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My Reputation Always Had More Fun Than Me: The Failure of eBay's Feedback Model to Effectively Prevent Online Auction Fraud

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ABSTRACT

{1}Online auctions for goods are currently a popular and lucrative form of e-commerce, but present special problems of trust and fraud prevention, because most deals involve buyers and sellers who do not know each other and are separated by distance. Online auctions for goods have been largely unregulated by formal laws. For that reason, trust-building and fraud prevention have primarily been accomplished through creative private regulatory models implemented by the auction houses themselves.

{2}This Comment examines one popular model, a registration and feedback system pioneered by the leading online auction company, eBay. Under this system, a user builds a public online reputation over time by engaging in a number of transactions and receiving public feedback from his transaction partners. By checking a potential transaction partner's feedback file, a user can theoretically receive information about that party's honesty and trustworthiness, and make an informed decision about transacting with that person. However, as this Comment will show, the growth of the user community has rendered this "community policing" model increasingly unreliable and unable to prevent bad behavior, although the model still has some psychological benefits. Therefore, eBay cannot rely on feedback systems to reliably prevent fraud, and must implement other forms of regulation (some of which are discussed in this Comment) or face being externally regulated by government entities.

I. Introduction

{3}In the past few years, online auctions for goods have emerged as a popular new sales form unique to the Internet.[1] Sellers enjoy reaching a wide audience at a low cost and getting the highest possible price that buyers are willing to pay. Buyers enjoy the fun and the excitement of bidding and the potential for finding unique bargains from all over the world without leaving their homes. Online auction site operators can also reap great profits with relatively little effort since their contribution is limited to maintaining the auction server, and the other transaction costs such as inventory maintenance and shipping are borne by the seller and buyer.

{4}However, in order to draw customers and inspire consumer confidence, online auction companies must find ways to prevent fraud and harassment, and encourage only serious, honest transactions.[2] On the "buy side," the auction buyer usually cannot personally inspect the seller or the actual goods. Many sellers are individuals or very small businesses such as antique dealerships. When these sellers operate outside their local communities, they may not be subject to the reputational and legal constraints that govern larger, established businesses. The nature of the goods being sold frequently collectibles of uncertain value causes concern about misrepresentation, shill bidding to drive up the price of an item, and other deceptive sales practices. Deals usually involve buyers and sellers separated by distance who complete the transaction by mail, so a dishonest seller might also take the money and never deliver the goods. During the past two years, significant increases in the number of fraud complaints involving dishonest sellers has spurred the Federal Trade Commission and consumer watchdog organizations to take up the buyer's cause.[3]

{5}On the "sell side," the auction seller's concern is to screen out "deadbeat bidders" who back out of the deal after the auction or bid more than they are able to pay. Although the most widely reported examples of the deadbeat bidder problem have involved big-ticket items,[4] this problem regularly occurs for less expensive items as well.[5]The seller is also concerned with protecting himself against non-serious bids by unfair competitors and pranksters. In the real world, a seller could make judgments based on appearance or demeanor and could invoke control mechanisms, such as calling police if a customer acted disruptive or failed to pay. These conventional methods are not available online.

{6}Because interstate (and international) online auctions for goods have been largely unregulated by formal laws,[6] online auction companies have been free to come up with creative private regulatory models to promote serious, honest transactions and build consumer confidence. One popular method, pioneered by the online auction company eBay, is a registration and feedback system. New users register with eBay by providing a certain amount of personal information and receiving a unique username associated with a public feedback file. At the conclusion of each transaction, each user posts a short report to her transaction partner's feedback file indicating whether the transaction went well. Over time, as a user engages in a number of transactions, he accumulates comments from many members of the community, essentially building up an online reputation. By checking these feedback files, users can receive information about whether a particular buyer or seller is likely to be a good and an honest transaction partner, and can thus decide whether to transact with that party. In theory, a user who conforms to accepted transactional norms will receive many positive comments, while a user with many negative comments will be punished by being shunned by transaction partners in the market. In extreme cases, a formal rule may be invoked to expel the user from the community. In this manner, the community theoretically polices itself with little intervention from eBay.

{7}Although this method of self-policing has some benefits, as eBay has grown from a small community into a huge worldwide business, this "community policing" model has become increasingly unreliable and unable to prevent bad behavior. In order to maintain the culture of trust essential to eBay's current business model, eBay as the intermediary must take some action to maintain a climate of trust and avoid having outside

regulation, such as federal law, imposed on its business.

{8}eBay has responded to eroding trust in two ways. First, it has added some protective mechanisms to its operating code, causing some forms of dishonest behavior to become mechanically impossible. However, this code-based regulation is weak because a strong form of code-based regulation would discourage legitimate users.[7] Second, eBay has attempted to shift responsibility for the problem by partnering with third party intermediaries, such as credit card companies, who offer a stronger and more effective form of market-based regulation.[8] But reliance on third parties does not absolve eBay of all practical responsibility, and perhaps not even of all legal responsibility. Moreover, in implementing stronger controls, eBay must somehow admit that its original trust-based protective systems have failed without losing credibility.

{9}Part I of this paper provides a brief description of eBay's operations and incentives, and shows why eBay, despite a legal incentive to remain passive, must take steps to prevent fraud to avoid harm to its business. Part II discusses the flaws in eBay's user registration scheme that shift the burden of fraud prevention onto the post-registration stage. Similarly, Part III discusses the problems with eBay's post-registration feedback model and how it fails to prevent fraud. Although the feedback system provides some communitarian benefits, especially to well-intentioned users who plan to be repeat players, effective fraud prevention is not among those benefits. Part IV briefly discusses the real ways in which fraud is effectively prevented on eBay: third-party private solutions and private investigation by cyber-vigilante users. Part V proposes an alternative scheme for third-party feedback administration. Part VI concludes by suggesting some ways in which eBay could improve its handling of the fraud problem within the bounds of its economic and legal concerns.

II. eBay's Auction Process, Economic Incentives, and Legal Incentives

{10}eBay, located at <http://www.ebay.com>, describes itself as "the world's largest personal online trading community" that "help[s] people trade practically anything on earth." [9] Although it includes big-ticket items such as real estate and automobiles, eBay is best known as a sort of online flea market for a vast variety of antiques, collectibles, computer equipment, used household goods, and junk of every description.[10] Founded in 1995, ostensibly as a site for the founder's wife to sell collectible Pez candy dispensers,[11] it pioneered the online auction model and spawned many competitors that imitate some or all of its features. [12] The company went public in 1998 and, unlike many other publicly traded dot-coms, has consistently shown a profit.[13] From 1997 to the present, eBay has undergone phenomenal growth, expanding from a community of approximately 150,000 users in 1997 to approximately 19 million user accounts as of October 2000.[14] On a typical day, several million eBay auctions will be in progress, covering more than 4,500 item categories.[15]

{11}This section first details the basic operation of an eBay auction, then discusses the economic and legal incentives that drive eBay's regulatory schemes and motivate its use of third parties. As this section will show, although eBay has had incentives to remain passive up to this point, passivity is not a viable option in the face of escalating fraud. Therefore, eBay is forced to take some steps to preserve the economically advantageous atmosphere of trust and avoid potential legal liability.

A. How an eBay Auction Works[16]

{12}The eBay auction process operates as follows. In order to buy or sell on eBay, a user must first register with eBay through a web-based process and provide some personal information.[17] The registration process

is outlined in more detail in Part II, *infra*. Newly registered users choose a unique username and password, to which is attached an initially empty feedback file.

{13} eBay makes money by collecting listing fees and commissions from auction sellers. Most eBay products are sold by individuals or small businesses such as antique dealerships, to other individuals or small businesses.^[18] A seller pays a listing fee to put an item up for auction by listing a picture, description and opening bid in the appropriate eBay category.^[19] Interested buyers may find the item by browsing the eBay site or by using a search engine. A buyer who wishes to purchase an item enters her bid electronically on the eBay site. Each auction runs for a fixed time period, normally several days; at the conclusion of the auction, the highest bidder is awarded the right to purchase the item.^[20] The high bidder and seller are expected to obtain each other's e-mail addresses (and other contact information, if needed) from the eBay site and complete the transaction on their own without further assistance from eBay. The buyer pays the seller and the seller pays a commission to eBay.^[21]

{14} At the conclusion of the transaction, each party has the option to leave a positive, negative or neutral comment, or no comment, in the other party's feedback file. The feedback process is discussed in more detail in Part III, *infra*. This feedback is meant to provide low-cost information to future potential transaction partners, so they can better decide whether to transact with the person in the future.^[22]

B. eBay's Economic Incentives: Honesty for Sale Cheap

{15} As a for-profit business, eBay's behavior is primarily driven by economic incentives. In a nutshell, eBay wants to encourage many customers, both buyers and sellers, to visit its site and transact business, resulting in more listing fees and commissions for eBay. At the same time, eBay would like to minimize its own costs of doing business, including the costs of operating internal regulatory systems, meeting externally imposed requirements (such as laws) and obtaining capital. Regulatory processes such as registration and feedback must take these economic drivers into account.

{16} In order to make the comparatively new business model of online auctions credible and profitable, eBay must provide a trading environment that is trustworthy enough to engender confidence in users, stockholders, government enforcers and regulators, large private market "regulators" such as Microsoft and America Online, and potential business partners. If any one of these groups lost confidence in eBay, business might suffer as a result, with eBay losing sales or strategic access and incurring the costs of self-defense or increased governmental scrutiny.^[23] Therefore, eBay strives to provide a default image of trustworthiness and credibility as well as convenience.^[24] In particular, site browsers must quickly get a positive image of eBay, so that potential customers will like what they see and want to transact.

{17} First and foremost, eBay's site must communicate an image of trust. eBay realized early on that many people hesitate at the thought of transacting with unseen strangers on the Internet, particularly for collectibles of uncertain value sold in an auction format. Users cannot see their distant transaction partners, and must transact through non-rich communications such as e-mail, telephone calls and viewing photographs of the item. The cheapest and easiest method of communication, e-mail, may be difficult to use effectively within the short auction time window, since each party must wait for the other to respond. Other methods, such as long-distance telephone calls, are inconvenient and may be expensive compared with the value of the item at auction. Original users suggested community-provided feedback to eBay. It allows eBay to provide some free information and paint an honest picture with lower cost and less involvement than if eBay itself had to investigate each user and post an evaluation.^[25] Feedback profiles showing many positive comments also contribute to a trustworthy overall image.^[26]

{18} Second, eBay's site must be easy to use and allow new visitors to quickly start buying and selling. New

buyers especially need speedy involvement in order to make impulse purchases and bid on auctions that might be ending. Therefore, initial registration, especially for buyers, must not be burdensome or intrusive. Added pre-screening is costly and may discourage new users, particularly those who value their privacy more than the potential value gain from transacting.[27] If a new user feels that she must undergo the "third degree" in order to buy a five-dollar Pokemon toy on eBay, she is likely to take her business elsewhere.

{19}Third, eBay's site design must be "sticky" it must keep customers on the site for long periods of time and it must also encourage repeated visits. Long browsing sessions and repeated trips are more likely to result in transactions, and also increase other competitive metrics such as the number of page views.[28] To keep users on the site, eBay has not only product listings, but additional features such as online magazines, discussion groups and feedback forums. To keep users coming back, eBay attempts "code lock-in," a technology design that discourages visitors to take their auction business to a competitor.[29] Code lock-in is an important consideration in designing features such as feedback, which is currently not portable to other auction sites. Once a user goes to the trouble of building up a good online reputation with eBay through amassing feedback comments, that user will be less likely to go to a new site where, assuming his established transaction partners choose to remain on eBay, he will have to start building an online reputation again from scratch with new transaction partners. Under this scenario, a collective action problem arises because all users suffer from the same code lock-in problem and, barring a mass exodus of many users from eBay, there is no incentive for any one user to leave.[30]

{20}Fourth, eBay must be responsive to its customers' needs, particularly those of its sellers. Sellers are preferred because they generate eBay's fees and commissions, they are closer to the market, and they act as eBay's eyes and ears in the field. In addition, as dealers attempting to earn income, they are more likely to be repeat players than buyers, who might only make purchases sporadically.[31] Therefore, if customers, particularly sellers, want a specific feature, eBay must take their desires into account. Customers have played a significant role in developing the eBay feedback model up to this point, and are likely to continue to do so in the future.[32]

{21}Potential adverse effects on stock are very important to eBay management, who not only receive stock as part of their compensation, but also might lose investors' confidence, as well as their own money, if the stock drops. Stock is most likely to be affected by high-profile incidents of fraud, several of which occurred during 1998 and 1999. In one case, a 13-year-old boy bid on and won \$3 million of merchandise, including a 1955 convertible and a Van Gogh painting, before his parents discovered his activities.[33] Another mishap occurred when eBay auctioned for charity a jacket autographed by Katie Couric, host of NBC's "Today" show. The winning bid of \$200,000, after being announced on the show, was found to be fraudulent, and the jacket sold for a much lower price.[34] On the sell side, in November 1999, a California man became the first person sentenced to prison for online auction fraud as a result of an eBay scam that netted him approximately \$37,000.[35] While these public humiliations affect investor behavior, ordinary users are just as likely to depart in frustration over smaller incidents of fraud occurring on their auctions.

C. eBay's Legal Incentives: Regulating Just Enough to Avoid Being Regulated

{22}Although economic drivers are eBay's foremost concerns, eBay also has to take legal and regulatory concerns into account. In the past eBay has remained as passive as possible in order to escape legal liability, but increasing regulatory pressure coupled with legal uncertainty make this strategy risky and untenable for the future.

{23}Like any Internet business with potentially "deep pockets" and a large number of users, eBay wishes to

avoid legal liability for anything that might happen on its site, such as fraud, harassment of a user, or defamation of a user. Historically it has done this by attempting to stay out of the transaction, and it prefers to characterize itself as a passive provider, "only a venue" where transaction partners meet and go about their business.[36]

{24}In taking this stance, eBay appears to characterize itself as a passive Internet service provider ("ISP") and relies upon decisions such as *Zeran v. America Online*[37] and *Blumenthal v. Drudge*[38] to absolve itself from tort liability based on the behavior of its active users. In *Zeran* and *Blumenthal*, America Online ("AOL") was absolved of liability for defamatory statements posted on its service by individual users,[39] despite the fact that, in *Blumenthal*, AOL had contracted with the defendant Drudge, a journalist, to carry his column on AOL's Internet service and to remove content if it violated AOL's terms of service.[40] The holdings in *Zeran* and *Blumenthal* relied on an interpretation of federal communications law[41] that protected providers from tort liability based on the actions of its users, on the grounds that a large provider cannot afford to police the activities of many users without cutting back on services.[42]

{25}However, the current regulatory environment offers only weak support for this passive stance. So far, only three circuits have explicitly adopted the holding of *Zeran*. [43] Furthermore, most interpretations of *Zeran* and *Blumenthal* read the decisions as exempting service providers from liability based on the published statements of their users. It is unclear whether the holdings would protect the providers when users commit tortious acts that go beyond publishing defamatory statements. Furthermore, when the liability at issue involves a broken contract for sale of goods, rather than a tort such as defamation, the ISP may not be permitted to escape liability so easily.[44]

{26}It is also questionable whether eBay truly falls within the policy definition of an ISP. The ISP involved in *Zeran* and *Blumenthal*, AOL, could be seen as providing the societal beneficial service of low-cost user-friendly Internet access to U.S. citizens.[45] Internet access is seen as increasingly essential for purposes of educating children, gathering information, communicating with others, and completing work tasks; the importance of this service might justify limiting AOL's liability for user misconduct, so that increased liability does not force AOL to cut back service to many subscribers. By contrast, an online auction house such as eBay might be viewed as providing a nonessential service. The goods sold on eBay are not the necessities of daily life; rather, they are almost entirely lifestyle products, enjoyable but certainly not essential. Therefore, as a policy matter, eBay might not merit the same protection as AOL.

{27}In the area of fraud, the government has shown signs of increasing unfriendliness toward eBay. While in 1999 the federal government took a "wait and see" position toward Internet regulation,[46] the rapidly increasing number of online auction fraud complaints[47] has drawn federal regulatory attention to online auctions.[48] Several states also recently attempted to enact laws regulating online auctions.[49] eBay's posted statement, quoted below, shows the difficulty of maintaining a passive position:

D. Trust and Safety: User Agreement: What Does "eBay is Only a Venue" Mean?

{28}The eBay user agreement states:

eBay acts as a link between the buyer and seller. We just provide the automated bidding system. We do not authenticate users, we do not verify items, we do not guarantee that you will receive payment or the item. However, we are extremely concerned about our community and your safety within our community. To that end, we work with third parties to offer you services to authenticate users, insure and escrow your transactions.[50]

{29}By going through third parties, eBay probably hopes to take advantage of existing regulation without

exposing itself to possible new liability or regulation, as well as sending a message to government that it is trying to do something about fraud. Some of the third parties, such as Equifax for some user credit verifications^[51] and Lloyds for free insurance of an item purchased on eBay up to \$200 (with a \$25 deductible),^[52] are longstanding brick-and-mortar businesses that are governed by existing laws covering credit reporting and insurance. However, other partners such as I-Escrow.com (offering escrow services)^[53] are new business models themselves, with unclear liability, and may not actually relieve eBay of legal burdens.

