

CAN BUSINESS FORUMS BE TRUSTED?

Final Project Report
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Union des consommateurs, Strength Through Networking

Union des consommateurs (UC) is a non-profit organization comprised of 13 consumer advocacy organizations.

UC's mission is to represent and defend the rights of consumers, with special emphasis on the interests of low-income households. Its activities are based on values cherished by its members: solidarity, equity and social justice, and improving consumers' economic, social, political and environmental living conditions.

UC's structure enables it to maintain a broad vision of consumer issues while developing in-depth expertise in certain programming sectors, particularly via its research efforts on the emerging issues confronting consumers. Its activities, which are nation-wide in scope, are enriched and legitimated by its field work and the deep roots of its member associations in the community.

Union des consommateurs acts mainly at the national level by representing the interests of consumers before political or regulatory authorities, in public forums or through class actions. Its priority issues, in terms of research, action and advocacy, include household finances and money management, energy, issues related to telephone services, radio broadcasting, cable television and the Internet, public health, financial products and services, and social and fiscal policies.

Introduction

To join the discussion and make contact with consumers, companies must transition from a transitional site content to post information and sell products to a relational site based on the community and its engagement.

Guide pratique des réseaux sociaux¹

Situation: you have a report to submit to your boss the next day but your computer keeps acting up. The manufacturer's technical support department closed a few hours ago. What options are available? You go to the manufacturer's website and vainly search through the "Help" menu. Suddenly, a miracle solution presents itself: a community forum on the manufacturer's website. You quickly notice that forum users who appear highly knowledgeable are responding to a string of questions at any time of the day or night. So you post your question and impatiently wait for a competent contributor to come up with a solution...

Business forums, also referred to as community forums, support communities and online communities, are currently very popular. First used as an independent and alternative communication and information exchange channel between Internet users, forums are now also used by various companies, in particular in the tech industry, where they often serve as an extension to customer service. Some companies can thus rely on the contribution of expert and volunteer users who like to help others in their free time. Indirectly, forums are also a platform that enables companies to easily and freely gather user feedback from a location where solutions are provided to various problems encountered by users with a company's products or services, as well as an ideal platform for advertising the company's various products and services.

At first glance, this type of forum appears to provide only benefits for consumers. However, the situation may not be so simple. In fact, even though the forums are on company websites, the information that is provided may sometimes be less than complete or reliable. In fact, questions may remain unanswered, and doubtful or hazardous solutions may be proposed. Also, some sites may have moderators who seem to have little concern for the forum users' privacy; terms of use that release the company from all liability or that grant the company the intellectual property rights on users' posts. One also sometimes finds on this type of forum, in the form of a response to users' questions, more or less disguised advertising for the company or another firm.

A review is therefore required. What are the benefits and drawbacks of this type of forum for the various players? What are the different types of business forums? What type of information can consumers expect to receive by visiting this type of forum? Is the information provided on the forums closely moderated to ensure it is accurate and complete? Do consumers obtain, through these online business forums, a service that meets the companies' main obligations with respect to customer service, representations, privacy, etc.?

¹ Marc FANELLI-ISLA, *Guide pratique des réseaux sociaux*, Dunod, Paris, 2012, 224 p.

The first chapter of this report presents an overview of the discussion forums found on company websites, which, in addition to a background and definition, will examine the needs that such forums are attempting to meet as well as their benefits and drawbacks.

The second chapter presents our case studies. Different forums on the websites of various types of companies (electronics manufacturers, developers of consumer software, telecommunications providers, retailers) will be briefly covered. The next chapter will report the results of the more in-depth study of the various aspects of a sample of these forums: rules which users must observe, terms of use, privacy policies, etc.

We consulted the various stakeholders – federal regulatory authorities, provincial consumer protection agencies and companies hosting community forums on their websites – in order to confirm or expand on certain key points (e.g. number and type of complaints, forum moderation, possible solutions). The fourth chapter presents the results of this consultation.

In the fifth chapter, we complete our study by presenting the legislative frameworks applicable in Canada. The various possibly problematic elements that may have been identified in the previous chapters will be examined against current regulations.

The sixth and last chapter will present a brief review of some relevant legislative measures in the United States.

A summary and our research conclusions will be followed by our recommendations.

1. Overview of Business Forums

1.1 Definition

It is important to first define the topic of our study, namely business forums.

An online business forum can be defined as “[...] a virtual public space intended for discussion on a given topic.”² More specifically, a business forum consists of:

[TRANSLATION] *A service that enables discussions on a given topic: each user can read everyone’s posts at any time and provide his own contribution in the form of articles.*³

Community forums proliferate on the Internet; what differentiates a business forum is simply the fact that it is hosted on a company website. Discussions on a forum take place in the form of message threads that are posted immediately or later. Posts can generally be read at a later time since they are kept on the forum. Forums usually require that members comply with forum rules of conduct.

