



**18th BILETA Conference: *Controlling Information in the Online Environment***

*April, 2003  
QMW, London*

## **PayPal and eBay: The legal implications of the C2C electronic commerce model**

Andrés Guadamuz González  
University of Edinburgh

### **Abstract**

This paper attempts to address some of the legal implications of the popular Consumer-to-Consumer electronic commerce model. The paper analyses two of the most successful examples of this model, the auctions site eBay and the payment system PayPal.

### **Keywords**

Electronic commerce, consumer, C2C, eBay, PayPal, intermediary liability, internet auctions, contract, payments, fraud, unfair terms.

### **Introduction**

Much has been written about the Business-to-Business (B2B) and Business-to-Consumer (B2C) models of electronic commerce, but there is a surprisingly small amount of information about the legal implications of the Consumer-to-Consumer model (C2C), which is the system of e-commerce that serves as a facilitator in a transaction between individuals or small enterprises. The lack of literature in this area is made more evident by the fact that the C2C model is proving to be one of the most successful developments in electronic commerce after the dot.com bubble burst and the internet business scene changed completely.

One of the best examples of this model can be found in the shape of various internet auctions websites, of which the site eBay is the strongest example. The success of this company cannot be understated, boasting a vast number of transactions taking place daily and an ever growing number of users. However, with the growing number of online transactions between consumers, legal conflicts are likely to occur, hence the importance of understanding some of the legal implications of the C2C model and whether or not existing legislation is adequately prepared for the challenges posed by this new commercial environment.

The other cornerstone of the C2C model can be found in consumer friendly payment systems such as PayPal, which has been acquired recently by eBay. The relationship between both sites is enforced by the fact that people who are exchanging goods through internet auctions need secure and reliable methods to conduct monetary transactions to pay for their online purchases. PayPal is set to become the standard for online payments between consumers and small businesses in the coming years, and it is at the moment the leader in this field.

The present paper will be divided in two sections, one will analyse the auction model by taking a look at some of the legal issues involved, such as the contractual implications, the liability (or lack of) of auction sites, and the dispute resolution model.

The second part of the paper will analyse the C2C payment system exemplified by PayPal, and it will explore some of the most pressing legal questions which need answering, such as the legal status of PayPal.

## **1. Internet Auctions**

### **1.1 The eBay phenomenon**

The success of internet auction sites has usually been made synonymous with one of the most successful survivors from the dot.com era, eBay.

As with so many other stories of wildly innovative and successful enterprises, the tale of eBay begins with a very simple idea. French-born Pierre Omidyar designed the site in 1995 to help his fiancée purchase PEZ dispensers online. Omidyar had been looking for new applications for the nascent internet and he thought that having an auction site would be a good idea. He programmed a small site called AuctionWeb as a hobby; something he never thought would generate enough income to leave his job.<sup>[1]</sup> These pessimistic views were justified during the early days of the site, which was not generating many hits and did not have many customers. Omidyar recalls that he discovered that the model could be a success when he sold a broken laser pointer for fourteen dollars even after making sure that he stated that it did not work.<sup>[2]</sup> The rest is history; AuctionWeb started receiving larger numbers of users, so many that Omidyar had to start charging a small percentage per finalised transaction to maintain the growing economic demands posed by the site. By early 1996 he had earned \$1,000, and the figures started doubling daily. By June AuctionWeb was generating \$10,000 per month, and Omidyar had in his hands a dot.com success.<sup>[3]</sup>

By 1997, the site had acquired its present name and was being courted by several other e-commerce giants. With a major technological overhaul, the site continued growing at breakneck speed, and the amount of transactions was growing exponentially. At present time, eBay is the largest internet auction site in the world, with a total of nearly 55 million confirmed registered users and an average 1.7 million new users every month, and over one million auctions being held daily.<sup>[4]</sup> By 2002 it was thought that as many as 100,000 Americans were making their living off eBay.<sup>[5]</sup> At the end of 2002, eBay announced that it had made a total of \$288.8 million USD net profit in the third quarter; the site had 160 million items listed during the quarter, with total sales worth \$3.77 billion USD.<sup>[6]</sup>

eBay exploits many of the most important characteristics that have made the Internet so popular; it empowers users and provides the internet community with a place in which they can exchange goods and services with each other. The amazing success of the eBay model can be attributed to many different reasons, ranging from sheer luck to an astute business plan, but at the heart of the site's accomplishments lays two basic truths about the internet. One is that people need a place where to buy and sell directly on the internet, and the second is the principle of peer-review and community enforceability.