{30}The obvious need for additional fraud protection is part of a larger picture showing the need for increasingly formal regulation in many areas of a rapidly growing global business. In eBay's early days, prior to going public, eBay had few formal rules, and in the absence of law governing eBay's operations, relied almost exclusively on informal regulation by social norms and the market.^[54] Users who violated eBay norms, as determined by the feedback reports of the greater user community including eBay staff, were punished through market means when other parties refused to transact. The eBay community also benefitted from the efforts of private users who engaged in the cybervigilantism popularly known as "netcopping" by personally investigating and tracking down suspected eBay fraud perpetrators.^[55]

{31}As eBay has grown, extended its territory worldwide, and become more sensitive to public concerns, it has been forced to implement stronger, more formal control policies across the board.^[56] Large, diverse growth in the eBay community also tended to disturb the formation and maintenance of group norms that may have worked well for a smaller community.^[57]

{32}Although geographic proximity is not required for norm formation, shared common interests and interdependence are required.^[58] The users on eBay do not share a common interest. This is due to the diversity of products sold and varying levels of involvement, from repeat play to infrequent use. In addition varying roles, including professional dealer, frequent buyer, and infrequent buyer or seller add to the diversity. Therefore, in order to avoid an increased number of bad transactions caused by mismatched expectations, eBay needs to take a greater role in enforcing some regulation, rather than leaving transactions up to purely private ordering.^[59] If eBay does not step in, it is likely that formal legal authorities will increasingly be called upon to do so.

E. Conclusions About eBay's Process and Incentives

{33}eBay has a strong incentive to stay out of user-to-user transactions in hopes of avoiding massive liability for fraud under the holdings of *Zeran* and *Blumenthal*. However, when fraud reaches a certain point, eBay cannot continue to remain passive without undermining its economic goals. This is not a matter of eBay having a moral responsibility to promote trustworthy dealings, but a practical matter that if too many users complain about fraud, eBay's business will suffer, its reputation and access to capital may be harmed, and it may be subject to unwanted outside regulation by federal or state government. In attempting to seek solutions to fraud, eBay will attempt to balance the need to preserve its trustworthy reputation against the economic incentives to keep the site open to as many users as possible and the legal incentive, provided by *Zeran* and *Blumenthal*, to remain as passive as possible. The difficulty of this situation suggests that *Zeran* and *Blumenthal* may provide an inappropriate incentive for providers, such as eBay, who are not just providing a vehicle for allowing outside parties to engage in speech, but are actually facilitating some nonessential non-speech action in this case, economic transactions for non-necessities between users.

III. The First Level of Protection: User Registration

{34}In attempting to ensure an honest and well-mannered user community, eBay's first potential challenge is registration for new users. The desire to sign up as many users as possible conflicts with the goal of screening

to ensure that all users who join will be trustworthy. In striking a balance between these concerns, eBay has chosen to encourage as many registrations as possible, and address registration abuse through weak code and market solutions. As a result, user registration, while no doubt serving eBay's business billing and data-gathering purposes, is largely ineffective as a means of pre-screening new users or preventing banned users from returning. Thus, most regulatory burden is shifted onto post-registration control systems such as the feedback forum and private third-party solutions. Post-registration control systems are further burdened by the ease with which malicious users can register anonymously.

{35}The first part of this section details eBay's registration procedure and demonstrates how it fails to adequately screen users at the initial stage. The second part discusses eBay's system of maintaining user contact information and how lack of anonymity, while in some ways contributing to an atmosphere of trust, exposes "good users" i.e., repeat players to risks and harassment, while permitting "bad users" to misbehave in the short term due to lower stakes.

A. User Registration Procedures

{36}The original eBay registration system allowed any user to sign up for an account without providing verification of his identity. There was no pre-screening of new users, unless they had recently been suspended under the same name and contact information. As a result, the entire burden of controlling abuses fell on the post-registration stage. When eBay finally determined that some type of control should be placed on registration, it chose a weak code and private third party solution that can be easily circumvented by users bent on fraud.

{37}The current system works as follows. In order to buy, sell, or use features on eBay, a user must first register at eBay's web site and provide eBay with a name, mailing address, telephone number, and e-mail address. An e-mail confirmation is sent to ensure that the user's e-mail is working. The registered user chooses a unique username, which is usually anonymous (although some choose to use their real names or e-mails), and a password.[60]

{38}The new eBay rules differentiate between sellers and buyers, with sellers required to give more personal information. If a registrant wishes to sell items on eBay, she must also undergo identity verification, preferably by providing a valid credit card number to eBay. Alternatively, if the user does not want to provide a credit card, she can select the more difficult and time-consuming option of having Equifax, a third-party credit reporting agency, verify identity based on a credit report.[61] The verification rule is meant to screen out minors, pranksters and fraud perpetrators.[62] Providing the credit card number also allows eBay to charge the card for listing fees and commissions.

{39}Buyers can still register and bid on most eBay auctions, with few exceptions, without providing a credit card number, and the vast majority of sellers will also accept money orders and/or personal checks for payment.[63] eBay does require a credit card number if a user registers with a free e-mail address. Although this feature is not widely publicized on the website, in fact, the requirement does not even appear until the user is several screens into the registration process, thus making it less likely that he will not finish.[64]

{40}Users wishing to buy and sell can either use the same account for both, or use one account for buying and another (with different user ID) for selling as long as the two accounts do not interact. A seller is not permitted to shill bid on his own auctions using his buying account.[65]

{41}If a registered user is caught seriously violating eBay policy, the ultimate sanction is revocation of the user's registration, known as NARUing the user, which expunges the user's account and bans the user from

bidding, selling, or using other features at eBay. NARU stands for "not a registered user." [66] Users are generally NARUed only after their violations are reported to eBay by other users, since eBay does little or no policing of individual accounts. NARUed users are theoretically not permitted to return, but in reality are able to open new accounts if they use different identifying information.

{42} While this registration scheme could theoretically screen out some pranksters and fraudulent sellers, it is a weak protection against fraud. Clever fraudulent users, particularly bidders, can get around the screening requirements. Some ways of beating the system might include registering for a buyer account that does not require a credit card, in order to engage in fraudulent acts such as shill bidding; using false information, such as the name and credit card number of a relative or friend; or engaging in forms of fraud that are not visible to your transaction partner, such as selling stolen goods. These fraudulent acts are compounded by the fact that most transaction partners are located at a distance from each other in different jurisdictions, creating barriers to effective private investigation and enforcement. [67]

{43} In making this decision, eBay probably considered the economic costs of requiring users to provide extra information, since eBay has an economic incentive to sign up as many users as possible. From an economic standpoint, it is likely that new sellers will agree to give some additional personal information in return for using eBay's established brand-name site to make money. Sellers are planning to establish an ongoing business relationship with eBay anyway, and may like the convenience of paying eBay with their credit cards. An alternative verification procedure is available if sellers do not want to give eBay their credit card number.

{44} New buyers, upon registering, are less likely to give eBay a credit card number, since they are not transacting directly with eBay. They may also feel that being asked to give personal credit information to eBay in return for the chance to bid on a collectible (and, if they win, to pay the seller directly rather than paying eBay) is not a worthwhile trade. Therefore, eBay limits the amount of screening required of buyers and buries the screening procedure in the registration process or uses code so buyers will be less likely to resist. And while credit cards may be required to cover buyers using some well-known free e-mail services, it is unlikely that eBay can identify every small, free e-mail provider, nor does it wish to screen that many buyers. While eBay may have made a correct evaluation of the buyer privacy tradeoff, obtaining a bogus buyer account is still fairly easy. [68]

{45} Although auction sites including eBay generally claim that registration abuse is not a problem, [69] abuse incidents have nevertheless been documented. [70] The ease of obtaining an account, particularly an unverified buyer's account, technically facilitates the creation of bogus accounts for fraud, harassment, and retaliation. Depending on what scheme a user is attempting, he might even sign up for multiple accounts, perhaps keeping one account for "good" purposes such as transactions, and using other accounts for "bad" purposes (or for the questionable purpose of "netcopping" - investigating other users while masquerading as a legitimate user). With 10 million active accounts, eBay is unlikely to incur investigation costs to find bad actors, at least until bad behavior is reported by a victim or netcop. [71]

{46} The lack of control at this stage continues to place a greater burden on post-registration policing methods, including community policing methods such as the feedback forum. It is noteworthy that eBay instituted the credit card or equivalent as the strongest requirement, and a less convenient credit check for only those users (sellers) who pay eBay directly. When its own pocketbook is involved, eBay recognizes the superiority of existing regulatory systems, such as credit checks, over its own community policing models to weed out sellers who do not pay. However, while the credit card requirements may discourage some malicious sellers (and a few fraudulent bidders in certain categories), the prevalence of credit card fraud in the U.S. suggests that a malicious user will be able to easily supply a fraudulent credit card number. [72]

B. Obtaining a Registered eBay User's Contact Information

{47}Any registered user can easily obtain the contact information of another registered user. This is normally done when a potential buyer wishes to contact a seller to get more information about an item up for auction, or when an auction has concluded and the winning bidder and seller need to contact each other to complete the transaction. However, a user's contact information may also be obtained outside the context of a transaction if another user suspects him of fraud, wishes to send him spam, or wishes to harass him.

{48}Requests for contact information are built into the site code. To obtain an e-mail address, a user simply enters his password and views the e-mail addresses of other users on the eBay web site.[73] To obtain additional contact information, such as a name, mailing address and phone number, a user normally sends an e-mail request to the e-mail address he obtains. Alternatively, a user can request another user's full contact information directly from eBay via an automated procedure known as "pulling contact information," causing e-mails to be sent to both users containing both parties' full contact information. (Note that this information is limited to name, address, phone number and e-mail address. Credit card numbers, if on file with eBay, are not released.) Pulling contact information is intended for situations when attempts to contact a user by e-mail have failed, or when there is some doubt about a transaction partner's identity.[74] The dual e-mail serves to inform the target that the requestor has pulled his contact information, but since the information is also disseminated to the requestor by the dual e-mail, the target cannot prevent the dissemination from occurring; he can only complain after the fact.

{49}eBay's poorly controlled dissemination of a user's personal contact information the name, address and telephone number associated with a particular user ID to other registered users effectively destroys any anonymity or pseudonymity[75] provided by the user ID.[76] This means that all actions taken by a user, including leaving feedback comments, are essentially done in the public eye, unless the user obtains private market security or lies to protect himself. Since dissemination of user contact information is not restricted to transaction partners, a legitimate user basically consents to publicizing the registered name, address and phone number associated with his user ID to all other registered users on demand, including many with whom he did not choose to transact, thus widening the pool of potential harassers.[77] In fact, one might say the user has consented to disseminating this information to the general public, since anyone can quickly register for a buyer account (perhaps using a false identity), immediately pull contact information, and the targeted user cannot object until after the fact.

{50}Even when the target does object, the ultimate penalty is unclear. Although eBay limits the purposes for which a user can use another's personal information,[78] any evaluation of purpose still occurs after the fact after the data has already been disseminated. Since e-mail notification is sent to the target after contact information is pulled, merely pulling contact information can act as a veiled threat, even if nothing is done with it. Moreover, eBay's website states that contact information may be used for "matters regarding eBay," [79] or "eBay-related communications that are not unsolicited commercial messages," [80] terms that are broad and vague enough to cover a multitude of questionable uses, at least in early stages.

{51}At first glance, providing contact information on demand appears to be reasonable because it is expected that transaction partners, having chosen to transact, will not be anonymous to each other. Rather, they will exchange personal contact information[81] to facilitate mailing payments and goods to each other. It also makes eBay appear more honest since, theoretically, no one is permitted to transact anonymously. Furthermore, anonymity and pseudonymity have little value in a transaction context concerned with protecting other parties from harm caused by a user's actions, rather than emphasizing the user's freedom of self-expression.[82]

{52}However, a user who plans to commit questionable acts and is only going to remain on eBay long

enough to carry out his plans has little incentive to provide correct contact information.^[83] This "bad user" may well lie and take short-term advantage of "good users" who are truthful because, as repeat players, they have a large stake in appearing honest.^[84] Under the current scheme a bad user who has already taken pains to disguise his identity for purposes of committing bad acts has nothing to lose, but a good user who might be subject to harassment, reputational harm, or business loss does. As the next section will show, this risk influences the willingness of good users to take part in post-registration community policing schemes.

{53}Alternatively, good users might try to disguise their identities or take advantage of private market security such as P.O. boxes. However, they then run the risk of being thought untrustworthy by the community and suffering sanctions as a result.^[85]

{54}It should be noted that e-mail addresses receive even less protection than contact information.^[86] E-mail addresses can be viewed simply by entering a registered user password, with no notification given to the owner of the address. This is less of a concern for several reasons. First, e-mail addresses, unlike personal names, addresses, and phone numbers, are widely disseminated on the Internet, and e-mail through a reasonably anonymous Internet service is widely available at little or no cost. Therefore, eBay's low level of e-mail protection is commensurate with the Internet in general. It is also desirable to have e-mail be easily available to potential transaction partners to avoid resorting to more costly and intrusive means of communication, such as telephone calls and personal visits. However, the easy availability of e-mail suggests even more strongly that other personal contact information should receive more protection than it currently does.

C. Conclusions About User Registration

{55}As shown above, eBay's user registration scheme provides only a bare minimum of user screening, thus shifting most of the regulatory burden onto post-registration forms. Bad users will likely find ways to register and remain on eBay until their bad acts are either reported by other users or impact eBay directly (in the case of sellers who fail to pay eBay's fees). Moreover, by requiring a credit card or similar verification for those users (sellers) who pay eBay directly, eBay tacitly admits that its own post-registration protections, such as the Feedback Forum, are inadequate.

{56}Furthermore, while eBay's public dissemination of personal registration information appears to promote an honest and open atmosphere, it actually exposes good users to harassment risks if their behavior angers someone. Good users who depend on the community's trust for their repeat business must transact in the public eye, unlike bad users with short-term malicious agendas. By contrast, bad users with bogus accounts and a short-term focus have little or nothing to lose. As the next section will show, risk of harassment influences the behavior of good users at the post-registration stage. Keeping this atmosphere in mind, we turn to the discussion of the second stage of consumer protection--eBay's feedback forum.

IV. The Second Level of Protection: The Feedback Forum

{57}The Feedback Forum is one of the most discussed and copied aspects of eBay. Commentators are fascinated with the Forum because it theoretically provides a means of overcoming the anonymity inherent in transacting on the Internet. It has been hailed as a triumph of community, and a means of creating cooperation in an unpromising setting.^[87] The Feedback Forum does provide positive rewards such as motivation, learning and encouragement to users with inherently good intentions. However, over time, it has grown into a complex system prone to collective action failures and fraught with indiscretion. Therefore, at least where negative comments are concerned, it is a far cry from the simple ratings system promoted by eBay. It is not a strong means of preventing fraud or even dissatisfaction, and hence must be backed up with other methods of regulation.

{58} This section first describes how the feedback system works, including recent rule and code changes meant to strengthen the system against abuses. (Note that the mere description of its operation goes on for some paragraphs, thus providing the first hint that this system is not so simple after all.) Next, user benefits from the feedback system, including low cost, flexibility, ease of use, and psychic benefits are analyzed. Finally, drawbacks to the feedback system are discussed, the first and foremost being that the system does not prevent fraud. It also does not permit easy appeals, is not portable to other contexts, discourages truthful negative reporting, and is governed by complex, unwieldy norms.

A. How the Feedback System Works

{59} Early in its existence, eBay realized that users would be wary of doing business with far-away individuals whom they do not know. Therefore, eBay created a feedback system that allows users to post short, public reports on their transaction partners after each transaction.^[88] Currently, the feedback system operates as follows--each registered user automatically gets a feedback file, starting with no comments and a value of zero. Thereafter, when users, for example, Ann and Bob, complete a transaction with each other, Ann has the option of leaving a feedback comment for Bob, and vice versa. Ann and Bob can also choose to leave no comment, although eBay strongly encourages users to leave feedback through exhortations on the site,^[89] code features,^[90] and rewards for good feedback levels that inspire users to push their transaction partners for positive feedback.^[91]

{60} If Ann chooses to leave a comment for Bob, Ann may do so by entering her own user name and password, the user name of the target (Bob), and the transaction number of the auction which the two completed. Ann then checks a box indicating a positive, negative, or neutral comment, and types the text of the comment for Bob. The comment, dated and marked with Ann's user name, then appears in Bob's publicly viewable file. The feedback entry pages contain warnings that feedback, once left, cannot be removed, that the feedback leaver is responsible for his own words, and that the feedback leaver should make an effort to work out differences first and then think carefully before leaving negative feedback.^[92]

{61} The comment is meant to give other users a sense of what it is like to transact with the other party, and many users prefer that it discuss the transaction.^[93] A typical positive comment might be, "Item as advertised, shipped promptly, pleasant seller, would buy from again." When leaving a negative comment, the feedback leaver is expected to calmly state the grounds for the negative comment in order to be credible, although the feedback system does not force him to do so. Neutral comments are regarded by experienced users as constituting "weak negatives" indicating some displeasure with the transaction. Therefore, users dislike receiving neutrals, even though their feedback ratings are not affected by them.^[94]

{62} A user's feedback profile consists of three items, all of which can be viewed by any site visitor, not just registered users: the list of comments a feedback rating calculated by giving each positive comment by a unique user +1 point, each negative comment 1 point, and each neutral comment 0 points and summing the points; and a star icon "award" whose color changes at different levels of feedback rating (ranging from yellow for +10 to a "shooting star" for +10,000). Repeat transaction partners can leave additional comments, but only one positive comment by each unique user name can count towards the numerical rating.

