

Consumer Rights Protection on the Online Auction Website - Situations and Solutions: A Case Study of EBay

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I. Introduction

The issue of consumer rights protection has been explored for thousands of times in the past in several languages by various experts from different jurisdictions, as a result of that nowadays more and more consumers are benefiting from the improving shopping environments in both online and offline worlds. The current legal regime for consumer protection, which is mainly formed in the 20th Century, seems to function well even when it enters the Era of E-Commerce; As many governments have fully acknowledged the significance of consumer's confidence in E-Commerce, and thus enacted a large number of new legislations to accommodate the variations brought by this new business mode by taking into consideration the particular nature of the online world. The European Union, for example, has promulgated the Distance Selling Directive 97/7/EC and the E-Commerce Directive 00/31/EC after taking into account the different characteristics of E-Commerce. To some extent, the 'cooperation' of new regulations and old mechanisms has played an effective and crucial role in protecting consumers; rights online in the general E-Commerce environment. However, a different image has been witnessed when such a legal regime is being applied to the Online Auction Website (OAW). Unlike trading with the traditional auction companies, consumers are, to certain extent, facing a more difficult situation when they are coming across problems when purchasing items on OAW. This paper will attempt to examine the effectiveness of contemporary consumer law regime applicable to the OAW, and will further argue that more improvements could and should be performed by means of legislation and self-regulation. The whole article will be organized in four parts. Part 1 works as an introduction by explaining the rapid development of OAW and relevant applicable rules in the United Kingdom within the EU background, different legal positions between the online existence of traditional auction company (Sotheby's Online) and the new OAW (eBay) will be compared to demonstrate the need for a review of the current consumer law regime. In order to illustrate the problems in depth, a case study of eBay, the world's largest OAW, will be undertaken in the next part. Specific difficulties confronting a consumer on OAW will be discussed in this part as well by analyzing the applicable rules provided by the government and the available mechanisms offered by the OAW. Consumer's Fair Trading Rights, as one of consumers' legitimate rights, will be mainly addressed by overlooking consumers' actual situations in respects of (a) Information Disclosure, (b) Transaction Safety and (c) Redress on the OAW. The different transaction experience between a consumer and a business or an individual seller will be explored separately for a better understanding of consumer protection realities on eBay. Thereafter, this paper will seek to present a feasible proposal for improvements towards a better protection of consumers' interests on OAW. The final part will draw a conclusion on the ground of the abovementioned arguments and findings.

II. Consumer Rights Protection on the OAWs

The influence of online auction websites, represented by the famous name 'eBay.com', could be perceived from numerous aspects in our daily life. One good example comes from the recent marketing practice performed by several mobile service providers (MSPs) in the United Kingdom including some famous brands such as O2¹, Vodafone² and Three³. In their recent

¹ See O2 official website for more details, available at http://i-mode.o2.co.uk/see_imode_ebay.html