Who uses or participates in such forums? There are basically two types of online forum users:

*Users of online forums can be divided into two types: posters and lurkers. Posters are members who actively participate in discussions within the forum and are willing to help others. Lurkers are those who do not wish to participate in the discussion but instead eavesdrop.*⁴ [Citations omitted]

The members of a business forum thus form an online community:

[TRANSLATION]

1 – *Members share interests, with at least one primary location of shared activities;*

2 – *A “member” is someone who is registered with a stable identity and whose contributions to the site are stored and easily accessible to everyone;*

3 – *There is a clear “membership guide” and a flag system for moderators.*⁵

Moderators are generally in charge of ensuring compliance with the users’ charter and of making sure, in particular, that posters do not go off topic on discussion threads. Some

² LAROUSSE, Paris, France. [Online] <http://www.larousse.fr/dictionnaires/francais/forum/34709?q=forum#34672> (Viewed on August 21, 2017).

³ JOURNAL DE L'INFORMATIQUE ET D'INTERNET, *Forum – Définition*, 2014. [Online] <http://www.dicofr.com/cgi-bin/n.pl/dicofr/definition/20010101001958> (Viewed on August 21, 2017).

⁴ Jennie BYRNE, Vicky O'ROURKE, *Evaluating the influence of online forums in consumer buyer behaviour*, Letterkenny Institute of Technology, Co. Donegal, Ireland, 2-13. [Online] https://marketing.conference-services.net/resources/327/3554/pdf/AM2013_0198_paper.pdf (Viewed on September 28, 2017).

⁵ Bruno BOUTOT, *Communauté sur le Web – Définition*, webmédias, Canada, October 29, 2009. [Online] <http://webmedias.boutotcom.com/2009/10/29/definition-de-communaute-sur-le-web/#p4> (Viewed on October 15, 2017).

moderators may also actively participate in forums and answer questions or comments posted by users.⁶

Moderation of a forum can be critical. However, moderators may act as they see fit since there is no charter or rights and duties for moderators or generally recognized standards that must be followed. Each discussion forum thus establishes its own moderation policy and practices.⁷ Some of a moderator's main duties include checking the content of posts, which must be relevant and comply with *netiquette*⁸ and the forum's specific rules. A moderator must also ensure that topics are properly structured, and move or delete topics as needed. A moderator is also often required to handle complaints on the forum, banish troublemakers, etc.⁹

Various methods are used to moderate posts on online forums. Some forum administrators opt for prior moderation, where users' posts will only be posted after being authorized by the moderator. This type of moderation presents the advantage of avoiding any off-topic posting, but it can also slow down and limit discussion. The delay in posting may cause users to simply answer the initial post, with little subsequent discussion.

Other administrators may instead choose to moderate comments once they have been posted, with users' posts appearing "as is" on the forum as soon as they are posted. Moderation "after the fact" involves checking comments that have already been posted and, if required, deleting posts which other users may have already read or moving them to other threads. This type of moderation enables discussion in real time, which makes the forum all the more interactive.

Other forums will only have "reactive" moderation, where users will be responsible for reporting posts that should be deleted (or moved to another thread).

There are also other systems or moderation tools that can be used in addition to or instead of those previously mentioned. Such systems thus allow various filters to be put in place, in particular through the use of key words, that will enable a certain degree of prior moderation of posts at lower cost, without the moderators having to be involved as directly.¹⁰

On a forum specific to a company and hosted on its website, the discussion topics will generally be limited to anything that pertains to the company, and any comments involving the promotion of other companies are not permitted. One topic of discussion may be the quality of the company's products, a device malfunction, advice on device operation, advice on how a video game works, general comments on a company product or service, etc. Companies will generally state that they cannot respond to problems that are under the purview of customer service, and

⁶ Caroline SAUVAJOL-RIALLAND, *Mieux s'informer pour mieux communiquer Décrypter-Sélectionner-Transmettre*, Dunod, Paris, France, 2009, p. 59-60.

⁷ One can still find recommendations on the Internet regarding what good practices should consist of. For instance, *Le Guide des droits sur Internet*, among the suggested ways of minimizing some risks presented by forums, has a list of what a moderator's main duties should be. CENTRE DE RECHERCHE EN DROIT PUBLIC (CRDP), *Guide des droits sur Internet*, Conseils et mises en garde à l'intention des modérateurs, Montreal. [Online] <http://www.droitsurinternet.ca/pratique.php?pratique=12§ion=136> (Viewed on May 20, 2018).

⁸ WIKIPEDIA, *Netiquette*: [TRANSLATION] "Consists of informal conventions and a charter defining the rules of conduct and courtesy recommended on the first communication media made available on the Internet. Netiquette consists of attempts to formalize certain social conventions for the Internet." [Online] <https://fr.wikipedia.org/wiki/Nétiquette> (Viewed on May 20, 2018). See also: S. HAMBRIDGE, *RFC 1855: Netiquette Guidelines*, Network Working Group (1995) <https://tools.ietf.org/html/rfc1855>

⁹ CDRP, *Guide des droits sur Internet*, *Op. cit.*, Note 7.