{63} If the feedback rating reaches 4, the user's account is automatically suspended.^[95] However, since the rating is calculated as a sum of all comments, more than 4 negatives will be required to reach 4 if the user has one or more positives. Therefore, users with the same rating can have different feedback comments. For example, a rating of +50 can mean 50 positives and no negatives, or 100 positives and 50 negatives. Obviously, a user with a significant number of positive comments would have to get many negative comments before being suspended.^[96]

{64} eBay has also instituted a special feedback rule for dealing with "deadbeat bidders" those who bid and win the auction, then fail to pay for the item. eBay states that when a bidder fails to pay, and the seller requests a refund of the commission paid to eBay, eBay will sanction the deadbeat bidder and may suspend him.^[97] However, any negative feedback comments received by a deadbeat bidder regarding his failure to pay will not count towards the 4 score required for suspension of the bidder.^[98]

{65} Because of this, the rating's information is incomplete, and eBay advises users to view the text of the feedback comments.^[99] However, to do this the user must take time to load the comments and scroll through them on the screen, which typically displays 25 comments at a time. Thus, a relatively small number of comments, for example 100 comments, would require the user to load, scroll, and read four pages of comments. Regular sellers usually build up even larger feedback files, containing several hundred or even several thousand comments. It is difficult to isolate comments of a specific type, such as all the negatives.^[100] eBay has repeatedly refused to provide this capability on the grounds that it wants users to see negative and neutral comments in context.^[101] Therefore, it is likely that some users will rely only on the rating and perhaps view a few recent comments, without taking the time to scroll through many pages of comments.

{66} Even though most users with negative comments will not be suspended from eBay, the community possesses the ability to penalize users with negative comments. eBay allows sellers the right to cancel bids made by buyers with negative feedback. Additionally, eBay permits buyers the option to bypass auctions listed by a seller with negative feedback. Most eBay users strongly dislike getting even one negative feedback, even if they receive many positive comments to balance the effect.^[102]

{67} Early in 2000, eBay instituted the code-based requirement that all feedback relate to a transaction between the parties. The feedback software forces all feedback leavers to enter the number of a closed, completed auction transaction involving their partner. The number is good for one feedback, and if a valid number is not entered, feedback cannot be left.^[103] In this manner, eBay eliminates non-transactional feedback, which typically consists either of personal comments from friends and enemies (e.g. "You're a great person and a true friend!"), or comments based on commercial transactions outside of a completed eBay auction (e.g. "I have bought from this seller many times at his store and I recommend him"). Prior to this change, eBay offered a variety of rationalizations for non-transactional feedback, including that it helped to build a sense of community - people who were nice and helpful outside the context of a transaction could also earn rewards - and that it allowed customer support staff, who do not transact, to earn positive comments.^[104]

{68} However, non-transactional feedback also posed serious problems. First, many users did not wish to base their transaction decisions upon feedback that did not address the potential partner's performance in a past eBay transaction.^[105] Second, the ability to leave literally any comment on eBay encouraged harassment, often on non-transactional subjects such as political views or sex. Finally, non-transactional feedback encouraged "feedback padding," a scam procedure by which a user built up a false positive rating by soliciting comments (often worded to sound transactional, although no transaction took place) from relatives, friends, bogus accounts started by the same user, and other users who agreed in advance to exchange positive feedback without going through a transaction.^[106] Under pressure from many users and faced with reports of feedback padding (including a highly publicized "feedback padding party" that involved exchanges of feedback "gifts" between approximately 140 users in December 1999), eBay finally changed its code to force all-transactional feedback.^[107]

{69} Originally, eBay policy also stated that the company would not remove any feedback. Presumably, many positive comments outweighed an isolated negative comment, and it would not pose a major issue. Receiving a negative comment provided an incentive for a repeat user to participate in several positive transactions to

"bury" the negative, while at the same time generating revenue for eBay. As eBay grew, however, the non-removal policy caused concern as more users received harassing comments. At that time, allowing non-transactional feedback compounded the problem, causing some users to receive negative comments from non-transacting parties.[108] Several high-profile incidents of feedback harassment occurred in connection with heavily advertised auctions running as publicity stunts near the time of eBay's initial public offering.[109] Pressure from users forced eBay to establish guidelines and take an active role in removing feedback that crossed the line.[110]

{70} Under the new policy, eBay will only remove feedback in a few specific situations. According to eBay rules, feedback will be removed at a user's request under the following circumstances: if it has no connection to eBay transactions; advertises another auction service; contains links; contains vulgar or profane language or adult material; contains personal identifying information; claims (rightly or wrongly) that the user is being investigated; is proven by the feedback composer (not the target) to have been left for the wrong party; was left by a user who cannot be reached through his own contact information; or is found to be part of a multi-feedback harassment campaign by one user.[111] If none of these circumstances apply, eBay requires a court order to remove feedback.[112] For all of these situations, a user must e-mail a complaint to eBay's reporting system, as eBay does not check feedback.[113]

{71} Comments falling outside the above categories, including accusations of fraud or dishonesty, remain in the user's feedback file permanently and do not expire. For example, if Ann leaves a negative comment for Bob, his options include responding on a special response line, as well as leaving his own negative comment for Ann. Although users have asked for a way to indicate or "tag" these "retaliatory negatives," eBay has not implemented this feature. Thus, leaving a negative comment carries the expectation of receiving a negative comment in return.[114]

{72} All feedback is normally visible to the general public, including persons who are not registered with eBay. eBay allows users to exercise the option of making their feedback file private (viewable only by the user, who may then choose to send the comments to others), but this is discouraged both by the user community and by eBay. Private feedback results in the likelihood of provoking distrust and discouraging bids. Since most users use public feedback, the eBay community views a person utilizing private feedback as untrustworthy.[115] A user could overcome this negative perception through a well-known and honest reputation in the eBay community.[116] Some users attempt to diminish this problem by offering e-mail explaining why the feedback is private. But potential transaction partners, who manage to overcome their initial distrust from the lack of public feedback, must still go through the extra steps of sending e-mail and evaluating its explanation. The likelihood also exists that eBay, besides noting the negative effect of community distrust on sales, realizes that if all or most users made their feedback private, the feedback forum would lose much of its advertising and site stickiness value. Therefore, in an attempt to reduce the use of private feedback, eBay encourages its users with these words:

You will find that your Feedback Profile is a valuable asset at eBay, helping you earn the trust and respect of fellow eBay participants. By making your Feedback Profile private, you may be jeopardizing other eBay participants' desire to conduct business with you. We strongly encourage you to consider this carefully when making the decision to make your Feedback Profile private.

[117]

B. The Feedback System's Benefits and Drawbacks, From a User's Perspective

{73} The feedback system presents obvious benefits to eBay, the company. First, feedback advertises to the world that people transact on eBay. Hundreds or thousands of feedback comments suggest many repeat transactions, and spell success.[118] To the extent that most comments are positive, the world views eBay as a self-policing community, intolerant of fraud, and used by honest people. As discussed in the beginning of

this paper, large feedback files also benefit eBay through site stickiness and code lock-in, thus keeping traffic on the site.

{74} But all of these benefits help the company, not the user. The individual user needs a different framework. Aside from receiving an initial, and possibly false, sense of security, the individual user does not benefit from the "big picture" that shows many past positive transactions. The user's main focus concerns the one transaction he wishes to make and the few past transactions, primarily those involving the user's potential partner, that might provide relevant cost-effective information about the current transaction. Therefore, feedback only assists the user if it both relates to the current transaction and provides accurate information at a reasonable cost. In addition, the public feedback system contains psychic components unrelated to transactional information, particularly since online auction users often bid for one-of-a-kind collectibles containing emotional value.^[119] This section will first evaluate the benefits of the feedback system to users, followed by its drawbacks.

1. The Benefits of the Feedback System to Users

{75} Users obtain two primary benefits from the feedback system. For most transactions, feedback offers an easier, more cost-effective mode of protection than other alternative forms of protection, such as credit checks. Second, positive feedback provides some psychological benefits, especially for repeat players.

a. Feedback is Less Costly and Easier to Use Than Credit Checks

{76} A comparison between feedback and the alternative forms of protection, credit reports and credit card checks, aids in evaluating feedback from the user's perspective. Both feedback and credit checks achieve the same purpose of providing assurance about a transaction partner's integrity. The lower costs, flexibility and informality, however, distinguish eBay's feedback reporting from credit reporting. For this reason, the informal procedures better suit the sale of lower-priced goods on eBay. If eBay did not utilize feedback reporting, the costs of reporting through normal channels might prevent the exchange of any information, resulting in a lack of trust and an unwillingness to enter into online auction transactions. Therefore, feedback produces the benefit of allowing low-cost information exchange which in turn, facilitates low-dollar transactions.^[120]

{77} The first difference between feedback and credit checks is one of publicity and type of information. Feedback is public and can be viewed online at any time, by any person, for free. Although a certain amount of personal information is available to other registered eBay users (who, as described in part II, supra, can pull contact information to see the identity of a particular user name), the amount of personal information is limited to name, address, telephone number, and e-mail, and can be obtained for free.

{78} On the other hand, credit reports are private, and their owners are very concerned that there is no wide dissemination of the reports, especially online, because they contain large amounts of personal and financial information.^[121] Obtaining a credit report also involves costs, both in paying fees to view a report or verify a credit card, and in following the established procedure for doing so.^[122] Simply accepting payment by credit card, which ensures that the credit company will authorize the charge, requires a seller to have a merchant bank account and incur additional fees and risk.^[123] Requiring a credit card for every transaction would also decrease the eBay user pool, because many users either do not have a credit card or do not feel comfortable giving card numbers to strangers on the Internet.^[124]

{79} Based on this comparison, informal feedback is more suitable for eBay because transaction partners are unlikely to favor using credit cards or credit reports on a wide scale. For the average sale involving an inexpensive, used collectible, the cost to the user of disclosing private information would probably outweigh

the benefit of the purchase. Even only mandating credit cards would exclude some users from the eBay pool, those who do not have or do not wish to use credit cards. Therefore, credit reports, and even credit cards, will not generally be a viable option for general user-to-user verification on eBay, although these methods may be appropriate for a few select transactions.^[125]

{80} Feedback can be reported by any transaction partner (formerly any registered user), and although eBay has implemented more formal rules than it once applied, there are still only a few rules governing feedback postings. eBay and the user community might suggest that certain informal procedures be followed such as expressing a preference for feedback describing a transaction or attempting to work out a sale with a partner for some time before leaving a negative, but these procedures are not binding. A user can leave negative feedback for any transaction-related reason at any time after the transaction, although leaving a negative comment that is not well founded might make the leaver look worse than the target in the eyes of the community. Users can also report many forms of transaction-related conduct, including bad debts and other transaction issues such as rudeness and slow service.^[126]

{81} By contrast, only certain entities can report bad debts to credit reporting agencies, and are required by law to follow strict procedures for trying to resolve the debt and for reporting it.^[127] Furthermore, only bad debts can be reported. It is not possible to report to a credit agency that you were unhappy with a customer's attitude or a seller's inadequate shipping container.

{82} Based on the criteria of flexibility and cost, feedback is better suited to eBay than credit reporting. It would be difficult and costly for eBay to enforce strict reporting procedures on their thousands of small, individual mail-order transactions. Forcing a strict, costly procedure would result in less available information and possibly fewer transactions. Furthermore, credit reports and credit checks are primarily concerned with payment for goods and do not take service variables, such as payment method, communications, and shipment, into account. Because many eBay users are not full-time businesspeople, and are buying and selling informally rather than through a streamlined service process, they may have specific customer service expectations, and feedback allows customers to easily communicate about these expectations.

b. Psychological and Quality Benefits of Feedback to Users

{83} Feedback also offers psychological benefits to its user. Feedback leavers are able to express their feelings in a public forum they get a chance to vent, positively or negatively, for the world to see. Feedback also gives users the feeling, whether true or not, that they have some control over the transaction situation (*i.e.*, by reading feedback comments, they can avoid getting "ripped off"), and over their transaction partner's behavior. According to a study by the Online Auction Users Association, 76 percent of sellers surveyed, and 86 percent of buyers, listed the ability to rate the transacting party as the most important criteria in choosing an auction site.^[128] This is important because the Internet is not a rich medium, and people cannot exert control in normal ways, like making judgments based on a person's physical appearance or expressing anger in person.^[129]

{84} Feedback also helps improve service quality in borderline cases by telegraphing community expectations. For example, a user sees feedback praising others for fast payment and decides that she, too, will pay quickly. While a user bent on committing fraud is unlikely to find feedback a deterrent, a good user who just needs extra encouragement to improve, ship faster, communicate with partners better, or improve her listings to get higher bids may get that encouragement from feedback. This prevents a user from skimping on service online, when the transaction partner is separated by distance.^[130] Telegraphing expectations through feedback is also important in the context of eBay specifically, because online auctions are a new business model and "newbies" must learn the norms of use.^[131]

{85}Feedback provides a low-cost reward for users who meet the expectations of the community.[132] eBay also has some grounds for identifying the most committed users and rewarding them through publicity or incentive programs. (As discussed in the next section, the emotional downside to this is that users who receive an unfair comment have no recourse and are apt to feel very unhappy because so much importance is placed on maintaining a spotless reputation.[133]

{86}Finally, the presence of feedback helps build a trustworthy atmosphere, which is important not only to eBay's public image, but to the comfort level of its users. Many of the collectibles and unique goods sold on eBay have emotional connotations for the transaction partners, and many of eBay's users are not seasoned business professionals. The lack of anonymity and the friendly atmosphere engendered by glowingly positive feedback encourages users to feel comfortable.[134]

c. Conclusions Regarding Feedback's Benefits to Users

{87}The eBay feedback system benefits users by providing an inexpensive, flexible, easy-to-use means of getting information about a potential transaction partner. It also provides good intentioned users with psychological benefits, making them feel more comfortable and in control, and instructs new users on how best to behave.

2. The Drawbacks of the Feedback System for Users

{88}Despite the financial and emotional benefits for some users, the eBay feedback system also has a number of drawbacks. First, it is ineffective at preventing fraud and other abuses, particularly given the ease with which a person can abuse the registration scheme. Second, it suffers from collective action problems, thus fostering a "good news only" reporting policy on the part of users and the posting of incomplete information. Third, it lacks some of the benefits of credit reporting, namely procedures for challenging unfair negative comments and portability to other similar venues.

a. Feedback Does Not Prevent Fraud

{89}While the feedback system may inspire an improved level of customer service for "good" users, it is unlikely to prevent fraud if a user is determined to act badly. Obviously, a bad user is disinclined to care what the community thinks of him.[135] But in addition, the long-term nature of the system allows a user to register, commit fraud, and disappear with the profits before bad feedback appears in his file. Another method of committing fraud is to register and perform on a certain number of legitimate transactions in order to acquire good feedback, perhaps by buying or selling low dollar amount items, before committing fraud on big-ticket items.[136] Although some users may refuse to transact with new users having zero or low feedback, it is likely that with 10 million users, some "suckers" will be found. There are also many ways of committing fraud, such as buying items on a stolen credit card and reselling them on eBay, that are unlikely to be detected by transaction partners, who will then leave positive feedback.

{90}A user may also commit fraud using the feedback system itself. "Feedback abuse" is committed when a user has friends with accounts pad her feedback with positive comments, or does so herself through multiple accounts all owned by her (which are technically forbidden). Although eBay's new insistence that a transaction number be entered to leave feedback makes padding harder, it is still possible to get transaction numbers by holding sham auctions and not actually completing the transactions. The only difference is that eBay will now receive fees for the sham auctions as well, but which are still relatively low for inexpensive items. After amassing a good feedback file based on the cheap items, the fraud perpetrator can pull off scams

involving expensive items or simply enjoy the community benefits of having high feedback.

