



## **An Overview of eBay's Consumer Protection Regime:**

### **Towards a Sound Protection of EBayers**

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#### **Abstract**

*This paper mainly concerns the issue of consumer protection in the C2C environment. In order to achieve such a goal, a case study of eBay, the world's largest C2C platform, will be pursued specifically regarding its registration procedure, feedback mechanism, insurance coverage, and disputes settlement process. For a better understanding, relevant lawsuits happened in the USA will be examined for a further analysis. By doing so, this paper attempts to argue that the current consumer protection regime provided by eBay could not fully address the needs of online consumers; many improvements should and could be undertaken in the legal framework. On the ground of those discussions, feasible countermeasures towards a sound protection of the online C2C consumers would be suggested.*

#### **1. Introduction**

Since its emergence in 1995, eBay has become one of the favourite icons in the cyberspace. Its success has been witnessed from the rapid development of the company's size and revenues in the past several years. According to the most up-to-date financial report of eBay, its annual net revenue for the year 2005 has reached the number of \$4.552 billion<sup>1</sup>. Meanwhile, the eBay fever has attracted more

than 180.6 million people who are interested in selling and purchasing items online<sup>2</sup>. Driven by the high interest of the C2C industry, more and more companies also begin to operate the online C2C service. Yahoo, Amazon, Lycos now are all active participators in this area. On the one hand, online C2C venues do provides the online consumer with a unique experience of purchasing and selling goods, on the other hand these venues also open the door for fraudulent and dishonest transactions. Along with the booming development of C2C industry, those side effects begin to arise as revealed by some statistics. According to the report of 'Computing Which' Magazine, each month more than 130 eBay-related cases are filed with the police in London alone<sup>3</sup>. Additionally, the Internet Fraud Survey published by the National Consumer League in the USA also has mirrored this tendency since 1998<sup>4</sup>. In accordance with their surveys since 1998, online auction site has become a heaven for fraudulent transactions. However, fraud threat is only one of the nightmares for online consumers; other threats like moral hazard and privacy invasion also began to show their effects in hindering consumers from being actively involved into the C2C world. Bearing such a situation in mind, and realizing the significance of Consumer's confidence in e-commerce in motivating the development of e-commerce, legal responses to the challenges of online C2C world is of importance to be reviewed.

Taking into consideration the dominant role of eBay and the amount of relevant lawsuits reported in the US, this C2C giant will be studied in detail in this paper as a representative of C2C service provider. In addition, for a comprehensive review of eBay's consumer protection system, user of eBay's online marketplace service, either as a buyer or a seller, will be examined from the perspective of eBay consumer instead. This paper will focus on the issue of what has been provided to the consumer by eBay UK as an online platform service provider by having a close look at the recently happened eBay related cases. For the purpose of this, part two will lay a foundation work by defining the Online Platform Service Provider and introducing the main interests of consumer in the C2C environment. Based on the categories of consumer's main interests, eBay's consumer protection model will be studied in part

three. The deficiencies of such model and the legal responses regarding specific problems will be discussed in part 4 by reviewing some recently happened lawsuits relevant with eBay. Afterwards, deficiencies and shortcomings of current legal framework in protecting consumer's rights as a C2C service user will then be summarized. On the ground of all these discussions, the final part will draw some universal applicable rules and suggestions from the sphere of legislation and self-regulation regarding the issue of consumer protection in the C2C world.

## **2. Consumer in the Context of C2C Environment**

Concerns of consumer protection could be traced back to the 1960s and 1970s, since then the legal framework for consumer protection has been gradually established. The incentive to build such a protective regime was to be the rebalance the bargaining power between the individual consumer and the powerful supplier of goods or services<sup>5</sup>. Such an imbalance of bargaining power is mainly because of the ability difference between consumer and supplier in obtaining information regarding specific goods or service. The situation becomes worse when the whole world comes to the cyber age, as all the decisions could only be made merely upon the descriptions on the webpage<sup>6</sup>. Such an asymmetry of information has given rise to a lot of problems including frauds. Two aspects of information asymmetry are considered to be of most importance in ensuring consumers a safety environment: One is the anonymous identities of the relating trading party and the other is the uncertainty of item quality<sup>7</sup>. Apart from these, the borderless feature of online world has also raised a big problem to the traditional consumer protection paradigms which were constructed according to the physical boundaries<sup>8</sup>. Thus, it is of more significance to provide extra protection for online consumers to ensure their basic interests.