¹⁰ Blaise GRIMES-VIORT, *6 types of content moderation you need to know about*, Online Communities and Social media, UK, December 6, 2010. [Online] <http://blaisegv.com/community-management/6-types-of-content-moderation-you-need-to-know-about/> (Viewed on January 5, 2018).

that for this type of problem, it is preferable that users directly contact the company's traditional customer service.

Setting up a forum or its moderation requires the allocation of resources and expertise; companies specialized in providing various services related to new technologies now provide services to set up community forums and forum moderation. Given the keen interest in discussion forums and their benefits which, in their opinion, are undeniable, these companies have in fact developed tools (free of charge or not, depending on the level of complexity of the given forum) that enable companies to set up a forum on their website; some also offer turnkey moderation services carried out, according to these companies, by experts in the field.

1.2 Online Business Community Forums: A Growing Phenomenon

88% of Canadians use the Internet.¹¹

Canadians are among the most engaged users in the world. According to comScore, Canadians spend more hours online (36.7 per month) than anyone else in the world.¹²

And how do they use the Internet? Not surprisingly, e-mail and social media are some of the online activities Canadians engage in the most. Browsing for goods or shopping online have quickly become some of the most common online activities, as shown in Table 1.

¹¹ CANADIAN INTERNET REGISTRATION AUTHORITY (CIRA), *Canada's Internet*, Ottawa, Canada, 2016. [Online] https://cira.ca/factbook/domain-industry-data-and-canadian-Internet-trends/canada%E2%80%99s-internet?_ga=2.13657975.1787755220.1530512124-1066074125.1530512124 Viewed on October 11, 2017.

¹² *Ibid.*

Table 1: Percentage of Canadians engaged in common online activities¹³

Given the most common online activities, it is not surprising that online forums have quickly become very popular. In fact, they allow users to obtain feedback, comments or advice from other consumers on various products and services, which constitute useful and sought-after information when shopping for a product or service.

[TRANSLATION] *Historically speaking, the forum is one of the oldest applications available on the Internet and one of the most commonly used. Forums have developed rules of procedure, generational attitudes and legends. The great diversity of the technical forms of the online forum are an indication of its intrinsic vibrancy as a modern and globalized medium of communication.*¹⁴

Companies quickly recognized the interest which interaction on social media could represent for them: setting up community forums on their own websites could enable more interaction not only between the company and its customers but also between customers.

[TRANSLATION] *To join the discussion and make contact with consumers, companies must transition from a transitional site content to post information and sell products to a relational site based on the community and its engagement.*

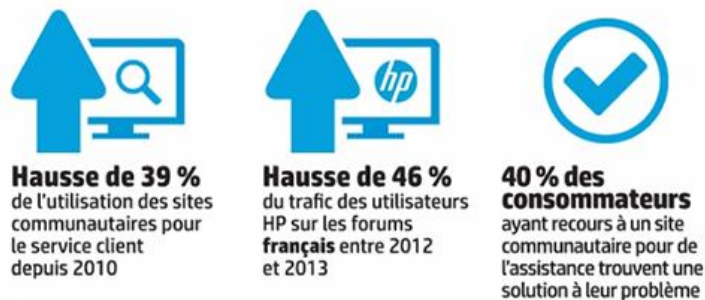
¹³ *Ibid.*

¹⁴ C. SAUVAJOL-RIALLAND, *Mieux s'informer*, Op. Cit., Note 6.

According to Google Trends, a website analysis tool based on Google Search, all corporate websites have been on the decline since 2007. They are being visited less and less: New York Times, Sony, Dell, BMW, Adidas, etc. By contrast, Facebook, Twitter, FriendFeed, LinkedIn, etc. keep growing. This is due to a preference for interacting with brands made possible through social media: for instance, users can share the latest article from the New York Times with their friends and post a comment on Sony's Facebook page. In addition, with social media, users no longer need to leave the interface and go back and forth in the web browser: the network's search engine replaces Google or Ask.com. And lastly, companies themselves are replacing their presentation site with YouTube channels, a Twitter account, Facebook page, etc. This consists of off-site: sources and platforms where they must be present to capture the attention of Internet users.¹⁵

The number of community forums on company websites has thus grown, and their use by consumers is significant and constantly on the rise. Table 2 shows various data on the increased use of business community forums. One can see that there has been an increase of close to 40% since 2010 of the use of community websites for customer service.

Table 2: Growth in community forum use¹⁶



1.3 Benefits and Drawbacks of Online Business Community Forums

1.3.1 For consumers

Consumers visit business forums for various reasons, whether they consist of forums on electronics, telecommunication services or video games. Table 3 lists the reasons why consumers visit forums. The speed at which users can find an answer to their questions is not surprisingly the top reason.

