

9 ODR AND ONLINE REPUTATION SYSTEMS

Maintaining Trust and Accuracy Through Effective Redress

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1 INTRODUCTION

Researchers at Oxford have discovered that most people can maintain close relationships with a maximum of 150 people at a time.¹ Beyond that number it becomes too complicated to keep track of the details in your head. In ancient times that 150 number was probably adequate for most people, because our ancestors spent the majority of their lives in small communities where they knew pretty much everyone. But in our modern world, where we ride packed commuter trains into large cities and work in skyscrapers filled with thousands of people in cubes, that 150 cap is just too low. We can easily max out our mental capacity before breakfast.

So in response, as our societies have urbanized, we have built increasingly sophisticated systems for keeping track of all the people we have to interact with. These systems have enabled us to grow far beyond our 150 person limit. Using these systems enables us to share our relationships with others, aggregating information into reputation systems that stretch far beyond the scope of our personal interactions. More recently we have enlisted technology to help these systems scale into the millions and even billions.

But as with any complex system, especially one as enormous and complex as a global reputation system, inaccuracies and fraud can arise, and these issues can result in disagreements between users. Timely resolution of these disagreements is essential to the continued health and success of any reputation system. If disagreements go unaddressed and inaccuracies are not fairly addressed, they steadily and inevitably undermine trust in the overall reputation system, which can push the system toward irrelevance and abandonment.

This chapter examines the growth of reputation systems and the resolution mechanisms that have evolved to support them. We discuss the legal context reputation systems operate within, and how it differs between North America and Europe. We then examine two reputation systems in depth, one new and one old: a cutting-edge reputation system called SiteJabber, which collects feedback on websites around the globe; and eBay's feedback system, one of the original online reputation systems, which has collected more than four

¹ <www.dailymail.co.uk/news/article-1245684/5-000-friends-Facebook-Scientists-prove-150-cope-with.html>, last accessed 1 March 2011.

billion reviews over the last ten years. We analyze the resolution systems utilized on these platforms in some detail, and then draw some conclusions as to what works and what doesn't in providing redress for reputation systems. We conclude with our projections as to how these systems will need to evolve in the coming years.

2 WHAT ARE ONLINE REPUTATION SYSTEMS?

Reputation systems have existed as long as human commerce. In ancient Mesopotamia traders kept lists of transactions and transaction prices carved in stone to keep track of cross-border purchases.² In Renaissance Italy exchanges were recorded in detailed log books to ensure adherence to commercial terms.³ As the world has industrialized these systems have grown in importance, and the scale and sophistication of reputation systems has grown immeasurably. While these systems have always existed on some level (be it stone carvings or ledger books) the expansion of information and communications technology has truly taken them to the next level. These days we can sort through literally billions of reviews at the click of a button, and billions of people around the world do so repeatedly each day.

Most online reputation systems usually share several characteristics. First, they rely on “user generated content”. This means that individuals can log into the system and leave their own reviews on people, products, or services they have experience with. The system administrator sets up the framework and then users come in and populate it with content. Second, these systems usually allow both positive and negative reviews. Users can indicate their opinion of the reviewed individual or service and provide a short comment elaborating on their experience. Third, these systems then organize all of this submitted content so as to make it easily understood, often aggregating the reviews into a “rolled up” metric like a feedback score or a number of stars. The reviews and ratings are then easily searchable, so visitors can come to the reputation system, easily find the individual or service they are interested in learning more about, and then quickly scan and process all the results to draw their own conclusion.

2.1 *The Need They Serve*

Humans crave information, and reputation systems provide targeted, useful data to help us make informed choices. Many of us now rely on information in reputation systems to

2 <www.suite101.com/content/economic-reasons-behind-the-invention-of-writing-a221934>, last viewed 29 March 2011.

3 <<http://acct.tamu.edu/giroux/FIRST.html>>, last accessed 1 April 2011.

make the big decisions in our lives, such as where to live, where to send our kids to school, and which doctor to use for our medical treatment. We also carefully monitor the information about ourselves in these systems because we know how important it can be to our future, such as our credit rating, LinkedIn profile, or Google results. One of the most common search terms users enter into sites like Google and Bing is their own name, because people want to know what other people are saying about them.⁴

Many of these reputation systems are focused on trust, enabling individuals to refer to information left by others to better determine who is trustworthy and who is not. For example, you can look your carpenter up in the Better Business Bureau or Chamber of Commerce to see if he has any complaints filed against him. You can check out opposing counsel in Martindale-Hubbell to see what firms he has worked with. You can even look up your new boss in LinkedIn to check out his prior positions. And it's not just individuals who use these reputation systems – corporations constantly monitor the behavior of their buyers so as to minimize risk and financial exposure, from credit checks to loyalty card programs to customer support contacts. Some reputation systems are not public, they are made available only to certain user communities, and it can be difficult to access the information they contain if you are not part of the allowed community.

2.2 *How They are Used*

The expansion of social networking has made reputation systems even more customizable and personal. Instead of reading through hundreds of random reviews to find the one that is most helpful, or relying on rolled up statistics from hundreds of random strangers, now you can look only at the reviews from your friends, or your neighbors, or left handed people, or Democrats, or Egyptians – whatever combination you think will provide the best sense of what choice might be good for you. And of course businesses can monitor our every click and page view, uncovering truths that we had never admit about ourselves (such as our insatiable interest in celebrity gossip and homemade cat videos).