The second-hand market was a dormant giant before eBay came along. It is thought that by 1995 this market was worth one billion USD in an underground market of auctions, garage sales, flea markets and classified ads.<sup>[7]</sup> What the internet managed through eBay was to expand the number of people that could be reached to sell one's used items. The old adage "one man's junk is another man's treasure" has been proven by eBay, where everything that can be sold is indeed sold daily. To this basic capitalist marketplace one must add the strong sense of community. Users police each other by providing feedback about fulfilled or failed transactions, this lends credibility to the business model and allows eBay to maintain its considerable user base.

## 1.2 Some legal issues

### 1.2.1 The dark side of auctions

With the large amount of transactions performed each day, the potential for legal conflict increases as well – with four out of every ten buyers reporting that they have had some sort of problem with their transactions.[8] Although eBay has several mechanisms in place to avoid misuse of the site and diminish the possibilities of fraud, this still takes place. For example, the National Fraud Information Center in the United States reported that half of all complaints received by its Internet Fraud Watch in 1998 involved auctions transactions, while the figure had reached an alarming 87% in 2002.[9] In 2000, the Federal Trade Commission (FTC) received more than 25,000 complaints for web-based auction fraud, which increased from just 100 in 1997.[10]

The problem for eBay when it comes to fraudulent practices from and against its users is that it must attempt to achieve some balance between providing as much freedom for its users as possible, and the imposition of enough restrictions to safeguard them from fraud, which may drive some of them away. After all, eBay is a place that has made a reputation as an open marketplace for users.

It is with this in mind that the many stories of illegal or even tasteless items being placed for sale in the site have generated some undesired publicity for this business model. A common practice from some fraudulent users is to log with two different accounts, one as a seller and another one as a buyer. If an honest buyer bids for an item, the seller can log in with another account and bid on the item as well to increase the price. Several people have suffered from this practice, buying items at a price that has been dishonestly pushed up by unscrupulous sellers.[11]

Another documented case of misuse is the attack of identity thieves on eBay. Several fraudsters have been using stolen credit cards to purchase domain names with the word “eBay” on them. With these sites these scam artists attract eBay users and make themselves pass as an official eBay site, and then they request personal information from the user and steal the details for anything from further credit card fraud to performing bank withdrawals in the victim’s name.[12]

The auction site has also suffered from the regular sale of illegal or restricted items. People have attempted to sell such things as body parts, pirated works of any kind, hallucinogenic drugs, weapons, people, Nazi memorabilia, countries and spam lists.[13] Dubious items make it all the time into the listings, including sex, prayers, enchantments, miracles, everything they own, islands and most recently debris from the space shuttle Columbia.[14] Many of these items have been black-listed by eBay and often pulled out before they are sold, but the negative impression about the site usually remains.

### 1.2.2 Dispute resolution

Because of the nature of the eBay marketplace, the potential for conflict in any transaction is higher in comparison to any other method of retail of new or used goods. Users go to the site, see a listing and purchase goods that they have never seen from a person they have never met, and then the seller must be sure that the payment will arrive at some point. Common eBay etiquette demands that the seller will ship the items only after the buyer has made payment through the various available methods – which include postal orders, cheques, escrow, cash mailing and credit card transactions through an intermediary system like PayPal. eBay’s excellent feedback system tries to make sure that users will leave feedback of the transaction, warning other users of potential troublesome clients, and praising good transactions as a reward. But what happens if something wrong takes place and the normal flow of a commercial transaction fails?

This is where the “Law of eBay” comes in. eBay has recognised that users need other options other than going to a court of law to settle their differences.[15] In the early days of eBay, Omidyar used

to serve as a mediator, but as the site grew he decided that he could not handle all of the complaints and created a feedback forum to allow users to police the site as a community.[16] This effort paid off, but did not eliminate complaints entirely.