² Please refer to the recent news report from ComputerWeekly, available at

advertisements, the feature of surfing on the 'eBay' has been universally emphasized as a big merit attempting to attract more customers to join their networks. Inferred from that, it could be noticed that the power of eBay is not only witnessed by the persistent increasing amount of its registered users and net revenues, but also echoed by the undeniable potentialities it may bring to the relevant industries. In the year 2006, eBay has earned \$ 6.0 Billion net revenues as contributed by its 221.6 million registered users⁴. The emergence and prevalence of eBay has improved the shopping environment for the consumers in terms of choices and prices. People could easily find a better deal or acquire a ceased-to-produce item on eBay where millions of items are available to be sold. Nevertheless, due to the borderless and anonymity characteristics of the Internet, the online C2C auction websites has, at the same time, caused many problems in respect of consumer protection. The old consumer protection regime was formed in the 1970s, and the story of consumer protection was therefore told according to the lines of physical and local bounds of space and time⁵, the law of a particular jurisdiction normally could only be enforced within that specific jurisdiction. The legal regime described in the story, which had functioned well for decades in the past, now is confronted with great challenge imposed by the new Internet era where boundaries do not exist anymore. One good example is consumer's dilemmatic situation when coming across fraudulent counterparties. Unlike consumers in the B2C world where some sorts of legal protection have been provided, under the current legal regime, the online auction sites like eBay could disclaim nearly all the responsibility for fraud occurring on their sites in practise. The lack of meaningful consumer protection with respect to online auctions in the form of consumer education efforts and appropriate regulation and effective enforcement thereof has left those defrauded consumers alone without any meaningful avenues of relief⁶. Those concerns have been evidenced by the Eurobarometer poll published in 2004, in which it is stated that 83% of EU consumers still do not use the internet for shopping purpose, and 25% of consumers do not find Internet sites credible as a shopping place⁷. Similar outcome could also be obtained in the United States, as according to the National Consumer League's research work, online auction fraud has dominated the Champion position among all online consumer threats since 1998⁸. On the ground of these figures, it may be concluded that consumers are facing a not so good situation when trading on the OAW. Taking into consideration the increasing amount of annual payment towards online auction transactions which was £2.8 billion as in the year 2005⁹, the issue of consumer protection situation on the OAW is thus of some significance to be examined in detail. The following paragraph will do a case study of the world's largest OAW eBay. A comparison between traditional auction company and eBay will be reviewed initially. Later, the different trading experience for a buyer purchasing items from a business seller and an individual seller will be visited for a better understanding of the consumer protection reality on eBay.

Sotheby's v. eBay

By comparing Sotheby's as a traditional auction company with eBay as an OAW, considerable differences could be noticed in terms of the means and volume of auction activities on eBay as opposed to Sotheby's¹⁰. Unlike in the traditional auction scenario such as trading at Sotheby's,

<http://www.computerweekly.com/Articles/2007/02/09/221710/vodafone-to-launch-ebay-mobile-service.htm>

³ See Three official website for more details, available at http://www.three.co.uk/personal/on_three_/planet_three_/detail.omp?cid=1171377589358

⁴ See "eBay Inc. Announces Fourth Quarter And Full Year 2006 Financial Results", available at <http://files.shareholder.com/downloads/ebay/116583043x0x69405/2cbacae7-15cf-46fb-9a19-a89664d4e591/eBayIncEarningsReleaseQ42006.pdf>

⁵ See Prins, J. E. J. (2003), "Consumers, Liability, and the Online World", *Information & Communication Technology Law*, Vol. 12, No. 2, June 2003

⁶ See Albert, R. Miriam (2002), "E-Buyer Beware: Why Online Auction Fraud Should Be Regulated", *American Business Law Journal*, Summer 2002, Vol.39, Issue 4, P575

⁷ See Eurobarometer poll on issues related to e-commerce, released March 2004, available at http://europa.eu.int/comm/consumers/topics/btoc_ecomm.pdf

⁸ Statistics of these reports from 1997 to 2006 could be found on the National Consumer League website, available at <http://www.fraud.org/internet/intinfo.htm>

⁹ APACS Administration, "**Surge in online spending at auction sites**" as published on 31/07/06, available at: http://www.apacs.org.uk/media_centre/press/06_31_07.html

¹⁰ See Mary Kay Finn et al., "Policies Underlying Congressional Approval of Criminal and Civil Immunity

where relevant parties could be in the identical venue with the specific item for auction, OAWs such as eBay merely use the internet as a tool to create a virtual venue where no parties would meet and buyers even have no opportunity to examine the item they are intending to purchase¹¹. Further, the volume of online auctions on eBay is many times greater than that of Sotheby's. Unlike traditional auction houses such as Sotheby's, the OAWs such as eBay do not take title to or handle the goods bought or sold using the medium of the Internet. Thus, consumers would be exposed to a higher risk in respect of potential problems resulting from the anonymity and borderless features as facilitated by eBay than Sotheby's¹². The potential shopping risks for a consumer who purchases at Sotheby's and EBay could be inferred from these major differences as revealed in the following table:

