

Optimise Your Distribution Strategy & Brand Growth

State of the Art Legal Advice | Brand Enablement KPIs
Disruption Insights | Comprehensive eControl Solution

What is eControl?

eControl is a discipline through which brands exert control — as permitted by law — over where and how their products are sold to achieve their optimal go-to-market strategy, stop commercial disruption, accelerate profitable growth and protect both brand value and reputation.

About Vorys eControl

Vorys eControl® has served more than 1,000 brands, including some of the world's largest, with an integrated team of lawyers and investigators, technologists and data analysts. Our first of their kind, comprehensive online sales control programs leverage integrated technology tools, data analytics and professional legal services to deliver measurable business value by identifying and helping to neutralize commercial disruption arising from unauthorised marketplace sales, channel conflict, brand equity erosion, product diversion and quality control issues, among others. Managing these issues is a central requirement for brands seeking to achieve optimal commercial outcomes in today's eCommerce landscape.

Our experience in
advising **over 1,000
brands around the world**
has proven time and
again that our eControl
program is the most
effective approach brands
can take in obtaining
**greater control over
their channels to enable
accelerated growth.**



VORYSeCONTROL

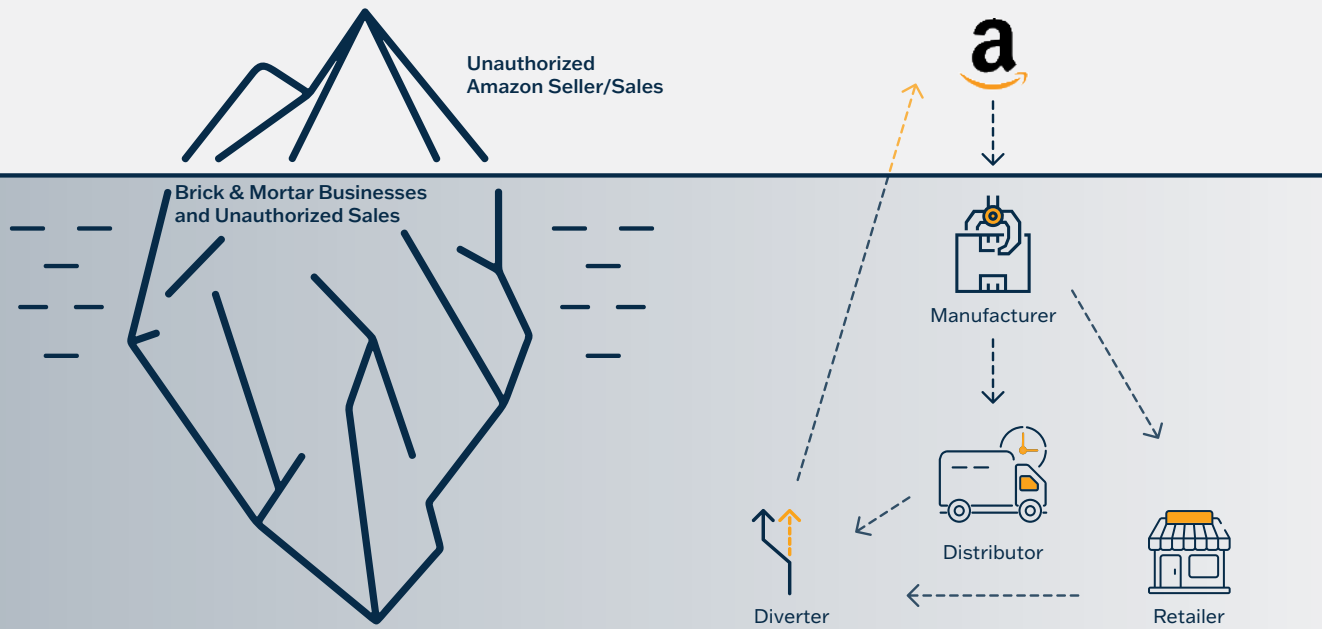
Do you struggle with lack of control over your brand in today's omnichannel world?

Vorys eControl helps companies operating in Europe and the UK understand how to gain control of their sales, revamp their distribution strategies, and protect their brand equity in the face of eCommerce disruption—all in service of enabling accelerated commercial growth. eCommerce disruption—driven in particular by the rise of open online marketplaces like Amazon—has caught many companies and their traditional channel customer off guard, and it has been difficult to understand how to get control, create greater overall channel harmony, and best drive healthy growth. **Vorys eControl** has significant experience in helping companies navigate online sales while protecting their brand value. The impact of our eControl Programs is measured in tangible commercial KPIs.

A robust marketplace control strategy is key to your brand's success...Both online and offline.

In Europe and the UK, Amazon is one of the most important marketplaces. Companies must have a clear strategy for how they will engage with the platform and manage the significant impact it presents. Amazon's mission is to offer customers the largest array of products. To that end, sellers of all types are welcomed onto the platform with very little vetting. Many of these sellers are uninvested, poor quality actors that source products through diversion, arbitrage, unauthorised transshipment and other disruptive means. These sellers then free-ride on brands' invested sellers, advertising campaigns and high-end content creation without investing themselves.

Moreover, negative seller performance can impact product reviews, harming the brand's reputation. In order to divert sales away from brands' approved product detail pages third-party sellers also often create their own ASINs ("rogue ASINs"). Left unchecked, unauthorised marketplace sellers can and will significantly impact brand image as well as commercial performance—both on Amazon and across other channels. Accordingly, it is imperative for brands to assert lawful control over who is authorised to sell their products on highly visible marketplace channels like Amazon to ensure an environment that enables optimal omnichannel performance.



How Vorys eControl's programs can help your brand protect its image and value while accelerating sales growth.