This is the main reason for the adoption by the company of the alternative dispute resolution (ADR) model. EBay's contract has an arbitration clause for conflicts arising between the user and the company. The clause states:

*"Disputes between you and eBay regarding our services may be reported to eBay Customer Support. We encourage you to report all disputes between users to your local law enforcement body. However, any controversy or claim arising out of or in connection with this Agreement may at our discretion be settled by binding arbitration by reference to an arbitration tribunal designated by eBay. You agree to be bound by the ruling arbitrator."*[17]

In case of conflicts between users, eBay recommends the use of the Online Dispute Resolution (ODR), an application of ADR rules in an online environment.[18] eBay started using ODR back in 1999 with a pilot project in tandem with the Center for Information Technology and Dispute Resolution at the University of Massachusetts.[19] According to some of the academics in charge of the project, one of the main challenges that they had was to try to determine whether ODR would be considered only an alternative to resolve disputes in eBay, or if the online community would consider it the primary tool for solving conflicts arising from commercial transactions in the auctions site.[20] To increase the ease in the online process, the Center decided to use mediation with one mediator as the most viable and easy to use ADR method. In the short period that the pilot programme ran, the organisers received a total of 225 complaints; of the processes which had a complete mediation process, forty six percent achieved a successful mediation.[21] A total of 144 of the complaints were not completed because the parts reached an agreement between them outside of the process or because their dispute was not related to the subject matter. A small number of complaints (only thirty-seven) were not continued because one of the parts did not want to continue with the mediation procedure. It is interesting to note that the largest number of complaints came from eBay buyers, and the main reason for complaining was the lack of delivery of the purchased goods.[22] The study conducted by the Center concluded that ODR could be a considerable advantageous tool in solving disputes arising from eBay transactions, as customers in an online environment look for speed in resolution as part of the nature of electronic commerce. The authors of the report conclude that eBay could be considered a jurisdiction on itself, and state that in the C2C environment *"the most relevant and powerful law probably was eBay's law and the power it exercised as a result of users agreeing to the terms and conditions for participation that eBay presents to them."*[23]

As a result of the positive experiences with ODR, eBay now recommends the use of a specific tool called Square Trade.[24] This company provides ODR services for eBay customers, and they claim to have solved 200,000 disputes in several fields, using mostly mediation as the main tool. There is no way at present to corroborate these figures, and an interesting further area of study would be to analyse the success of ODR in solving C2C disputes.

### 1.2.3 Liability

One of the main characteristics of C2C sites is the fact that they work as facilitators and intermediaries, which is usually stated in their terms of use. For example, eBay UK states in their agreement that:

*"eBay is not an auctioneer. Although, we are commonly referred to as an online auction web site, it is important to realise that we are not a traditional auctioneer. eBay acts as a venue which allows registered users to offer, sell, and buy just about anything, at any time, from anywhere, in a variety of formats including fixed price and auction-style."*[25]

Because of this status as a facilitator, eBay can operate with a low liability threshold. They state that “*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>[26]</sup> Such limitations of liability are not accepted as valid in several jurisdictions, so it is interesting to analyse instances in which courts of law have dealt with this issue.

An interesting case in the United States where this was discussed was the California case of *Gentry v. eBay*,<sup>[27]</sup> in which a class action suit was brought by former eBay customers who had purchased sports memorabilia from other users of the site. The claimants argued that eBay was liable for fake memorabilia advertised in the site. The judge in the case ruled that eBay was not responsible for the goods advertised as they served as facilitators and not as the sellers, and the auction site did not guarantee that any of the goods sold were genuine, that was the role of the actual seller.<sup>[28]</sup> This shows that the courts are willing to agree with the view of eBay as a facilitator and not liable for fraudulent operations.

This brings up the interesting question of whether or not the limitation of liability clause cited above is in itself an unfair term as defined by the Unfair Contract Term Act 1977 (UCT) and the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR). The 1977 Act specifies a list of terms that will be considered unfair – generally exclusion, limitation and indemnity clauses – and therefore these terms will not be binding.<sup>[29]</sup> eBay’s User Agreement does not appear to be directly against some of the unfair clauses listed by the Act such as exclusion of liability for breach of contract (s.3.1) or indemnity (s.12).