### **2.1 Consumer's Interests in the C2C World**

In order to promote the progress of consumer protection legislation, different governments and organizations have published various versions of guidelines on the

issue of consumer protection. These guidelines have played an crucial role in the course of building consumer protection regime. The following three guidelines are some of them:

The United Nations (UN) Guideline for Consumer Protection<sup>9</sup>

“General Principles: A. Physical Safety; B. Promotion and Protection of Consumer's Economic Interests; C. Standards for the Safety and Quality of Consumer Goods and Services; D. Distribution Facilities for Essential Consumer Goods and Services; E. Measures Enabling Consumers to Obtain Redress; F. Education and Information Programmes; G. Measures Relating to Specific Areas.”

The Organization for Economic Cooperation and Development (OECD) Guidelines for Consumer Protection in the Context of Electronic Commerce (1999)<sup>10</sup>

“General Principles: A. Transparent and effective protection; B. Fair business, advertising and marketing practices; C. Online disclosures; D. Confirmation process; E. Payment; F. Dispute resolution and redress; G. Privacy; H. Education and awareness.”

The European Union (EU) Consumer Protection Principles<sup>11</sup>

“A. Buy what you want, where you want; B. If it doesn't work, send it back; C. High safety standards for food and other consumer goods; D. Know what you are eating; E. Contracts should be fair to consumers; F. Sometimes consumers can change their mind; G. Making it easier to compare prices; H. Consumer should not be misled; I. Protection while you are on holiday; J. Effective redress for cross-border disputes.”

Despite the differences in words, these three guidelines all express some similar information related to consumer's basic interests that should be ensured in both online and off-line worlds. Taking into account the circumstances of the C2C model and the

spirit of these three guidelines, consumer's basic interests in the C2C world could be generalized as (a) Fair-Trading Interests (b) Safe-Transaction Interests and (c) Moral Interests.

## 2.2 Online Platform Service Provider

Unlike consumers in the B2C model, consumers in the C2C model are facing more problems as a result of the characteristics of C2C transactions. An indispensable involvement of certain service provider is one of the characteristics of C2C transaction. The function of eBay, one of the C2C service providers, is described as

“The Site acts as a venue which allows registered users to offer, sell, and buy just about anything which is legal, at any time, from anywhere, in a variety of price formats.”

In this paper, service providers like eBay will be referred to as an Online Platform Service Provider (OPSP) for a better understanding of its position. Service providers like eBay are categorized as Information Society Service Provider (ISSP)<sup>12</sup> in the European Union, or Interactive Computer Service Provider (ICSP)<sup>13</sup> in the United States. Either category has been granted a so-called immunity from certain types of liabilities. For instance, in the European Union, an OPSP shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction if it plays a role as either mere conduit or caching or hosting<sup>14</sup> according to the E-Commerce Directive. Similar rules also apply to the ICSP in the United States, an OPSP will be immunized from liability for information that originates with third parties according to the Communication Decency Act 1996<sup>15</sup>. Further discussion of such immunity will be discussed later with relevant case studies.

To accommodate the new challenges of cyberspace, both the European Union and the United States have enacted a series of e-commerce laws. The European Union, for example, has promulgated the Data Protection Directive<sup>16</sup>, the Distance Selling Directive<sup>17</sup> and the Electronic Commerce Directive<sup>18</sup>. These Directives along with the Directive on the sale of consumer goods<sup>19</sup>, the Directive on products liability<sup>20</sup>

and the Directive on unfair terms in consumer transactions<sup>21</sup> have improved the situation of consumer protection to a large extent. However, due to the distinctive nature of C2C model, consumers are still facing some problems which could not be fully addressed by the aforementioned legislations. The following study of eBay will illustrate some of them.

### **3. eBay's Consumer Protection System**

Every second, more than 60 listings are being made on eBay's website globally<sup>22</sup>. Each listing could directly or indirectly lead to a profit of \$2.4 for eBay<sup>23</sup>. Thus, there is enough reason for eBay to protect its users' basic interests. In order to meet the basic needs of its consumer, eBay has developed the following procedure to ensure the consumer a confident marketplace where they could freely purchase and sell goods.