¹⁵ Marc FANELLI-ISLA, *Guide pratique des réseaux sociaux Twitter, Facebook ... des outils pour communiquer*, Dunod, Paris, France, 2012. [Online] <https://books.google.ca/books?id=hm1lh04sTe4C&lpg=PA50&ots=2KfMityBsp&dq=forum%20de%20clients%20sur%20les%20sites%20d%27entreprises&hl=fr&pg=PA51#v=onepage&q=forum%20de%20clients%20sur%20les%20sites%20d'entreprises&f=false> (Viewed on September 17, 2017).

¹⁶ Aude GUESNON, *Infographie Sites et forums communautaires assurent le service client!*, RelationClientmag.fr, July 2014. [Online] <http://www.relationclientmag.fr/Thematique/acteurs-strategies-1014/service-clients-10063/Infographies/Sites-forums-communautaires-assurent-service-client-243920.htm#2bE17VhY7MpROWm1.97> (Viewed on October 22, 2017).

Table 3: Use of community forums by consumers¹⁷

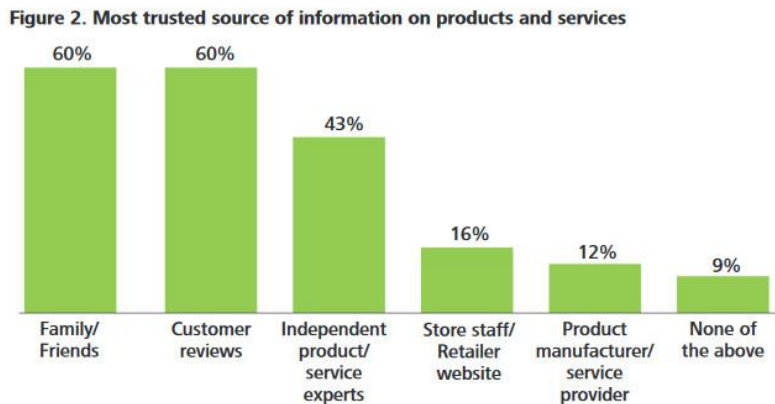


Besides a fast response time, users are also looking for information and answers from peers, whom consumers trust more than manufacturers or suppliers.

Deloitte’s research shows that for the majority of consumers, family and friends, consumer reviews and independent experts are the most trusted sources of information. Only around one in ten consumers find product manufacturers or service providers to be their most trusted source.¹⁸

Table 4 shows the sources of information on products and services which consumers trust the most; family/friends and customer reviews are at the top of the list, precisely the type of advice generally found on community forums.

Table 4: Most trusted source of information on products and services¹⁹



Source: Deloitte research, May 2014
 Base: UK consumers 16+ (n = 2,000).

¹⁷ *Ibid.*

¹⁸ DELOITTE, *The Deloitte Consumer Review — The growing power of consumers*, Deloitte, UK, 2014. [Online] <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/consumer-business/consumer-review-8-the-growing-power-of-consumers.pdf> (Viewed on September 10, 2017).

¹⁹ *Ibid.*

[TRANSLATION] *Arthur Armstrong and John Hagel attempted in '96 to define four types of consumer needs met by electronic communities: buying and selling products and services, communities of interest, communities of fantasy, and communities of relationship.*²⁰

Several consumers thus visit community forums, often with the ultimate aim of performing a transaction: before choosing a product or service, they seek the advice of other consumers. The forums on the websites of retailers or distributors of electronics, for instance, often meet this type of need.

Other forums instead respond to the desire of consumers wishing to converse with other enthusiasts, sometimes intensively, on the products or services that interest them; Apple's forum would be a good example of such forums that may meet this type of need in some consumers, by creating or in fact maintaining a sense of community among forum members. Similarly, the websites of video game developers or distributors provide a meeting place for consumers looking to meet with others in a fantasy world related to a specific video game, or who want to discuss tips for levelling up in the game or crossing certain hurdles.

Some consumers go to forums to share their experience, both good and bad, with a product or service. Others go to the same forums to obtain feedback to guide them in the choice of a product or service. Others who encounter a problem with a product or service will go to a manufacturer or supplier's forums or post questions on them to attempt to solve their problem based on the comments from other users who encountered the same problem and found a solution, or those of an expert who is sufficiently well versed with the topic to provide certain solutions; the latter may or may not be associated with the company on whose website the forum is found, or the forum's moderator. Community forums have the advantage of being available 24/7 (and not only during the business hours of traditional customer service departments); a consumer can thus post his question on the forum at any time and hope to receive a quick response. Said user may also browse the forum to see whether the answer he is looking for has already been posted in the past.

Forums thus fulfill various needs for users, ranging from the need for advice to a mere desire to share one's interests or even grievances toward a company, including the need to obtain information from other users.