The only question that may arise is whether the clause presented above would be an exclusion of liability for negligence as described in s.2(2) of the UCT, which states that a clause that excludes liability for loss or damage by negligence will be considered unfair if the notice satisfies the reasonableness test.<sup>[30]</sup> It is not clear if eBay’s exclusion clause would be considered unfair on these grounds, as it is markedly difficult to determine reasonableness in advance because the wording of s.11.1 is vague, as the apparent contradiction in some of the landmark cases dealing with unfair terms appear to indicate.<sup>[31]</sup>

There is a better chance of exploring the possible unfairness of the clause with the UTCCR. This regulatory regime is much broader than the UCT because the Act is circumscribed to a specific set of clauses, while the Regulations are not. The main concept in the regulations is the definition of what an unfair term will be. According to the Regulation:

*“A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer.”*<sup>[32]</sup>

A term will be considered to not have been negotiated individually if it has been drafted in advance and the consumer did not have a say in the terms of the final contract.<sup>[33]</sup> This definition is at the heart of any contractual dispute that may arise by the application of this Regulation. The test for unfairness in this Regulation has been established by *Director General of Fair Trading v. First National Bank plc*.<sup>[34]</sup> According to this, the consumer must prove that there has been bad faith on the part of the undertaking, that there is a significant imbalance to the parties and that it must be detrimental to the consumer. Analysed in that light it would be interesting to ascertain how the eBay clauses compare. There is certainly imbalance in the obligations of the parts, and they may be detrimental, but is the contract in bad faith? At the moment this question must remain open.

## 2. C2C Payments



## 2.1 A brief look at PayPal

One of the cornerstones of online auction sites such as eBay is the availability of easy to use online payment systems. Since the beginning of eBay, the issue of how consumers pay for the goods purchased has been an important part of the success of the system. Because eBay serves as an intermediary, consumers have the responsibility of making sure that the payment reaches the seller in a prompt and straightforward manner, as it is customary in the auction environment that the goods will only be sent once the payment has been received. Consumers use several different methods to pay for their online transactions through eBay, ranging from mailing cheques or cash to the seller to the use of online C2C payment systems.[35]

Because of the fast nature of online purchasing, online payment methods are more popular than traditional ones, as they allow for the transaction to be concluded almost immediately, and it has the added benefit that the seller can easily corroborate payment upon delivery. The buyer also has the advantage of being certain that the goods will be sent as soon as possible, reducing the waiting time for the goods. C2C operators usually prefer to manage their own online payment systems. Amazon has started using the C2C model to sell used goods through their website by using their considerable customer base, consumer confidence and existing infrastructure. They have opened Amazon Marketplace,[36] which uses its own online payment system based on their existing B2C system.

Payment has always been the weakest link in eBay's almost bullet-proof business model. Initially, once a transaction had been concluded the seller had to rely on traditional payment methods to receive the money. eBay did not want to have their own payment system as they considered it fell outside of their business plan, so they tried to reach agreements for facilitating online payments with financial institutions, but these efforts did not produce any positive results.[37] eBay then decided to have their own online payment system, and for that purpose they purchased a small company named Billpoint in 1999 to handle their in-house payment service for customers.

At the same time, there was another player in the horizon, a company founded in 1998 called PayPal. PayPal has often been called "email money", and its business model warrants such name. A customer can open a PayPal account by giving their credit card or bank information in a simple transaction that can take up to five minutes. Once this account is created, the customer can send money to any person giving their email number and placing a money sum in an easy to use online form. Once the recipient receives the email, he must open a PayPal account; the money then is taken from the sender's bank account or credit card and deposited into a new account in PayPal, acting almost like a viral payment system, and explaining the incredible growth of PayPal as a viable online payment method.[38] Each PayPal consumer can choose to keep their money in an account with the company for further use, or can choose to have that amount of money credited to their bank or credit card account. It is important to point out that PayPal does not disclose the account information of both parts to each other, ensuring the security of the transaction.[39]