In contrast with the fragmented market of legal providers, monitoring vendors, data analytics providers and others incapable of providing one integrated solution, our comprehensive capabilities enable us to develop, implement and manage complete eControl programs for our brand clients. **Vorys eControl** strategically assesses each client's needs and tailors the integrated programs most suitable for helping to deliver desired outcomes, which can include one or more of the following:

- **Program Development**

Our **Vorys eControl** team will assess your commercial goals and go-to-market strategy, your current policies and terms, and leveraging proprietary monitoring and data tools owned by **Precision eControl LLC** ("Precision"), a wholly-owned ancillary business of Vorys, measure the level of commercial disruption facing your brand on key marketplaces. Leveraging our deep experience, we will develop the comprehensive eControl program that is most likely to conform to your business and best help to achieve your commercial objectives.

- **Program Implementation & Management**

Our eControl program implementation and management frameworks enable the end-to-end integration of (i) distribution policies and agreements, (ii) the robust Precision technology platform that allows brands to track commercial KPIs, manage their authorised sellers, and identify disruption from unauthorised sellers, and (iii) comprehensive unauthorised seller investigation, enforcement and root cause mitigation capabilities. If one of these elements is missing, your brand's efforts will be incomplete and, ultimately, suboptimal.

Distribution Control

The starting point for brands is to implement effective distribution controls compliant with EU and UK laws that are capable of supporting their ideal go-to-market strategy. Brands have two options best suited for achieving this goal and helping to prevent eCommerce disruption:

- **Selective Distribution System**

Implementing a selective distribution system ("SDS") is the best way to control your distribution and prevent disruption in today's omnichannel market. Within an SDS, brands select and authorise resellers based on qualitative and/or quantitative criteria. Sales to non-authorised resellers can be prohibited. Brands have substantial commercial freedom in setting up their SDS where their market shares do not exceed 30%—a threshold which few brands surpass. As part of their SDS online sales criteria, Brands can require that their products be sold online only through a website and not on a third-party marketplace. Importantly, brands can also decide to appoint a single online marketplace seller or reserve the channel to themselves. An SDS can be effectively implemented through policies and/or terms and conditions and need not be created through mutually signed formal agreements. This allows for greater ease of implementation and is the approach taken by many brands today.

- **Marketplace Restriction**

Brands that do not wish to implement a full SDS have an alternative: restricting both their direct and the first tier of indirect customers' ability to sell on online marketplaces. Again, if market shares do not exceed 30%, brands have a lot of freedom and flexibility regarding the shaping of such marketplace restrictions. Marketplace restrictions can be part of the brand's terms or an online sales policy, mutually signed agreement is not required. Marketplace restrictions provide an attractive starting point for brands in their journey towards greater control.



The Precision eControl Platform

Brand Enablement & Disruption Management

Leveraging our vast experience advising brands, **Precision** developed the first purpose-built eControl technology platform designed to provide brands with the insights and tools they need to effectively assert greater control in the omnichannel world. The **Amazon Disruption Insights Module** enables brands to track authorised buy box and (if applicable) revenue percentages, as well as the buy box and (if applicable) revenue percentages owned by all other active sellers on Amazon. These are the key brand enablement metrics on Amazon, directly empowering brands' ability to drive growth on the platform. In addition, the Amazon Disruption Insights Module allows brands to identify and quantify unauthorised seller disruption to these metrics, which is critical to protecting your go-to-market strategy and enabling precision enforcement tactics. **Precision's Authorised Seller Management Module** allow brands to clearly identify their authorised sellers, manage their active policies and agreements and efficiently audit compliance therewith.



Investigation, Enforcement & Root Cause Mitigation, Unauthorised Seller Enforcement

Finally, our team of **Vorys eControl** attorneys, cyber investigators, brand protection specialists and data analysts empower brands with comprehensive investigation, enforcement and root cause mitigation capabilities. Our **Vorys eControl** teams, supported with data and insights from Precision, work to quickly identify and quantify the harms caused by unauthorised sellers and other illicit actors and determine the right enforcement tactics to use at the right time to drive measurable commercial outcomes, rather than endless games of whack-a-mole. These tactics may include uncovering complex diversion schemes, legal enforcement directly against gray market unauthorised sellers operating in contravention of brand distribution controls, or taking down counterfeit or other infringing products. The challenges brands face change day-to-day, and **Vorys eControl's** comprehensive capabilities give brands the tools needed to be effective in today's market.

Please contact us using the details below if you would like to further discuss how eControl can help your brand win.



Daren Garcia

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Daren Garcia is the managing partner of the Vorys London office where he leads eControl in Europe. Daren dedicates his practice to the development and implementation of strategies and enforcement systems designed to protect brand value in the omnichannel world. He has counseled many hundreds of brands and manufacturers confronting unauthorised sellers, channel conflict and other activities disruptive to brand revenues and value. Daren has also led litigation matters against significant gray market sellers disrupting brand value for Vorys' clients.



Sarwenaz Kiani

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Sarwenaz Kiani is a partner of Vorys eControl in the Berlin office. As a dual qualified lawyer (Germany/England & Wales), she advises on a spectrum of EU, German and UK antitrust law questions. Sarwenaz has worked on landmark cases on selective distribution and online restrictions, as well as policy initiatives in the EU and UK regarding the vertical legal frameworks. Sarwenaz' practice also includes investigations, merger control, contractual arrangements, as well as general competition law compliance. She has particular experience assisting luxury and consumer goods brands with planning and implementing their distribution systems including the design and enforcement of online sales criteria. Sarwenaz routinely represents clients in proceedings before the German Federal Cartel Office, the EU Commission and the UK Competition and Markets Authority.

The Precision eControl Platform is owned and operated by Precision eControl LLC, a wholly owned subsidiary and ancillary business of Vorys, Sater, Seymour and Pease LLP
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