{91} An example of how easily fraud perpetrators can get around the feedback system is shown by the file of an eBay user named "kuchar1," the subject of a successful fraud probe by California law enforcement, featured in a recent article.^[137] This user's behavior was clearly suspect. Despite listing an address in Union City, California, the seller asked users to wire payment for items to a bank in Latvia.^[138] (After mailing payment, users then received notice that their items had been charged to a credit card account in their own name, forcing them to either pay a second time or return the merchandise.^[139]) Yet even this seller managed to garner a feedback rating of +4, with six positive comments (five of which were left by unique users and linked to a completed transaction) and only one negative before being suspended.^[140] Although many eBay users might be dissuaded from transacting by the single negative, it is likely that some would have decided to ignore it and been defrauded as a result.^[141]

{92} Therefore, while feedback might give information about a transaction partner's habits, such as fast or slow payment or shipment, and might weed out some lazy or prank users, a user determined to commit fraud will not be deterred by the feedback scheme. Furthermore, since the eBay system encourages positive comments and discourages negatives (as discussed in the next section), a user might actually evade negative feedback for some time while engaging in undesirable practices.

b. The eBay System Encourages Positive Comments and Discourages Negatives

{93} The eBay system's code design and social norms can discourage users from posting honest negative comments. If Ann and Bob engage in a transaction, and Ann is dissatisfied, she may wish to post negative feedback for Bob. However, she faces a number of obstacles in doing so.

{94} When Ann goes to the eBay feedback page, she will see several warnings: that she is responsible for her own words; that eBay cannot take responsibility; that she should be careful about making libelous or slanderous comments; that she might need to contact her attorney; that once a comment is left it cannot be removed; and that she should try to work out her differences with Bob before leaving a negative.^[142] Therefore, she is made aware that making a negative comment is very serious business and may have consequences. If Ann is not in the habit of leaving negatives, seeing warnings about attorneys in an unfamiliar context such as the Internet might scare her away from doing so.^[143]

{95} Furthermore, if Bob already has overwhelmingly positive feedback, Ann is unlikely to want to leave a negative. Because most feedback left on eBay is glowingly positive and associated with one's reputation, negatives are highly disdained by the community, and most good users are upset about getting their first negative comment or even their first neutral.^[144] Fear of doing the wrong thing in the eyes of the community (especially if Bob is a "popular" user with many positive comments) might cause Ann not to leave negative feedback. Along these lines, it is not uncommon for users contemplating leaving negative feedback to go to a discussion board, give the facts of a transaction, and ask the other board members if, in their opinion, the transaction partner deserves a negative. While this builds community to some extent, it might also create a collective action problem by causing genuinely dissatisfied persons to bury their feelings and go along with the group's decision.^[145]

{96} Ann also knows that leaving a negative for Bob will, at the very least, probably earn her a retaliatory negative in return, and she may lack incentive to risk having her own feedback record tarnished. (Of course, if Bob has already left Ann a negative comment, she will have fewer qualms about responding in kind; also, if Bob has left Ann a positive comment, she may feel moral pressure not to "neg" him.) Given the strong desire of most users to avoid negative blots on their reputations, Ann will have to feel very strongly about the bad transaction, or else have nothing to lose - perhaps Ann is not a repeat player and only uses eBay once a

year, or perhaps Bob has already left the first negative - before she will make a negative comment.

{97}Furthermore, if Ann is an experienced eBay user, she knows that her negative comment will be publicly posted and that not only Bob, the target, can get her contact information, but that anyone else can easily get it. There is even a link to obtain contact information at the bottom of the page for leaving feedback. Therefore, Ann knows that by leaving a negative feedback, she might be exposing herself to retaliation from Bob, or harassment from anyone else who does not like what she posts. She also knows (or will soon discover) that eBay is unlikely and unwilling to become embroiled in a dispute between Bob and herself, should things escalate. In fact, if Ann feels that Bob has violated the rules, she may need to investigate him by "netcopping" on her own or with other victims in order to present a complaint to eBay, and may hesitate to leave a negative for fear of tipping him off before the investigation is complete.[\[146\]](#)

{98}If Ann is not experienced, she may leave the negative for Bob this time, but should she get an angry response, she may think twice about leaving a negative in the future, or even about engaging in another transaction, since her early experience has not been positive. In addition, Ann will probably get a retaliatory negative on her new user record, which will make other users wary of transacting with her because, as a new user, she will have few positives to balance the negative.

{99}In all of the above cases, Ann is unlikely to leave a negative, even though she is dissatisfied, and therefore the feedback system has failed to communicate useful information. Ann is most likely to leave no comment at all. Alternatively, she might leave a "nasty neutral," which does not detract from Bob's feedback score, or even leave a weak positive, where Bob gets a positive point but the comment suggests that he could do better in the customer service area. This comment is likely to fall on deaf ears though, since many users will not look beyond the positive rating.[\[147\]](#)

{100}These problems stem from Ann, an individual or small business owner, being forced to report on Bob, non-anonymously, in a public forum with flexible rules. By contrast, in the case of credit reports, the reporting entities are usually impersonal, corporate bodies that are insulated from the target through procedure and bureaucracy. Credit reporters often have bad debts handled by an outside collection agency that, unlike Ann, is equipped to deal with angry targets. Credit reporting does not take place in a public forum and certainly not on the Internet with thousands of users watching. It is also not a communitarian activity and is based on strict parameters (e.g. a company can only report a bad debt uncollected after a certain number of days without collection), rather than personal discretion.[\[148\]](#)

{101}Even though Ann has not reported with absolute honesty, eBay, the firm, is likely to be happy with this outcome. If users coming upon the eBay site see many negative comments, they will be less likely to register and participate in transactions. eBay would also like to boast to stockholders, regulators and other outside bodies that the vast majority of transactions on eBay go well. eBay therefore has an incentive to promote a "good news only policy," encouraging positive feedback as much as possible, and attempting to subtly discourage negative feedback. As we have seen, eBay does this by applying pressure through warnings, by forcing feedback to remain in the public eye, by encouraging community members to hold their feedback in high regard, and by not protecting users from bad consequences resulting from a bad transaction or negative feedback.

c. Unlike Credit Reports, eBay Feedback is Neither Appealable, Nor Portable

{102}Besides a less personal, more carefully controlled system of reporting, credit reports do have two additional advantages that eBay feedback currently lacks: clear and fair removal procedures, and portability.

{103}It is very difficult to remove negative feedback from one's eBay file. The removal procedure, although

more formal than it used to be, is not crystal clear, due to the flexibility of the comment guidelines. In the end removal is dependent on eBay's willingness to act in a particular case, suggesting that parties with strong bargaining power (such as high-volume sellers and celebrities) will be favored over weaker parties (such as new users with low feedback). Also, if the feedback is transactional in nature, under the new rules, it is likely to stay even if it is blatantly unfair. Barring removal by eBay, feedback is never expunged, even if the feedback leaver is NARUed.^[149] The user's only alternatives are to note an explanation for the comment in his feedback file, leave a retaliatory negative for the other party, and/or resort to getting an expensive court order against the leaver of the feedback especially difficult because many eBay users are in different legal jurisdictions, separated by distance.^[150] On the other hand, credit reporting agencies have formal, legal procedures for challenging a bad rating, and bad comments are also expunged automatically after a certain number of years.^[151]

{104} eBay's prohibition on retraction is good in that angry feedback receivers cannot bully feedback leavers into erasing their comments. However, the area of feedback removal is one where feedback appears to be deficient to the credit reporting model. Although removal procedures are now more formal, eBay lacks the incentive and the resources to remove many feedback comments, particularly those of a transactional nature (since that would involve eBay in the transaction). Therefore, individual users still find it difficult to challenge negative feedback. Obviously, eBay would prefer that a user engage in many more good transactions in order to bury or overcome the bad comment, thus generating commissions for eBay.

{105} One might argue that keeping negative feedback provides a more honest picture, or that the negative does not impact many critical areas of life like a negative credit report, making removal procedures less critical.^[152] However, users have been encouraged by eBay to take feedback very seriously, and view feedback as their reputation, so it is only fair that eBay should allow users to challenge blots on that reputation through an established review process. Another issue is that eBay does not normally volunteer information about feedback that it removes, probably in hopes of preventing a flood of removal requests, so many users are unsure how to challenge comments or think there is no recourse. From eBay's standpoint, this confusion is good because it can easily avoid having to intervene.

{106} Regarding the transferability of feedback, eBay feedback is not portable; it can normally only be used at eBay. eBay does not allow users to transfer their feedback or link eBay feedback to other sites for various reasons.^[153] eBay states some of these reasons on its site as concerns that other sites will interpret feedback differently, or will facilitate "daisy-chaining" fraud, where a user links his feedback rating to another site and then links the same feedback rating from that site to eBay, thus doubling his rating number.^[154] Obviously, a main reason, which is not stated, is eBay's unwillingness to allow Johnny-come-lately competitor sites to benefit from a feature that was meant to be helpful to eBay.

{107} Credit cards and credit reports, however, are portable, and can be used in many businesses and many areas of life. Unlike eBay feedback, credit reports come into play in many crucial life areas, such as obtaining a mortgage or an educational loan. The strict controls on credit reports partly reflect this centrality.^[155]

{108} While eBay feedback is not central to life, and probably should not be portable to important areas such as mortgage approval, it can be central to how one behaves in e-commerce transactions and could certainly serve a good purpose if made portable on the web. Indeed, some users have already made attempts to "export" their eBay reputation by signing up to do business at multiple auction sites under the same user ID.^[156] However, because not all users choose to visit multiple sites, confusion is possible since the same user ID on a different site does not necessarily represent the same person.

{109} From a regulatory rather than a business standpoint, there is no reason why eBay feedback should not be linked to or otherwise referenced from other e-commerce sites to show online reputation. Portable

feedback would enhance the value of one's eBay reputation and encourage one to perform even better as an eBay transaction partner. Also, other auction sites have encouraged feedback files, and it is theoretically possible that a user could be building up a separate feedback file on five or six sites. This makes little sense from a regulatory standpoint, since no one site is building up a complete picture of the user's activities. (From a business standpoint, each site is attempting to encourage stickiness and code lock-in, as well as promoting their version of the feedback system as a competitive advantage.)

d. Conclusions Regarding Feedback's Drawbacks For Users

{110}Feedback has some benefits, but fraud prevention is not one of them. Therefore, the presence of large amounts of good feedback on eBay's site probably testifies to the inherent good intentions of most users, who want to engage in productive transactions for mutual gain,^[157] rather than feedback's effectiveness as a fraud-stopper.

{111}Although credit reports are also powerless to stop some types of fraud, the penalties associated with a bad credit report, as well as the difficulty of obtaining clean credit, provide some deterrent effect. Feedback, however, carries relatively little penalty for a bad user because he can register under a new identity fairly easily, as discussed in Part II.

{112}Feedback unfairly penalizes good users by making appeal difficult and somewhat discretionary, and it passes up the opportunity to build trust in the wider e-commerce community by lacking portability to other auctions or contexts. The eBay system also encourages positive comments and discourages negative comments, thus providing a biased, positive feedback result to the company's advantage. The complexity and user discretion, inherent in the feedback process, also make the end result hard to interpret and unwieldy to change. In summation, while it is likely that feedback will persist, because users like it and enjoy some benefits, it is also clear that other means must be found to protect eBay users against fraud.

V. Beyond Feedback: Methods of Effectively Preventing Fraud

{113}As shown by the previous sections, eBay's current model of user registration and feedback provides a weak protection against fraud. The eBay feedback system appears deceptively simple and communitarian, but is actually quite complex. It is governed not only by the simple rules eBay sets forth for its use, but by a host of additional social norms and concerns, many of which are unwritten and known only to experienced users. Although one positive feature of the feedback system is educating newcomers about how to behave, the downside is that eBay community norms are not as simple as casual users would believe. The idea that transaction partners honestly rate each other, and that bad partners are summarily booted off eBay, never to return, is simply not true. Moreover, the idea of what constitutes a "bad" partner is so open to individual interpretation (and dependent on the willingness of the user to leave a negative) that it is difficult to establish clear standards. eBay's simple ratings scheme only works when comments exchanged are positive, clearly indicating that all went well on both sides and encouraging the users. It breaks down for discretionary negatives.

{114}eBay has attempted to address some of the feedback system's defects with alternative regulatory schemes. Although these schemes might produce desired results, they can add layers of confusion to the already confusing and discretionary message of feedback. One example of this problem is eBay's new non-paying bidder policy, meant to address the problem of deadbeat bidders.^[158] Feedback was not functioning as an effective disciplinary tool to prevent this problem, forcing eBay to come up with an alternative plan to review each deadbeat bidder case separately, in order to avoid losing money.

{115}However, due to the large number of transactions, eBay is not able to effectively police all incidents of

fraud on its own. At this time, eBay, as stated on its site, is actually relying primarily on third-party service providers to protect its clientele against fraud.^[159] It also derives benefits from the potentially risky activities of private netcops.

A. Third-Party Service Providers

{116} Third-party service providers active on eBay can be divided into two groups. The first group includes those with whom eBay has chosen to officially partner and promote on its site. Businesses in the second group include those with whom eBay does not have an official partnership agreement, but which offer services helpful for fraud prevention.

1. eBay's Official Third Party Partners

{117} The first group of eBay's partners include Equifax Secure, Lloyds, i-Escrow.com and SquareTrade.com. Equifax provides credit verification for eBay, while Lloyds insures all eBay purchases up to \$200 with a \$25 deductible. Meanwhile, i-Escrow is an online escrow service that holds a buyer's money until the buyer notifies i-Escrow that the purchase has arrived safely. When this happens, i-Escrow pays the seller.^[160] Finally, SquareTrade is a pilot mediation program. It is designed to resolve disputes over items that cost more than \$100. (There is very little information on SquareTrade because it is a pilot program. SquareTrade will not be discussed further in this paper.)^[161] eBay is also looking to partner with Visa, by making it the preferred payment method on eBay. Presumably, this would include inducements for users to pay with Visa.^[162]

{118} As mentioned earlier in this paper, the major benefits of partnering with Equifax and Lloyd's are eBay's ability to spread responsibility and the potential risk of fraud by taking advantage of established areas of law governing credit and insurance. The Lloyd's program is relatively uncontroversial because it is free and generally does not question the reputation of the user filing a claim. However, other programs which require an opt-in, or a payment for services by the user, have run into trouble. eBay cannot continue to hold up positive feedback as denoting honesty, while simultaneously suggesting that users pay extra (either in money, or some other form like personal information) for fraud protection.

{119} When user verification (of the type done by Equifax, or by credit card companies) was originally discussed, many longtime eBay users balked at the thought of having their credit reports verified, or having personal credit card information turned over to eBay. These users felt that their online sales records, including feedback, represented their good reputation and that no further checks were necessary. eBay circumvented this issue by providing a "grandfather clause" to all existing users (and, in a controversial move, suspending some of the most vocal critics).^[163]

{120} i-Escrow has presented even more serious problems because there is no way for eBay to exempt long-term users from the service. Many sellers view i-Escrow as an unnecessary administrative hassle and believe that if the seller has good feedback, the buyers need not, or need not want, to use i-Escrow. Consequently, users became upset when an eBay spokesperson publicly announced that sellers who refused to use i-Escrow were probably untrustworthy.^[164] eBay has also discovered that i-Escrow prevents some forms of fraud, while encouraging new forms that need to be controlled, a problem that might arise with other online partnerships as well.^[165] Finally, because i-Escrow is a new business, rather than a "brick-and-mortar" business such as Equifax, or Lloyds, it is unclear whether eBay will be able to depend on an existing body of law for guidance.

{121} In short, the success of eBay's partnerships is partly constrained by the community feedback norms that eBay has promoted. Having emphasized feedback as a tool for promoting honesty, and having built a user

base that strongly agrees, eBay must now find ways to sell new protective services to users without admitting that feedback is an unreliable form of protection. The only way around this problem is to design services that longtime users will value which enhance the transaction, perhaps by adding convenience. That way, the product can be marketed as a useful item without referring specifically to trust issues.

2. Third Parties Who Do Not Partner With eBay

{122}eBay also benefits from a number of third parties with whom it does not have official partnerships. Chief among these are online payment sites, such as PayPal.com, and offsite auction resource/discussion centers, such as AuctionWatch.com and Honesty.com, and the Online Auction Users Association ("OAU"), a nonprofit trade association. These businesses help eBay by providing channels for users to perform self-help relating to fraud. For example, using PayPal, a user can pay a middleman (an online banking service) with his credit card and ensure that his transaction partner receives cash. No personal information, such as credit card numbers, need be exchanged between the transacting parties. The seller does not have to assume the fees associated with taking credit cards and running credit checks, because the middleman assumes those fees. AuctionWatch, Honesty and the OAU, through discussions, reports and online articles, educate users about community norms, areas of concern and methods of spotting and foiling bad transaction partners. These organizations also perform data gathering tasks and provide channels for passing controversial information to eBay without eBay having to undergo the humiliation of having users criticize its features and practices on its own site.[166]

{123}These services occasionally take actions that are at odds with eBay's business moves, or otherwise may cause some disruption.[167] However, by and large, these services are helpful to eBay. They provide private market solutions to fraud at little, or no cost to eBay. eBay is not placed in the position of publicly stating that its feedback procedures for fraud are ineffective because eBay does not need to promote these services to users.