Reputation systems are not confined only to directories and reviews. Search engines like Google are built essentially as a giant reputation system as well. Google ranks websites on the basis of how many links point at that website. Each link-in is like a mini-review, because no web designer or content generator would link to a website unworthy of attention. This algorithm has turned out to be the best way to organize not only the billions of pages of information available on the internet, but also the entirety of human knowledge, such as books, pictures, and videos. We are using the information in these online reputation systems to guide the future direction of our society, which makes their accuracy all the more important.

⁴ <<http://en.wikipedia.org/wiki/Egosurfing>>, last accessed 1 April 2011.

2.3 *Dealing with Disagreements*

Online Dispute Resolution (or ODR) is intimately tied to reputation systems. Negative ratings in reputation systems usually come from interactions that went wrong in one way or another. Maybe a buyer got a used item when they were promised a new item, or maybe a customer at a hotel got a room that smelled like smoke even though they had paid for a non-smoking room. Initially, ODR can play a crucial role at the point where the problem is reported. Buyers can use ODR to inform sellers they received the wrong item, and a replacement can be shipped. A traveler can inform her or his online booking company that the suite they paid for is unavailable due to repairs, and a refund can be processed immediately. If the problem is resolved quickly and without any drama then the customer is likely to leave a positive review, or no review at all. But if the merchant makes it difficult to report the problem, or drags his feet in fixing it, then the customer is likely to leave a negative review. Studies have shown that users are far more likely to spread the news about negative experiences than positive ones.

But ODR's involvement with online ratings does not end there. Once a negative rating is left the reviewed party may take issue with the rating. Maybe a seller believes the buyer left the negative rating maliciously, or suspects that the buyer was an agent for a competitor looking to besmirch the reputation of the seller. Maybe the rating is factually inaccurate, or perhaps the customer was trying to use the threat of a negative rating to extort the service provider into including additional value not included in the original service agreement.

If reputation systems do not provide fair redress options for disagreements, over time they lose trust, and users move elsewhere. There are many different online reputation systems in operation at any one time, and it is very easy for users to switch to a system they perceive to be more accurate or trustworthy. This trust challenge cuts both ways: if negative reviews are removed in a non-transparent fashion then users will come to question the accuracy of all reviews in the system, presuming that the overall feedback is being "sweetened" so as to be falsely positive. However, if abusive or inaccurate reviews are included in the system, then buyers will become suspicious about the accuracy of the overall reviews in the system, which may undermine their trust and give them an incentive to move to another site. In addition, sellers become increasingly aggravated by unfair reviews, which may encourage them to either game the system (*e.g.* submitting their own false reviews) or to take legal action against the reputation system administrator.

3 LEGAL OBLIGATIONS FOR REPUTATION SYSTEM ADMINISTRATORS

Along with the economic consequences of a loss of user trust, the management of online reputation systems has legal implications as well. False and misleading reviews can cause

an online business to lose valuable sales. If a seller gets a series of negative reviews buyers may see those reviews and avoid transacting with that seller. Or if a buyer does decide to transact with the seller in spite of the negative reviews, they will insist on lower prices (and smaller profits for the seller) because they are pricing in the perceived “riskiness” of the transaction (sometimes called the *trust penalty*). Sellers know that the success of their business is intimately tied to their reputation, and that every negative review comes with a sizable price tag, so they will go to great lengths to protect their online reviews and urge buyers to give them positive feedback. This may lead them to put legal pressure on the reputation system administrator.

In many cases, reviews may also rise to the level of defamation. Defamation, generally, is a false and unprivileged statement of fact that is harmful to someone’s reputation, and published as a result of negligence or malice. For instance, an eBay buyer may leave a feedback comment for a seller that says the seller is a convicted felon who stole money and engaged in sexual assault. The comment may be entirely false, left only by an angry buyer looking to settle a score and cause aggravation to the seller. But because the buyer has the right to leave any feedback they like, and because the eBay system publishes said feedback widely and puts it at the top of the seller’s feedback page, that comment can have an extremely negative effect on the seller’s livelihood. The seller may then accuse eBay of being complicit in the insult.

In the online reputation system context, questions arise as to who is liable for defamation. Due to the fluidity of online identities, allegedly defamed parties often cannot determine who originally authored the review content. In such cases, the only clear target is the reputation system administrator. Consequently, the defamed party seeks to hold the reputation system administrator liable for the review content. Any liability of the reputation system administrator depends on the jurisdiction in which the defamed party brings suit.

Another dynamic of online interaction is anonymity. In many corners of the internet identities can change as easily as one changes an email address. It is relatively easy to create a new account and besmirch a shop, restaurant, or hotel, because a) in many reputation systems the review can be left anonymously, and b) the reviewer faces almost zero risk of ever being caught or held accountable if her or his identity is not shared. Reputation systems are often all the more valuable because a good reputation takes quite a long time to build, making those who consult them less vulnerable to fraudsters who may be continually registering new fake accounts so as to shield their true identities and hide their past bad behavior. But users are rarely required to have a long track record within the reputation system in order to have the right to leave a review.

3.1 *Vetting for Accuracy Versus only a Venue*

In response to this legal exposure, reputation system administrators have chosen a variety of strategies. Some system administrators claim that they are only venues, with no responsibility for the content of the reviews published in their systems. In this manner, they claim they are like an email service provider or a classified ad publisher, with no vetting of the content running through their platform. This enables the system administrator to claim complete indemnification from any liability for the information submitted. Under this approach, the system administrator cannot vet any individual review for accuracy, because if they did so, they would by implication be vouching for the accuracy of all the reviews in its system.

