

**GLOBAL
INITIATIVE**

AGAINST TRANSNATIONAL
ORGANIZED CRIME

ASSESSING ONLINE WILDLIFE MARKETING

A TOOL FOR MONITORING ILLEGALITY

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AUGUST 2021

ABOUT LEGAL ATLAS

Legal Atlas is a legal intelligence firm dedicated to breaking down the barriers to understanding, analysis and use of law in an increasingly connected world. A major area of focus has been the study of wildlife trade laws, including the development of a comprehensive taxonomy of wildlife crime and collaborations with the Global Initiative Against Transnational Organized Crime specifically on the legal challenges to wildlife trade. Legal Atlas leverages a variety of digital tools in combination with domain-specific methods to rapidly aggregate, assess, map and display laws and legal content in any jurisdiction and language in the world.

For more information on how legal taxonomies and other approaches to legal intelligence may be used to support legal analyses, monitoring and enforcement, contact Legal Atlas at info@legal-atlas.net.

The authors welcome feedback regarding omissions and the use of the tool, whether as a whole or with regard to particular components. Please contact mmfu@globalinitiative.net.

ACKNOWLEDGEMENTS

The authors acknowledge the support of the UK's Department for Environment, Food and Rural Affairs through the WILDS Project, led by Jacob Phelps of the Conservation Governance Lab at the University of Lancaster. The project provided financial support to Legal Atlas for the creation of the first global taxonomy of wildlife offences, which has been used as source vocabulary during the creation of this community tool.



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Market Monitoring and Friction Unit

The Market Monitoring and Friction Unit (MMFU) is a team within the Global Initiative Against Transnational Organized Crime (GI-TOC) dedicated to monitoring online marketing of endangered wildlife species and working towards innovative, effective strategies for disrupting them. The unit collaborates with civil society organizations and mandated authorities to shut down online illicit wildlife markets.

Websites on the open web – sites that people can access and use every day – host some of the biggest online markets for endangered species.¹ Evidence of wildlife crime is widespread across the internet and private platforms, and law enforcement agencies are either unwilling or unable to mount an adequate response.²

This mirrors a broader challenge in combating cyber-enabled crime, namely that criminals are on the web, but the police are not. Reasons for this include responses to cybercrime being under-resourced, a lack of explicit mandates to address it and the absence of investigatory authorities. This situation manifests unequally around the world. While rich countries have the largest internet-using populations, they also have the most resources to combat online harms. The greatest challenges are found in developing countries with the least resources for

regulating cyberspace or implementing strategies to combat cybercrime.

Within this broader crisis, the online trade in endangered species is easily overlooked, leaving a gap in the global response that allows wildlife traders to openly seek customers online, market goods, conduct transactions and stimulate demand. This contributes to the wider problem of the illicit wildlife trade, which can lead to extinction of species and heightened risk of outbreaks of zoonotic diseases; it also encourages corruption while enriching highly organized criminal networks.

The MMFU's investigation into the illicit online trade in endangered species grew from the recognition that innovative responses were needed to combat this type of crime. The unit's aim is to make the open web a space where there are fit-for-purpose laws protecting us – and endangered species – and that they are respected in letter and spirit.

With 'community tool' reports such as this one, the MMFU can share its knowledge with the community responding to the harms caused by illicit online wildlife trade. It is hoped that such tools will help to scale the lessons learnt and multiply the number of effective interventions to rein in illicit wildlife markets.

Summary

This community tool is aimed at people and organizations monitoring online markets for advertisements for live sales of endangered wildlife or wildlife products (made from endangered species). It is compiled in such a manner as to help people assess the legality (or illegality) of posts and to triage the information to identify entries that present the most compelling case for action by law enforcement.

This paper provides a checklist that contains a series of targeted questions to help monitors identify countries' legal requirements concerning online wildlife trade and guide decisions on the legality of

an advertisement. This checklist can also be downloaded as a spreadsheet from the MMFU website.