#### **3.1 Registration Procedure**

Registration procedure is the first consumer protection step for an eBay user either as a buyer or a seller. One interesting point comes in at this step, as after the acceptance of an all liability-excluded User Agreement, despite the equal position as an eBay member, requirements for admission as a potential buyer and a potential seller are different. At this step, a potential buyer is only requested to fill in an online application form to provide the information of his email account and personal details, and that is pretty much what is required by eBay. As soon as that applicant finishes this form, an email including a verification URL will be sent to him by eBay. By clicking on the verification URL, the accuracy of email accounts will be examined immediately. With regard to the authenticity of personal information, eBay simply relies on its members to guarantee the validity<sup>24</sup> status. Requirements for potential sellers are somewhat different as their bank account information is further required by eBay for verification. Regarding the credit limit of the account and the status of the account thereafter, no one cares about it anymore from that point. Such a difference

could be understandable as buyers are in a weaker position in the eBay community due to the general rule that the delivery of goods could only be made after the payment is cleared. Therefore it is reasonable that sellers should be regulated in a prior order.

This mechanism seems to work out fine if every member acts in good faith when participating in the online transactions. But, what if something is wrong there? It is not difficult nowadays for an individual to obtain either a credit card or a free email account from the website. From the seller's perspective, a buyer may register several accounts and use them to bid for several identical items just for a low price to take it. A scenario like this might happen:

*Scenario 1.*

Buyer X successfully got a bid for a laptop with a decent price of \$ 300, X received an email reminder from eBay to ask him to make the payment. One day later, another bid selling the same type of laptop turned out to be a better deal as the price was \$180, what would the buyer do? He might simply ignore the first bid and turn to the latter one at a price of dumping the first user account which is replaceable with another free email account.

If that case does happens, the only thing the seller could do is relisting the same item again with paying eBay the due listing fees which is unavoidable in that sense. If the delivery is not made, the situation is not that bad and maybe acceptable with the seller as no fraud activities were involved. The situation could be worse if there is a fraud and buyer X intends to get the laptop with an invalid bank cheque and user account.

From the perspective of a buyer, a seller could also use several accounts to shill bidding the specific item in order to increase the final price of the item. What's more important is that eBay seems to permit such activities according to its confusing bidding policies. Several instances have been given in the "Help" section, according to the statement of eBay<sup>25</sup>. The incentive of receiving more financial income has motivated eBay to encourage such transactions. A recent case is reported in California,

as bidders filed a lawsuit accusing eBay of shill bidding against its own customer to force up the prices and thus increase its fees and finance service charges<sup>26</sup>. Again, things could become worse if the seller wants to take a fraudulent transaction. In that situation, buyers may experience extreme difficulty in obtaining either the goods or the payments. If the seller is domiciled in another jurisdiction, and his account is established with a stolen bank card or other fraudulent measures, it could be predicted that consumers as a buyer could hardly ask the payment back.

### 3.2 Feedback Mechanism

In order to offer a better community for the eBay consumer, a so-called feedback mechanism was developed and introduced by eBay in order to encourage the self-regulation between buyers and sellers in the community. The purpose of importing such a mechanism could be seen as an incentive to rebuild the trust between buyers and sellers which are weakened by the asymmetric information in respect of both the trading party and the item. A feedback mechanism could to certain extent reflect the past reputation of each eBay user. It could be understood as a digitization of 'word of mouth' rule<sup>27</sup>. It is composed with comments and ratings left by the relevant trading parties after each transaction within 90 days. Ratings are categorized as positive, neutral and negative. Feedback score is calculated by means of accumulation of positive ratings (+1) and negative ratings (-1). In addition, a feedback star will be awarded to the user if he reaches the feedback score of 10. Details for comments could be seen from the member profile web page. Rating and feedback score are normally shown in the following way:

Feedback Score:	<b>3528</b>	Recent Ratings:		
Positive Feedback:	<b>99.9%</b>	Past Month	Past 6 Months	Past 12 Months
Members who left a positive:	3531	392	1833	2805
Members who left a negative:	3	1	1	1
All positive feedback received:	6587	1	1	1
<a href="#">Learn about</a> what these numbers mean.		Bid Retractions (Past 6 months): 2		

In theory, this mechanism could help eBay to find the right deal and rebuild the reliability between different users. However, a perfect model never exists. The same

rule applies to the feedback mechanism, as its effectiveness largely relies on two assumptions: firstly, all users should leave feedbacks for their trading parties in good faith; secondly, users should always use the same user account when they are a member of eBay.