B. Private Investigation and Netcopping

{124}Finally, eBay benefits from the efforts of private users, "netcops," who track down fraud on their own, or in concert with law enforcement.[168] Often these individuals will become involved after having been swindled themselves. They perform investigations that eBay does not have the money, resources, or incentives[169] to do so on its own. eBay encourages private netcopping in a number of ways. First, eBay makes contact information relatively easy to get, and a netcop's identity relatively easy to disguise. Second, eBay requires that a user complaining of another user's bad practices have evidence backing up his or her story. eBay is also very willing to act on well-documented complaints. Finally, eBay encourages netcopping by having engaged in explicit, or tacit cooperation agreements with netcops in the past.

{125}eBay benefits from using netcops primarily because netcops perform their services for free. If a netcop gathers enough reliable information on a fraud perpetrator, eBay does not need to spend money investigating any further. Netcopping is also relatively invisible and does not require eBay to announce the presence of fraud.

{126}However, eBay also runs some risks from encouraging netcopping activities. Chiefly, there is the possibility that the netcop may go too far in collecting and disseminating information about his or her targets. If that occurs, eBay will likely take action against the "good" netcop as well as the "bad" user, despite the netcop's past valuable services. If the netcop has a good reputation or standing in the community, then eBay will face public fallout from its decision to suspend the netcop. It will also lose an inexpensive source of controlling fraud by suspending the netcop.[170] If the netcop does not have standing in the community, the community may be outraged at the idea that a private user is being allowed to investigate other users, or file

complaints.[171] Netcopping schemes also tend to favor persons with the necessary knowledge and resources to perform the task. Hence, it does not allow all users' interests to be evenly represented.[172]

{127}Commentators have suggested that the best way around the netcopping problem is to discourage netcops from acting on their own, and instead have them work in concert with, or be certified by, law enforcement professionals.[173] Since law enforcement professionals are unlikely to have the interest or resources to investigate small fraud complaints, consumer watchdog groups might also prove a good source for educating netcops. Additionally, working out agreements with eBay so that personal boundaries are not crossed in the course of an investigation would be helpful.

VI. A Proposed Scheme for Third Party Feedback Administration

{128}Many of the problems plaguing the current feedback system stem from the difficulties inherent in a private provider managing feedback. Private providers, such as eBay, have a limited amount of resources to put into feedback maintenance, which is not the core of their businesses. Providers have an incentive to remain passive in order to avoid liability. Allowing each auction site to have its own feedback system also limits the amount of available information, because feedback comments cannot be transferred to a different auction site.

{129}This section suggests a different model for feedback that will address these concerns. For the community to get the most regulatory benefit, feedback for all auction exchanges (and perhaps for other e-commerce activities) could be moved to a third party administrator. The third party administrator would be relatively judgment-proof and would enforce specific, standardized rules for leaving feedback and challenging feedback which is left. This scheme would allow feedback from other auction and e-commerce sites to be gathered into one place, so that users could not engage in regulatory arbitrage by simply moving to a fresh site after having exploited one.

{130}A third party administrator is necessary because if eBay's feedback was regularly exported to new arenas, users would probably demand that eBay provide even more formalized procedures for addressing negative comments, as they would have a greater impact on their online existence. However, eBay, a private business, probably would not want to spend more time and resources managing a free feedback system that benefits other businesses outside its website. Therefore, third party administration is desirable. With ten million user accounts already active on eBay, and other auction sites promoting their own feedback systems, it is doubtful that any community spirit would erode at this point from moving all feedback to a third party site.

{131}Funding for such a scheme could be done through individual user fees, or alternatively, by having online auction houses pay an annual fee to allow all their members to have access. It is likely that a centralized feedback regime would appeal to users who participate in multiple auction services and wish to combine their scores.

VI. Conclusion

{132}eBay states on its site, "We believe people are basically good." [174] For the vast majority of its users, that statement is true. Judging from the sheer volume of sales occurring on eBay, as well as the large number of positive feedback comments, the typical eBay user does not want to perpetuate fraud, but instead wants to honestly transact business in a manner that will benefit both parties involved. Given that most users have good intentions, eBay's feedback system serves an important purpose as a motivational, educational and inspirational tool, and is extremely important to many users.

{133}However, for the small percentage of users with fraudulent intentions, the feedback system, coupled with weak registration and a lack of anonymity does not prevent fraud, nor does it adequately protect users against such fraud. It does serve eBay's economic and regulatory needs of encouraging a large user base, while maintaining distance from transactions. But for real fraud protection, users must turn to private solutions. Although eBay wishes to avoid having fraud on its website, and also wishes to appear committed to fraud prevention, it must use extreme caution in promoting additional fraud protection services to avoid upsetting its community, which believes strongly perhaps too strongly in the feedback model.

{134}There are several ways in which this system could be improved. First of all, as discussed in the previous section, feedback could be made portable and handled for all auction sites by a disinterested third party, who would also administer an appeal's procedure. Although eBay (and other auction sites) would likely balk at losing a perceived source of competitive advantage, in reality this would free eBay from the "emperor's new clothes" problem of pretending that the feedback system deters fraud, while being faced with ever-increasing evidence that it does not. As it is, eBay finds it hard to promote additional private solutions for fear of contradicting its stance on feedback and angering its users. Allowing a third party to handle standardized feedback reporting would also ensure that users of all online auctions receive good, reasonably consistent information.

{135}Secondly, eBay should continue the practice of partnering with outside service providers, or permitting outside service providers who operate within a clear legal framework to work with eBay. These service providers can include brick-and-mortar private companies, law enforcement and consumer watchdog groups. Operating within a defined framework takes the burden off eBay to come up with regulatory models and it allows eBay to better shift liability. eBay might also identify those partners that many of its users already prefer, thus reducing the need to sell users on the service and risk upsetting users who believe the feedback system protects against fraud.

{136}On a broad level, the success of community policing models relies partly on the willingness of users to abandon or at least modify the model when it becomes ineffective. However, when the model is tied up with emotionally important concepts, such as persona and reputation, users will be loath to abandon it. Online communities which create such models in the future would do well to recognize these models' limitations early on and educate users before the models, like eBay's feedback system for fraud prevention, turn into ineffective 800-lb. gorillas.

ENDNOTES

[*] J.D./ M.B.A. candidate, Georgetown University Law Center/ McDonough School of Business, 2001; M.S., George Washington University, 1994; B.S.E.E., Case Western Reserve University, 1985. I would like to thank Professor Julie Cohen for providing comments and direction, and the discussion communities of Auction Watch and Auction Patrol for offering enlightening common-sense insights. This Comment is dedicated to Derek de Prator, a fellow eBay user who played a role in the completion of this work.

[1] This paper focuses on online auctions for private retail goods. Online auctions for stock pose different regulatory problems, such as the feasibility of letting private stockholders bypass established markets such as NASDAQ to sell directly to each other. See Norman Sobol, Book Review: *Intelligent Agents and Futures Shock: Regulatory Challenges of the Internet*, 25 IOWA J. CORP. L. 103 , 108 n.4 (1999) (reviewing HOWARD

M. FRIEDMAN, SECURITIES REGULATION IN CYBERSPACE, at 15-14 (2d ed. 1998)). The online auction site eBay, the focus of this paper, prohibits auctions of stock and other securities on its site. *See eBay-Stocks, Bonds, Securities and Related Certificates*, at <http://pages.ebay.com/help/community/png-stocks.html> (last visited Mar. 9, 2001).

[2] For a general discussion of online auction fraud practices, *see* James M. Snyder, Note, *Online Auction Fraud: Are the Auction Houses Doing All They Should or Could to Stop Online Fraud?*, 52 FED. COMM. L.J. 453, 457-59 (2000).

[3] *See, e.g., id.* at 455 (noting tremendous increases in online auction complaints to the FTC and watchdog groups, and involvement of National Consumers League); Heartland Better Business Bureau, *News, Events & BBB Integrity Awards*, available at http://www.heartlandbbb.org/NewsEvents/hot_topics.htm (last visited Mar. 9, 2001).

[4] *See, e.g., infra* notes 33-34 and accompanying text (discussing widely reported incidents of a 13-year-old placing fake bids on high dollar items, such as a classic car, and a fake bid on a charity auction sponsored by ABC's *Today Show*).

[5] Deadbeat bidders are a frequent topic of discussion on Auctionwatch.com, a well-known resource site for the eBay community. *See, e.g.,* Posting of dnjbias, dnjbias@auctionwatch.com to <http://www.auctionwatch.com/mesg/read.html> (Jan. 26, 2001) *RE: Deadbeats on the Rise?*, at <http://www.auctionwatch.com/mesg/read.html?num=2&thread=164045> (noting incidents of deadbeats on items with average values of \$25 and \$15).

[6] This is in direct contrast to live auctions, which are normally regulated at the state level. Online auctions do not fit well into state regulatory schemes because the online auctioneer is an automated process, and is therefore not acting as the seller's agent in the traditional sense. *See* Richard A. White, *Overcoming Regulatory Barriers to Successful E-Commerce*, 570 PRAC. L. INST. COPYRIGHTS, TRADEMARKS And Literary Prop. Course Handbook Series, 703, 708 (1999). Jurisdictional constraints when the auction buyer or seller lives outside the state hamper enforceability of state laws and may invoke commerce clause issues. *See generally* Dan L. Burk, *Federalism in Cyberspace*, 28 CONN. L. REV. 1095 (1996). State governments are vulnerable to a deluge of complaints from online auction users, including state citizens. *See* Amanda Strickland, *N.C. Holds Off Controversial E-Auction Regs*, THE BUS. J., Dec. 31, 1999, available at <http://triangle.bcentral.com/triangle/stories/2000/01/03/story4.html> (discussing how North Carolina auction sellers were joined by other sellers across the country, as well as the trade association Online Auction Users Association (OAU), to defeat an attempt by North Carolina to force online auction sellers to obtain \$250 auctioneers' licenses).

[7] *See* Lawrence Lessig, *The Law of the Horse: What Cyberlaw Might Teach*, 113 HARV. L. REV. 500, 507-511 (1999) (describing four modalities of regulation in cyberspace as law, social norms, markets, and architecture or code). In this case, social norms and markets, which are relied upon by the feedback system, have failed to prevent fraud, so eBay must rely upon code and law.

[8] *See id.* In partnering with third parties, eBay relies upon external laws such as the Fair Credit Reporting Act that govern third parties' business activities but place little burden directly upon eBay's company.

[9] *About eBay Company Overview*, at <http://pages.ebay.com/community/aboutebay/overview/index.html> (last visited Mar. 6, 2001).

[10] *See eBay Category Overview*, at <http://listings.ebay.com/aw/listings/overview.html> (last visited Mar. 6,

2001). The "practically anything on earth" designation has been limited by the fact that eBay prohibits or controls the sale of many items, including but not limited to alcohol and tobacco products, firearms, human parts and remains, TV descramblers, drug paraphernalia, live animals, copyrighted items, unwashed clothing, hate memorabilia, and a wide range of adult materials. *See Is My Item Allowed on eBay? Prohibited, Questionable and Infringing Items*, at <http://pages.ebay.com/help/community/png-items.html> (last visited Mar. 6, 2001).

[11] This folksy tale usually omits the fact that founder Pierre Omidyar was a Silicon Valley veteran who had already started one e-commerce site that was purchased by Microsoft. *See Daniel Roth, Meg Muscles eBay Uptown*, FORTUNE, July 5, 1999, at 81.

[12] Competitors include major e-commerce firms such as Yahoo! and Amazon, as well as smaller imitators such as Gold's Auctions, Boxlot, Onsale, and Bidbay.

[13] It has been argued that eBay's profits stem mostly from its investment strategies and not from its operations. *See Warren Gump, Fool on the Hill: An Investment Opinion eBay's Amazing Profits* (last modified July 27, 1999), available at <http://www.fool.com/EveningNews/foth/1999/foth990727.htm>.

[14] *See Roth, supra* note 11; *About eBay: Company Overview Benchmarks*, at <http://pages.ebay.com/community/aboutebay/overview/benchmarks.html> (last visited Mar. 6, 2001).

[15] The number of categories fluctuates as eBay adds and removes categories based on user suggestions. *See About e-Bay: Company Overview-Benchmarks, supra* note 14.

[16] This description of how an auction works is partially based on the author's personal experience as a buyer in over two hundred eBay auctions since 1997.

[17] *See eBay Registration*, at http://cg4.ebay.com/aw-cgi/eBayISAPI.dll?SSLRegisterFromCountries&siteid=0&co_partnerid=2&uUsingSSL=0 (last visited Apr. 1, 2000).

[18] *See About eBay: Company Overview*, at <http://pages.ebay.com/community/aboutebay/overview/index.html> (last visited Mar.6, 2001) (noting that individuals not big businesses use eBay to buy and sell items). *See also* Mark Leibovich, *eBay, 'Cyburbia's' New Subdivision, Stokes a Boom; With an Emphasis on Community, Internet Auction Site Struggles with Growth*, WASH. POST, Jan. 31, 1999, at A1 (describing how many eBay sellers are individuals who discover that they can profit by selling their household knick-knacks or newspapers).

[19] *See eBay: New to Selling?*, at <http://pages.ebay.com/help/basics/n-selling.html> (last visited Mar. 9, 2001); *eBay: Are There Fees?* at <http://pages.ebay.com/help/basics/n-fees.html> (last visited Mar. 9, 2001).

[20] *See eBay: New to Bidding?*, at <http://pages.ebay.com/help/basics/n-bidding.html> (last visited Mar. 9, 2001).

[21] *See eBay: New to Selling?*, *supra* note 19. eBay permits several variations on this basic model, including the reserve price auction where the bids must reach a certain price level before the seller is obligated to sell; the Dutch auction where bidders bid for the right to purchase one or more items from an identical lot; and the private auction where bidders' identities are kept secret. *See eBay: Frequently Asked Questions About Auction Types*, at <http://pages.ebay.com/help/basics/f-format.html> (last visited Mar.9, 2001) (describing auction formats allowed by eBay). Some other variations not permitted by eBay, but permitted by some competitors,

include the choice auction, where the bidder wins the right to choose an item from a lot, and the extended auction, where the auction time is extended for a certain number of minutes after a late bid to give others a chance to respond.

[22] See *The Feedback Forum* at <http://pages.ebay.com/services/forum/feedback.html> (last visited Mar. 9, 2000).

[23] See Robin Fields, *Some E-Auction Users Get Less Than They Bargain For: Internet Fraud Has Escalated at Online Bidding Sites, Prompting Law Enforcement and Security Crackdowns*, L.A. TIMES, Mar. 16, 2000, at A1 (quoting eBay spokesman Kevin Pursglove as saying "¼if we don't do right by our community, then the issue of regulation arises.").

[24] See TAMAR FRANKEL, *Trusting and Non-Trusting: Comparing Benefits, Cost and Risk* (Boston Univ. Sch. of Law Working Paper Series, Law & Econ. Working Paper No. 99-12, 1999) (noting that "The starting point in trusting attitude is a presumption that the other person or institution is trustworthy, barring evidence that conflicts with trustworthiness"), available at <http://www.bu.edu/law/faculty/papers> (last visited January 30, 2001).

[25] See Roth, *supra* note 11.

[26] eBay's site contains numerous reassurances of honesty, including a link on the portal page entitled *Why eBay is Safe* that takes the viewer to a page describing the merits of the feedback forum, as well as other protective features such as insurance; a Better Business Bureau icon; and a Trust-E privacy icon, which most casual users are unlikely to understand, but which might provide psychic benefits through use of the words "trust" and "privacy". *eBay*, at <http://www.ebay.com> (last visited Mar. 9, 2001) (portal page); FRANKEL, *supra* note 24, at 18 (discussing how "market verifiers" such as Trust-E help establish trust by verification, but in so doing reduce trust to a "commodity" that can be bought). The eBay statement of community values also states the default trust rule, "We believe people are basically good," and eBay encourages "open and honest communication" among its members. *eBay Help: Community Standards Community Values*, at <http://pages.ebay.com/help/community/values.html> (last visited Mar. 6, 2001).

[27] See generally Richard S. Murphy, *Property Rights in Personal Information: An Economic Defense of Privacy*, 84 GEO. L.J. 2381 (1996) (analyzing economic value in privacy rights); Heather Green, *A Little Privacy, Please*, BUS. WEEK, Mar. 16, 1998, at 98 (noting that a Business Week/Harris poll found that a majority of 999 respondents polled listed privacy concerns as the main reason why they did not use the World Wide Web; of those who did use the Web, 78% said they would use it more if privacy were guaranteed).

[28] See, e.g., Stephen Hoare, *Turning Hits Into a Smash*, TIMES (London), Mar. 24, 2000, available at 2000 WL 2877491 ("For a site to do business it has to be 'sticky' people have to want to stay and discover what your website is offering rather than clicking off because they are bored or cannot navigate their way through the mass of information on offer.")

[29] See Peter S. Menell, *An Analysis of the Scope of Copyright Protection For Application Programs*, 41 STAN. L. REV. 1045, 1066-67 (1989) (discussing switching costs incurred by users who change software control interfaces); David J. Goldstone, *A Funny Thing Happened on the Way to the Cyber-Forum: Public vs. Private in Cyberspace Speech*, 69 U. COLO. L. REV. 1, 50-51 (1998) (noting code "lock-in" phenomenon causing a user to incur switching costs upon having to leave an established network, learn a new system, and adapt to a new architecture).