The qualitative results indicate that members use online forums to discuss in detail, specific topics and interests they have which they would otherwise be unable to discuss on more general social media or sharing sites. Forums are used to 'access information', 'hyper-targeted content' that caters to very specific interests that people have. A 'shared interest', 'to learn new information', to 'explore ideas', and to 'build or maintain a sense of community' are other reasons why online forums are used. An online forum 'offers members instant access to up-to-date information which validates their knowledge allowing them to share or relate to others' experiences'. Members

²⁰ Christine BITOUZET, Serge SOUDOPLATOFF, "Les communautés d'intérêt à l'heure d'Internet." *Revue française du marketing*, Julien Lévy (dir.), No. 177-178, 2000. http://www.soudoplatoff.com/txt/Coi_fm.pdf (Viewed on September 3, 2017).

can also 'learn from others, often getting answers to common problems more quickly than they might in other ways.'²¹

Moreover, the many benefits associated with forums should be put into perspective given the various problems which forums may potentially present. In fact, the advice and responses that are provided may prove not to be as reliable as those from a company's traditional customer service, in particular if the site is inadequately moderated or not at all. However, it is not always clear, on the various business community forums, whether moderators scrutinize all the posts and whether a post providing a wrong answer or suggesting a dangerous action would be deleted or marked as such. If consumers use these forums to obtain quick answers, a moderator's speed of response in such cases would naturally be critical.

Furthermore, we will see in a later chapter that companies are seeking to completely dissociate themselves from what users are saying on their forum, and generally inform users that they disclaim any liability regarding participants' actions.

A consumer looking for a quick answer who was told about the benefits of business community forums may also at times face bitter disappointment, as on some less popular forums questions may remain unanswered for a very long time.

Several questions should also be asked, such as what would be the consequences for a consumer if the answers that are provided or the actions proposed by participants on this type of forum were to prevent a product from operating properly or put a warranty at risk? Also, how is personal information that is posted on the forums protected? Some users do in fact publicly disclose certain aspects of their files in order to obtain advice on what to do to resolve a situation, for instance.

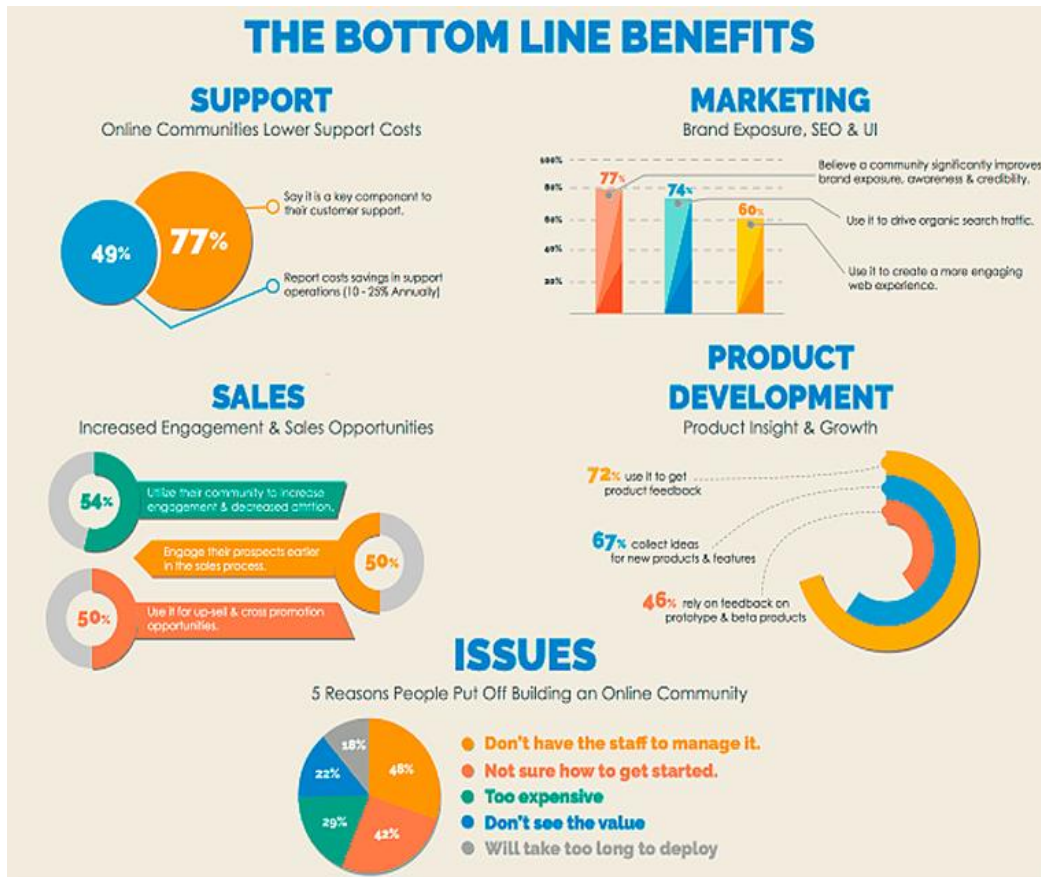
We will attempt in a later chapter to shed light on these various matters through an in-depth review of some forums and their terms of use.