Other reputation systems take a much more proactive stance. They may vet reviewers in advance, or require them to provide some evidence that they actually experienced the service they are reviewing. They may give sellers a chance to publicly respond to the review prior to it going live. They may enable other reviewers to report reviews that seem questionable. Once reviews are reported as being suspicious, the reputation system administrators may contact both the reviewer and the reviewee to get their perspectives on the matter. Usually these approaches only work when the reputation system is very small, because once the system scales into the millions or billions of reviews it is simply impossible for the system administrators to keep up with the volume. This is one of the reasons why smaller communities are often perceived to have more accurate reviews than larger systems. However, larger reputation systems argue that the volume of reviews they receive enables them to be more accurate in aggregate, because the overall sentiment expressed by reviewers is usually right on the money, even if there are the odd abusive or misleading reviews entered into the system.

In practice this black-and-white distinction between approaches becomes more nuanced over time. Reputation system administrators who claim to be only venues will make exceptions in cases where bright lines are crossed, such as threats, profanity, privacy violations, harassment, or criminal activity. And reputation systems that vet submitted reviews will some times allow a borderline review to stay in the system, arguing that it is just one comment out of thousands and should not be an undue burden on the reviewed individual or service. Often review systems start out vetting reviews and then ease off over time as their systems scale into larger volumes.

3.2 *In the United States*

The law related to online reputation systems is still evolving, and there are significant differences between various regions around the world. The United States has a long-standing

commitment to the principle of free speech, which has led the judiciary to take a very tolerant stance toward misleading or false reviews online. Europe, which has active libel and slander laws on the books in many countries, has a less tolerant approach on issues of intentionally false information. Many areas in the developing world have yet to write laws governing these types of speech, so how they would be handled is still very much an open question.

3.2.1 Section 230 of the Communications Decency Act

In the US, liability of reputation system administrators is determined based on Section 230 of the Communications Decency Act⁵. Section 230 states: “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider”. Generally, anyone who repeats someone else’s statements is just as responsible for their defamatory content as the original speaker – if they knew, or had reason to know, of the defamation. This standard clearly places a high burden on websites running message boards, chatrooms, and other similar technologies. To alleviate this burden and encourage online services to grow, Congress enacted Section 230, which provides strong protection against liability for Internet websites that provide or republish content authored by others. Essentially, this statute prevents a reputation system administrator from being held liable for publishing material created by third parties (*e.g.* buyers and sellers using the reputation system). However, this immunity is lost if the administrator materially alters the third party content. The US courts have not clearly defined the point at which content alteration goes from acceptable editing to material alteration. The following two cases provide some guidance regarding the liability of administrators in the United States.

3.2.2 *Reit v. Yelp!, Inc.*

In *Reit v. Yelp!, Inc.*,⁶ Reit, a dentist, sued the website Yelp.com for defamation. The regional Yelp websites have listings for businesses throughout the United States and Canada and accept reviews of any business or service. Listings vary widely in nature within the site, including listings for storefronts such as restaurants and shops; service businesses such as doctors, hotels, and cultural venues; and non-business locations such as schools, museums, parks, and churches. In *Reit*, the defamation claim arose from a post created by an anonymous Yelp.com user. The user posted a negative, and allegedly defamatory, review about Reit’s practice, including statements that his office is “small”, “old” and “smelly”, and “the equipment is old and dirty”. Reit claimed that the number of people who called for appointments dropped from 10-15 per day to 4-5 per day as a result of this post. After

⁵ 47 USC. § 230 (2006).

⁶ 907 N.Y.S.2d 411 (2010).

Reit contacted Yelp about removing the posting, Reit claimed that Yelp removed all the positive postings on Reit's page and only kept the aforementioned negative review.

The New York court in this case ruled that Yelp is an interactive computer service as defined in CDA Section 230 and a "third party information content provider" supplied the allegedly defamatory content at issue. The court found that Yelp's selection of the posts it maintains on Yelp.com can be considered the selection of material for publication, an action "quintessentially related to a publisher's role". Accordingly, the court found the defamation claim barred by CDA 230.

3.2.3 *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*
However, in *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*,⁷ the Ninth Circuit Court of Appeals did not provide Section 230 immunity for the defendant website operator. Although this website did not employ a reputation system, the case opinion provides another US court's perspective of Section 230.

Roommates.com operates a website designed to match people renting out spare rooms with people looking for a place to live. Before subscribers can search listings or post housing opportunities on Roommate's website, they must create profiles, a process that requires them to answer a series of questions. In addition to requesting basic information – such as name, location and email address – Roommates required each subscriber to disclose his sex, sexual orientation and whether he would bring children to a household. Each subscriber also had to describe his preferences in roommates with respect to the same three criteria: sex, sexual orientation and whether they will bring children to the household. The subscriber enters this information using pre-defined drop-down menu fields. The site also encourages subscribers to provide "Additional Comments" describing themselves and their desired roommate in an open-ended essay. After a new subscriber completes the application, Roommate assembles his answers into a "profile page". The profile page displays the subscriber's pseudonym, his description and his preferences, as divulged through answers to Roommate's questions.

