

## Tort Situation of China's C2C Platform Service Providers and the Improvement of Its System

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**Abstract.** The paper classifies torts such as threats to security, information leakage and defamation based on empirical analysis to ensure security and stability of customer-to-customer transactions in China and further reduce irregular risks caused by providers' torts. It puts forward the principles for taking responsibilities for providers' torts and security system after it points out that lacking of control system is the main reason for more and more torts and that affects the sound development of internet trade platforms.

**Keywords:** C2C platform service providers; tort situation; system

### 1. Introduction

In recent years, the trading scale of E-commerce market in China has enlarged quickly. The volume of business in 2007 is 51.6 billion, it is 108.1 billion in 2008, and it reached 230.7 billion in 2009<sup>[1]</sup>. The growth rates are all about 100%, but the proportion of shopping is not so high. It only increases from 22.1% to 24.8% from the year 2004 to 2008(iResearch). But it increases from 55.9% to 70.5% in America in the same period (JPMorgan). According to the survey of iResearch, the main factors that hinder the development of internet shopping is reputation. People are worried when they don't see the real products and the after-sale service<sup>[2]</sup>. The situation that consumers worry about the reputation of online sellers reflects the unsound security system. Lacking of control and judicial measures make purchasers don't expect assistance from public institutions and most transactions are done in the rare traditional trading platforms, which lead to an extremely unreasonable composition of providers. The proportion of transaction of Taobao in 2007 is 81.6%. Paipai comes in the second with a proportion of 8.7% and Eachnet comes in the third with a proportion of 7.7%. In the last two years, Youa of Baidu and Google tried to enter C2C business, but the proportion of market share doesn't change. The monopoly of the leaders of C2C platform service providers leads to a high concentration of the platform service, short profit periods and fierce competition. Investors can enter this field with low cost, but they need large amount of reserving funds. This makes a lot of investors abandon this industry and the situation that the growth rate of trade of C2C is lower than that of B2C finally forms.

Although we have some judicial interpretation, administrative regulations, industry norms and government guidelines which prescribe the legal liability of the C2C platform providers, some short nesses still exist in scope of application and forcible execution of them. This makes their responsibilities still obscure. Once some scholars did empirical analysis on their torts. Shen Jili thought about the dispute of the imitation of KOSE<sup>[3]</sup> on Eachnet and pointed out that C2C platform providers are intermediary organizations which are independent of both sides of trades and make use of technology to realize automating transactions on the platforms. Qian Huabing analyzed the case that Puma Joint Stock Company made an accusation against

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Taobao for refusing to delete the tort logo and trademark on its platform and pointed out that providers should accept the responsibility for telling truth, managing properly, examining rationally and taking measures to prevent torts<sup>[4]</sup>. Huang Xiaolan thinks that platform service providers should take remedial measures after torts<sup>[5]</sup>. But the now existing documents don't state clearly the classification of torts and legislative measures for preventing and punishing torts.

There are a lot of torts in the process of providing C2C platform service. The author discusses the principles for taking responsibilities for providers' torts and puts forward measures for improving related systems based on the analysis of activities on threats to security, information leakage and defamation.

## **2. Analysis of the Tort Situation**

C2C transaction platform is a computer network system which provides Web Space, technology and transaction service. It has rich and wide range of merchandise which mainly is articles of personal consumption. People can trade on the platform with no restriction of time and space. Compared with B2B and B2C platform, C2C platform service providers don't participate directly in the transaction. It is a huge online transaction platform which integrates with news, publishing, entertainment and shopping (such as Taobao, eBay, Eachnet and paipai). As people can surf on internet more portably and conveniently, more and more people use the online transaction platforms, which may cause more torts. There are more and more means of payment such as online payment, mobile payment and payment by phone and so on. These may cause more torts.

### **2.1 Security threat**

As the internet technology renews quickly and the security technology of the C2C platform service provider is unperfected, the transaction process and the accuracy of the transaction data are always changed. The computer virus, malicious softwares, Trojan horse and hackers which caused by neglecting of management of the provider are very common.