²¹ Jennie BYRNE and Vicky O'ROURKE, *Evaluating the influence of online forums in consumer buyer behaviour*, Letterkenny Institute of Technology, Co. Donegal, Ireland, p. 4. [Online] https://marketing.conference-services.net/resources/327/3554/pdf/AM2013_0198_paper.pdf (Viewed on September 28, 2017).

1.3.2 For Businesses

The various articles or blogs dealing with community forums on company websites mention their many benefits. Table 5 shows some of these alleged benefits, such as companies realizing savings and increased sales.

Table 5: What are the benefits for companies of having a community forum on their website?²²



Setting up a community forum on a company’s website allows the company to create a virtual community where its customers can hold discussions and thus indirectly reinforce ties to it.

[TRANSLATION] First of all, online businesses create a virtual community between their customers by enabling potential consumers to share information on product quality and price. The idea is to promote transverse relationships without any involvement on the merchant’s part. To do so, priority must be given to consumers’ interests by providing them with information on competing products, promote discussions among consumers on a product or service. [...]

The creation of online ties with customers increases online audience and reputation; these ties must then be sustained by building customer loyalty.²³

²² Douglas KARR, *6 Benefits Of Branded Forums And Online Communities*, Workfront, February 7, 2017. [Online] <https://resources.workfront.com/project-management-blog/6-benefits-of-branded-forums-and-online-communities-2> (Viewed on November 29, 2017).

According to Kim Auclair, Niviti's web community president and host, online communities meet numerous needs of companies and provide them with many benefits — needs and benefits that are closely linked. Forums can namely enable a company to promote its expertise, pave the way to global markets, learn from consumers, such as by expressing an interest in users who post on the forum, develop strategic partnerships with forum contributors who learn more about the company's values and culture, find and recruit new talent, and develop products or services.²⁴

Vanilla is a company that sells cloud-based community forum software that enables a virtual community to be built by promoting the benefits of such a forum:

- Build loyalty
- Improve service
- Get feedback
- Convert prospects²⁵

Although online business forums build customer loyalty by providing a space where ties can be created between the company and its customers, these ties will be all the stronger if the company invests heavily in the forum through the presence of active moderators.

The presence of a community forum may also improve a company's service; consumers may visit the forum and find answers to their questions, which could have the effect of freeing up the company's customer service department, which will then be able to better meet support requests from users who prefer using more traditional services. The forums also represent an unbelievable platform for companies to survey the opinion and experience of consumers regarding their products and services.

*The benefits of online forums to marketers is not as an advertising medium, but rather as a source of market research in that a collection of data can be gathered. Data such as: product or service satisfaction, desired and undesired product features, brand loyalty and price sensitivity.*²⁶

[References omitted]

Community forums thus allow companies to obtain feedback from their customers at a lesser cost; and this feedback will likely be more honest than what a survey firm would obtain. Gathering the feedback posted on their forums could allow companies to improve their products and services:

[TRANSLATION] *Good or bad, forum feedback is a cost-effective way to sound out and get feedback from Internet users.*²⁷

A company can get a lot of information through the discussions on its forum:

²³ C. BITOUZET, S. SOUDOPLATOFF, "Les communautés d'intérêt à l'heure d'Internet." *Op. cit.*, Note 20.

²⁴ Kim AUCLAIR, *L'importance d'une communauté en ligne pour une entreprise*, Niviti, Québec, Canada, 2015. [Online] <https://niviti.com/blogue/limportance-dune-communaute-en-ligne-pour-une-entreprise/> (Viewed on October 12, 2017).

²⁵ VANILLA, *Engage with Community*. [Online] <https://vanillaforums.com/en/> (Viewed on September 10, 2017).

²⁶ J. BYRNE, V. O'ROURKE, *Evaluating the influence of online forums*, *Op. cit.*, Note 21.

²⁷ L'EXPRESS, *Comment utiliser les réseaux sociaux pour faire parler de sa marque*, July 7, 2010. [Online] http://lentreprise.lexpress.fr/marketing-vente/promotion-communication/comment-utiliser-les-reseaux-sociaux-pour-faire-parler-de-sa-marque_1514038.html (Viewed on August 21, 2017).

[TRANSLATION] *The intensity of community discussions constitutes highly interesting information on the profile of the members in the community. This is where the different Anglo-Saxon and Latin approaches to the community connection meet. The host of an online community, whatever its type, can manage and extract value from information on each of its customers in order to provide them with custom products and services that meet their specific needs, or that sometimes artificially reveal unexpressed needs.*²⁸

Companies benefit by engaging their forum users in discussions rather than attempting to use these spaces as a marketing tool:

*Qualitative findings indicate that companies shouldn't directly use forums as a marketing tool, they instead should be used as a 'customer service and feedback system' as promotion within forums is more often seen as 'pourriel'. 'Forums are like a social event, if companies promote, consumers will get bored, but if they discuss and listen, consumers will engage'. Forums are an excellent way for organisations to 'build relationships by offering advice and guidance'. They provide 'priceless market and consumer research by listening, using what is learned to market better, become a better company and/or develop better products or services.*²⁹

By building a relationship of trust with potential customers on forums, companies are given the opportunity to convert the undecided who may not yet have chosen their company. What is more, community forums offer an additional reason for visitors to return to a website, thus favouring the retention of potential customers.³⁰

There is another advantage to community forums that is less often mentioned: participation in forums, if fairly significant, can enable better indexing of websites in search engines.