However, the reality is not the entire user could leave the decent comments and ratings. This mechanism could work in another way which are completely different from its original purpose:

### *Scenario 2*<sup>28</sup>

Seller Y sold his bicycle to buyer Z, Z did not leave a feedback for Y immediately as soon as he received the item. Instead, Z waited and tried the item from time to time until the 90<sup>th</sup> day came. Then, he left a negative feedback for Y as time passed by, Z found a lot of deficiencies that he had not foreseen before the purchase. The item was exactly the same as what was described on eBay.

### *Scenario 3*

Seller Y earned a satisfied feedback score by selling 99p free post items which would normally cost 1.99 each on eBay. In a short period, Y became a seller with a total feedback score of 30. Then, he sold a described to be new laptop online to the Buyer Q, and that laptop turned out to be a refurbished one finally...

In both scenarios, the real reputation of eBay's user is not completely reflected by the mere feedback score. If consumers of eBay are Seller Y or Buyer Q, their interests as honest traders will definitely be harmed. These two scenarios are not the worst situations; again, if there is a fraudulent intention with either the buyer aspect or the seller aspect, the outcome could be detrimental to the development of C2C industry.

Due to the imperfection of the feedback system, eBay has changed the feedback policy for several times since this system was introduced. Despite all the efforts made

by eBay, problems stemming from this system are still being reported all over the world.

### 3.3 Insurance Coverage

Besides the aforementioned mechanisms, which could be deemed as a pre-sale protection solution, another solution called “eBay Standard Purchase Protection Programme” was introduced into the eBay community recently. This programme functions as an insurance policy which is now only open to the buyer of eBay free of charge. Most items bought on eBay are covered by this programme with a maximum reimbursement of £105.00. eBay defined the aim of this programme as follows:

“While the vast majority of eBay transactions are trouble-free, rest assured that when problems occur, our Standard Purchase Protection Programme can help. Here are some examples of typical trading problems:

1. Paying for an item and never receiving it; or
2. Receiving an item that is less than what is described, such as winning a solid gold necklace but receiving a copper one instead.”

If all the requirements are as short as mentioned above, then consumers of eBay might be confident enough to purchase whatever they want now. However, according to the Eligibility Requirements of the programme, only a few people could apply for it. In order to get the opportunity to claim such coverage, the buyer should first of all go through the whole 90 day maximum “Item Not Received or Significantly Not as Described” Process which is a part of eBay's disputes settlement mechanism. Afterwards, the buyer should also meet at least the following requirements which are selected from eBay's coverage policy<sup>29</sup>:

- “1. The final winning bid price for the item is over £15.
2. The buyer is a member in good standing at the time of filing a claim. Both the buyer and the seller should have a feedback rating of zero or above at the

close of the listing.

3. The buyer should send the payment to the seller in good faith and document the proof of payment.
4. The buyer should not exceed the three claims per six-month limit.
5. Items should be significantly different from the description and could not be purchased by cash or other instant money transfer service such as WesternUnion or MoneyGram.”

Even according to these selected requirements, lots of eBay users would be excluded from this coverage policy. Users who purchased a relatively low price item at £14.99 are the first group of consumers who should be excluded from such a protective mechanism. As most eBay users are purchasing some bargains from this web site, the number of such users could not be underestimated. In addition, users who paid for their items should keep the evidence for 90 days. If it is the first time for a user to claim such a coverage policy, and he was in a good faith when making the payment, it is really not easy for him to keep the evidence for such a long time.

### **3.4 Disputes Resolution Process**

As disputes settlement procedure is the prerequisite of claiming coverage, the whole procedure is of same importance to be addressed here. In case of coming across an unpaid item, the seller could file a claim to use eBay's "Unpaid Item Process"<sup>30</sup>, within 45 days after the transaction date. Once a claim is filed, eBay will contact and inform the buyer of such a claim. Then, the seller should wait for the responds from the buyer. If an agreement could be concluded regarding the payment, then the seller could close the dispute. Or, if there is no respond from the buyer for more than sever days, the seller could also close the dispute which will lead to an Unpaid Item strike to the buyer, at the same time, the seller receives a Final Value Fee credit, and the item is eligible for a relist credit. In this case, the buyer could still leave a feedback comment about the transaction, but such a rating will neither appear nor count toward the seller's feedback score. As for the buyer, an eBay administrative will leave a feedback

comment stating that the buyer did not participate in the Unpaid Item process.