A transaction can be considered 'legal' according to this tool only if all the questions applicable to a particular jurisdiction are checked as true (subject to the limitations described). If an advertisement does not contain enough evidence to decide on its legality, results may nonetheless be used to assess the level of risk that a given transaction could be illegal.

This paper presents the background to the development of the tool, the legality checklist and a discussion of its content and limitations.



INTRODUCTION TO THE ONLINE WILDLIFE TRADE LEGALITY CHECKLIST

▲
Websites on the open web host some of the biggest online markets for endangered species.
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The legal taxonomy presented here offers a systematic process to help monitors understand the legal requirements that may apply to online wildlife trade. It is meant to be used in response to a post, advertisement or thread of interactions (e.g. over a messaging app) that is suspected of pointing to an illegal transaction of live wildlife or products containing parts of endangered species.

The need for a checklist like this comes from the complex legal environment that governs online wildlife trade, and the difficulties of applying it in a specific context where jurisdictional borders dissolve. The transnational nature of the illicit wildlife trade makes its detection and prosecution notoriously difficult, and this problem has only been complicated by the increased use of the internet and social media platforms to market and sell wildlife products.

The GI-TOC and Legal Atlas have previously collaborated to outline the major difficulties with using legislative responses to combat online trade in wildlife products.³ That report offered an overview of the state of legislation that could be used to curb the online marketing and sale of endangered animals and revealed an uphill battle for police officers and prosecutors. These challenges stem, in part, from the difficulty of establishing jurisdiction online and consequently applying appropriate laws, which is the foundational step of any criminal investigation.

The 'borderless' nature of the internet makes determining the already difficult jurisdiction of wildlife crime that much harder. Current international treaties also rely heavily on domestic legislation and enforcement, and the types and levels of protection awarded to species vary widely between origin, transit and destination states. Lack of interoperability between different legal systems also decreases the prospects for cross-border cooperation. Investigators face the additional difficulty of having to distinguish between legal and illegal wildlife items without having physical specimens to inspect. These problems are further compounded by law enforcement agencies being largely under-resourced and ill-equipped to investigate complex online offences, and in too many

cases there is a complete gap in the legal mandate for wildlife units to investigate such crimes.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) recognized this issue in 2018 when they recommended that parties to the convention develop their domestic measures to ensure they can address the challenge of controlling the illegal wildlife trade on the internet.⁴ Yet few jurisdictions have responded to this by either improving the capacity of cybercrime units with respect to wildlife crimes or amending wildlife-related legislation to specifically address online trade. Investigatory powers for wildlife crime are often only partially defined and typically directed at field operations, without mention of online wildlife trade.⁵

Why use the checklist?

Complex and underdeveloped legal frameworks in most jurisdictions mean that detecting and understanding what constitutes online wildlife crime is often time-intensive and complicated, and so neglected by time-constrained and resource-strapped organizations. To address this problem, the checklist simplifies the process of making a decision about legality and so helps to make the process more efficient.

The report presents an approach to capturing the legal requirements that may apply in general to online wildlife trade in any jurisdiction. It is intended to help anyone to understand the legality (or illegality) of an advertisement and to triage material so as to identify the most compelling cases for further action.

Understanding the checklist

The checklist is built as a global, single-jurisdiction assessment tool for online advertisements of wildlife trade.

Global means that the tool contains standardized terms potentially applicable to any country. The checklist therefore simplifies checking online wildlife legality across jurisdictions. A different set of items will apply for each country depending on its specific legislation governing online wildlife trade.

Single jurisdiction means that the tool is directed at assessing the legality of a transaction involving one country at a time. The approach recognizes, however, that online trade is known for its jurisdictional fluidity, where the country hosting the advertisement may be different from the country of the seller or buyer.

To capture an entire online trade transaction may require completing the checklist more than once, covering each jurisdiction involved.

Online advertisement is understood as the act of posting a notice or announcement on an internet-based platform to market a product. These include e-commerce platforms, social media, messaging/social networking apps, online advertisement channels, etc.

Wildlife trade is understood as any offer to sell, purchase, exchange, rent, donate or gift wildlife in all its forms (live, dead, parts and products). It does not include other acts known to be associated with trade but which are assumed to be outside the immediate evidentiary value of an advertisement (e.g. hunting, transportation, storage, etc.).