[30] See Goldstone, *supra* note 29, at 50-51 (describing lock-in phenomenon as it relates to e-mail forums).

Based on Goldstone's analysis, costs of switching to other sites in this case could be broken down as (1) the costs of subscribing, learning about, and configuring a new system and (2) the cost of notifying the "installed base" of users with whom one normally communicates that one has changed systems. In this case, there is an additional cost (3), that of developing a new user base on the new system. Because auction sites are generally easy to use and similar to each other, the costs of (1) are small, leaving the costs of (2) and (3) to mainly determine whether a user stays on eBay or goes elsewhere. *Id.*

[31] Although eBay does not baldly state its preference, eBay subtly expresses its preference through incentives such as the PowerSellers Program, a special service and reward program for high volume sellers who are therefore frequent repeat players. *See PowerSellers Program*, at <http://pages.ebay.com/services/buyandsell/powersellers.html> (last visited Mar. 6, 2001). There is no corresponding program for "power buyers." *See id.*

[32] *See Community: Suggestion - Feedback Revision Project*, at <http://pages.ebay.com/community/suggestion/feedbackresults.html> (last visited Apr. 1, 2000) (discussing feedback changes that eBay will make in response to customer input) [hereinafter *Feedback Revision Project*]. A survey conducted by the Online Auction Users Association helped to drive this change. *See generally* ONLINE AUCTION USERS ASSOCIATION, Member Issues Report, Nov. 24, 1999 (available to members only; copy on file with author) [hereinafter OUA REPORT].

[33] *See Boy Bids Millions on Internet Auctions: The 13-Year-Old "Really Didn't Know This Was For Real," Said His Shocked Mother*, CHI. SUN-TIMES, Apr. 30, 1999, at 38.

[34] *See* Leibovich, *supra* note 18.

[35] Guest was the second person in the U.S. to be convicted of online auction fraud and the first to be sentenced to prison. *See Communications Media Center at New York Law School*, at <http://www.cmcnyls.edu/public/bulletins/ebycg14m.html.ssi> (last visited Jan. 24, 2001). As of March 2000, approximately 35 similar cases had been brought in state and federal jurisdictions. *See* Don Benson, Local Online Auction Fraud Conviction 2nd in Nation, BUS. PRESS, Aug. 2, 1999, at 1; Fields, *supra* note 23.

[36] *Trust and Safety: User Agreement "eBay is Only a Venue,"* at <http://pages.ebay.com/help/community/png-user.html> (last visited Mar. 6, 2001); *See also* Leibovich, *supra* note 18 (quoting eBay's vice-president as saying "Pierre's [eBay founder's] philosophy is 'make as few rules as possible and get out of the way.'").

[37] 129 F.3d 327 (4th Cir. 1997), *cert. denied*, 524 U.S. 937 (1998). The plaintiff, Zeran, brought an action for negligence against America Online ("AOL") after AOL delayed removing defamatory messages posted anonymously to an AOL bulletin board. The messages, phony advertisements for offensive T-shirts regarding the Oklahoma City bombing, included Zeran's home phone number. Zeran subsequently received numerous harassment calls, including death threats, and required police protection after a radio station publicized the postings, which AOL did not remove promptly. *Id.* at 329.

[38] 992 F. Supp. 44 (D.D.C. 1998). The plaintiff, Sidney Blumenthal a former assistant to President Clinton, sued Internet journalist Matt Drudge and AOL after Drudge published a story alleging that Blumenthal had a spousal abuse past. Prior to the story, AOL and Drudge entered into a license agreement to make Drudge's online publication, *The Drudge Report*, available to AOL subscribers. *See id.* at 47-48. The case also aroused controversy due to Drudge's previous notoriety for breaking the story of President Clinton's affair with Monica Lewinsky.

[39] See *Zeran*, 129 F.3d at 335; *Blumenthal*, 992 F. Supp. at 53.

[40] See *Blumenthal*, 992 F. Supp. at 47.

[41] See 47 U.S.C. § 230 (1994 & Supp. IV 1998); *Zeran*, 129 F.3d at 331-35 (discussing limitations of liability for online publishers under § 230); *Blumenthal*, 992 F. Supp. at 48-53.

[42] See *Zeran*, 129 F. Supp. at 333.

[43] In addition to the Court of Appeals for the Fourth Circuit and D.C. Circuits, the Court of Appeals for the Tenth Circuit in *Ben Ezra, Weinstein Inc. v. America Online*, 206 F.3d 980, 985-86 (10th Cir. 2000), held that § 230 immunized AOL from suit after it published allegedly erroneous information about a company's publicly traded stock.

[44] See Michael J. Brady et al., *The New World of the World Wide Web: Internet Liability Issues*, 67 DEF. COUNS. J. 47, 55 (2000) (pointing out "[t]he extent, if any, to which an online service provider becomes liable for the tortious actions or contract violations of its subscribers remains unsettled."); *Kimmel v. DeGasperi*, No. Civ.A. 00-143, 2000 U.S. Dist. WL 420639, at *3 (E.D. Pa. Apr. 7, 2000) (sustaining plaintiff's action against co-defendant eBay in action based on seller's refusal to complete sale of goods).

[45] AOL was also the defendant in a similar Tenth Circuit case. See note 42 *supra*.

[46] See Dan Mitchell, *Feds Hesitate to Regulate*, CNET News.com (Feb. 24, 1999) at <http://news.cnet.com/news/0-1007-201-339001-0.html?tag=st.ne.ni>; Fields, *supra* note 23 (noting that politicians have hesitated to regulate "wildly successful" online auctions).

[47] The number of online auction fraud complaints, which presumably include complaints from sites other than eBay, has increased over 100 times since 1997, with the total number of complaints reaching 10,700 in 1999. See Fields, *supra* note 23. Although eBay points out that these numbers comprise a small percentage of the total transactions, with approximately one in 25,000 transactions being "troubled," the large number of complaints is hard to ignore. *Id.*

Furthermore, in a user survey performed by the trade association Online Auction Users Association, users asked to identify the top issues facing the industry put fraud at the top of the list, with 66.7% of users surveyed indicating concern. See OUA Report, *supra* note 18, at 5. The likelihood also exists that some frauds are underreported to consumer agencies. For instance, deadbeat bidders do not need to be reported to consumer agencies since sellers can request a credit report from eBay and put the item up for sale again. Sellers use this route even though eBay recently started tracking the activities of deadbeat bidders for potential sanctions in response to seller complaints. See *Non-Paying Bidder Policy*, at <http://pages.ebay.com/help/community/npb.html> (visited Mar. 6, 2001). Some frauds, like bid shilling, are also difficult for inexperienced users to detect and report. See *Shilling*, at <http://www.auctionwatch.com/mesg/read.html?num=2&id=199484&thread=188447> (visited Mar. 6, 2001) (discussing ways that users might spot a shilling seller, but cautioning that these methods do not always work).

[48] Although the Federal Trade Commission is launching a multi-agency effort against online auction fraud, some experts think that the problem may still burgeon dramatically. See Fields, *supra* note 23. In addition to fraud problems, eBay has also come under Justice Department scrutiny for alleged anti-competitive practices. See *DOJ begins eBay watch: Is Web auctioneer anti-competitive, or trying to protect its business?*, CNNfn (Feb. 4, 2000), at <http://cnnfn.com/2000/02/04/technology/ebay>.

[49] See Fields, *supra* note 23 (discussing failed North Carolina auctioneers' licensing effort); Posting of Steve, *OAAU Launches Phone/Fax/Letter/Email Campaign to Fight Regulation NC, NH, TN. Help!*, at <http://www.auctionusers.org/forums/Forum10/HTML/000066.html> (last updated Dec.15, 1999) (discussing North Carolina situation as well as similar regulation attempts by New Hampshire and Tennessee).

[50] *Trust and Safety: User Agreement*, *supra* note 36.

[51] See *eBay ID Verify* (discussing Equifax verification service), at <http://pages.ebay.com/services/buyandsell/idverify-login.html> (last visited Mar. 6, 2001).

[52] See *eBay Insurance Process*, at <http://pages.ebay.com/help/community/ins-process.html> (last visited Mar. 6, 2001).

[53] See *eBay Escrow Overview*, at <http://pages.ebay.com/help/community/escrow.html> (last visited Mar. 6, 2001).

[54] See Lessig, *supra* note 7, at 508 (discussing interplay of law, norms, markets and code).

[55] One of the most popular early netcops was Sandy List, a federal government employee who, under the user ID "Cyberyenta," devoted herself to tracking down shill bidders and was a popular contributor to eBay discussion boards. After she had been doing this for some months, eBay eventually barred her from the site after deciding that she had gone too far in collecting and disseminating information about users. See Leibovich, *supra* note 18. Many other eBay users engage in netcopping to some extent. See Shilling, *supra* note 47.

[56] Although this paper focuses on eBay's fraud prevention issues, it is important to realize that eBay has simultaneously been evolving and formalizing procedures in a number of other areas beyond the scope of this paper, in response to legal or economic stimuli. These areas include:

- Controlling sales of merchandise that violate copyright. eBay controls copyright violations through its VeRo program, which allows copyright owners to report potentially infringing auction items to eBay for investigation and removal from the web. See *eBay's Verified Rights Owner (VeRo) Program: Protecting Intellectual Property*, at <http://pages.ebay.com/help/community/vero-program.html> (last visited Mar. 6, 2001). The program replaced an earlier program known as "Legal Buddies," which users had dubbed "Legal Bullies" due to its perceived overzealousness in pursuing individuals reselling their own legally purchased clothing and recordings. See *What a Week! eBay Shut Down My Chanel Auction* (discussing Legal Buddies and Vero programs), at <http://www.auctionwatch.com/mesg/read.html?num=2&thread=22953&id=22953> (last modified July 18, 1999). In particular, an attempt during 1999 by the mother and copyright owner of deceased musician Jeff Buckley to remove Jeff Buckley merchandise from eBay sparked a civil liberties protest by activist users, who listed pieces of original art and poems named after or inspired by Jeff Buckley. This author personally witnessed the protest and bid on one of the items as a show of support. See Dennis Prince, *NetCops: To Protect and Surf* (describing Jeff Buckley infringement situation), at <http://www.auctionwatch.com/awdaily/features/netcops/3.html> (last modified Oct. 18, 1999) [hereinafter *Netcops*].

- Limiting sales of dangerous or offensive merchandise such as human body organs, used underwear, firearms, adult materials, and racist and hate memorabilia. See *eBay: Is My Item Allowed on eBay? Prohibited, Restricted and Infringing Items*, at <http://pages.ebay.com/help/community/png-items.html> (last visited Mar. 6, 2001). One reason for the constraints is that, as eBay goes global, it must contend with jurisdictional prohibitions on goods that are allowed in the U.S. In some cases, entire categories may be prohibited from view in particular countries. See Ed Ritchie, *The Law at eBay: AW Talks With eBay's Associate General Counsel, Rob Chesnut* at <http://www.auctionwatch.com/awdaily/dailynews/1-121599.html>

(last modified Dec. 15, 1999).

- Developing policies for use of on-site discussion boards. *See eBay: Board Usage Policy* <http://pages.ebay.com/help/community/png-board.html> (last visited Mar. 6, 2001). Discussion board policies were developed after eBay, who previously had no clear policy on board use, suspended a group of users for comments on a "discuss new features" board (also known to users as the "do not fight" board due to the heated discussion) criticizing eBay's gun sales prohibitions, its customer service, and its embarrassing outage problems. *See, e.g., Roth, supra* note 11. eBay's heavy-handed management of its discussion boards led to the increased popularity of off-site eBay activist discussion communities such as Auctionwatch.com, where users can comment with somewhat less fear of eBay sanctions.

- Formalizing the interactions of eBay staff with users. For example, many members of the eBay community felt betrayed when Jim Griffith, a popular eBay advice giver under the handle "Uncle Griff," admitted that he had a second user identity as "Dale," a customer support person. *See Who the Heck is "Skippy" and Where Did He Go?*, at <http://www.auctionwatch.com/mesg/read.html?num=2&id=27328&thread=27300> (last visited Mar. 6, 2001) (discussing users' discomfort with eBay staff personnel, including Griffith, having multiple online identities). eBay has also tried to rein in employees who go too far in policing users (an eBay support person who witnessed a dispute involving personal information on an offsite board sent an e-mail threatening the parties with suspension, even though they were not on the eBay site at the time) and provide more standardized support training. *See EBAY HOW DARE YOU!!! PART 2*, at <http://www.auctionwatch.com/mesg/read.html?num=2&id=79696&thread=79521> (last visited Mar. 6, 2001) (expressing user outrage over suspension warning based on offsite board incident); *A Response From the VP of eBay's Customer Support*, at <http://www.auctionwatch.com/mesg/read.html?num=2&id=81657&thread=81627> (last visited Mar. 6, 2001) (apologizing for e-mailed warning of suspension).

[57] *See* Julie E. Cohen, *A Right to Read Anonymously: A Closer Look at "Copyright Management" in Cyberspace*, 28 CONN. L. REV. 981, 995 (1996).

[58] *Id.* at 996-97.

[59] *See* Mark A. Lemley, *The Law and Economics of Internet Norms*, 73 CHI.-KENT L. REV. 1257, 1273 (1998) (discussing how buyer and seller interests are not aligned for purposes of norming); *cf.* Cohen, *supra* note 57 (suggesting that consensual private ordering works for small cyberspace groups with shared interests).

[60] eBay originally used the user's e-mail as an identifier. User ID's were introduced after attacks by `bot programs which harvested e-mail addresses for spammers. Many user ID's serve the purpose of advertising what the person likes to buy or sell.

[61] *See ID Verify, supra* note 51.

[62] *See Why Does eBay Have Additional Requirements in Order to Sell?*, at <http://pages.ebay.com/help/sellerguide/selling-account.html> (last visited Mar. 6, 2001).

[63] A few buying activities do require entry of a credit card number. Buyers must enter a card number to preview or bid on adults-only materials, to place bids over \$5000, and to bid on a few categories containing high-priced goods. *See Restricted Access Auctions*, at <http://pages.ebay.com/help/basics/f-format.html#4> (last visited Mar. 6, 2001); *CC Verification: Learn More eBay User Verification*, at http://pages.ebay.com/help/basics/learn_more.html (last visited Mar. 6, 2001) (discussing Great Collections category, which features high-priced art and collectibles).

[64] Critics have noted that eBay is unlikely to be able to track all small free e-mail providers, and will likely monitor only the large companies such as Hotmail. See Dallas Middaugh, *Registration Abuse: Online Auctions in an Imperfect World*, at <http://www.auctionwatch.com/awdaily/features/abuse/4.html> (last modified Sept. 24, 1999). Interestingly, eBay's registration site lists America Online (AOL) as a trustworthy domain that does not require a credit card, even though commentators have noted that AOL accounts are prone to abuse because multiple identities on one AOL account are easy to obtain. See Peter Kollock, *The Production of Trust in Online Markets*, 16 *ADVANCES IN GROUP PROCESSES* (forthcoming 2000) (noting AOL account multiple identity issue). This author recalls that the discussion board harasser, discussed *infra* at note 70, created multiple identities using an AOL account. However, the likelihood exists that eBay simply does not want to alienate the large pool of AOL users.

[65] eBay probably does not want to encourage multiple accounts, though I was unable to find any support for this policy on the eBay site. However, it is common knowledge among users that two non-interacting accounts are permissible and even desirable because negative comments you receive on one account will not affect your credibility on the other. See, e.g., *Need Advice Quick!*, at <http://www.auctionwatch.com/mesg/read.html?num=2&id=165896&thread=165896> (last modified Mar. 26, 2000).

[66] See *eBay: Not a Registered User*, at <http://pages.ebay.com/help/myinfo/user-not-registered.html> (last visited Mar. 6, 2001); *eBay: Investigations*, at <http://pages.ebay.com/help/community/investigates.html> (last visited Mar. 6, 2001).

[67] See A. Michael Froomkin, *The Internet as a Source of Regulatory Arbitrage*, in *BORDERS IN CYBERSPACE, INFORMATION POLICY AND THE GLOBAL INFORMATION INFRASTRUCTURE* 129, 150 (Brian Kahin & Charles Nesson eds., 1997). Online auction users might engage in a form of regulatory arbitrage, not only by committing fraud against foreign transaction partners (common on eBay) but also by committing fraud against transaction parties located in distant states. Although federal remedies exist, enforcement of fraud sanctions against distant parties may be difficult, especially when the value of the item is low or the fraudulent behavior is not clear. *Id.*

[68] After registration information is provided, it is also not screened for continued validity, nor are update reminders sent. This author mistakenly had an incorrect telephone number in her profile for a number of months; it went undetected by eBay.