PayPal operates by placing a small charge to each online transaction. For customer accounts, the average sum charged for transactions under \$15USD is \$0.30. For UK personal accounts the transaction is free, but the customer cannot receive credit card payments. For premier and business accounts the fees vary according to volume of transaction.[40] Because many customers leave money they have received in their accounts, PayPal appears to operate with these deposits to fund their transactions. According to Peter Thiel, PayPal's chief executive, "*The PayPal account doesn't provide interest, so PayPal can invest any money left there until the user wants to spend it.*"[41] PayPal places the money deposited by users into a bank account at Wells Fargo Bank and into money market fund managed by them.[42]

Because of its adaptable model and the ease of user registration, PayPal has become the most successful online payment system for C2C transactions. PayPal boasts more than 20 million users in 38 countries, with an average of 28,000 new users per day. This success prompted eBay to purchase

the company in 2002, as Billpoint had not proven to be as popular as PayPal was. The move made business sense as it brought together the main two players in the growing C2C market and allowed eBay to use PayPal's large user base and add it to its own. PayPal and eBay are working very well together, in the third quarter of 2002 eBay expressed that PayPal users had generated a total of \$1.79 billion in Total Payment Volume, representing a 93% increase from the \$925 million generated in the third quarter of the previous year.[43]

## 2.2 Legal issues

There are several interesting legal issues involved with C2C payment systems, and in particular with the business model presented by PayPal. Although there are some problems in regards to liability of PayPal as an intermediary system in cases of fraud, money laundering or the use of the system to pay for illegal or restricted goods and/or services, the present paper will concentrate on the issue of the regulatory status of PayPal in regards to European law.

From reading the PayPal business operation model presented in the last section, any person who is even slightly familiar with commercial law will immediately ask the question of whether or not what PayPal does is similar to a credit institution as defined by various European directives. This person would certainly be right in posing such a question, as there appears to be a clear similarity with the way in which PayPal operates and the functions performed by a bank. Indeed, Directive 2000/12/EC on credit institutions states that "*'credit institution' shall mean an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account.*"[44]

Deposit has been defined by the Directive 94/19/EC as a credit balance that results from funds entered into an account and which the credit institution must pay back.[45] This is rather straightforward definition of what a deposit is, but differs slightly from the definition in effect in the UK through the Regulated Activities Order 2001 (RAO), which defines a deposit in two different ways:

*"(a) money received by way of deposit is lent to others; or (b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on money received by way of deposit."*[46]

This is interesting because of the "or". If a person accepts deposits and uses them to finance any of its activities, the letter of the law clearly implies that this would be considered as a regulated deposit-taking activity.

The above definitions would seem to indicate that PayPal acts as a deposit-taking institution, and therefore should be considered as a bank for all regulatory purposes. However, and contrary to some of the earlier opinions already quoted by people related to the company, PayPal argues that it does not make any use of the deposits in the user accounts it holds. In fact, PayPal's user agreement states that "*PayPal will at all times hold your funds separate from its corporate funds, will not use your funds for its operating expenses or any other corporate purposes, and will not voluntarily make funds available to its creditors in the event of bankruptcy or for any other purpose.*"[47] This paragraph poses an interesting conundrum as PayPal claims not to use the funds in the accounts held by the customers for operational expenses, a practice that would clearly indicate that they are indeed a financial institution as defined.

Grossman[48] agrees that PayPal is not a financial institution because the money received in an account is not deposited by the account holder but by third parties, and because it does not lend money out and keeps it in separate bank accounts. The first assumption does not appear to be correct. After all, large amounts of money that goes into people's bank accounts are deposited by third parties, such as employers, and there is no requirement in the existing legislation that a deposit needs to be made by the account holder to be considered such. The second objection requires closer

examination as the Financial Services Authority (FSA) has not made any pronouncements in this respect at present.