A similar “Item Not Received or Significantly Not as Described” procedure applies to the buyer when coming across a non-delivery or significantly misdescribed item, however, he needs to file such a claim within 10-60 days after the transaction date. If this procedure begins, and there is no respond from the seller within 10 days the seller could close the dispute. Or, even there is a respond from the seller; the buyer could still close the dispute after 17 days of the item listing close date. If the buyer is not satisfied with the result, he could escalate the result to a claim which could activate the standard buyer protection programme. If this option is adopted and reconfirmed by eBay's Trust and Safety team, the seller's account could be restricted or suspended. In both cases, consumers either as a buyer or a seller would benefit from such a mechanism. Especially for the seller, as there is no coverage policy available for them, they could at least get an opportunity of relisting.

EBay has offered its customer the aforementioned protection mechanism, it could be concluded that such a mechanism has enhanced the confidence of eBayers either as a buyer or a seller. But, there are still some deficiencies and shortcomings which ought to be altered in the future and this issue will be discussed later in this paper.

#### **4. Consumer's Status as an EBay Member**

According to the discussion above, it is apparent that eBay has provided certain types of protection mechanisms for the consumer. But, how is the effectiveness of such mechanisms as a whole? And, how is the legal status of consumers as eBay members? A review of eBay relevant lawsuits could be a good approach to the final answer.

##### **4.1 Liability of EBay as an OPSP**

The first issue which needs to be mentioned here is the issue of eBay's legal status as an OPSP, since eBay has stated the following words in its user agreement regarding

its liability position:

“EBay is not an auctioneer. Although.....from anywhere, in a variety of formats including fixed price and auction-style.<sup>31</sup>...We will not be liable for any economic losses (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings), any loss of goodwill or reputation , or any special, indirect or consequential damages (however arising, including negligence) arising out of or in connection with this agreement)<sup>32,</sup>”

In the European Union, service providers like eBay are widely defined as an Information Society Service Provider according to the Technical Standards and Regulations Directive<sup>33</sup>. According to its definition, an information society service provider refers to those providers who provide any kind of service for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service. Its liability for third party's content is further laid down by the Electronic Commerce Directive<sup>34</sup>. In accordance with this Directive, a ISSP which functions either as a 'mere conduit', a 'proxy caching' or a 'hosting server' should not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that transmission. EBay seems to fit the definition of 'hosting server' well as it is stated in the Directive that<sup>35</sup>:

“Where an information society service is provided which consists of the storage of information provided by a recipient of the service, the service provider shall not be liable for..... where – (a) the service provider (i) does not have actual knowledge of unlawful activity or information and, where a claim for damages is made, is not aware of facts or circumstances from which it would have been apparent to the service provider that the activity or information was unlawful; or (ii) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information, and (b) the recipient of the service was not

acting under the authority or the control of the service provider”

Similar regulations could also be found in the 1998 Digital Millennium Copyright Act<sup>36</sup> where it is regulated that four categories of conduct by a service provider (1) Transitory communications;(2) System caching;(3) Storage of information on systems or networks at direction of users; and (4) Information location tools should be granted a limitation on liability for copyright infringement. As a Safe Harbour has been built by the legislations, eBay is generally held, at least up till now, to be exempted from liabilities arising from third party's content on its website. Such an attitude was evidenced from the case *Gentry v. eBay*<sup>37</sup>, in which the court ruled that eBay was not responsible for the goods advertised on its web site. According to that case, consumers who purchase goods from eBay could only rely on themselves to distinguish the genuine goods from counterfeit one, while eBay can not provide more service regarding extra information or authentication. eBay's liability for such kind of third party's information is clarified. However, recently, the question regarding eBay's liability for the counterfeit items advertised on its site now is being challenged as raised by the case *Tiffany v. eBay, Inc.*, in this case, the famous jewellery dealer sued eBay in the Southern District of New York. The plaintiff claimed that eBay should be held accountable for the sales of fake Tiffany products over its web site. In other words, eBay should provide not only tents but also polices for its website. Whether such an attempt could be supported by the court is still not clear yet, but it is apparent that eBay was making money from the counterfeit items sales. Once the court supports the Tiffany, consumers might be confident to buy the big brands items from eBay, but now, they are still exposed to the risk of buying fake goods at a real price without a legitimate remedy.

