Regulating Reputation Systems

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Talk Overview

- Definitions

- Examples of Reputation Systems

- Regulation of Reputation Systems

- Lessons Learned

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Reputation and Why It Matters

- Reputational information = information about an actor's past performance that helps predict the actor's future ability to perform/satisfy preferences

- Reputational information is crucial to the marketplace's proper functioning

  – Reputational information = invisible hand of the invisible hand

- Types of reputational systems:

Unmediated	Mediated
• Word of mouth • Job reference/recommendation letter	• Credit scores • Bond ratings • Consumer reviews (BBB; online)

Selected Online Consumer Review Sites

Selected Reputational Information Regulations

- Defamation/Privacy
  - First Amendment defenses such as public concern or opinion
  - Anti-SLAPP laws
  - 47 USC 230

- "Soft" torts (tortious interference, unfair competition, etc.). Ex: Cats & Dogs v. Yelp

- IP Laws
  - Trade Secret
  - Trademark law. Ex: Lifestyle Lift v. RealSelf
  - Copyright law. Ex: Medical Justice

- System-specific laws. Ex: Fair Credit Reporting Act

A Tale of Two Reputation Systems

- **#1: Job references**
  - Former employer faces defamation/tortious omission liability for giving references
  - State statutes immunize "good faith" references
  - Nevertheless, job reference market has collapsed
  - Demand for job reference information pushed to inferior sources

- **#2: Online consumer product reviews**
  - Reviewers face defamation liability
  - Review site operators protected by 47 USC 230
  - Explosion of review sites and consumer reviews

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Why the Difference? Hypotheses:

- **Structural difference:** online product reviews are (mostly) mediated

- **Differences in reviewers**
  - Online reviewers don't appreciate the legal risks they face
  - Employers are good litigation targets; online reviewers aren't

- **Differences in review consequences**
  - Single bad job reference can be life-changing
  - Employees have fewer legitimate evaluative sources
  - Job performance evaluations are inherently subjective

Some Possible Lessons

- Mediated reputation systems are more socially valuable than unmediated systems
  - Unmediated systems have high transaction costs
    - Finding reliable data sources
    - Assessing credibility
    - Policing errors
  - Mediated systems
    - Can capture and distill wisdom of the crowds
    - Can provide incentives to produce non-public information
    - Can establish the credibility of its information sources
    - Care about their own reputation (the tertiary invisible hand)

Some Possible Lessons (con't)

- **Mediated systems flourish with liability immunization such as 47 USC 230**
  - Avoids lopsided databases
  - Fosters experimentation

- **Common attributes of successful mediated systems (*preliminary*)**
  - Translucent algorithms + robust anti-gaming enforcement + no pay-to-play
  - Attributed sources
  - Right of reply