TABLE 1

	Sotheby's	EBay
<i>Registration procedure for the buyer</i>	Proof or Identity (Passport, Driving License etc.) ¹³	Providing a Valid Email Address ¹⁴
<i>Registration procedure for the Seller</i>	1. Evaluating the item for a decision of acceptance ¹⁵ 2. Contracting with the seller if that item has been accepted ¹⁶	1. Verifying the Identity of Seller by Phone or Credit Card ¹⁷ 2. Offering PayPal or a Merchant Account Credit Card as a Payment Method ¹⁸
<i>Liability Distribution</i>	The Sotheby's, The Seller, and The Buyer	The Seller and The Buyer
<i>Criteria for a decision of purchase</i>	Descriptions and Examination of the Specific Item.	Descriptions only

Based on the table above, it could be noticed that consumers, when trading with traditional auction companies such as Sotheby's, are subject to a better protection than trading online. Reasons for such a result could be generalized from many aspects:

Initially, before the completion of purchase, consumers could gain more accurate information regarding the item when trading with Sotheby's than EBay as the former one always performs an evaluation process regarding the specific merchandise for auction in respect of its quality and fitness for sale. Consumers could benefit from the expertise of those auction companies

for Interactive Computer Service Providers Under Provisions of the Communications Decency Act of 1996--

Should E-Buyers Beware?", 31 U. TOL. L. REV. 347,370 (2000).

¹¹ See Brian Krebs, Newsbytes News Network, "FTC Seeks To Stem Online Auction Fraud 02/14/00 - Government Activity", available at: http://www.findarticles.com/p/articles/mi_m0NEW/is_2000_Feb_14/ai_59460316

¹² See Miriam R. Albert, "E-Buyer Beware: Why Online Auction Fraud Should Be Regulated?", *American Business Law Journal*, Volume 39, Issue 4, pp 533

¹³ See terms for the Buyer at the Sotheby's, available at <http://www.sothebys.com/help/buy/index.html>

¹⁴ See the current registration forms for a buyer at eBay which tells the current requirements for the buyer, according to that, a user only needs to provide a valid email address as there is no verification procedure as regarding the personal information, available at <https://scgi.ebay.co.uk/ws/eBayISAPI.dll?RegisterEnterInfo&ru=http%3A/www.ebay.co.uk/>

¹⁵ See terms for the Seller at the Sotheby's, available at <http://www.sothebys.com/help/sell/index.html>

¹⁶ Ibid

¹⁷ See eBay's help forum, "Creating a Seller's Account", available at http://pages.ebay.co.uk/help/sell/seller_account.html

¹⁸ Sellers who register after 17th January, 2007 are required to offer either PayPal or a merchant account credit card as an accepted payment method for their items. See from eBay's help forum, "Creating a Seller's Account", available at http://pages.ebay.co.uk/help/sell/seller_account.html

and visual examination of the merchandise. This feature could hardly be found on eBay where thousands of items are being posted on its website each day. The large amount of listings and average low commission fees for each transaction has, to some extent, caused some practical difficulties for OAWs like eBay to perform a similar function.

Later, after the completion of purchase, if there is a dispute regarding the merchandise, consumers who are trading with traditional auction companies such as Sotheby's could be entitled to a more comprehensive legal remedy as comparing with the OAWs such as eBay as relevant auction law has already laid a solid foundation for consumers who purchase goods by means of auction in the offline world. For example, a consumer who bought a fake famous paint could sue both the seller and the auctioneer for compensations relying on the contract law or tort law. This approach, however, when being applied to the online world, may be subject to a more difficult situation as accurate information regarding the seller could not easily be obtained and the auctioneer has been granted immunity for nearly all sorts of liabilities. In the United Kingdom, OAWs such as eBay are categorized as an Information Society Service Provider (ISSP) who normally provides any 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 service¹⁹. Being tagged as an ISSP has actually enabled eBay to be entitled a kind of immunity under certain circumstances as what has always been successfully held and insisted by eBay when being challenged in courts²⁰ all around the world, this privilege for ISSP is stated in the Electronic Commerce (EC Directive) Regulations 2002 in article 19²¹ as:

“ Where an information society service is provided which consists of the storage of information provided by a recipient of the service, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that storage 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; (ii) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information, and”

The 2006 'Contact Lens' case heard at City of London Magistrates, in which the court has dismissed eBay's liability for aiding the illegal sale of contact lens, has reinforced the standpoint of ISSP immunity, at least, in the United Kingdom²². Thus, for an OAW, its duty is simply to remove illegal sale notices from its site when it is made aware of them rather than to comb through it for them. For a consumer who intends to seek a legal remedy, the OAW should be the first name to be excluded from the list, as a result of which, that consumer could only sue the buyer with limited information as stored on the OAW where no accuracy could be ensured.