#### **4.2 Grace v. EBay Inc<sup>38</sup>.**

Based on the discussion of eBay's liability as an OPSP, it seems that consumers could not protect their rights via a litigation approach as what they do in the off-line

marketplace. Many legislations and lawsuits have confirmed the tendency that OPSPs like eBay will not be liable for third party's content. However, the case *Grace v. EBay Inc* has opened another aspect in reviewing this position as a new element of defamatory materials was involved. In this case, the plaintiff Grace bought several items from another individual and then left some negative comments on the seller regarding some of the transactions. As a result of that, the seller responded by commenting on Grace as to each transaction by stating: "Complaint: SHOULD BE BANNED FROM EBAY!!!! DISHONEST ALL THE WAY!!!!" The plaintiff then turned for eBay to remove such kind of defamatory material. However, eBay refused to remove them. In this case, eBay knew and had reason to know that the comments left by the seller were defamatory. Therefore, despite the superior court's conclusion of immunizing eBay against liability for libel and violation of the unfair competition according to the Communication Decency Act 1996<sup>39</sup>, the court of appeal of the state of California concluded that the Communication Decency Act 1996 could not provide eBay with immunity against liability for a distributor of information who knew or had reason to know that the information was defamatory. However, this time the written release in eBay's user agreement relieves it of the liability alleged in the complaint. What will be concluded if such a case happens in the United Kingdom? Will the situation be different?

### **4.3 Unfairness of Exclusion Clause**

The *Grace v. EBay Inc.* case raises a new issue which is worthy discussing here, the issues is whether such a written release in eBay's user agreement is a kind of unfair exclusion clause according to the UK law? Both the Unfair Contract Term Act 1997 (UCTA)<sup>40</sup> and the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR)<sup>41</sup> could be applied to the case where unfair exclusion clauses were adopted. The applicability of UCTA, according to s. 2 (2) of the UCTA, issues may arise when the clauses of written release are considered to be an exclusion of liability for negligence. The application of the UCTA in this case, as analyzed by Andres (2003)<sup>42</sup>

is feasible to some extent as some of the elements of the decisive reasonableness test are met. It is further suggested that an application of UTCCR could be a better attempt as the crucial element which needs to be proved in that case would be the issue of 'bad faith' on the part of the undertaking<sup>43</sup>.

Based on the discussion in this part, it could be concluded that the litigation approach could only be pursued when the consumer intends to sue the other trading party other than eBay, as current legislations have established a safe harbour to prevent eBay from liability of third party's contents. Thus, consumers could only prefer the self-regulatory mechanism and third party's help like SquareTrade<sup>44</sup> and Escrow<sup>45</sup> to ensure their legitimate interests. Even in case of needs of litigation, consumers should collect adequate information regarding the other trading party.

## 5. Suggestion and Conclusion

To sum up, the C2C environment does on the one hand enables online consumers to find the best deals suitable for them, on the other hand it also raises many issues which are detrimental to consumers' interests. So far, laws are still in favour of promoting the development of C2C industry. It is relatively difficult for the consumer to file a lawsuit against the service provider for either the unfair terms or the unsatisfied service. Nevertheless, the bottom line regarding the basic responsibilities as an OPSP will be drawn. The answer to this question could partly be answered by the Tiffany v. eBay case once the final decision is available. In addition, more and more national governments and international organizations have realized the importance of consumer's confidence in the online marketplace. The European Union, for example, has considered the issue of consumer protection as one of the essential elements that could contribute to competitiveness of the internal market.<sup>46</sup> Legislation is of prior order to be undertaken by the European Union as one of the means to increase consumer trust in e-commerce<sup>47</sup>. It could be predicted that in the C2C world more legislations will be available to consumers. Regarding such a tendency, some

suggestions specifically related to the C2C industry could be given as follows:

1. Clarifying the legal status of online platform service provider in detail, either via the legislation approach or the court decisions. Online platform service provider could cover different kinds of services, for example, Blog Service Provider. The rapid development of C2C industry also gives rise to an urgent need of adequate regulation to guide the future road. Issues like to what extent should service provider be liable for the security of their web site should be answered. Because if eBay could use a better screen scanning software, more fraudulent descriptions could be easily found and eliminated in the first place. If the law could define the responsibilities of the OPSP, then consumers may get a better protection.
2. Encouraging the adoption of a strict requirement of identity authentication, either through a mechanism of regulation or self-regulation. Such a solution is designed to set a bottom line for the ID verification process. Otherwise, service providers like eBay may be reluctant to such a policy which will definitely lead to a loss of registered members. However, once such a stricter requirement of identity authentication is generally accepted, the outcome could be beneficial for the whole C2C industry, if the user account can not be easily obtained, the user will take it more seriously when trading with other parties. If all users of eBay, either as a buyer or a seller, all need to be verified by their bank account, the buyer and the seller may behaviour well as to get an bank account is not that easy as to get an email account.
3. Enacting more legislation in respect of regulating e-money and other online payment service. These areas are troublesome as revealed by the recently happened cases. Users have experienced different kinds of problems regarding the online payment service. An up-to-date legislation could benefit both the market and the participator.