*One of the key advantages of including a forum and discussion feature on your own website is that it will automatically generate fresh content. Search engines love content, so having a forum with lots of people all contributing and adding new posts and replies can generate enough content to really push your site forward. It can take some time to get to this kind of level and you will need some great members, but if you can get an amazing group of users all posting away then this can really help your site increase its rankings.*³¹

This also means that forums will not only have an impact on users but also on non-users, since the forum content will appear in the results generated by search engines.³²

However, this type of platform is not a panacea for companies. And, of course, there may be costs involved in setting up and maintaining a forum. As pointed out by the director of a customer relations consulting firm, community support does not reduce customer service costs:

[TRANSLATION] *Even if these forums are able to handle requests that would relieve customer service, these gains would be quickly offset by the need to*

²⁸ C. BITOUZET, S. SOUDOPLATOFF, "Les communautés d'intérêt à l'heure d'Internet." *Op. cit.*, Note 20.

²⁹ J. BYRNE, V. O'ROURKE, *Evaluating the influence of online forums*, *Op. cit.*, Note 21.

³⁰ Digital Visitor, *The Benefits of Having Discussions & Forums on your Website*, UK, December 16, 2011. [Online] <http://digitalvisitor.com/the-benefits-of-having-discussions-forums-on-your-website/> (Viewed on December 15, 2017).

³¹ *Ibid.*

³² J. BYRNE, V. O'ROURKE, *Evaluating the influence of online forums*, *Op. cit.*, Note 21.

*set up supervision or an intervention when situations that are outside the scope of community support begin to cause frustration (e.g. product that continues to be unavailable, major delay with an order). It will also be necessary to make up for the lack of a possible response in the peer community and train conventional advisors on usage-related questions which these new relationship channels may create.*³³

Companies may in fact initially see their traditional customer service department relieved of a certain number of requests due to the forum being used by their customers and the answers which users provide to each other. However, if they are looking to provide service on their forum that is equivalent to their traditional customer service, they will need to invest time and money so that moderators scrutinize all the posts to ensure the quality of the responses that are provided, that customers are not misled, and that each user receives a useful response to his question.

Companies therefore cannot disregard moderation and will have to respond promptly when negative comments are posted on their forum.

*Generally, the expression of some negative feedback is positive for an online community, as it gives the Community Manager or company representative an opportunity to respond to, if not action these comments. At the very least, being respectful and responsive will promote the view that your company cares about what their customers think, and are willing to take these views on board.*³⁴

Although the fact of allowing negative comments to be posted and of responding to them quickly, politely and by offering solutions can contribute to the company's positive image, this may still prove to be a double-edged sword:

[TRANSLATION] *Based on the famous Fia-Net study, a happy customer will tell three people, while an unhappy customer will tell 11. The impact is much greater online since the message posted on a forum will have a much greater reach, of about one thousand Internet users. And although in real life our strong feelings towards a brand decrease and dissipate over time, on the Internet the post is perpetually there. It will come up each time an Internet user enters the name of the brand and a few key words on Google or some other search engine.*³⁵

³³ Vincent PLACER, *Les consommateurs vont-ils remplacer les services clients?*, RelationClientmag.fr, France, June 2016. [Online] http://www.relationclientmag.fr/Thematique/acteurs-strategies-1014/Breves/Les-consommateurs-vont-ils-remplacer-services-clients-305822.htm#&utm_source=similar-content&utm_medium=onsite&utm_campaign=similar-content-default#Zqd2j7WVbqj9kFxG.97 (Viewed on October 20, 2017).

³⁴ Blaise GRIMES-VIORT, *Dealing with negative feedback or your community turning on you*, Online communities & social media, UK, March 19, 2010. [Online] <http://blaiseqv.com/community-management/dealing-with-negative-feedback-or-your-community-turning-on-you/> (Viewed on November 2, 2017).

³⁵ Perla COHEN, *Fiabilité de l'information 2.0*, JDN, France, March 10, 2014. [Online] <https://www.journaldunet.com/ebusiness/expert/56761/fiabilite-de-l-information-2-0.shtml> (Viewed on November 15, 2017).

2. Review of Different Business Community Forums

2.1 Methodology

With the aim of drawing up a general profile of online business forums, our objective was to identify various large Canadian and non-Canadian companies in order to examine their respective forums. The choice of the 20 companies which we were intending to visit was mainly based on their reputation and the types of services offered, given that we wished to observe practices in a wide range of areas. This first look will be completed, in the next chapter, with a more in-depth review of a sample of these forums.

