

United States Senate

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COMMITTEES

ARMED SERVICES
COMMERCE, SCIENCE, AND
TRANSPORTATION
ENVIRONMENT AND
PUBLIC WORKS
VETERANS' AFFAIRS

Josh Silverman
CEO, Etsy, Inc.
117 Adams Street
Brooklyn, NY 11201

Dear Mr. Silverman:

I write to make you aware that Etsy has been unfairly terminating some of my Alaska Native (i.e., indigenous Alaskans) constituents' accounts. Your company's action—due to your well-meaning, but frankly misguided policies and terms of service—are having unintended consequences that are harming Alaska Natives and their communities in my state. The Alaska Native Community has for thousands of years used animal products for survival and subsistence, as well as a key source of cultural expression. Alaska Natives living in remote villages and throughout our state not only rely on subsistence hunting and fishing as a critical source of nutrition, they also rely heavily on sales of authentic native articles of handicraft and clothing to bring money into communities that have few, if any, other sources of generating a cash economy.

Unfortunately, I have been made aware that some of my constituents have had their Etsy accounts terminated. These are Alaska Natives who are legally selling sustainably harvested sealskin, sea otter, and ivory based art and clothing products. I understand your company has taken the position through your policy that these are “prohibited items.”¹ This policy seems to lack awareness and recognition that Alaska Natives have historically and legally created and sold these products as a key source of income in rural economies. This policy also discriminates against my constituents, denies them a prime forum to sell their sustainably produced goods, and falls short of your company's stated mission. You claim “Etsy is the global marketplace for *unique and creative goods* ... [and your] mission is to Keep Commerce Human.”² By banning these products and denying Alaska Natives' ability to exercise their statutory right to produce and sell authentic articles of handicrafts and clothing,³ your company is failing to live up to this mission by inadvertently discriminating against Alaska Natives' age-old traditions and denying a market and financial development to remote Alaskans practicing their legal and cultural heritage.

¹ Etsy, Inc., *Prohibited Items Policy*, <https://www.etsy.com/legal/prohibited/?ref=list#Q2> (last updated Jan. 22, 2018).

² Etsy, Inc., *About Etsy*, <https://www.etsy.com/about?ref=fr> (last visited Jan. 25, 2018).

³ Marine Mammal Protection Act 16 USC § 1371(b) (2012), *see also*, 50 CFR 216.23 (implementing the Alaska native exemptions for taking, creating and selling authentic native articles of handicraft and clothing in a non-wasteful manner).

Your policies in your terms of service also shed light on an important issue to Alaska Natives regarding the traditional use and sale of legal ivory. Your company prohibits the sale of “ivory or bones from ivory-producing animals, including tusks, elk ivory, fossilized ivory, and woolly mammoth ivory.”⁴ I support efforts by the U.S. Fish and Wildlife Service and others to combat the illegal sale and trade of ivory, as well as the significant work being done to combat elephant poaching in Africa and India—which I assume is the basis for your policy. However, your policy fails to recognize that Alaska Natives are explicitly authorized under federal laws, the Marine Mammal Protection Act, to work with and sell walrus ivory, whale tooth and bone, and other non-elephant ivory.⁵ Additionally, Mammoth ivory is not currently regulated under any federal law and since the animals have been extinct for millennia, there is little conservation benefit to limiting the sale of their ivory. Alaska Natives use this fossilized ivory as a primary medium of cultural expression and financial opportunity. Your prohibition without recognizing the legal production and sale of these items by Alaskan Natives is disheartening and shortsighted. Worse yet, Etsy explicitly allows the sale of items made from human teeth and hair.⁶ To recognize a market for these “human remains” on your site while failing to account for unique and centuries old cultural practices of Alaska Natives seems to be an odd way to “Keep Commerce Human.”