4. Facilitating the employment of online disputes settlement service and online secure payment service. As in the C2C environment, it is not easy for the consumer to take a litigation approach in protecting their legitimate interests. Wide usage of online disputes settlement service and secure payment service could speed up the overall efficiency of the C2C world.
5. Regulating the jurisdiction and applicable law rules for cross border transactions, as in the C2C world, more and more consumers are domiciled in different jurisdictions. If there are some serious disputes or frauds, the legal solution should be feasible and enforceable for the relevant parties.
6. Promoting the education of consumers regarding the knowledge of online fraud prevention skills etc. Education is widely recognized as an efficient tool in tackling online frauds. It is therefore still needs to be promoted in the C2C world.

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<sup>1</sup> See Forth Quarter and Full Year's Financial Results of eBay for 2005, available at <http://investor.ebay.com/news/Q405/EBAY0118-123321.pdf>

<sup>2</sup> Ibid

<sup>3</sup> See 'More fraud protection needed on eBay', *Computing Which Magazine*, 25 February 2006, available at <http://www.which.co.uk/news/computersandinternet/06/feb/ebay-fraudreport.html>

<sup>4</sup> According to the survey of National Consumer League started from 1998, online auction site has occupied the first position among all other fraud types. Relevant surveys since 1997 could be obtained from Internet Fraud Statistics Reports Webpage <http://www.fraud.org/internet/intstat.htm>

<sup>5</sup> See pp35

<sup>6</sup> See Scott, Colin (2004), "Regulatory Innovation and the Online Consumer", *Law & Policy*, Vol. 26, No. 3&4, July & October 2004, pp476

<sup>7</sup> See S. Y. Choi, D.O. Stahl, A.B. Whinston, "*The Economics of Electronic Commerce*," Macmillan Technical Publishing, Indianapolis, Indiana, 1997

<sup>8</sup> See Prins, J.E.J.(2003), "Consumers, Liability, and the Online World", *Information & Communication Technology Law*, Vol.12, No.2, June 2003

<sup>9</sup> See The UN guidelines for consumer protection, The General Assembly adopted by consensus on 9 April 1985, available at <http://www.un.org/documents/ga/res/39/a39r248.htm>

<sup>10</sup> See OECD Guidelines for Consumer Protection in the Context of Electronic Commerce (1999), available at <http://www.oecd.org/dataoecd/18/13/34023235.pdf>

<sup>11</sup> See Consumer Protection in the EU: Ten Basic Principles ,available at [http://europa.eu.int/comm/consumers/cons\\_info/10principles/en.pdf](http://europa.eu.int/comm/consumers/cons_info/10principles/en.pdf)

<sup>12</sup> See Article 18 of the Electronic Commerce Directive (00/31/EC), available at