How was the checklist compiled?

The development of the checklist involved five steps.

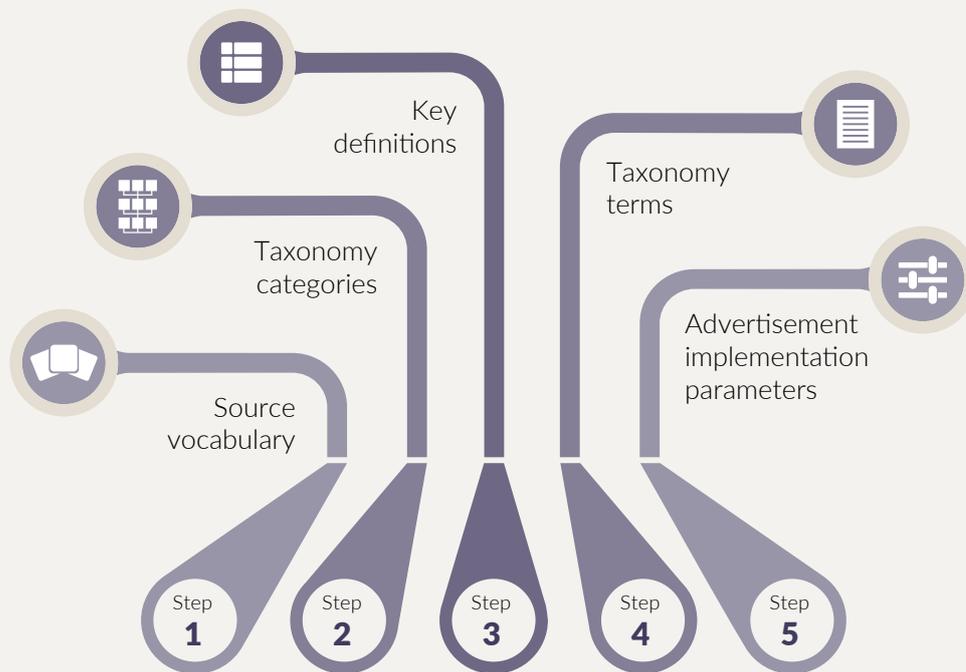


FIGURE 1 Five steps used to compile the checklist.

-  **Step 1:** The 487 terms included in Legal Atlas's newly created wildlife crimes taxonomy⁶ were screened to identify types of crime directly associated with trade transactions, online commerce or an opportunity to decide on legality.
-  **Step 2:** A set of 72 terms were selected and provisionally organized into generic trade categories (seller, buyers, platforms, product, transaction, definitions).
-  **Step 3:** Definitions for 'trade' and 'valid permit' were compiled from 12 terms.
-  **Step 4:** The remaining 60 terms were used as the basis of a 20-item checklist, organized according to three main categories (actors, product, transaction). Taxonomic terms expressing 'criminal acts' (as used in Legal Atlas's wildlife crimes taxonomy) were adapted to express 'trade legality conditions'.
-  **Step 5:** The characteristics to look for in the advertisement and the type of national benchmarks necessary to decide on legality were noted for each item.

How to use the checklist

The checklist includes legality conditions that jurisdictions may impose on online wildlife transactions and groups them in three categories:

- Actors – who is involved in the transaction?
- Products – what is being traded?
- Transactions – how is the transaction being conducted?

The checklist will need to be matched to the laws and regulations in the jurisdiction the analyst is considering to determine its applicability. Checkboxes for non-applicable entries should be blocked, but the items should not be deleted from the checklist to facilitate cross-jurisdictional comparisons.

For applicable items within a jurisdiction, the checklist provides guidance on two additional elements: the type of evidence to collect from the advertisement to verify legality and the national benchmarks to compare against for determining legality. This last element refers to bans, lists of species, national registers, etc.

existing in each particular jurisdiction's laws and regulations.