### **2.2 Information leakage**

Users can receive the C2C transaction service only if they register on the sites. The C2C platform service providers all require the parties of transactions to agree to the user's agreements they made and then they can register for free. They need to identify the sellers by credit card, e-mail or phone messages. By this way, they can find the real persons that should take the responsibilities according to it when there are some problems in the transaction or in the goods. But the personal information that stored in the information system of the providers after identity authentication may be disclosed. For example, A Miss Gong from Shanghai made an accusation to Taobao for disclosing her personal information. And the platform providers always use technologies which may infringe privacy, such as cookie and keyboard record programme and so on. 87% of E-commerce websites track customers' activities on internet by cookie and acquire lots of users' data and information. There are a lot of cases for the providers of infringing users' name right, they run publicity campaigns by other's names without permission, especially the names of well-known figures. For example, Taobao once put up important news to sell the domain name of the Olympic champion Tian Liang ([www.tianliang.com](http://www.tianliang.com)) by auction to attract the attentions of Net-surfers on its BBS and its place for advertisement.

### **2.3 Defamation**

After the transaction is finished on the C2C platform, the consumer and the seller will evaluate each other for the goods and payment, and the mutual evaluations will form the credit rating system of the transaction platform. The system is set up by the C2C platform service providers to improve internet credit and protect the rights of both the consumers and sellers. With more and more online disputes and different people have different credit, there are a lot of cases of defamation. One party involved get revenge on the other party by malicious evaluation and defamation when the dispute was not solved effectively and timely.

The frequent torts seriously hinder the development of this new kind of economy. The basic reason is lacking of the legal system that can control the legal liability of C2C platform service providers and both sides of trade.

### **3. Discussion**

The legal relation between the C2C platform service provider and the sellers is similar to the relation between counter renter and the tenant. The former has the mastery of the platform. It has the right to check and revise the information of goods and delete the users' evaluation on the goods, sellers and consumers. But the real counter leasing is that the seller signs lease contract with the counter owner or user and pay related fee to them. Even if the C2C platform service provider signs space renting contract with the seller and charge insertion fee from the seller, but the service agreement is different from the lease contract. The fact that the provider of the platform provides space for the seller can't improve the leasehold relation between them. The provider only takes the responsibilities for maintain the normal operation of the platform, protects users' personal data and deletes information that is against the laws.

#### **3.1 Principles**

The America established the no-fault liability principle by making "Intellectual Property and National Information Infrastructure: Reports of the Working Group for Intellectual Property". A few years since then, many scholars and online sellers gradually find it has increased the burden of responsibility of the C2C platform service providers. The providers have to invest much capital and put in much energy to prevent tort. The service cost was inevitably passed on to users of the platforms finally. The act protected the legal rights of users, but it hindered the development of internet economy. So it was taken place by "1997 Online Copyright Liability Limitation Act", which advocates limiting copyright tort liability of providers. The DMCA that was put forward afterwards limits the liability of the providers according to the fault. The "European Laws for E-commerce" prescribes the tort liability of the providers in transmission, cache and server storing, which exclude lots of online torts by others who make use of the system.

Some scholars think that the no-fault liability system should be used in C2C E-commerce torts. The platform service providers need to assume the responsibility when the party involved can provide direct evidence to show that he suffered injury in the rights and interests. This will make the participants don't take any measures to prevent tort and it will inspire the infringement party because they don't need to take any liability of tort. And the provider can't afford to compensate for the bad results caused by the preventable computer virus and hackers. It has much negativity. The no-fault liability system will spur the provider to prevent marginal cost. It will make the provider focus on examining the information of users and goods in spite of users' privacy and freedom of speech. Even they may quit the industry after weighing the profit.

Relatively speaking, fault presumption principle only requires the victim to prove his damage is caused by the behavior or article of the infringer. He doesn't need to improve it is a subjective fault of the infringer. They can make presumption that the infringer has subjective faults and should bear civil liability. The infringer will not bear the civil liability only if he can prove he is innocent. The network transactions have much larger range, instantaneity and information publishing continuity compared with traditional commerce. The tort of the provider always involves in technical details and it is a high technology. The fault presumption principle requires the provider to takes proper duties and it can better protect the legal rights of the victim and effectively punish the violated behaviors. However, when we identify the tort liability by fault presumption principle, it should meet the following requirements, such as fact of damages, illegal activities, cause-effect relationships and subjective faults.