The plaintiffs in this case argued that the questionnaire causes users to make a "statement ... with respect to the sale or rental of a dwelling that indicates ... an intention to make [a] preference, limitation or discrimination" in violation of the Fair Housing Act (FHA). The court held that the manner in which Roommates.com elicited information from users concerning their roommate preferences, and the manner in which it utilized that information in generating roommate matches, the matching service created or developed the information claimed to violate the Fair Housing Act, and thus was responsible for it as an "information content provider". Roommates.com most likely would have been granted Section 230 immunity if it did not mandatorily require FHA violating information from

⁷ 489 F.3d 921 (9th Cir. 2007).

the user. Conversely, the court upheld immunity for the descriptions posted by users in the “Additional Comments” section because users entered information into this section optionally without any requirement or input from Roomates.com.

3.3 *In England*

CDA 230 provides expansive protections for online reputation system administrators, but CDA 230 is only applicable in the United States. Sites such as eBay, Yelp, Trip Advisor, and the like have a worldwide user base. The United Kingdom offers a helpful counter-example to the US approach.

In the UK, the laws of libel and defamation treat a disseminator of information as having “published” material posted by a user and the responsibility is on the reputation system provider to prove that it did not know the publication was defamatory and it was not negligent in failing to know. Clearly, this places a much higher burden on online entities that publish user created content. Under this legal standard, online reputation system administrators in the UK can choose to either actively engage with content created by users or completely turn a blind eye to user posted content.

In the US, CDA 230 allows administrators to use the former approach and remove, edit, and non-materially edit user created posts. Without a CDA 230 equivalent in the UK, the only viable option for reputation system administrators is to allow users to post non-moderated content. One method currently used in the UK is not to have any moderators on message boards or chatrooms. This approach provides the legal defense of arguing that the administrator did not know of any defamatory content.

Clearly, this method can create dangerous and unsafe online environments, especially on sites geared towards younger internet users. However, there is also an upside with this approach for the allegedly defamed party. Once such a party informs the reputation system administrator of the defamatory content, the administrator loses the lack of knowledge defense. The administrator has to take action by verifying the accuracy of the content or removing it since it may be held liable if the content is determined to be defamatory. Conversely, under CDA 230, a reputation system administrator can simply claim immunity even if the defamed party notifies the administrator of potentially defamatory content.

4 REPUTATION SYSTEM CASE STUDIES

In this section, we examine two reputation systems and several of the redress processes employed by those systems to ensure continued trust in the accuracy of the information contained therein. These case studies can provide more helpful context on how these

reputation systems actually work, how they respond to applicable legal requirements, and how they instill and maintain a sense of trustworthiness among their users.

4.1 *SiteJabber.com*

SiteJabber, funded by the National Science Foundation in the United States, is a relatively new reputation system that enables its users to rate other internet websites. SiteJabber's goal is to help "people avoid fraudulent websites and find ones they will love". This goal is accomplished by allowing users to rate websites so as to indicate which ones they like and which ones they do not.

SiteJabber has a clean layout providing easy to navigate pages. The main page has two dynamic sections, "Community Alerts" and "Reviews of the Day", whose content changes based on different factors. The "Community Alerts" section randomly displays websites that have received negative reviews on SiteJabber. A warning in the form of "## members warn about websitename.com" is displayed next to a thumbnail snapshot of the website. Also, included is a portion of the top ranked SiteJabber review for the site. The "Reviews of the Day" section highlights two randomly selected positive reviews. The two selected reviews change daily.

The review interface is quite simple and intuitive. Users enter the domain name of the site they are reviewing, describe the type of website it is, and then select from one of four reviews: \$#@! (which indicates extreme unhappiness), MEH (which indicates mild displeasure or neutrality), cool (indicating modest enthusiasm), and ♥, which indicates strong enthusiasm. The site then gives reviewers the ability to provide open form text with additional detail on why they provided the review that they did. The instructions to reviewers specifically say, "Please do not review if you are affiliated [with] or [have a] conflict of interest with this website". The tone of the website is playful and fun, and it uses cartoon characters to provide additional color to the various tiered rating options available (see Figure 4).

Figure 4 Review Input Interface⁸

1 What website are you reviewing?
www.example.com

2 What type of website is this? (separate with commas)
news, shopping, politics, etc.

3 How would you rate this website?
 \$#@! MEH. Cool. ♥
 Roll over the bubbles, then click to rate.

4 Tell us about your experience [Read Review Guidelines](#)
 Your review will help others learn about this website.
 Please do not review if you are affiliated or have a conflict of interest with this website.

Submit

In terms of redress options provided to site administrators who receive negative reviews they feel are undeserved, there are relatively few options. The “Review Guidelines” provided by SiteJabber state that generally SiteJabber does not remove reviews unless the review fits the following categories: conflicts of interest, second-hand experience based review, personal attacks such as hate speech, bigotry, lewdness, or plagiarism.

To respond to a negative review, the website owner has to contact SiteJabber support. SiteJabber users can also report reviews by clicking on the “Report” below the review. There they are presented with a text box where they can explain why they think the review should be re-examined. SiteJabber is still of a size where they can manually review the information submitted through this channel.

A SiteJabber website review page has three tabs: Reviews, Questions & Answers, & More Info. The review tab displays all of the reviews left by users. The reviews listed can be sorted by relevancy, helpfulness, date, and rating. Helpfulness is determined by the number of users that clicked on the “Helpful?” link below the review. The review structure displays the reviewer’s name and whether or not the reviewer is a “Trusted Consumer Advocate”. SiteJabber reviewers earn levels for their contributions to the community. Levels are gained by writing reviews, comments, and forum posts that are found helpful

⁸ This SiteJabber screenshot was taken in February 2011 from <www.sitejabber.com>.

by other community members. By attaining higher levels, users can earn special privileges, such as being recognized as a Trusted Consumer Advocate (which provides greater visibility and weight to reviews). More information on special privileges is disclosed as reviewers advance in levels.

