) imitation firearms that look real, or are prohibited by law; (3) “items that support or commemorate current or historical hate

¹² See Prohibited Items Policy.

¹³ See https://storage.googleapis.com/etsy-extfiles-prod/Etsy_2020_Transparency_Report.pdf (“2020 Transparency Report.”)

groups” such as “Nazi or Neo-Nazi groups, Ku Klux Klan (KKK) groups, white supremacist groups, misogynist groups, or groups that advocate anti-gay, anti-immigrant, or Holocaust denial agendas”; (4) pornography; and (5) “[i]tems that glorify human suffering or tragedies, including items that commemorate or honor serial killers ... exploit natural disasters or human tragedies ... encourage, glorify, or celebrate acts of violence against individual groups ... encourage self-mutilation, starvation, or other self-harm.”¹⁴ Some rules are based on applicable laws and regulations in the US and worldwide. In many cases they are editorial judgments based on our policies, standards, and values. As our Prohibited Items Policy notes:

Policy decisions are complex. We consider many different and often divergent factors before coming to a decision about what is best for our community. Because we are a creative community, we err on the side of freedom of expression. We also tend to allow items that have educational, historical, or artistic value, but we know that even those items are subject to a variety of valid and sometimes conflicting interpretations and emotional responses.¹⁵

9. If enacted, the Act would force Etsy to host content that would violate these policies, standards, and values, including potentially unlawful content. As a simple example, if Etsy were required to allow listings that were not within our generally applicable Handmade, Vintage or Craft Supplies Policies, just because they were from certain individuals (like a selected subset of politicians and journalists), it would interfere with the core mission of the platform, let alone Etsy’s

¹⁴ See Prohibited Items Policy.

¹⁵ *Id.*

editorial judgement and ability to moderate its marketplace. More crucially, it would be anathema to our policies and values if Etsy was forced to allow an individual to post, for example, an entire storefront of neo-Nazi memorabilia because they fell into a statutory exception under the Act.

10. The Act would delay, or prohibit outright, Esty from taking a wide range of moderation actions to further our policies, standards, and values and decline to open our private platform to prohibited items such as those “that support or commemorate current or historical hate groups” including “Nazi or Neo-Nazi groups, Ku Klux Klan . . . groups, [and] white supremacist” and anti-Semitic groups.

11. For example, the Act would flatly prohibit us from “tak[ing] any action” that involves (among other things) “restrict[ing], edit[ing], alter[ing], [or] inhibit[ing] the publication of . . . any content or material posted by a user” who meets the definition of a “journalistic enterprise.” Act § 4 (adding F.S. § 501.2041(2)(j)); *see also id.* (adding F.S. § 501.2041(1)(b) (defining “censor”). Given the sweepingly broad and vague definition of “journalistic enterprise,”¹⁶ this moderation restriction could require us to open our private service to offer for sale items from any group that meets the minimum size or audience requirements of the

¹⁶ Fl. Stat. § 501.2041(1)(d) (defining “journalistic enterprise” to include entities doing business in Florida that “[p]ublishes in excess of 100,000 words available online with at least 50,000 paid subscribers or 100,000 monthly active users” or “[p]ublishes 100 hours of audio or video available online with at least 100 million viewers annually”).

law, and even if well outside our platform's mission, such as even racist and white supremacist organizations seeking to disseminate Nazi memorabilia; or terrorist groups seeking to peddle propaganda. Moreover, it is unclear under the Act whether Etsy could take action against those enterprises if they are, for example, attempting fraud schemes against our community.

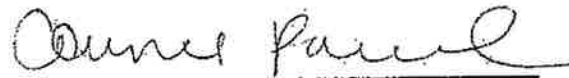
12. Further, the Act could not only compel Etsy to host hateful and highly offensive content and limit its ability to protect its community from misconduct, but also give such content and potential misconduct preferential treatment (depending on the poster), thereby compelling us to effectively advertise this content. This would run counter to our mission and values, undermine our editorial decision making and could interfere with our ability to police and protect our community.

13. The Act would also limit our ability to curate and organize items in a manner that is most helpful to prospective buyers. This could drastically alter the nature of our service, severely harming our users' experience. For example, beyond being forced to include content not relevant to the Etsy community, the Act could force Etsy to allow sellers to "opt out" of content moderation in a way that deprives us of our ability to use modern tools (algorithms) to sort and curate content, so users can quickly and easily find what they're looking for. Act, § 4 (adding § 501.2041(2)(f)(2)). Under the Act's mandate, by contrast, a prospective seller could insist that Etsy "allow sequential or chronological posts and content,"

id., which makes little sense for a marketplace of more than ninety million diverse items. It would make our service less useable for our community and interfere with Etsy's mission to keep commerce human, all for little or no cognizable benefit. . The harms to Etsy, its buyers and its sellers could be irreparable.

14. The Act could also inflict serious harms in other ways. We would be hamstrung in our ability to change our standards and policies regarding objectionable, offensive, dangerous, or unlawful material more than once every thirty days. Act, § 4 (*Id.* (adding § 501.2041(2)(c)). This would prevent us from swiftly responding to new trends in the marketplace, a new law or judicial ruling, or regulatory requests from Federal and state agencies (such as attempted sales of counterfeit goods; responding to bad actors taking advantage of a fast-moving news story, or sales of contraband).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 3rd day of June, 2021 at Hudson, NY



Corinne Pavlovic
VP, Trust & Safety
Etsy, Inc.