B2C v C2C

Consumers who are willing to purchase goods on eBay could possibly face two types of sellers which are (a) Business Seller and (b) Individual Seller. Business Sellers will be required to provide more details in the registration procedure, as a return those sellers would be given the title of business seller when selling items on eBay and could provide contact details on their profiles to attract more business²³. Consumers may be subject to a better protection when

¹⁹ See Interpretation 2. (1) of *The Electronic Commerce (EC Directive) Regulations 2002*, available at <http://www.opsi.gov.uk/si/si2002/20022013.htm>

²⁰ In *Zeran v. America Online, Inc.* (4th Cir.1997) 129 F.3d 327 (Zeran), cert. den. (1998) 524 U.S. 937, the court held section 230, by its "plain language," created a federal immunity to any cause of action that would make interactive service providers liable for information originating with a third-party user of the service.

²¹ See Article 19 (a) of the *Electronic Commerce (EC Directive) Regulations 2002*, available at <http://www.opsi.gov.uk/si/si2002/20022013.htm>

²² See BBC News, "eBay contact lens case dismissed", <http://news.bbc.co.uk/1/hi/health/4771910.stm>

²³ See eBay website "Registering with a Business Account", available at <http://pages.ebay.co.uk/help/sell/business/contextual/businessaccount.html>

trading with those business sellers as relevant laws and regulations have laid a somehow solid foundation to guarantee their legitimate interests online. For example, the Consumer Protection (Distance Selling) Regulations 2000 has regulated that business dealers, for the purpose of the contract to provide the consumer with goods or services under an organized distance by making exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded²⁴, should conform to the following requirements:

(a) The supplier must give consumers clear information including details of the goods or services offered, delivery arrangements and payment, the supplier's details and the consumer's cancellation right before they buy (known as prior information)²⁵; (b) The supplier must also provide this information in writing²⁶; (c) The consumer has a cooling-off period of seven working days²⁷.

Theoretically speaking, consumers when trading with business sellers on OAWs could be entitled to such a protection as granted by law, however, as the same legislation has also identified the auction-concluded contract as a kind of excepted contracts, consumers may not benefit from this when undertaking their purchases on OAWs such as eBay:

"The following are excepted contracts, namely any contract - ... (f) concluded at an auction."

-- Article 5 (1) (f) of the Consumer Protection Regulations 2000²⁸.

Thus, before the UK court has unambiguously interpreted the applicability of this clause with regard to OAWs, it may still be a blurred image as whether consumers could rely on this regulation to protect their legitimate rights when trading with business sellers on the OAWs. However, as could be inferred from the *Gentry vs. eBay* case²⁹, where eBay has expressly stated its opinion as merely a venue provider³⁰ rather than an auctioneer, consumers may, in the future, rely on the Consumer Protection Regulations 2000 to attempt to challenge the business sellers in courts.

With regard to the circumstances where consumers trading with consumers (C2C scenario), as in this situation consumers could be either the seller or the buyer, there would be lots of problems when consumers intend to ask for help by means of legal approach as no specific regulations designed in the cyber age could be applied to that situation, all that consumers could rely on would be the old consumer protection regime established in the last century. It is, therefore, a wise decision for the consumers in the C2C scenario to choose the alternative disputes resolution (ADR) approach to solve the disputes which have arisen. This approach is, in fact, being employed on eBay known as the Consolidated Dispute Console (CDC). With the help of CDC, unsatisfied consumer could meet an agreement with the individual seller who is not acting deliberately for fraudulent considerations. Alternatively, consumers may choose the impartial mediation – currently provided by SquareTrade on eBay's, this approach offers a free web-based forum where consumers can work out problems, as well as a panel of professional mediators who can help consumers resolve your dispute³¹. As for those disputes arising from product qualities, consumers either as the buyer or the seller could go for another approach