Below each review, there are three links: Helpful, Comments, and Link to this. SiteJabber users can click on these links to provide feedback about the review.

Registered SiteJabber users receive a few additional options and bits of data. For registered users the review structure displays statistical information about the reviewer (*e.g.* number of reviews written and number of helpful clicks received). Also, registered users are given a fourth link at the bottom of each review. This link is titled “Report” and is used to report a review to SiteJabber. Registered users have the option to “Report” any listed comments, Send the commenter a private message, or “Follow” the commenter. Following a user gives you notifications of the followed user’s public actions on SiteJabber.

SiteJabber is an excellent example of next-generation online reputation systems, which are designed to gather detailed information from users and organize it so as to make it useful to others. It uses a fun, light-hearted tone to encourage users to visit again, and it offers reviewed sites several options for clarifying and appealing negative reviews. The question is how well these systems will scale as volume increases, and whether or not the information gathered in the system will be deemed trustworthy or accurate enough to convince users to keep coming back.

4.2 *eBay’s Feedback System*

These days, most of the world’s internet users know about eBay. It is the largest global e-commerce site, with more than 250 million registered users around the world. eBay made its name in the late 1990s providing online auctions that connected buyers and sellers. It’s easy to forget these days, but back in early days of the internet there were actually a wide variety of auction sites serving the US market, not just eBay. Due to the network effect⁹ it made sense for all auction traffic to consolidate onto a single site over time, but in the early days it was unclear which auction site would eventually triumph. One of the major reasons why eBay became the winner was its fully integrated online reputation system

9 The network effect, originally coined by Theodore Vail, the first post patent president of Bell Telephone, describes how the value of a network increases for every additional node added to it. A good example is fax machines: the first person who bought a fax machine purchased a worthless device, but when the second fax machine was purchased the value of the first person’s machine increased, and it continued to increase for every additional fax machine sold. Online auction sites operate similarly, in that the more buyers and sellers that participate in the site, the more competition that exists, and the more efficient the market becomes. Previously fragmented markets, such as the market for collectable items like stamps, coins, and antiques, quickly migrated online into a single marketplace because that migration made the market more efficient and improved selection.

called Feedback. At eBay's launch the feedback system was merely a discussion forum where people could leave comments about other users in the system, but as the site scaled up the feedback forum became a highly streamlined system processing billions of reviews. Eventually it became the largest online reputation system ever created.

eBay Feedback is based on a simple concept: buyers and sellers should be able to leave a public evaluation of their transaction partner's performance so that future transaction partners can determine the trustworthiness of that potential partner prior to making the decision to transact with them. The system is quite simple. When buyers purchase an item from the seller, they have the option of leaving a feedback comment. This feedback can be positive, neutral, or negative. eBay then counts up all the feedbacks received by a seller to calculate that seller's feedback score, or the percent of the seller's feedback that is positive. In recent years eBay added a component to the feedback system called Detailed Seller Ratings, or DSRs. DSRs enable the buyer to rate their seller in several different categories (*e.g.*, shipping timeliness, responsiveness, etc.). What is different about DSRs is that the seller does not know the scores left by any individual buyer, they only know their aggregate scores. So if a seller sees his scores going down it is very difficult for him or her to know which of their recent buyers left a low DSR rating to pull down the overall score. It also means that as sellers sell more and more items and receive more reviews each individual DSR matters less to the overall score.

eBay's feedback system works much like the well-known negotiation game the Prisoner's Dilemma. In a single interaction in that game, there is a strong incentive to betray the other side in order to achieve maximum personal benefit. But if the game is played repeatedly, the incentive to betray the other side is removed because over the long-term, the reputation of the repeated betrayer will weaken trust between the parties. Similar to the Prisoner's Dilemma, in a one-off e-commerce transaction there is an incentive to betray the other side if it is unlikely that they will ever transact with you again. However, if your performance in each transaction is made public, then your reputation follows you to future transactions. Your future buyers will be able to see the evaluations from your past buyers, so if those buyers were dissatisfied, future buyers will steer clear of you, or demand much more favorable prices. eBay's feedback system turned e-commerce purchases into repeated game, thereby removing much of the incentive for seller misbehavior.

Figure 5 eBay's Feedback Profile¹⁰



At inception, feedback was designed to be bi-directional, so buyers could leave feedback for sellers, and vice versa. A few years ago the feedback system was changed so that buyers could leave positive, neutral, or negative feedback for sellers, but sellers could only leave positive feedback for buyers. The rationale for this change was that eBay was the only commercial environment where consumers were rated for their buying performance.¹¹ eBay was an anomaly in the sense that ratings were bidirectional, and while that might have been good for the resolution platform because it created incentives for both sides to deal honestly with their transaction partners, it did provide something of a disincentive for consumers to leave honest feedback on eBay. On competing marketplaces, like Amazon.com, buyers were not rated by their sellers. eBay had discovered by looking at transac-

¹⁰ eBay screenshot taken in February 2011 from <www.ebay.com>.

¹¹ For instance, buyers do not go to a large retailer like Target where they are then rated as they leave the store for how well they shopped and paid for the items that they purchased.

tion histories and reactivation metrics that buyers who received negative feedback from their sellers would often leave eBay, never to return. So a few years ago eBay made the decision to change the feedback system so that buyers were no longer subject to negative reviews from their sellers.