[69] See Middaugh, *supra* note 64, at 3. Because auction sites, motivated by economic concerns, also routinely minimize other detrimental information, such as the number of transactions gone bad, it is difficult to put credibility in their statements that registration abuse is not a problem. *Id.*

[70] See, e.g., Randy Barrett, *Net Posses Saddle Up Against Cybercrooks*, *ZDNET INTERACTIVE WEEK* (describing investigation of a fraudulent seller known as "kuchar1" who was found to be operating under different seller aliases), at <http://www.zdnet.com/intweek/stories/news/0,4164,2375053,00.html> (Oct. 18, 1999). See also Michelle Dennehy, *Someone to Watch Over Me: AW Investigates Privacy in Online Auctions*, at <http://www.auctionwatch.com/awdaily/dailynews/1-120199.html> (last updated Dec. 1, 1999) (describing incident of suspended seller who used multiple identities to commit fraud on eBay and then to harass users who reported her).

[71] eBay also notes that when deciding sanctions for persons whom eBay investigated, eBay takes the user's past record into account. A user who has been a money-earner for eBay may be likely to get off with a light penalty. See *Auctionwatch: Investigations*, available at <http://www.auctionwatch.com/mesg/read.html?num=2&thread=165462&id=165462> (last visited Mar. 6, 2001).

[72] A KPMG survey found reported instances of credit card fraud had reached \$1,126 million in 1998, up from \$367,000 in 1994, suggesting that this type of fraud is both easy and common. *See* Lesley D. Hand, *Fraud: What Every Practicing Attorney Needs to Know*, 1133 PLI/ CORP 417, 437 (1999).

[73] It should be noted that in early 2001, while this paper was being submitted for publication, eBay changed its procedures for obtaining contact information. A registered user can now only obtain another registered user's e-mail address if the two are currently engaged in a transaction. In other words, a seller can obtain e-mail addresses of all his bidders, and a winning bidder can obtain the e-mail address of the seller. Other parties can contact each other through eBay's mail forwarding service, which forwards an e-mail without notifying the sender of the recipient's e-mail address. The recipient receives the sender's e-mail address and can then decide whether to respond directly. *See Email Address and User ID History Request Form*, at <http://contact.ebay.com/aw-cgi/eBayISAPI.dll?> (last visited Apr. 11, 2001). eBay made this change to limit the amount of unsolicited e-mail received by members, which includes not only harassing e-mail, but commercial spam, such as offers to sell a bidder the same item at a cheaper price. *See Learn More*, at [ReturnUserEmail&requested=terminal_towerhttp://pages.ebay.com/help/Contact_form_learnmore](http://pages.ebay.com/help/Contact_form_learnmore) (last visited Apr. 11, 2001). While this feature does make it more difficult to obtain a user's e-mail address, it should be noted that there are several easy ways around it. First, many users still publicize their e-mail addresses by using the address as a user ID or by listing the address on an auction page or linked web page, thus rendering the feature useless. Second, a potential harasser can still obtain a user's e-mail address by entering a transaction with him (which may never be completed if the main purpose is to get information) or by sending the target an innocuous, transaction-related question via the eBay forwarding service. For example, the harasser might ask the target a question about an item up for auction via the forwarding service, suggesting that he is considering bidding on it. The target will respond directly to the harasser, thus revealing his own e-mail address. Similarly, requests for contact information have also been limited to parties involved in a transaction with each other. *See Find Members*, at <http://cgi3.ebay.com/aw-cgi/eBayISAPI.dll?MemberSearchShow> (last visited Apr. 11, 2001). Again, while this provides some additional privacy protection, the protection is questionable if the two parties have been involved in a transaction gone bad, or if the transaction was entered solely to get information. Originally, user's e-mail addresses were always publicly displayed. The password-entry requirement was implemented to defeat information-gathering `bots, which harvest e-mail addresses for spammers. This feature is now limited to transaction partners.

[74] Pulling contact information allows a user to see if the address to which he is mailing payment or an item matches the address of the legitimate transaction partner. eBay suggests that users pull contact information when they have a hard time reaching their partners by e-mail. *See eBay: Contact Information Someone Requested My Contact Information*, at <http://webhelp.ebay.com/cgi-bin/eHNC/showdoc-ebay.tcl?docid=562&queryid=harassment> (last visited Mar. 6, 2001) [hereinafter *Contact Info Request*]. Contact information might also be pulled if one suspects that a person is misrepresenting himself in e-mail in an effort to confuse a legitimate seller or winning bidder into transacting with them. *See Auctionwatch: Best Way to Deal With Unwanted Seller E-Mail?*, at <http://www.auctionwatch.com/mesg/read.html?num=2&thread=165462&id=165462> (last modified Mar. 25, 2000). This feature is now limited to transaction partners. *See* note 73, *supra*.

[75] User ID's might be considered pseudonyms in cases where the user does significant business under the same ID, hence building up a recognized reputation and online persona associated with that pseudonym. *See* David G. Post, *Pooling Intellectual Capital: Thoughts on Anonymity, Pseudonymity, and Limited Liability in Cyberspace*, 1996 U. CHI. LEGAL F. 139, 158-59 (1996) [hereinafter *Pooling*].

[76] eBay has shown concern over users' data privacy, particularly when commercial interests might be at stake. For example, it has taken steps to protect against outside commercial entities harvesting eBay user

data, and its site features a privacy policy describing how user data is used, as well as Trust-E third party privacy certification. *See* Glenn R. Simpson, *eBay Site was Raided by Rival, FTC Says*, WALL S T . J., Jan. 7, 2000, at B6 (describing eBay's filing of a suit against a competing auction house that registered with eBay as a user, harvested user data and then spammed eBay users); *see also* *eBay: Privacy Policy*, at <http://pages.ebay.com/help/community/png-priv.html> (last visited Mar. 6, 2001). eBay has also attempted, less successfully, to enforce sanctions against individual users who disseminate user data in offsite settings, such as discussion boards. In one case, a seller who had been suspended for deceptive practices on the basis of complaints by transaction partners proceeded to assume multiple cyberidentities and harass the users whom she blamed for the suspension. The frustrated targets eventually posted personal information about the harasser on an offsite discussion board; the information was only visible for a short time and the posters claimed it was a mistake. However, the suspended harasser complained to eBay, who threatened the targets with suspension, but later was forced to issue an apology after users protested. *See* Dennehy, *supra* note 70 (describing incident, eBay's threat and later apology). This incident is also supported by the personal recollection of author, who observed the harassment and corresponded by e-mail with one of the targets.

[77] This author recalls that during the harassment incident discussed in the previous footnote, several of the harassment targets were not transaction partners of the harasser, but persons she believed responsible for investigating her practices. Former netcop Sandy List has also gone on record with tales of harassment by users who were not her transaction partners. *See* Leibovich, *supra* note 18.

[78] The privacy policy states permitted uses as:

(a) eBay-related communications that are not unsolicited commercial messages, (b) using co-branded services offered through eBay (e.g. escrow, insurance, shipping and fraud complaints), and (c) any other purpose that such user expressly opts into after adequate disclosure of the purpose(s). In all cases, you must give users an opportunity to remove themselves from your database and a chance to review what information you have collected about them. In addition, under no circumstances, except as defined in this Section, can you disclose personally identifiable information about another user to any third party without our consent and the consent of such other user after adequate disclosure.

eBay: Privacy Policy, *supra* note 76. Certain parties, such as law enforcement officers, are exempt from the policy. *See id.* Elsewhere on the site, eBay states that the information may be used only for "matters regarding eBay." *eBay: Contact Info Request*, *supra* note 74.

[79] *eBay: Contact Info Request*, *supra* note 74.

[80] *eBay: Privacy Policy*, *supra* note 76.

[81] Users might also exchange business contact information, but since many users are individuals rather than businesses, some of the information they exchange is likely to be personal.

[82] *Cf.* Post, *Pooling*, *supra* note 75, at 159-60 (describing the added social benefit pseudonymity brings to cyberspace communication by facilitating more freedom of expression).

[83] *See* Lemley, *supra* note 59, at 1273 (stating that a bad user has no incentive to respect cyberspace norms of conduct).

[84] *See generally* Kollock, *supra* note 64 (discussing the importance of trust and reputation for online transactions).

[85] *Id.* (noting that consumer protection advisors usually caution against sending money to a P.O. box

address and suggest that an honest user would provide a street address and working telephone number); Margaret Graham Tebo, *Filling E-Carts with Caution*, 86 ABA J., Jan. 2000, at 89 (advising online buyers to "beware of sites lacking a physical address for the company, or those that provide only a post office box.").

[86] Prior to the introduction of eBay User IDs in late 1997, eBay bidders and sellers used their e-mail addresses as their user ID's, and they were always visible to the general public.

[87] See, e.g., Kollock, *supra* note 64 at 19; *Making the Personal Connection: On-Line Communities Can Allow People to Build Reputations and Trust and Foster Intimacy*, Chi. Trib., Mar. 13, 2000, at 1 (interviewing Professor Amitai Etzioni about online communities, including eBay) [hereinafter *Etzioni Interview*].

[88] See Roth, *supra* note 11 (describing origin of the feedback system as customer request).

[89] See "The Feedback Forum: One of Your Most Valuable Tools," *Feedback Forum*, at <http://pages.ebay.com/services/forum/feedback.html> (last visited Mar. 6, 2001).

[90] A new code feature, implemented in March 2000, allows the user to scroll through all of his recent transactions to leave feedback, thus minimizing the possibility that he will skip or forget one. See *Find all transactions*, at [http://cgi2.ebay.com/aw-cgi/eBayISAPI.dll?LeaveFeedback Show](http://cgi2.ebay.com/aw-cgi/eBayISAPI.dll?LeaveFeedbackShow) (last visited Mar. 6, 2001).

[91] Rewards include special PowerSeller services for sellers, which require users to maintain a 98% positive feedback level, see *PowerSellers Program*, *supra* note 31. Other benefits include star icons after a User ID based on the number of positive comments, and occasionally, public acclaim. Recently, a user known as Parrothead88 was publicly lauded on the eBay site (and privately by many community members) for being the first to achieve a 10,000 feedback rating. See *First 10,000-Level Feedback Shooting Star Awarded*, eBay Life, Jan. 2000, at <http://pages.ebay.com/community/life/ebay-life-pA4.html> (last visited Apr. 11, 2001). Of course, an additional reward is the increased willingness of transaction partners to do business with someone who has high feedback.

[92] User interface pages for leaving feedback contain a highlighted warning explaining that "You are responsible for your own words" when leaving feedback. See e.g., *Leave Feedback for an eBay User*, at <http://cgi2.ebay.com/aw-cgi/eBayISAPI.dll?LeaveFeedbackShow> (visited Mar. 6, 2001). Many other similar warnings are found throughout the site wherever feedback is discussed.

[93] See OAU Report, *supra* note 32, at 5 (noting that OAU members heavily support feedback related to a transaction, believing that this type of feedback is least likely to be "bogus"); see also Dennis Prince, *Look Who's Talking: The Art of Feedback* at 3, at <http://www.auctionwatch.com/awdaily/features/feedback/index.html> (last modified Sept. 3, 1999) [hereinafter *Look Who's Talking*].

[94] See Prince, *Look Who's Talking*, *supra* note 93, at 4 (noting that neutrals are used for bad reports); *Neutrals and Negatives*, at <http://www.auctionwatch.com/awdaily/features/feedback/4.html> (last visited Mar. 6, 2001) (expressing users' dissatisfactions with neutral comments).

[95] The user with a rating of 4 or below will be automatically made unable to place bids or list items, but is not automatically NARUed. In order to be NARUed, the user's rating must come to eBay's attention, frequently through notification from another user or law enforcement agent. See *Help Basics*, "Why are users who have a lot of negative feedback still allowed to trade on your site?," at http://webhelp.ebay.com/cgi-bin/eHNC/showdoc-ebay.tcl?docid=88347 &queryid=what_happens_when_you_get_negative_feedback (last visited Mar. 5, 2001).

[96] eBay justified this policy on the grounds that feedback is somewhat subjective and that in any significant number of transactions, there are likely to be a few disagreements. *See Before the Auction: Understanding Feedback*, at <http://www.auctionwatch.com/awdaily/tipsandtactics/buy-feedback.html> (last visited Feb. 6, 2001). However, experienced users tend to be upset by the presence of even a few negatives. *See* Kollock, *supra* note 64 at 22.

[97] *See Non-Paying Bidder Policy*, at <http://pages.ebay.com/help/community/npb.html> (last visited Mar. 6, 2001).

[98] *See eBay: Non-Paying Bidder Policy Frequently Asked Questions*, at <http://pages.ebay.com/help/basics/f-npb.html> (last visited Mar. 6, 2001). Although eBay has stated it will review suspensions for non-paying bidders manually, it is unclear where they will find the administrative resources to check out many deadbeats. In response to the question, "If a user has 4 feedback comments for nonpayment, will they be suspended?" eBay responds somewhat cryptically, "No, feedback comments are separate from the non-paying bidder policy. eBay encourages you to leave appropriate feedback about your trading partners." *Id.* This rule, while sounding odd since one would assume a seller would find it "appropriate" to leave a negative for a non-paying bidder, may reflect the fact that a bidder might have a good excuse, such as a family emergency, for not paying. It may also reflect eBay's wish to get rid of deadbeat bidders who cost eBay commission money, without waiting for their feedback to reach the 4 mark.

[99] *See eBay: FAQ: Feedback*, at <http://pages.ebay.com/help/basics/f-feedback.html#1> (last visited Mar. 6, 2001) (noting that a high feedback rating does not necessarily mean the user has a stellar reputation).

[100] Some users have dealt with this problem by setting their computer to display a large number of feedback comments (i.e. more than 25) and using a search engine to find the word "complaint" indicating a negative feedback. However, because of the extra time and computer knowhow it takes to use this method, it is likely that most users do not bother.

[101] *See Feedback Revision Project*, *supra* note 32. Of course, scrolling through all the comments might require a user to stay on the site longer a favorable outcome for eBay, *see* Hoare, *supra* note 28 - but more likely, a user will simply look at the most recent feedback. Kollock notes that some other online auction sites do not share eBay's concern, and allow users to quickly see the total numbers of each type of comment. *See* Kollock, *supra* note 64.

[102] *See e.g.*, Kollock, *supra* note 64, at 4; Leibovich, *supra* note 18 (describing how a user with 733 positive feedback comments still felt "really bothered" by his single negative, earned when he misplaced a buyer's item during a family crisis).

[103] *See Feedback Revision Project*, *supra* note 32.

[104] *See e.g.*, *Auctionwatch: Feedback Padding*, at <http://www.auctionwatch.com/mesg/read.html?num=2&thread=122903&id=122903> (last modified Jan. 25, 2000) (offering justifications for a feedback exchange "party" that took place at Christmas between regular members of an eBay bookseller's discussion board). While some users feel that persons who have been helpful have earned a positive feedback, other users only care about transaction performance and feel that awarding feedback on other grounds constitutes fraud. *Id.*

[105] *Id.* *See also* OUA Report, *supra* note 32, at 5 (showing that members surveyed preferred transactional-only feedback).

[106] See *Auctionwatch: Feedback Padding*, *supra* note 104; *New BB Feedback Padding Thread Your Input?*, at <http://www.auctionwatch.com/mesg/read.html?num=2&thread=126873&id=126873> (last modified Jan. 26, 2000).

[107] *Id.*

[108] Harassers can include competitors, past customers, employees with a grudge, cyberstalkers, or random pranksters. In 1999, an eBay user with User ID "andy46477" briefly became a discussion board celebrity based on his prank leavings of humorous, suggestive and sarcastic non-transactional comments in random eBay users' files. While some community members thought Andy's comments were funny or artistic, others predictably found them less benign, and he was NARUed after being reported by an online auction user group known as the eBay Users' Protective Union (EUPU). Two hundred and twelve of his comments remain in various eBay user's files. See *eBay Feedback Comments Left by andy46477*, at <http://cgi2.ebay.com/aw-cgi/eBayISAPI.dll?ViewFeedbackLeft&userid=andy46477> (visited Mar. 6, 2001); *Where's Andy?*, at <http://www.auctionwatch.com/mesg/read.html?num=2&id=14789&thread=14755> (last modified July 2, 1999).

[109] In addition to the Rosie O'Donnell feedback previously discussed, this author recalls another feedback controversy involving high-priced, well-publicized auctions of Mark McGwire and Sammy Sosa's home run baseballs near the time of the company's IPO. Some users objected strongly to what they felt was a commercialization of the eBay community and/or the sport of baseball. One user intended to leave disgruntled, non-transactional feedback for a baseball auctioneer, but accidentally left it for an innocent user with a similar ID, who had nothing to do with the baseball auctions. eBay's initial slowness in removing the undeserved negative comment provoked an angry response on eBay discussion boards from users unhappy with the perceived lack of customer support. (Because discussion in those days primarily took place on dynamic real-time eBay support boards, records of this controversy have been lost, although the author recalls the incident.)

[110] See *eBay: Feedback Revision Project*, *supra* note 32 (showing user pressure on eBay applied through trade organization).

[111] See *eBay: Feedback Removal Policy*, at <http://pages.ebay.com/help/community/fbremove.html> (visited Mar. 6, 2001).