²⁴ See Interpretation 3. (1) of the *Consumer Protection (Distance Selling) Regulations 2000*, available at <http://www.opsi.gov.uk/si/si2000/20002334.htm>

²⁵ See Article 8 and 10 of the *Consumer Protection (Distance Selling) Regulations 2000*, available at <http://www.opsi.gov.uk/si/si2000/20002334.htm>

²⁶ See Article 10 of the *Consumer Protection (Distance Selling) Regulations 2000*, available at <http://www.opsi.gov.uk/si/si2000/20002334.htm>

²⁷ See Article 11 and 12 of the *Consumer Protection (Distance Selling) Regulations 2000*, available at <http://www.opsi.gov.uk/si/si2000/20002334.htm>

²⁸ See Article 5 (1)(f) of the *Consumer Protection (Distance Selling) Regulations 2000*, available at <http://www.opsi.gov.uk/si/si2000/20002334.htm>

²⁹ See Jennifer Couzin, *CNN News* on November 7, 2000, "Analysis: eBay fraud lawsuit raises questions", available at <http://archives.cnn.com/2000/TECH/computing/11/07/suing.ebay.idg/index.html>

³⁰ See Liability Provisions of eBay's User Agreement, available at <http://pages.ebay.co.uk/help/policies/user-agreement.html?ssPageName=f:UK>

³¹ See SquareTrade website for details, available at http://www.squaretrade.com/cnt/jsp/odr/overview_odr.jsp?marketplace_name=ebay&campaign=EBY_OD_1

provided by SquareTrade known as the SquareTrade Product Care Plan³². This plan could be deemed as an insurance policy specifically designed to accommodate the environment of OAWs. For consumers who seek litigation approach, which is comparatively rare due to the cost-lost consideration, acquiring enough evidence regarding the transaction and obtaining personal information regarding the counterparty may cause some difficulties due to the virtual characteristic of the online environment and the relatively loose verification requirements.

III. Observations and Solutions

The above paragraphs have illustrated the effectiveness of the present consumer protection regime relating to the online auction environment, based on these abovementioned discussions, consumers' exigent wishes regarding improvements on the OAWs will be analyzed in this part by overlooking consumers' actual conditions in respects of (a) Information Disclosure, (b) Transaction Safety and (c) Redress on the OAW which are of great significance to the consumers who are trading on OAWs.

Information Disclosure

The issue of information disclosure deals with the requirements in relation to the information of merchandises and sellers. Since internet has brought considerable difficulty for consumers to obtain accurate and authentic information due to the virtual characteristic of the internet, this issue has become more crucial as for the protection of consumers' rights. As for the OAWs, consumers are demanding enough genuine information regarding both the item and the seller. In the B2C scenario, consumers may be entitled to get access to more information as opposed to the C2C scenario as relevant laws and website user agreements have required the seller to perform such an obligation to offer real and accurate information such as business address and merchandise descriptions. For consumers in the C2C scenario who are confronting difficulties obtaining reliable information regarding the item or the trading party, it could, at least, be suggested that compulsory rules or self-regulatory industrial agreement may be enacted as regarding the fundamental requirements for operating the online auction service in respect of registration process and trading practices. For example, laws or norms could be drafted to ask all the users who want to get involved in the online auction service to provide genuine personal information at the registration step if they are about to sell considerable valuable items on OAWs. Such a thought could be achieved via a strengthened verification procedure where more reliable medium could be employed as proof of identity, and a close connection between the real identity and the user account should be established by means of that. Therefore, both sellers and buyers will act carefully with their accounts as it would be not that easy to reopen a similar account. Cases like *Zeran v. Diamond Broadband, Inc*³³ where three accounts were opened by the same user and further utilized on the same website will disappear more quickly.