Another dynamic that emerged in eBay's feedback system was a tendency for buyers to self-censor out of fear that they would receive a retaliatory negative rating. In some cases where buyers had a negative purchasing experience from a merchant, they would leave negative feedback for the seller, and the seller, out of anger, would leave negative feedback for the buyer even though the buyer had done nothing wrong. Buyers quickly learned it was easier to either not leave feedback or leave positive feedback so as to avoid the threat of a retaliatory negative. This led to significant "grade inflation" on eBay, where even sketchy sellers could receive ninety-five percent positive ratings, which undermined user confidence in the feedback system as an accurate way to predict likely transaction success.

Sellers very rarely examined the feedback of their buyers prior to the buyer winning an auction or making a purchase from the seller, so feedback was not of great consequence for most buyers. However, buyers almost always examine a seller's feedback prior to placing a bid for purchasing an item from that seller, so feedback was of great consequence for sellers. Sellers who had lots of negative feedback would often receive fewer bids on their listings and would achieve lower final prices than other sellers who have high feedback. In that sense, sellers put much more stake in maintaining very high positive feedback as opposed to buyers. But because feedback was so public (one's feedback score always appears next to one's user name on eBay) both buyers and sellers got quite emotional about negative feedbacks they received, and went to great lengths to try to remove them.

The eBay feedback system has gone through many growing pains over the years, and some have called for the elimination of positive-neutral-negative ratings, instead moving to only the Detailed Seller Ratings (or DSRs, the star-based system). The rationale expressed for this is that DSRs are more in line with emerging web standards for merchant reviews, and that they are anonymous (sellers only see their aggregated DSRs, not the individual ratings left by individual buyers) which encourages buyers to leave honest feedback without fear of reprisal. To date, however, the feedback system remains unchanged, largely due to the fact that many sellers have spent a decade or more building their positive feedback, and they would be quite dismayed to lose it. As a result of that historical inertia, the eBay feedback system probably is not going away any time soon.

4.3 *Examples of Redress Options in eBay's Reputation System*

eBay's enormous transaction volume across a wide number of different categories led to a series of experiments in how best to provide redress within the feedback system. This section details three approaches eBay has utilized and the successes and failures of each.

4.3.1 **SquareTrade and Mutual Feedback Withdrawal**

SquareTrade provided eBay's first feedback redress process. SquareTrade was an independent company in San Francisco that provided a variety of trust-building services within the eBay marketplace, such as trust seals and dispute resolution. Between 2000 and 2004 SquareTrade handled several million feedback disputes for eBay. Their website presented a short automated negotiation process to eBay buyers and sellers, and if the issue could not be worked out directly through that process, SquareTrade offered a panel of live mediators to work with parties to resolve their disputes. eBay worked closely with SquareTrade for those years and paid SquareTrade a modest fee per case on top of the fee SquareTrade charged case filers who requested the assistance of a mediator. If SquareTrade helped the parties achieve a mutually acceptable solution to the disagreement (usually an agreement to remove both feedbacks left by the buyer and the seller) eBay would enforce the outcome and remove the ratings. SquareTrade also would remove the rating of any user who did not respond to the request to mediate the dispute in question.

SquareTrade's services were largely replaced by a mechanism on eBay called Mutual Feedback Withdrawal (MFW). Mutual Feedback Withdrawal made it possible for a seller to reach an agreement with a buyer to jointly remove feedback. If both sides indicated their agreement through the MFW tool, the feedback was de-scored, meaning the comment would remain on the eBay site, but the positive-neutral-negative rating was not included in the user's overall feedback score. A short notation was also included after the feedback indicating that the comment had been de-scored as a result of the MFW process.

The Mutual Feedback Withdrawal process made sense in an era when feedback was mutual, but once eBay made the decision that buyers could no longer receive negative feedback, the notion of "mutual" withdrawal was meaningless. The MFW process was replaced with a mechanism where the seller can ask the buyer one time if the buyer is willing to remove a negative feedback. If the buyer agrees, the feedback is removed. If the buyer does not agree, or does not respond, the feedback remains and the seller cannot ask again. Also, the buyer cannot unilaterally remove negative feedback, they must respond to a feedback removal request originally initiated by the seller.

4.3.2 **Independent Feedback Review**

In some categories on eBay, such as automobiles, the asymmetry between buyer and seller feedback valuations made MFW inadequate, because feedback was valued so differently

between users. Buyers can receive lots of positive feedback on low dollar value purchases, while professional sellers may only receive ten or twenty feedback a month, particularly if they are selling expensive automobiles. If an automobile seller receives a negative feedback, therefore, it appears on the front page of their feedback profile for weeks until the seller is able to make enough new sales to push it to a subsequent page. Sellers in the automobile category quickly discovered that these negative feedback ratings had a very tangible impact on their profits. Buyers soon discovered this fact as well, and often did not hesitate to exploit it. A buyer might purchase a car that was described accurately in the listing, but then insist on extra value not included in the original listing while threatening to leave the seller a negative feedback. For instance, a buyer might insist that the seller throw in a set of new tires on a car purchase even though the original listing did not say new tires were included. The seller knows that a negative feedback will impact their business to the tune of USD 1,000 or more of lost business, while the new tires will only set the seller back USD 750. As a result, the seller yields to the buyer's demand and provides new tires so as to avoid the negative feedback.