#### **3.2 Systems**

1) *Limited Authentication Liability*: We can't verify the realness of the identity and data of the transaction parties( for example, the seller may handle credit card, register the phone user and apply for an E-mail with fake identity card). The virtuality of internet causes predictable but unavoidable risks for online trading. The online trading may easily conceal the real identity of the transaction parties. So the provider should conduct

identity authentication for the users when registering on the platform. The provider shall bear the compensation responsibility when losses are caused by neglecting of authentication.

2) *Protecting Privacy*: The C2C platform service providers shall protect the privacy of the transaction parties in online trading, carefully preserve the transaction information and data and keep commercial secret for the parties involved according to the agreement. They shall also prevent others to steal the data by illegal means and *they* can't seek unlawful interests with the users' data and information they have. But at the same time, the provider should preserve the users' data and information to assist related organs to collect evidences for torts. They shall accurately tell the involved parties about the transaction information by the system on the basis of no violation of privacy and national laws and regulations. And they have no obligation to investigate the information they don't have.

3) *Ensuring the Realness*: Buyers can't know directly the goods when they want to buy the goods or service on online transaction platform. They can only get to know the information of goods or service by the description of words, pictures and even multimedia. So the provider of the C2C platform shall verify the released *information* and check if they are true. The provider need to take measures to ensure the realness and legality of the sales. They shall tell the consignor the true information of the involved people including their identities and credits and information of goods or service including the quality, reputation and price and matters of signing contracts. As the transactions are concluded digitally, the C2C platform service providers shall control directly the key evidences of agreement and promise and so on. They have the obligations to provide both sides of transaction with necessary electronic evidence and store and make a backup for it in order to check it later when there is a dispute.

4) *Improving Technical Service*: The C2C platform service providers should correctly transmit and store online information and use techniques such as data backup and fault recovery to ensure the integrity and accuracy of data. It can also realize convenient and quick communication and avoid goods with inferior quality and unreasonable high price that caused by information asymmetry .

5) *Perfecting Electronic Payment System*: To perfect electronic payment system, most of transactions on C2C platform use the method of "pay money and get the purchase". All the C2C platform service providers have the *supported* third-party payment platform, such as the alipay of Taobao and tenpay of Paipai. It may takes some risks to transfer money by e-payment syste, such as falsification, steal, fraud, error and technical risks and non-financial risks such as payment risk and including financial risks such as credit risk, system risk and liquidity risk. To perfect electronic payment system can reduce torts in transactions on C2C platforms and online disputes.

6) *Building up Insurance for Transaction on C2C Platfornorm*: The uncertainty of internet makes the risk of transaction on C2C platform very high. And the personal credit system in China is still in initial phase, so they need to adopt the management model of the third party liability insurance for traffic accident and banking industry to reduce the additional risk and protect the interests of transaction parties. And they need to set up insurance system for transactions on C2C platform. We need to force the service providers to withdraw deposit for the risk and ask the transaction parties to pay deposit for their transactions. Of course the proportion of the *insurance* and the amount need to be accurately calculated. The deposit for the risk will increase operation cost of the providers and this will be passed on to the users of the platform. If the amount of deposit is too large, it will not be good for the development of transactions on C2C platform.

#### **4. Conclusion**

Although all the C2C platforms are trying to improve their searching technology, and there is a tendency that search engine will combine with E-commerce, they have no basis for data sharing and they can't make full and effective use of the information resources by the scale effect after the integration. The C2C platform service providers has the supreme managerial power of the platform, they can verify and approve the identities of the transaction parties and delete and revise the information published. They also gain some management powers by the service agreement. The provider makes formatted user agreement to identify the rights and obligations of them from their own interests. But in fact, it may do damage to the interests of the transaction parties.

The industry with imbalanced interests can't develop continuously and it may lead to zero development and negative growth. We need to prescribe clearly the basic responsibilities of the C2C platform service providers for using necessary technology and management measures and providing reliable trading environment and service to ensure the normal operation of the platform by legislation. Before the legislation, we can state clearly the duties and responsibilities of the provider in the transactions on C2C platform by judicial interpretation. For example, the provider has the obligations to check up on the identity, evidence of rights and evidence of tort of the infringer after receiving the notice of tort and the provider should bear the joint liability if they don't take necessary measures to prevent further tort of the infringer within a reasonable time limit. They shall give instructions and foundations for the court to deal with such disputes and they need to reduce the scope of application of the formatted clauses to balance the interests of all the transaction parties and to improve greatly the development of trading on C2C platform.

## **5. Acknowledgment**

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