In the United States the Federal Deposit Insurance Corporation (FDIC) did not consider that PayPal to be a bank in accordance to US regulations because it did not physically handle or hold the money placed in the customer's accounts. The FDIC also ruled that PayPal should not be considered a bank because it did not have a bank charter, which is one of the legal requirements in US legislation.[49] This would seem to be circular reasoning from the American regulators, but regardless of this the opinion of the FDIC should not bear too much importance in Europe as the regulatory regimes are dissimilar. Besides, there appears to be a small discrepancy in the FDIC's opinion, as they have also held that deposits made to PayPal will be subject to federal deposit insurance, which is usually given only to banking institutions.[50]

In the end, why should it be important to determine if PayPal conducts itself as a bank or not? The answer is simple, financial services institutions are heavily regulated and must be authorised to operate by a governmental body. In the UK this responsibility falls unto the FSA, which is the only body that can authorise deposit-taking and credit-giving institutions to operate.[51] What is more, an institution that undertakes these services will be prohibited to operate at all without said authorisation.[52] If one considers PayPal to be a deposit-taking institution as defined by the cited legislation, then it should require authorisation. Because PayPal is now operating in the UK – they have a co.uk domain name and take deposits from UK bank accounts – then they are operating outside the regulatory scheme.

The financial implication for PayPal of being considered a bank or not would be substantial, as they would have to comply with a strict regulatory scheme that includes restrictions on the initial capital required, the own-funds that it must have at all times, the solvency ratio and restrictions on holdings in other undertakings.[53] The reason for this strict regime is the nature of a bank, it acts as a depository of other people's money, so the liabilities and securities that it must provide are higher than to other institutions because there is a considerable public interest in making sure that only trustworthy undertakings will be subject to it.

## Conclusions

The C2C electronic commerce model is a new and exciting area in the relatively new field of e-commerce law, present paper has just started to ask some of the questions posed by this method, and more research in the field will be definitely welcome as it suffers from some lack of interest from the academic community.

It is evident that there is some room for regulatory involvement in this area, in particular in the payment system. In this line the most pressing regulatory question is the legal status of intermediary online payment systems such as PayPal. It is the author's opinion that PayPal operates as a bank, but regardless of this it is imperative that the FSA at least should give some consideration to the subject, something that has not happened yet.

There are also some interesting legal questions in the area of online auctions, in particular in the filed of limitation of liability. Both existing legislation and case law do not appear to strongly indicate whether or not intermediary sites will be liable for fraudulent transactions committed in the site, further developments in this area should be closely monitored.