Sellers became very upset about this exposure to abusive buyer feedback and potential buyer extortion. As a result, working with the eBay Motors team, eBay's Trust and Safety team designed the Independent Feedback (IFR) Review process. This process was intended to provide protection to sellers in eBay motors category should they be exposed to the undeserved feedback from their buyers. The IFR program was designed as an arbitration/evaluation program, along the same design as ICANN's domain name dispute resolution protocol. The IFR program began with three separate online dispute resolution providers: the Better Business Bureau, Net Neutrals (a program of DeMars Associates) and Squaretrade.com. Over time the system evolved to work with only a single provider, NetNeutrals.com.

The program works this way: a user who feels he or she has received an undeserved negative feedback is able to initiate a case through the IFR program. Initially the filing process resided on the eBay.com website, and once the filing was received, it was forwarded on a round robin basis to one of the three approved ODR providers. Once the program condensed down to a single provider after a few years the users were then made able to file the case directly on the NetNeutrals website. When they filed the case the seller indicated why they felt the feedback they received was inappropriate. The IFR program had four clearly stated reasons why feedback could be removed:

- The member leaving the Feedback didn't show a good faith effort to complete the transaction.
- The feedback was not submitted in a reasonable amount of time. Thirty days is usually an adequate period of time to allow for inspection and test drive of a purchased vehicle.

- There is clear and convincing evidence that the transaction-related information contained in the Feedback comment is factually inaccurate, even if this was the result of a misunderstanding or an honest mistake.
- The member leaving the Feedback made an attempt to extract excessive value from their transaction partner. “Extract excessive value” means the buyer or seller is trying to get money, goods or services that are worth more than what was advertised in the listing.¹²

If the seller’s complaint did not fit into one of the four categories, the feedback could not be removed. Once the seller explained her or his case, the buyer would be contacted and provided an opportunity to respond as well. The buyer would submit her or his information and also have the ability to review the comments that were submitted by the seller. Once the buyer had completed a submission, the seller had one final opportunity to rebut the buyer’s points. Once all of the information was collected from the buyer and the seller the case was forwarded to an independent evaluator who looked at the information submitted and, based on the four rationales for removal under the independent feedback review program, determined if the comment was undeserved.

If the evaluator determined that the feedback was inappropriate, that decision was communicated to eBay. eBay would then take the appropriate action in the feedback system. Negative feedback was never removed from the seller’s feedback profile – only the score would be removed from their overall feedback percentage, and a note was appended below the feedback indicating that it had been de-scored as a result of an outcome from IFR process.

NetNeutrals has the advantage of expertise: all of their evaluators are ASE certified technicians, so they can understand the specific problems reported by the buyer and connect it to the particular model or vehicle type in question. NetNeutrals is the online program of DeMars Associates, a face-to-face dispute resolution firm that has handled warranty arbitrations for major automakers for many years. Partnering with a highly credible third party like NetNeutrals – whose panelists have extensive subject matter expertise – lent serious legitimacy for the process, which in turn helped to underscore trust.

4.3.3 The Community Court

The Community Court (found at <<http://ebaycourt.com>>) is a system in use at eBay India to provide redress to sellers who believe they have received an unfair feedback. Sellers can visit the eBay Court and report the matter, indicating the feedback in question and explaining why they think it was undeserved. Buyers then have an opportunity to log in

¹² <<http://pages.ebay.com/help/feedback/motors-independent-feedback-review.html>>, last accessed 28 March 2011.

and explain their perspective as well. Each side can upload whatever information they think is relevant to the case, including video, images, and documents. Once each side has made their case, the matter is put in front of a jury of twenty-one randomly selected eBay community members. Each member has previously applied to be a juror in the Community Court and met fairly stringent eligibility criteria (*e.g.* time on site, positive feedback). They are also tested at the time of case assignment to ensure that none of the jurors have ever transacted with the buyer and seller involved with the case. The jury is also balanced between buyers and sellers. Each juror evaluates the information submitted by both sides and indicates whether they agree with the buyer, the seller, or if they feel there is not enough information to make a decision. If the buyer prevails, then the feedback is left on the site unchanged. If the seller prevails, the outcome is communicated back to eBay, who removes the feedback in question.

The experience of administering the Community Court over the past three years has illuminated both the strengths and weaknesses of this crowd-sourced approach. Over time, the platform has been revised to improve case assignment, jury balance, and juror engagement. The eBay India team learned from speaking to users that the “court” and “juror” language was not optimal for users, so now the platform speaks instead about community review “panels”.

Originally the concern was that there would be a shortage of jurors, but in fact, the eBay Court has had more than enough jurors apply, and as of yet the platform has not needed to compensate jurors for their service in order to keep them engaged. This may be a unique feature of eBay, because eBay has long had an active community with extremely engaged users. Also, the eBay Court administrators have learned how to monitor verdicts and identify troublesome patterns. If a juror’s decisions raise concerns, they may be tested out with previously decided cases, or they may stop receiving case referrals altogether.

The feedback on the eBay Court has been very strongly positive, and eBay India has indicated that they love the feature and will support it over the longer term. This crowd-sourced, community-driven approach to providing redress in online reputation systems offers great promise, and it is soon to be implemented on other sites, such as <www.marktplaats.nl>, the largest e-commerce site in The Netherlands.

5 WHY REPUTATION SYSTEMS SHOULD USE ODR

It is true that in the US the Communications Decency Act provides immunity for internet intermediaries in the area of user generated content. Many companies rely on that immunity as the only defense against a potential mountain of litigation from users unhappy with information disseminated through their systems. Because internet companies are so wary of exposure to that liability, many of them would prefer to stay distant from the

content being generated within their reputation systems, because they believe that provides the greatest protection against lawsuits. Legally, this may be the safest approach.