As the focus is the online transaction itself and not a particular jurisdiction, it may be necessary to aggregate more than one checklist if the advertiser, seller and buyer are located in different jurisdictions. This would apply, for example, when an advertisement for an endangered parrot is hosted on a Ugandan platform, but the seller is located in South Africa, and the buyer in Kenya.

Only when all the items applicable to a jurisdiction are true may a transaction be considered 'legal', subject to the limitations as described elsewhere (see 'Assumptions and limitations'). If even one of the items is not true, the transaction can be considered illegal.

When an advertisement does not contain enough evidence to make a determination of the legality, results may nonetheless be used to assess the level of risk that the transaction could be illegal.



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ONLINE WILDLIFE TRADE LEGALITY CHECKLIST

			NATIONAL BENCHMARK TO TEST FOR LEGALITY	EVIDENCE IN ADVERTISEMENT TO TEST FOR LEGALITY	
 ACTORS	1	Seller has a valid business permit to trade wildlife		Trade permit	
	2	Seller is listed in the national register of wildlife traders	National register of wildlife traders	Name of seller	
	3	Trophy seller has a valid business permit for taxidermy		Taxidermy permit	
	4	Seller is not listed in the national register of environmental offenders	National register of environmental offenders	Name of seller	
	5	Buyer has a valid permit to purchase wildlife		Purchase permit	
 PRODUCT	6	Wildlife is not listed as protected for trade	National list of protected species	Name/image of the species	
	7	Wildlife is not listed as banned for trade	Temporary wildlife bans	Name/image of the species	
	8	Wildlife is not sold as pet		Content of advertisement	
	9	Wildlife trophies have a permit		Trophy permit	
	10	Wildlife taken from the wild has a valid commercial hunting licence		Hunting license/tag	
	11	Wildlife taken from the wild meets legal criteria for size, weight and age	Regulation on hunting limitations	Wildlife description	
	12	Wildlife bred in captivity has a valid proof of origin		Captive-breeding documentation	
	13	Wildlife is not listed in CITES Appendix I, if imported	CITES Appendix I, List of national species	Name/image of the species	
	14	Wildlife listed in CITES Appendix II has a valid permit, if imported	CITES Appendix II, List of national species	Name/image of the species	
	15	Wildlife has health certificate issued by foreign authority, if imported		Health certificate	
 TRANSACTION	16	Wildlife is not listed as invasive, if imported	National list of invasive species	Name/image of the species	
	17	Wildlife listed as invasive has a valid permit, if imported	National list of invasive species	Import permit	
	18	Advertising wildlife online is not expressly prohibited	General or specific limitations for advertising	IP address of advertisement	
	19	Advertised content includes minimum mandatory information for wildlife products	Regulation for wildlife advertisements: minimum content	Content of advertisement	
	20	Advertised content does not include false product description		Content of advertisement	

Assumptions and limitations of the checklist

Users should keep the following assumptions and limitations in mind when using the checklist:

- The checklist follows an **empirical** rather than qualitative approach. Items are based on the forms of crime found in legislation and are not intended to be used as a set of best practices. It is only a guide to determining legality in a selected jurisdiction and should not be seen as assessing the strength of the legislation on defining what trade legality is.
- The checklist considers **only proximate crimes**. As indicated in the methods, we have not considered all the possibly applicable crimes that can be attached to the wildlife trade in this checklist. Some of them (such as those related to wildlife storage and transportation of specimens being traded online) are far removed from the online transaction itself. This exclusion helps to narrow the focus of the decision regarding the legality of an online advertisement or transaction. This narrowing is justified given that online advertisements are generally assumed not to offer sufficient information to assess acts that are more remote from the observed trade event (e.g. processing wildlife).

For reference to protected species, the impact of this exclusion is considered minor as they tend to have near total bans, although this is not always the case (e.g. some populations may be fully protected, others not) and may not apply to all forms of trade (wild vs captive bred). For other species, the impact cannot be fairly estimated, but the absence of such determinability could be used in 'risk rating' in further iterations of the tool.