## Bibliography

- "Ebay shuts down Columbia auctions", *The Register*, February 3, 2003. @: <<http://www.theregister.co.uk/content/6/29147.html>>
- Bruner, M. "Cautionary tales of two auctions", *MSNBC*, October 10, 2002. @: <<http://www.msnbc.com/news/818257.asp?0si&cp1=1>>
- Bunnell, D and Luecke, R. *The eBay Phenomenon*. New York : John Wiley, 2000.
- Bureau of National Affairs. "Electronic Payments: Paypal Funds Eligible for Pass-Through Insurance From FDIC as Deposits by Agent", *BNA Newsletter*, Vol 7 No. 12, March 20, 2002, p.254.
- Cohen, A. "On-Line Auctions: Bidding for Bargains", *New York Law Journal*, January 19, 1999. @: <<http://www6.law.com/ny/tech/011999t4.html>>
- Cohen, A. *The Perfect Store: Inside eBay*, Boston: Little, Brown & Co; 2002.
- Davis, C. "Court Dismisses Class Action Against eBay in Counterfeit Sports Memorabilia Case", *Internet Law Journal*, March 8 2001. @: <<http://www.tilj.com/content/litigationheadline03080101.htm>>
- eBay. *eBay Inc. Announces Third Quarter 2002 Financial Results*, October 17, 2002. @: <<http://www.shareholder.com/eBay/news/20021017-92686.htm>>
- Ellinger, E. P; Lomnicka, E. and Hooley, R. *Modern Banking Law*, 3rd edition, Oxford: Oxford University Press, 2002.
- Festa, P. "Identity thieves strike eBay", *CNET News*, November 22, 2002. @: <<http://news.com.com/2100-1017-966835.html>>
- FTC. Internet Fraud. Statement by the FTC to the Subcommittee on Commerce, Trade and Consumer Protection, 2000. @ <<http://www.ftc.gov/os/2001/05/internetfraudttmy.htm>>
- Grossman, W. "Online payment systems: Easy money?" *The Independent*, September 9, 2002. @: <<http://news.independent.co.uk/digital/features/story.jsp?story=331757>>
- Katsh, E; Rifkin, J; and Gaitenby, A. "E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of 'eBay Law'", *Ohio State Journal on Dispute Resolution*, Vol. 15:3, 200, p.706.
- Mcedrick, E. *Contract Law*, Fourth Edition, Basingstoke: Palgrave, 2000, pp.231-242.
- Miller, S. "Payment in an On-line World". In Edwards and Waelde (eds), *Law and the Internet II: A Framework for Electronic Commerce*, Oxford : Hart, 2000.
- National Consumers League. *Online Auction Fraud Skyrocketing in 2002*, August 2002, @: <<http://www.nclnet.org/fraudweek2.htm>>
- *Phillips Products Ltd v. Hyland and Hamstead Plant Hire Co Ltd* [1987] 2 All ER 620; *Smith v. Eric S Bush* [1990] 1 AC 831; and *Thomson v. Lothian Ltd* [1987] 2 All ER 631.
- Regan, K. "PayPal Users Sue over Frozen Funds". In *E-Commerce Times*, March 13, 2002. @: <<http://www.ecommercetimes.com/perl/story/16751.html>>
- Rule, C. *Online dispute resolution for business: B2B, e-commerce, consumer, employment, insurance, and other commercial conflicts*, San Francisco: Jossey-Bass, 2002.
- Sapsford, J. PayPal Sees Torrid Growth With Money-Sending Service, *The Wall Street Journal*, February 16, 2000. @: <<http://www.paypal.com/html/wsj3.html>>
- Selis, P; Ramasastry, A. and Sato, A. *Towards a Fraud-Free Marketplace: Best Practices for the Online Auction Industry*.
- Report by the Washington Attorney General's Office, April 2001. @: <<http://www.wa.gov/ago/consumer/auctions/home.htm>>
- Sorkin, D. E. "Payment Methods for Consumer-to-Consumer Online Transactions", 35 *Akron Law Review* 1, 2001.
- Wolverson, T. "PayPal not a bank", *CNet News*, March 12, 2002. @: <<http://news.com.com/2100-1017-858264.html?tag=bplst>>

- 
- [1] Cohen, A. *The Perfect Store: Inside eBay*, Boston : Little, Brown & Co; 2002, p.19
- [2] Ibid, p.4.
- [3] Bunnell, D. and Luecke, R. *The eBay Phenomenon*. New York : John Wiley, 2000, pp.25-60.
- [4] eBay. *eBay Inc. Announces Third Quarter 2002 Financial Results*, October 17, 2002. @: <<http://www.shareholder.com/eBay/news/20021017-92686.htm> >
- [5] Cohen, op cit; p.10.
- [6] eBay 2002, op cit.
- [7] Cohen, op cit; p.27.
- [8] Selis, P; Ramasastry, A. and Sato, A. *Towards a Fraud-Free Marketplace: Best Practices for the Online Auction Industry*. Report by the Washington Attorney General's Office, April 2001. @: <<http://www.wa.gov/ago/consumer/auctions/home.htm>>
- [9] National Consumers League. *Online Auction Fraud Skyrocketing in 2002*, August 2002, @: <<http://www.nclnet.org/fraudweek2.htm>>
- [10] FTC. Internet Fraud. Statement by the FTC to the Subcommittee on Commerce, Trade and Consumer Protection, 2000. @: <<http://www.ftc.gov/os/2001/05/internetfraudttmy.htm>>
- [11] Brunner, M. "Cautionary tales of two auctions", *MSNBC*, October 10, 2002. @: <<http://www.msnbc.com/news/818257.asp?0si&cp1=1>>
- [12] Festa, P. "Identity thieves strike eBay", *CNET News*, November 22, 2002. @: <<http://news.com.com/2100-1017-966835.html>>
- [13] Bunnell and Luecke, op cit; pp.142-147.
- [14] "Ebay shuts down Columbia auctions", *The Register*, February 3, 2003. @: <<http://www.theregister.co.uk/content/6/29147.html>>
- [15] Bunnell and Luecke, op cit; pp.61-62.
- [16] Cohen, op cit; pp.26-27.
- [17] *EBay User Agreement*, para.16.
- [18] For more on this subject, see: Rule, C. *Online dispute resolution for business: B2B, e-commerce, consumer, employment, insurance, and other commercial conflicts*, San Francisco: Jossey-Bass, 2002.
- [19] <<http://www.umass.edu/dispute>>
- [20] Katsh, E; Rifkin, J; and Gaitenby, A. "E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of 'eBay Law'", *Ohio State Journal on Dispute Resolution*, Vol. 15:3, 200, p.706.
- [21] Ibid, pp.710-712.
- [22] Ibid.
- [23] Ibid, p.731.
- [24] <<http://www.squaretrade.com/>>
- [25] *EBay User Agreement*, para. 3.
- [26] *EBay User Agreement*, para.12.
- [27] *Gentry, et al. v. eBay Inc.*, Super Ct. No. GIC746980 (Cal. Crt. App., June 26, 2002)
- [28] Davis, C. "Court Dismisses Class Action Against eBay in Counterfeit Sports Memorabilia Case", *Internet Law Journal*, March 8 2001. @: <<http://www.tilj.com/content/litigationheadline03080101.htm>>
- [29] McKendrick, E. *Contract Law*, Fourth Edition, Basingstoke: Palgrave, 2000, pp.231-242.
- [30] Reasonableness is defined by s.11(1) thus: "the term shall have been a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made."
- [31] See: *Phillips Products Ltd v. Hyland and Hamstead Plant Hire Co Ltd* [1987] 2 All ER 620; *Smith v. Eric S Bush* [1990] 1 AC 831; and *Thomson v. Lothan Ltd* [1987] 2 All ER 631.

