Chapter IV

Legal Challenges of Online Reputation Systems

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Abstract

Online reputation systems have become important tools for supporting commercial as well as noncommercial online interactions. But as online users become more and more reliant on these systems, the question of whether the operators of online reputation systems may be legally liable for problems with these systems becomes both interesting and important. Indeed, lawsuits against the operators of online reputation systems have already emerged in the United States regarding errors in the information provided by such systems. In this chapter, we will take the example of eBay’s Feedback Forum to review the potential legal liabilities facing the operators of online reputation systems. In particular, the applicability of the Canadian law of negligent misrepresentation and of defamation will be covered. Similar issues may be expected to arise in the other common law jurisdictions.
Online reputation systems have become a significant feature of online behaviour in commercial as well as noncommercial contexts. These systems, also known as online rating systems, are “large-scale online word-of-mouth communities in which individuals share experiences on a wide range of topics, including companies, products, and services” (Dellarocas & Resnick, 2003). Recent evidence, based on a survey conducted in May and June of 2004, suggests that they are widely used.

The Pew Internet & American Life Project has found that 26% of adult internet users in the U.S., more than 33 million people, have rated a product, service, or person using an online rating system. (Hitlin & Rainie, 2004)

These systems, which enable the collective formation of reputation, represent a traditional social institution in a highly distributed electronic form. Given that other trust-building mechanisms, such as the law or established brands, are weakened or uncertain online, online reputation systems are a promising means of supporting online interactions. Indeed, they seem admirably suited to the formation of reputation because of the efficiency with which multiple far-flung experiences can be aggregated and distributed. On the other hand, although online reputation systems may be able to gather more information, the quality of this information is perhaps more questionable.

Online reputation systems are attracting increasing interest among researchers as well (Thompson, 2003, p. 4). An interdisciplinary symposium on online reputation systems in 2003 brought together specialists in economics, computer science, artificial intelligence, sociology, and psychology (Dellarocas & Resnick, 2003). So far a focus on the legal aspects of online reputation systems has been less developed, although several articles focusing on legal and regulatory issues in the American context have been published (Block-Lieb, 2002; Calkins, 2001; Gillette, 2002).

Lawyers can be expected to pay increasing attention to online reputation systems as the use of such systems increases. The formation and dissemination of information about reputation is surrounded by law and regulation in the off-line world, and the same difficulties that inspired the development of legal doctrine off-line have already emerged in the context of online reputation systems. The possibility of liability for an online reputation system that generates false or misleading results was raised in Gentry v. eBay, Inc. 99 Cal. App. 4th 816 (Cal. Ct. App. 2002).

Liability for the publication of defamatory comments within an online reputation system has also been raised: Grace v. eBay 120 Cal. App. 4th 984 (Cal. Ct. App. 2004), Schneider v. Amazon.com, Inc. 108 Wn. App. 454 (Wash. Ct. App. 2001). Defamation law imposes liability not just on the primary speaker of a defamatory comment, but also on subsequent publishers in certain circumstances.

Search engines are not recognized as a typical form of online reputation system, but those (such as Google) that rank Web sites in part according to the number of inbound links they attract make use of a type of distributed reputation formation. An inbound link may be interpreted in this case as a vote of approbation for a given Web site. It is accordingly instructive to
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