

CSISAC Position Paper on the importance of “reputational information” – Eric Goldman

I am delighted to participate in the OECD’s workshop as a CSISAC expert. My remarks at the workshop will undoubtedly cover several subjects. This position paper outlines my thoughts on just one of the project’s topics.

My recent research has focused on “reputational information,” which I define as information about a producer’s past performance that can help a consumer decide whether or not to transact with the producer. Reputational information includes both objective data (e.g., product recall rates) and subjective data (e.g., consumer reviews).

Reputational information plays a crucial role in the efficient functioning of markets. We expect the market’s “invisible hand” to reward good producers and punish poor ones, but this occurs only when producers are, in fact, accountable for their performance. Reputational information can improve producer accountability when it is readily available and relatively free from distortions. Unfortunately, improperly calibrated regulation can undermine the optimal flow of reputational information in several ways.

Two examples:

First, positive consumer reviews presumably help producers, but producers will seek to remove negative consumer reviews about them. If producers can easily take down negative reviews simply by alleging defamation or other legal violations, a “lopsided”—and unhelpful—database of only positive consumer reviews will remain.

Second, consumers expect Internet publishers to organize and filter voluminous amounts of reputational information while preserving the “wisdom of the crowd.” To meet these needs, Internet publishers constantly try new ways to procure, order and display reputational information. This type of experimentation can occur only when Internet publishers do not make editorial choices designed principally to minimize their legal risks.

The United States has seen an explosion of entrepreneurial activity from Internet publishers of reputational information—a process fostered by 47 U.S.C. § 230, which Congress enacted in 1996 as part of the Communications Decency Act. Content originators remain liable for their content, but 230 provides Internet publishers with a powerful immunization for content originated by third parties. With 230’s protection, Internet publishers are developing innovative ways to supply consumers with helpful reputational information, freed from concerns that innovation will increase their liability for user content. 230 also helps Internet publishers avoid lopsided databases because publishers can confidently resist demands to suppress negative reviews. Thus, 230 has improved both the quantity and quality of reputational information available to help consumers make their marketplace decisions.

As a result, 230’s liability immunity strengthens the marketplace’s ability to reward good producers and punish poor ones. In its review of regulatory options, I encourage the OECD to analyze the benefits of immunity regimes for Internet publishers that can achieve similar objectives.