- [32] UTCCR, s.5(1).
- [33] UTCCR, s.5(2).
- [34] *Director General of Fair Trading v. First National Bank plc* [2000] 2 All ER 759.
- [35] For more of these methods, see: Sorkin, D. E. "Payment Methods for Consumer-to-Consumer Online Transactions", 35 *Akron Law Review* 1, 2001.
- [36] <<http://www.amazon.com/marketplace>>
- [37] Cohen, op cit; pp.229-230.
- [38] Sapsford, J. "PayPal Sees Torrid Growth With Money-Sending Service", *The Wall Street Journal*, February 16, 2000. @:  
<<http://www.paypal.com/html/ws3.html>>
- [39] Sorkin, op cit; pp.11-12.
- [40] For more on their fees, see: <<http://www.paypal.com/cgi-bin/webscr?cmd=p/gen/fees-outside>>
- [41] Thiel, P; cited by Sapsford, op. cit.
- [42] Grossman, W. "Online payment systems: Easy money?" *The Independent*, September 9, 2002. @: <<http://news.independent.co.uk/digital/features/story.jsp?story=331757>>
- [43] For more financial reports from eBay, see: <<http://www.shareholder.com/eBay/releases-earnings.cfm>>
- [44] Directive 2000/12/EC of the European Parliament and of the Council of Europe of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, OJ L 126/1, 2000, Art. 1; implemented in the UK by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO), SI 2001-544.
- [45] Directive 94/19/EC of the European Parliament and of the Council of Europe of 16 May 1994 on deposit-guarantee schemes, OJ L 135, 1994, Art. 1.1.
- [46] ROA, s.5(1).
- [47] *PayPal user agreement*, para 2.1.
- [48] Grossman, op cit.
- [49] Wolverton, T. "PayPal not a bank", *CNet News*, March 12, 2002. @:  
<<http://news.com.com/2100-1017-858264.html?tag=bplst>>
- [50] Bureau of National Affairs. "Electronic Payments: Paypal Funds Eligible for Pass-Through Insurance From FDIC as Deposits by Agent", *BNA Newsletter*, Vol 7 No. 12, March 20, 2002, p.254.
- [51] Financial Services and Markets Act 2000 (FSMA), ss.33-39.
- [52] FSMA, s.19.
- [53] Ellinger, E. P; Lomnicka, E. and Hooley, R. *Modern Banking Law*, 3rd edition, Oxford: Oxford University Press, 2002, Ch. 2.