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- [http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l\\_178/l\\_17820000717en00010016.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l_178/l_17820000717en00010016.pdf)
- <sup>13</sup> See Section 230 (e) (2) of the Communication Decency Act 1996, available at [http://www.epic.org/free\\_speech/CDA/cda.html](http://www.epic.org/free_speech/CDA/cda.html)
- <sup>14</sup> Article 17 18 19 of the Directive on Electronic Commerce (00/31/EC)
- <sup>15</sup> See the Communication Decency Act 1996, 47 USC Section 230
- <sup>16</sup> See Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, available at <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML>
- <sup>17</sup> See Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in respect of Distance Contracts, available at [http://europa.eu.int/comm/consumers/cons\\_int/safe\\_shop/dist\\_sell/dist01\\_en.pdf](http://europa.eu.int/comm/consumers/cons_int/safe_shop/dist_sell/dist01_en.pdf)
- <sup>18</sup> See the Electronic Commerce Directive (2000/31/EC), available at [http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l\\_178/l\\_17820000717en00010016.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l_178/l_17820000717en00010016.pdf)
- <sup>19</sup> See Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees, available at <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31999L0044:EN:HTML>
- <sup>20</sup> See Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, available at [http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31985L0374R\(01\):EN:HTML](http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31985L0374R(01):EN:HTML)
- <sup>21</sup> See Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts, available at <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31993L0013:EN:HTML>
- <sup>22</sup> It's an estimated figure according to the Forth Quarter and Full Year's Financial Results of eBay for 2005, available at <http://investor.ebay.com/news/Q405/EBAY0118-123321.pdf>
- <sup>23</sup> Ibid
- <sup>24</sup> See Rules and Policies of eBay, Identity Section, it is stated that "eBay members can't misrepresent their identities. eBay members must always provide valid and complete contact information...".
- <sup>25</sup> See eBay Help, "How to Change a Bid" section, where it is stated "In most cases you, as a bidder, cannot bid against yourself. However, there are a few exceptions where this can occur, and I have listed these incidents for you below...."
- <sup>26</sup> See "Bidders File Lawsuit Accusing eBay of Shill Bidding", *Auctionbytes.com*, NewsFlash, Number 961, February 24, 2005 ISSN 1539-5065
- <sup>27</sup> See Dellarocas, Chrysanthos (2003), "The Digitization of Word of Mouth: Promise and Challenges of Online Feedback Mechanisms", *Management Science*, 2003, Vol. 49, No. 10, October 2003, pp. 1407-1424
- <sup>28</sup> Similar story was reported by Auctionbytes.com, "The Challenges of eBay Feedback", Number 144, June 05, 2005.
- <sup>29</sup> For whole version of the policy, please see "eBay Standard Purchase Protection Programme: Coverage and Eligibility", available at <http://pages.ebay.co.uk/help/tp/esppp-coverage-eligibility.html>
- <sup>30</sup> See <http://pages.ebay.co.uk/help/policies/unpaid-item-process.html>
- <sup>31</sup> See User Agreement of eBay, Para 3
- <sup>32</sup> See User Agreement of eBay, Para 12
- <sup>33</sup> See Article 1 (2) of The Technical Standards and Regulations Directive 98/34/EC (as amended by Directive 98/48/EC)
- <sup>34</sup> See, Article 12 to 15 of The Electronic Commerce Directive (00/31/EC)
- <sup>35</sup> See Article 14 of The Electronic Commerce Directive (00/31/EC)
- <sup>36</sup> See US Copyright Act Section 512, as inserted by the Digital Millennium Copyright Act.
- <sup>37</sup> *Gentry, et al. v. eBay Inc.*, Super Ct. No. GIC746980 (Cal. Ct. App, June 26, 2002)
- <sup>38</sup> *Roger M. Grace v. EBAY INC.*, Los Angeles County Super. Ct. No. BS 288836
- <sup>39</sup> See Title 47 of United States Code Section 230, part of the Communications Decency Act 1996
- <sup>40</sup> See The Unfair Contract Term Act 1997, available at <http://www.netlawman.co.uk/acts/unfair-contract-terms-act-1977.php>
- <sup>41</sup> See the Unfair Terms in Consumer Contracts Regulations 1999, available at <http://www.opsi.gov.uk/si/si1999/19992083.htm>
- <sup>42</sup> See Andres Guadamuz Gonzalez (2003), "eBay Law: The Legal Implication of the C2C Electronic Commerce Model", *Computer Law & Security Report*, Vol. 19, No. 6, 2003
- <sup>43</sup> Ibid

<sup>44</sup> SquareTrade is the online disputes settlement service provider. For more information, see <http://www.squaretrade.com/cnt/jsp/abt/aboutus.jsp;jsessionid=gvvitroif1?vhostid=daffly&stmp=google&cntid=gvvitroif1>

<sup>45</sup> Escrow provides a secure payment service for trading parties, for details of its procedure, please see <https://www.escrow.com/solutions/escrow/process.asp>

<sup>46</sup> See European Union (2004), "Consumer Confidence in E-Commerce: lessons learned from the e-confidence initiative", available at [http://europa.eu.int/comm/consumers/cons\\_int/e-commerce/e-conf\\_working\\_doc.pdf](http://europa.eu.int/comm/consumers/cons_int/e-commerce/e-conf_working_doc.pdf)

<sup>47</sup> Ibid