[112] *Id.*

[113] *Id.* eBay also states on this site that "under federal law (the Communications Decency Act), eBay is not legally responsible for the remarks that users post on its site, even if those remarks are defamatory" and refers users to legal search sites such as Findlaw for more information. This appears to be an attempt to scare angry feedback receivers into assuming eBay is judgment-proof. As discussed *supra* in text accompanying notes 37-42, the reach of defamation cases in the online auction context is unclear, and a non-attorney user is unlikely to understand information obtained on a legal web site. *Id.*

[114] In the past, the eBay system technology did not allow users to leave negative comments more than 60 days after a transaction. Users quickly figured out that leaving a negative comment at the very last second of the 60 day window protected them from retaliation. See *Negative Feedback*, at <http://www.auctionwatch.com/mesg/read.html?num=2&id=154865&thread=150533> (last modified Mar. 4, 2000) (detailing retaliatory avoidance plan publicized by activist user "AirAmerica"). eBay subsequently changed the system to eliminate the window. See *eBay: Feedback Revision Project*, *supra* note 18.

[115] See Kollock, *supra* note 64 at 22 ("One can choose to make one's feedback profile private, but this is a huge disadvantage in a market that relies on these reputations.").

[116] The For All Kids Foundation, a children's charity sponsored by television personality Rosie O'Donnell and conducting business under the user ID "4allkids," provides an example of a user for whom reputation outweighs the problem of private feedback. Because of O'Donnell's reputation and promotion, as well as the charitable image of the seller, auctions by "4allkids" receive bids on a regular basis. This author recalls that before the privatization of "4allkids" feedback, the charity received positive and negative non-transactional, political comments, based on O'Donnell's public comments about gun control. This author further suspects that these comments, plus a wish to avoid further celebrity-based harassment, motivated the privatization of feedback.

[117] *eBay: Make Your Feedback Profile Public or Private*, at <http://cgi2.ebay.com/aw-cgi/eBayISAPI.dll?FeedbackOption> (last visited Mar. 6, 2001).

[118] This assumes that most feedback on eBay results from the products of actual transactions, which is probably the case, although a significant number of comments may have stemmed from past non-transactional activities and/or fraud.

[119] See e.g., Barbara Giasone, *E-Tailers Click On to New Marketing*, Orange County Reg., Jan. 27, 2000, at 12 (discussing emotional motivations of antiques buyers); *Update: Item Worth Only 20%*, at <http://www.auctionwatch.com/mesg/read.html?num=2&id=189923&thread=189920> (last visited Mar. 6, 2001) (discussing how sentimental value causes collectibles to sell at prices much higher than market valuation).

[120] See *Is There Anything Good About Feedback?*, at <http://www.auctionwatch.com/mesg/read.html?num=2&id=166488&thread=163764> (last modified Mar. 26, 2000) (noting that feedback gives a user at least some information about his transaction partner); Kollock, *supra* note 64 at 4.

[121] See Cheryl B. Preston, *Honor Among Bankers: Ethics in the Exchange of Commercial Credit Information and the Protection of Consumer Interests*, 40 U. Kan. L. Rev. 943, 959-63 (1992) (describing risks of electronic data storage and individuals' desire to prevent dissemination).

[122] See Fair Credit Reporting Act, Charges for Certain Disclosures, 15 U.S.C. § 1681(j) (1994 & Supp. IV 1998).

[123] See Andy Roe, *Merchant Beware: AW's Investigation into Credit Card Merchant Accounts* at <http://www.auctionwatch.com/awdaily/features/beware/index.html> (last visited Mar. 6, 2001) (describing auction sellers' risks and fees when choosing a merchant bank).

[124] See e.g., Rich Shopes, *New Company Has Answer to Cyber-Shoppers' Fears*, Sarasota (Fla.) Herald-Trib., May 12, 2000, at 1D (discussing consumers' fears of using their credit card numbers on the Internet).

[125] For example, a person buying a high-priced item, such as real estate or an automobile, would probably understand the need for a credit report and be willing to disseminate it.

[126] See e.g., *Is There Anything Good About Feedback?*, *supra* note 120 (discussing types of information that can be communicated in feedback).

[127] See Fair Credit Reporting Act, Procedure in Case of Disputed Accuracy, 15 U.S.C. § 1681(i) (1994 &

- [128] See OAU Report, *supra* note 32, at 4-5.
- [129] See Marshall Scott Poole et al., *Communication Media and Negotiation Processes*, in *Communication and Negotiation* (Linda L. Putnam & Michael E. Roloff eds., 1992) (surveying literature analyzing media richness and discussing added communications difficulties that arise when communications are not performed face-to-face).
- [130] Tebo, *supra* note 85 at 89.
- [131] See Lemley, *supra* note 59 (discussing norms in the new context of cyberspace).
- [132] See *Auctionwatch: Is There Anything Good About Feedback?*, *supra* note 120.
- [133] See Kollock, *supra* note 64.
- [134] *Etzioni Interview*, *supra* note 87.
- [135] See Lemley, *supra* note 59, at 1273.
- [136] The strategy of building up enough good feedback to lure bidders was used by Robert Guest who was convicted of online auction fraud. See *supra* note 35 and accompanying text.
- [137] See Barrett, *supra* note 70 (describing investigation of "kuchar1").
- [138] *eBay View User Feedback For kuchar1*, at <http://cgi2.ebay.com/aw-cgi/eBayISAPI.dll?ViewFeedback&userid=kuchar1> (last visited Mar. 6, 2001) [hereinafter *Feedback For kuchar1*]; see Barrett, *supra* note 70.
- [139] *Id.*
- [140] See *Feedback For kuchar1*, *supra* note 138.
- [141] See *Etzioni Interview*, *supra* note 87 (describing how Etzioni decided to discount one negative comment in the feedback of a seller who had 30 positives, a relatively low number for eBay, because "the seller seemed reliable." Although Etzioni's purchase went smoothly, that is not always the case when a user decides to give another the benefit of the doubt.)
- [142] See *eBay: Find All Transactions for an eBay User*, at <http://cgi2.ebay.com/aw-cgi/eBayISAPI.dll?LeaveFeedbackShow> (last visited Feb. 2, 2001) (feedback posting page with long, highlighted warning about liability, etc.).
- [143] eBay knows this, as evidenced by their web page claiming that they are not liable for defamatory comments and referring users to legal websites. See *supra* note 113.
- [144] See Kollock, *supra* note 102.
- [145] See Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* 163-64 (1971) (describing problems of group decisionmaking and free riding).

[146] See Prince, *Netcops*, *supra* note 56 at 3.

[147] If Ann chooses to leave no comment at all, unclear information is communicated. Since users are not obligated to leave feedback, they frequently forget to leave comments or leave them long after transactions are complete, and a user's transactions-to-feedback-left ratio is not readily apparent to the casual observer.

[148] See Fair Credit Reporting Act, Responsibilities of Furnishers of Information to Consumer Reporting Agencies, 15 U.S.C. § 1681(s-2) (1994 & Supp. IV 1998).

[149] Comments by NARUed users are tagged "Not A Registered User," but remain in the file. See *Feedback FAQ*, at <http://pages.ebay.com/help/basics/f-feedback.html#7> (last visited Feb 2, 2001).

[150] For a general discussion of the jurisdictional difficulties in cyberlaw enforcement, see generally David R. Johnson & David Post, *Law and Borders: The Rise of Law in Cyberspace*, 48 Stan. L. Rev. 1367 (1996).

[151] See Fair Credit Reporting Act, Procedure in Case of Disputed Accuracy, 15 U.S.C. § 1681(i) (1994 & Supp. IV 1998); Reporting of Requirements Relating to Information Contained in Consumer Reports Prohibited, 15 U.S.C. § 1681(c) (1994 & Supp. IV 1998).

[152] Cf. James P. Nehf, *A Legislative Framework For Reducing Fraud in the Credit Repair Industry*, 70 N.C. L. Rev. 781, 783 (noting that a bad credit report can keep a person from obtaining a broad range of valuable services, particularly in today's credit-dominated economy).

[153] In the past, eBay did allow users to perform a one-time transfer of the feedback rating number, but not the actual comments, to other auction sites, as this author did by transferring her eBay rating to Gold's Auctions. eBay's justification for not allowing comments to be transferred or linked was that it owned the comments. However, copyright law supports ownership of the comments by the comment writers (feedback leavers), who are also responsible for their own words under defamation law.

[154] See *eBay: Feedback Forum Integrity*, at <http://pages.ebay.com/help/basics/f-feedback1.html> (last visited Feb. 2, 2001).

[155] See *e.g.*, Nehf, *supra* note 151 at 783.

[156] For example, this author has signed up under the same User ID at eBay, Boxlot and Gold's Auctions, although most of her time is spent on eBay. Many other users, particularly sellers, attempt to do the same, so that transaction partners can easily find them without confusion.

[157] See Frankel, *supra* note 24, at 16 (noting that risk can be reduced through mutual self-interest).

[158] See text *supra* accompanying notes 97-98.

[159] See text *supra* accompanying note 50.

[160] See *supra* notes 51-53.

[161] See *eBay: Dispute Resolution Overview*, at <http://pages.ebay.com/services/buyandsell/disputeres.html> (last visited Mar. 6, 2001) (describing SquareTrade pilot program).

[162] See Jim O'Brien, *You've Got Money! Buyers and Sellers Find Convenience in Cash by E-Mail; Industry Trend or Event*, Computer Shopper, July 1, 2000, at 89.

[163] Although no archived material is available, this author personally recalls that following eBay's IPO, several users known as members of "the Posse," who posted frequent comments decrying user verification on eBay discussion boards, were suspended, ostensibly for discussion board disruption activities.

[164] See Bernadette Smith, *Online Shopping Can Be Safer When Precautions Are Taken*, Knight-Ridder Trib. Bus. News, July 11, 1999, available at 1999 WL 17356178 (quoting eBay spokesman Kevin Pursglove as saying, "If a seller refuses to use . . . [an escrow] service that should raise red flags about his reliability."). Pursglove's statement outraged many sellers with good feedback records who did not wish to use an escrow service for personal or economic reasons.

[165] Some sellers have found that fraudulent buyers will send payment to i-Escrow, receive the item, cannibalize it for parts, or otherwise use it, return it claiming that it was shipped defective and then get their money back from i-Escrow. See *Sellers Beware i-Escrow!!!*, at <http://www.auctionwatch.com/mesg/read.html?num=2&thread=164635&id=164635> (last visited Mar. 6, 2001).

[166] AuctionWatch.com and Honesty.com also provide many other useful services, such as image hosting for sellers placing pictures in auction listings, and free counters to track how many people view a particular auction. See generally *AuctionWatch.com Customer Service*, at <http://www.auctionwatch.com/service/> (last visited Jan. 30, 2001) (describing frequently asked questions about AuctionWatch's image hosting and counter features); *Honesty.com - Image Hosting*, at <http://www.honesty.com/hosting/> (last visited Jan. 30, 2001) (describing Honesty.com's image hosting).

[167] A recent disruption occurred when PayPal ran a promotion to encourage new sign-ups. Each user could earn \$5 for each additional user that she referred to PayPal. In order to get people to sign up, PayPal suggested that users complete an auction and then offer to pay, or accept payment, by PayPal. However, the users who tried this tactic to get transaction partners to sign up were perceived as acting coercively by other users. See generally *PayPal - New Account Bonus/Refer-A-Friend Bonus*, at <http://www.paypal.com/cgi-bin/webscr?cmd=p/wel/bonus-outside> (last visited Jan. 30, 2001) (discusses \$5 bonus for signing up with PayPal and a \$5 bonus for every referral to PayPal). In addition, sellers who refused to sign up with PayPal had to deal with deadbeat bidders, who had expected to receive their auction item at a \$5 discount by convincing the seller to sign up with PayPal. When sellers refused to sign up, some buyers refused to honor their high bids. It is expected that this problem will end when the \$5 promotion ends. See *id.*

[168] Netcops are becoming more common in online auction investigations. See Barrett, *supra* note 70 (quoting a Federal Trade Commission official as saying, "Oftentimes it's common for [fraud victims] to have done some digging themselves.").

[169] See Snyder, *supra* note 2, at 465 (stating that nothing but imposing liability will motivate online auction houses to take major steps to regulate fraud).

[170] Sandy List tracked fraudulent users under the name "CyberYenta." She frequently contributed to eBay support and discussion boards and is an example of a netcop who was well respected. She was suspended in 1998 after eBay became concerned about her activities. See Stephen Buel, *Online Trader eBay Feeling Growing Pains*, Knight-Ridder Trib. Bus. News, Dec. 29, 1998, available at 1998 WL 25059648 (discussing the suspension of Sandy List). This author recalls that the suspension of List upset many of her acquaintances and briefly sparked a "Support-Cyber" campaign on eBay. Supporters displayed a special graphic on their

auction and discussion posts in support of List.

[171] The mother of Jeff Buckley, whose overzealous reporting of users selling Jeff Buckley merchandise (or indeed, anything bearing the name of Jeff Buckley), is an example of a netcop who lacks standing in the community. Users were angry that eBay ended auctions based on her allegations of copyright infringement as a member of the "Legal Buddies" program. *See* discussion *supra* note 56.

[172] *See* Lemley, *supra* note 59, at 1284-86.

[173] *Cf.* Stevan D. Mitchell & Elizabeth A. Banker, *Note: Private Intrusion Response*, 11 HARV. J.L. & TECH. 699, 720-22 (1998) (discussing potential oversight mechanisms for training and overseeing computer security professionals).

[174] *eBay Community Values*, at <http://pages.ebay.com/help/community/values.html> (last visited Mar. 6, 2001).

Related Browsing

(1) http://www.internetnews.com/fina-news/article/0,,5_564411,00.html. Article, "eBay Beats the Street." Financial analysis and comparison of eBay and traditional stocks.

(2) <http://www.soyouwanna.com/site/syws/ebay/ebay.html> Article, "So You Wanna Use eBay (and Not Get Ripped Off)." This site offers a fairly extensive overview of eBay, and the dangers it poses.

(3) <http://www.zdnet.com/zdnn/stories/news/0,4586,2676115,00.html> Article, "Judge Dismisses eBay Fraud Case." This article provides an overview of recent class action case against eBay.

(4) http://www.ecommercetimes.com/success_stories/success-ebay.shtml. Article, "Ecommerce Success Story: eBay." Interview with Senior Director of Communications at eBay.

(5) http://www.businessweek.com/1999/99_22/b3631001.htm Article, "eBay v. Amazon.com." Comparison of fixed price internet retailers v. auction based.

(6) http://www.zdnet.com/anchordesk/story/story_3108.html Article, "How to Shop Online Actions Safely." Discusses scams, etc., how to avoid them.

(7) <http://www.ftc.gov/bcp/online/pubs/alerts/gonealrt.htm>. FTC Consumer Alert, "Internet Auctions: Secrets of Success." Fair Trade Commission document detailing steps buyers and sellers should take to protect themselves.

(8) <http://www.esmarts.com/auctions/> eSmarts: Auction Buying Guide. Provides a list and review of most popular auction sites, and tips for transactions

(9) <http://www.fool.com/news/2001/yhoo010123.htm> Article, "Yahoo Auctions: Down, But Not Out." The number of auctions on Yahoo!'s site has been cut almost in half since the company instituted listing fees. The

move cleared out most of the spam and advertisements, however, and allows for a more meaningful comparison to eBay and other competitors.

- (10) <http://www.ftc.gov/bcp/online/pubs/online/auctions.htm> FTC "Internet Auctions: A Guide for Buyers and Sellers." General overview of internet auctions, processes, problems.
- (11) <http://www.agorics.com/new.html> Article, "Going, Going, Gone! A Survey of Auction Types." A series of articles explaining different auction types and some of the issues important in determining whether to use auctions and, if so, which kind.
- (12) <http://www.wired.com/news/culture/0,1284,40153,00.html> Article, "E-Auctions: No Grand Masters Yet." Article discussing partnerships of online auction companies and traditional auction houses.
- (13) <http://www.merchantfraudsquad.com/> Website established by a group of parties interested in e-commerce fraud prevention.
- (14) <http://law.utoledo.edu/lawreview/outarticle/finn2000.htm>. Policies Underlying Congressional Approval of Criminal and Civil Immunity for Interactive Computer Service Providers Under Provisions of the Communications Decency Act of 1996 _ Should e-Buyers Beware? Mary Kay Finn, Karen Lahey and David Redle .
- (15) <http://news.cnet.com/news/0,10000,0-1007-200-334943,00.html> Paul Festa, *Fraud Threatens Auction Sites*. This article explains some common terms used in referring to online auction fraud and suggests building a system around blacklisting as a solution.
- (16) <http://www.wired.com/news/topstories/0,1287,17357,00.html> Polly Sprenger, *Ebay Cracks Down on Fraud*. This 1999 article discusses the change of policy by Ebay to handle concerns of fraud.
- (17) <http://strategis.ic.gc.ca/SSG/mi06301e.html> Julie King, *Avoiding E-Commerce Fraud: New Sites Help Vulnerable Merchants*.
- (18) <http://www.wilsonwork.com/wilsonweb/wct1/issue11.htm> Web Commerce Today, Issue 11, on fraud prevention.