Transaction Safety

The issue of transaction safety mainly concerns the threats of identity theft and other types of frauds such as shill bidding which happens rampantly on the OAWs³⁴. For a solution, a comprehensive approach should be adopted including consumer education, report mechanism and insurance coverage. To solve the identity theft problem, consumer education could work effectively by enhancing consumer's awareness regarding those common tricks, report mechanism may also contribute to that if consumers who have identified the fraud could go to report it to the appropriate authority such as FTC in the United States, the amount of online auction frauds would be reduced to some extent. As for the other types of frauds committed by the fraudulent user, the buyer as the major victim could possibly be protected by the insurance policy products as provided on eBay known as the *eBay Standard Purchase Protection Programme*³⁵. If the buyer could get coverage like that, he or she would be granted

³² See SquareTrade website for details, available at <http://www.squaretrade.com/buyersvcs/processWarrantyEntry.do?vhostid=daffly&stmp=squaretrade&cntid=c857evdts2>

³³ See *Zeran v. Diamond Broad Inc.*, 203 F.3d 714,717 (10th Cir. 2000)

³⁴ See Staff Writer, *CNET News.com* November 22, 2002, "Identity thieves strike eBay", available at <http://news.com.com/2100-1017-966835.html>

³⁵ See eBay Standard Purchase Protection Programme webpage for details, available at <http://pages.ebay.co.uk/help/tp/esppp-process.html>

compensation up to £120.00 (less £15.00 to cover processing costs) or Up to £500.00 or the purchase price whichever is lower if the buyer has used PayPal as the payment methods³⁶. A strict requirements relating with the users' personal information as suggested in the above paragraph could also work as a countermeasure in reducing OAWs relevant frauds to return the OAW consumer a better trading environment.

Redress on OAWs

Redress works as a post-transaction method to protect consumers' rights on OAWs. Generally speaking, redress could be categorized as two leading types which are non-litigation approach and litigation approach. The former often refers to as ADR which are widely acknowledged as online mediation and arbitration. For consumers on eBay, ADR is not an unfamiliar word if they have tried the items not received procedure as communication with the relevant trading parties is the essential content of this programme. The effectiveness of ADR, especially when dealing with disputes relevant with low price items, has been confirmed as reported by various research articles³⁷. It remains a wise decision for the OAWs to promote the ADR approach in solving disputes which may arise in the transactions. Consumers who intend to redress in terms of litigation should also be equipped with sufficient legislations with regard to the OAWs as a new type of trading venue. Further interpretation regarding the currently available laws and regulations should be given as regarding its applicability for the consumers on OAWs.

IV. Conclusion

To sum up, consumers on the OAWs are confronting comparatively more difficulties to protect their legitimate rights when comparing with those consumers who are trading with business website such as Amazon.com where many specific rules would be available in case of needs. This problem could only be solved by means of cooperation of laws and norms in terms of regulating OAWs, laws could work as the final tool to stop those wrongdoers and norms could work as a preliminary method to reduce the risk of threats to the consumers. Additionally, the policy of immunity for OAWs should also be re-examined in the future, if not now. As transaction amounts and difficulty with review of content could not always served as a convincing argument resulting in non-regulation as one good example could be witnessed from the check processing industry where drawees, such as banks, act as "third persons" in the process of transferring funds from the drawer to the payee. In theory, the drawee works as a similar role as of ISP who acts merely as the conduit for the transfer of funds³⁸. Drawees, however, have often been held to be liable for some or all of the risk of loss because they receive economic benefit for their participation.

³⁶ See PayPal Buyer Protection Programme, available at <http://pages.ebay.co.uk/help/tp/paypal-protection.html>

³⁷ See Melissa Conley Tyler

Di Bretherton, "Research into Online Alternative Dispute Resolution Exploration Report prepared for the Department of Justice, Victoria", published on 21 March 2003, pp.35, available at <http://www.strategicaction.com.au/ADR%20Online%20Research%20Report.pdf>

³⁸ See Mary Kay Finn, Karen Lahey, and David Redle, "Policies Underlying Congressional Approval of Criminal and Civil Immunity for Interactive Computer Service Providers Under Provisions of the Communications Decency Act of 1996- Should E-Buyers Beware", *University of Toledo Law Review*, Volume 31, issue 3, pp371

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