However, this strategy is short-sighted. Reputation systems are created to provide accurate information as to the performance of services or businesses based on prior experience. If there are inaccurate or abusive reviews being left within a reputation system, then those reviews are undermining the system's accuracy. It also is unfair to the reviewed individual, business, or service. These entities may be penalized based on feedback left for them online, and without a redress option, they are powerless to do anything about it. Imagine a small, family-run restaurant, just starting out and building its reputation, that receives an inaccurate or unfair review – maybe from a competitor, or maybe from a customer with some ulterior motive. If that review is disseminated through a powerful internet intermediary, that negative early word of mouth can cause major dislocations in the restaurant's growth plans. And when the restaurant calls up the intermediary and asks to provide evidence that the feedback is not legitimate, the intermediary responds that their policy is not to vet any feedback received. Yes, the CDA may protect the intermediary according to the letter of the law. But what is the right thing to do?

Of course, online reputation system administrators do not want to open the door to lawsuits by playing a more aggressive role in vetting reviews. But reputation systems can partner with outside organizations to provide this redress, insulating themselves from liability while at the same time providing justice to their users. It might be a community-vetting approach, such as the Community Court, where a panel of both active reviewers and reviewed service providers can hear the perspectives on both sides of an issue and render a decision. The community is generating the feedback, so the community should also have the ability to vet the feedback for accuracy and provide fair redress where appropriate. Or it might be an expert-arbitration approach, like NetNeutrals.com, where individual cases are evaluated by qualified third parties. Using mechanisms such as these, the reputation system administrator takes no responsibility for the decision, they just agree to enforce the outcomes rendered.

Some reputation system designers get concerned about the impact on buyer willingness to leave feedback if a redress system is put into place. If buyers know that their feedback may be subject to a subsequent review process, they ask, won't buyers be more reluctant to leave a review in the first place? This is a valid concern, but on the other hand, it might be a good thing for buyers to know that their feedback may be reviewed. They might be less likely to leave an inappropriate or abusive feedback if they have some sense that they may be held accountable for it. Also, if positioned carefully, buyers may appreciate the importance put upon their feedback by the existence of a redress process. That a panel of community members would be brought in to evaluate the comment they left communicates the importance and value placed upon feedback left in the system. The redress process should be framed as an attempt to create fairness, but also a further indicator of the

importance placed upon the buyer's opinion, and as an indicator that the review will have meaningful ramifications. Also, the system should be designed so that buyer has an upside to the process: maybe if the buyer is victorious in the appeal, a comment is appended to the review in question indicating that a review panel affirmed the buyer's original review. In some respects, if buyers are unwilling to show up to defend their reviews, maybe they do not belong in the reputation system.

6 CONCLUSION

The relationship between reputation systems and online dispute resolution is a very symbiotic one. Both redress and reputation are intimately connected to identity. In the face-to-face world, it is almost impossible to shed all vestiges of one's prior identity and to take on a new one, because of unalterable biological characteristics like fingerprints, appearance, or other identifying information such as Social Security numbers or credit history. On the Internet, however, identity can be quite fluid. Online buyers can engage in all sorts of bad behavior and even fraud, and then once their reputation has been entirely discredited, just throw away that identity and create a new one without the baggage of their bad past behavior. This dynamic makes meaningful redress all the more important.

This is as much a challenge for online dispute resolution systems as it is a challenge for many large websites. Proving that people are who they say they are is one of the central difficulties of online interaction. But when it takes a very long time to build a good reputation, it becomes much harder to fake one's identity. New entrants into a marketplace do not have the kind of trust that is built up over many years of good behavior, and as such are frequently regarded with some suspicion. So reputation systems can help to combat some of the abuses that fluid online identities make possible.

Sellers know that their fortunes are directly connected to their feedback rating. Their sale prices and yearly profits are largely dictated by their reviews and feedback scores. And as of the last few years, sites like eBay and Google are beginning to rank search results and tier pricing on the basis of feedback and buyer reporting, so the possible profit margin for a seller is directly tied to the reviews they have received. So the importance of redress in these systems will only grow.

As online reputation systems become more influential and more widespread, the importance of fair redress systems will expand. It may be enough today for reputation system administrators to say that they have no legal obligation to provide redress to sellers who feel that they have received an erroneous review. But over time, the lack of effective redress will undermine the trust and transparency of the reputation system, weakening the loyalty of users. Savvy online reputation system administrators will embrace this challenge

and integrate redress into their processes sooner rather than later, so they can get ahead of the curve and use trust as a competitive advantage. They will win over the long term.

Some argue that negative reviews on the internet do not really harm anyone that significantly, so it is not important to provide redress. There are plenty of counterexamples to that assertion. One doesn't have to look far to find many examples of online harassment that have taken place in online reputation systems. Character assassination, cyber-stalking and bullying, and business interference are not unusual. If an unfair negative review helps to crush an online business, who should have the responsibility to address it? It is clear that only the system administrator has that kind of authority. So while the CDA's indemnification may serve as legal protection, there are brand and customer satisfaction issues to be considered as well.

Redress is often seen as a priority during the second-phase of growth. That was what happened in e-commerce, and it is likely to happen that way in online reputation systems. User generated content is powerful and exciting, but it is only the first step. User generated justice is the next step. It is not adequate to just start a reputation system and then disavow responsibility for the content inside of it. The next wave of sophistication and maturity in the online reputation system space will usher in user demands for fairness, justice, and transparency. Those sites that overlook those elements will see their visitors migrate to sites that do not overlook them.