I am also concerned that your choice of law provisions highlight the lack of clarity regarding legal Alaska ivory products due to certain state ivory bans conflicting with federal law. Etsy’s Terms of Service list New York law and the laws of the United States of America as controlling disputes with sellers. Five states, including New York, have enacted overbroad bans on walrus and mammoth ivory sales. However, federal law explicitly allows the sale of these products when legally produced by Alaska Natives. Recent reports have shown that these broader state ivory bans are in fact negatively impacting the market for Alaska Native handicrafts. Additionally, some producers have had to give up selling their products at events in the Lower 48 states due to the difficulty in explaining that their products are or should be legal to sell, buy, and transport.

In October of 2016, at a Congressional hearing on the issue, at the annual Alaska Federation of Natives convention, Dr. Rosita Worl of the Sealaska Heritage Institute outlined the problem with these bans. “The differing ... bans are confusing and, collectively, may serve as a deterrent to those who might be inclined to buy Alaska ivory art, and will only serve to seriously undermine the ivory art market. Suppression of the ivory market will be devastating to Alaska Native hunters, craftspeople, and artisans....”⁷ Unfortunately your terms of service and policies are exacerbating

⁴ Etsy, Inc., *Prohibited Items Policy*, <https://www.etsy.com/legal/prohibited/?ref=list#Q2> (last updated Jan. 22, 2018).

⁵ 16 USC § 1371(b).

⁶ Etsy, Inc., *Prohibited Items Policy*, <https://www.etsy.com/legal/prohibited/?ref=list#Q2> (last updated Jan. 22, 2018), *See also* https://www.etsy.com/listing/533361402/25-real-human-teeth?ref=shop_home_active_1 (offering 25 human teeth for sale.)

⁷ Testimony of Dr. Rosita Worl, President, Sealaska Heritage Institute 8 (Oct 20 2016) (Field Hearing of the Fisheries, Water, and Wildlife Subcommittee of the Senate Committee on Environment and Public Works; *see also id.* at 6 (“Rural villages are characterized by high energy and transportation costs, and lack of infrastructure to support economic development. The production and exchange of arts and crafts is an ancient tradition that supported vibrant and sustainable indigenous communities throughout Alaska. It was expanded to include the sale of arts and

this confusion in the market place and choking off avenues for the sale of legal ivory products crafted by Alaskans, including Alaska Natives practicing centuries-old traditions.

To address the confusion and problems caused by these state walrus and mammoth ivory bans, I introduced S. 1965, the Allowing Alaska IVORY Act. The bill would preempt these confusing and disparate state bans and ensure that existing federal authorizations for Alaska Natives are preserved and clear. Until this bill is signed into law, I hope business leaders like you will see the wisdom of following existing federal law and protecting Alaska Natives' culture and economic opportunity.

In conclusion, while we can all agree that measures must be taken to combat elephant poaching and protect various species of marine mammals, harming Alaska's rich cultural traditions and rural economies will do little to achieve additional conservation benefits. Alaska Native artists should not be the victims of these well-intended efforts. I urge you to consider the impacts that your policies—including your decision to terminate my constituents' accounts—are having on Alaskans, in particular Alaska Natives. Finally, I ask that you reconsider your policies to recognize sales of Alaska Natives' legal and tradition cultural and art. Doing so will allow the world to connect to remote areas of Alaska and Alaska Natives in ways once only a dream before sites like yours connected people and their creativity across miles and borders.

I welcome the opportunity to speak with you and to facilitate meetings between you and my constituents to discuss this issue in further detail.

Sincerely,



Dan Sullivan
Chairman, Subcommittee on Oceans, Atmosphere,
Fisheries, and Coast Guard,
U.S. Senate Committee on Commerce, Science, and
Transportation

crafts with the arrival of Westerners. Today, arts and crafts still play an even greater role in village economies. Walrus ivory, including mammoth and mastodon ivory, are also used as creative high art expressions that are widely coveted in the art world. Arts and craft production and sale, including ivory, is one means of providing modest, but critically financial benefits to Natives who otherwise lack economic opportunities. While we lack hard data on the value of ivory production, we know that ivory plays a significant role in Alaska's small-scale subsistence economies, and the annual arts and crafts tourist market that is well over \$32 million. We know that village artisans can make up to 35,000 to 50,000 dollars annually, and that those earnings are widely shared among family and community members.”)