It should therefore be understood that the 'legality' result does not mean that a given advertisement represents fully legal trade or that the trader does not share in the liability for an associated illegal act that has occurred prior to or after the transaction (e.g. illegal take or processing, illegal shipment, etc.). Such liability can be based on the direct involvement in other crimes mentioned or on common forms of criminal liability intended to capture all involved in an illegal endeavour (e.g. organized crime, money laundering, as a co-conspirator, joint liability, constructive liability, etc.).

- The checklist points to **potential liability** in activities identified as illegal based on the use of the checklist, and so not all actors involved in the transaction carry the same liability. Some of the general patterns are as follows:

- **Buyers:** Item 5 implies liability exclusively for buyers.
- **Sellers:** Items 1–17, except 5, imply liability for sellers.
- **Advertisers:** Items 18–20 imply liability exclusively for advertisers, so when they claim to be or are in fact different from the seller, it is still possible to bring charges against them. When the seller is also the advertiser, these items apply also to sellers.
- **Platforms:** For jurisdictions where platforms are liable for illegal wildlife transactions, the illegality of the transactions may also result in liability for the platform or the entity that provides the means of advertising.
- **Evidentiary concerns:** For items 18–20, the advertisement itself provides direct evidence of crime (e.g., the failure to provide required information in the advertisement). However, when the laws criminalize only the 'sale', the advertisement can only provide indirect evidence because an advertisement is not yet legally a 'sale' and the advertisement is therefore not direct evidence of the sale or the seller.

Laws that criminalize wildlife trade typically apply to more than one act or actor, referred to as the elements of a crime. These elements can include singular (e.g. illegal to sell wildlife) or composite crimes (e.g. illegal to sell wildlife that has been illegally hunted). This can result in multiple evidentiary requirements for which the advertisement may provide some, but often not all, information, such as: direct evidence of a crime (use of a forged document); indirect evidence of a crime (illegal sale); direct evidence of a composite ancillary crime (platform liability); indirect evidence of a composite ancillary crime (sale of illegally imported wildlife), etc.

A full understanding of what type of evidence is required, what information the advertisement actually provides, and how it might be used (e.g. as direct or indirect evidence of the immediate or ancillary crime) can be built only based on the wording of the applicable law for the jurisdiction. This exercise is related to, but separate from, understanding base legality and is a fundamental question that instructs what forms of investigation are still required. If one of the goals is to facilitate communication with enforcement personnel, then this understanding can, and should, be developed in further iterations of the tool.

NOTES

- 1 Simone Haysom, In search of cyber-enabled disruption: Insights from the Digital Dangers project, Global Initiative Against Transnational Organized Crime, 2019, <https://globalinitiative.net/analysis/in-search-of-cyber-enabled-disruption/>.
- 2 See Katie Paul, Kathleen Miles and Damien Huffer, Two clicks away: Wildlife sales on Facebook, Alliance to Counter Crime Online, 2020, <https://www.countercrime.org/wildlife-sales-on-facebook/>; Jo Hastie, Disrupt: Wildlife cybercrime – Uncovering the scale and nature of online wildlife trade, International Fund for Animal Welfare, 2018, <https://www.ifaw.org/united-kingdom/online-wildlife-trade-2018>.
- 3 James Wingard and Maria Pascual, Catch me if you can: Legal challenges to illicit wildlife trafficking over the internet, Global Initiative Against Transnational Organized Crime, 2018, <https://globalinitiative.net/wp-content/uploads/2018/07/Wingard-and-Pascual-Digital-Dangers-Catch-me-if-you-can-July-2018.pdf>.
- 4 Compliance and Enforcement, Resolution Conf. 11.3 (Rev. CoP18), <https://cites.org/sites/default/files/document/E-Res-11-03-R18.pdf>.
- 5 Based on research conducted into the legal frameworks governing wildlife trade by Legal Atlas in more than 70 jurisdictions.
- 6 Maria Pascual et al, Building a global taxonomy of wildlife offenses, *Conservation Biology*, 1–10, 2021, DOI: 10.1111/cobi.13761, <https://onlinelibrary.wiley.com/doi/pdf/10.1111/cobi.13761>.



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