We selected companies from five categories, based on their area of activity: electronics manufacturers, developers or distributors of consumer software, telecommunications providers, retailers, and others (companies that did not fall into any of the four main categories, but whose products or services reached a large segment of the population). This approach enabled us to determine certain similarities among the various forums based on the type of company hosting them. The community forum study was conducted in the fall of 2017.

The next chapter presents an overview of the various forums that we reviewed. We examined a few general aspects for each forum: Is the forum easily accessible? Do companies have forums in different languages? What types of questions are asked? Who responds to the questions? Etc. Through our review, we sought to obtain a general profile of the various forums that are available.

Reviewed forums

We reviewed 20 business forums which we grouped into five categories:

- Electronics manufacturers: Apple, BlackBerry, Intel, Dell, Logitech, Motorola and International Business Machines (IBM).
- Developers or distributors of consumer software: Microsoft, Norton, Ubisoft, Nintendo, Hewlett-Packard (HP), Riot Games and Telltale.
- Telecommunications providers: Rogers, Shaw and Videotron.
- Retailers: Best Buy and eBay.
- Other: PayPal.

Review grid

For each forum we reviewed, we first looked at the forum's accessibility and presentation: can the forum be easily accessed, such as from the home page? Do users need to navigate through several pages before getting to the forum? How does the company present the forum?

Next, we checked whether forums were available in several languages. Note, however, that even if a forum is available in several languages, each forum is separate and never translated; a question can be asked in an English forum, for instance, and receive an answer, but a consumer with the same question on the French forum would never know that an answer was available if the question was not asked or was not answered in the French version of the forum. The language factor can thus ironically present a barrier to accessibility.

We also looked at how the different forums were structured and run. For instance, are the various questions presented one after the other based on the date and time when they are asked? Or is the forum instead structured based on the company's different products? Are there sub-categories? Is there an indication when a question is answered? Does the site offer rewards to forum users? Do moderators also answer questions? Do some questions remain unanswered?

Lastly, all forums can be viewed without having to subscribe. We also checked whether users had to register in order to ask a question.

2.2 Observations

All the forums we reviewed are set up and run in a very similar way. We will therefore present our general observations and point out any noteworthy distinctions.

2.2.1 Forum Accessibility and Presentation

The various online business forums are, for the most part, very easily accessible.

A business forum is generally accessed through a link in the main menu, which is often found under *Help* or *Support*, or is simply called *Community* or *Forum*. However, a few companies "hide" their forum: in three cases (BlackBerry, Microsoft and Shaw), the only way we could access the forum was to do a search through the website's search tool (and even, in one case, on Google, by entering "forum" and the company name). Note also that IBM's forum is less easily accessible than some of the others from the company's website (through the menu at the bottom of the page rather than the menu at the top); but this forum is strictly intended for developers and not the general public.

The way some companies present their forum seems to indicate that the forum is a kind of extension of their customer service. The Apple example is typical of this type of presentation; the company displays on the forum home page: "*Welcome to Apple Support. We're here to help.*"³⁶ Videotron does something similar by indicating in its Support menu: "*Get help anytime. Find answers to your questions 24/7 on the Videotron Community forum.*"³⁷ Rogers presents its forum more clearly and gives no indication that it is an extension of its customer service: "*Join the Rogers Community Forums. Discover solutions, share knowledge or ask a question and get advice from our members.*"³⁸ Lastly, most of the companies present their forum very sparsely, similar to Nintendo ("*Nintendo Support Forums*"³⁹), Dell ("*Welcome to the Dell Community*"⁴⁰) and Logitech ("*Welcome to Logitech community forum*"⁴¹), without any details about what the forum contains.

³⁶ APPLE, *Apple Support Communities*. [Online] <https://discussions.apple.com/welcome> (Viewed on November 2, 2017).

³⁷ VIDEOTRON. [Online] <http://www.videotron.com/> (Viewed on May 30, 2018).

³⁸ ROGERS, *Join the Rogers Community Forums*. [Online] <http://communityforums.rogers.com/t5/Rogers-Community-Forums/ct-p/EnglishCommunity?profile.language=en> (Viewed on October 10, 2017).

³⁹ NINTENDO, *Nintendo Support Forums*. [Online] https://en-americas-support.nintendo.com/app/social_home/kw*/page/1 (Viewed on May 30, 2018).

⁴⁰ DELL, *Welcome to the Dell Community*. [Online] <https://www.dell.com/community/Dell-Community/ct-p/English?profile.language=en> (Viewed on May 30, 2018).

⁴¹ LOGITECH. *Welcome to Logitech Community Forum*. [Online] <https://community.logitech.com/s/> (Viewed on October 16, 2017).

2.2.2 Language

Several of the companies we reviewed have user forums in French (generally from the company's French website [in France]) and in English. These are separate forums, with different discussions, and even without any cross-referencing between them. However, some companies (BlackBerry, Intel, Logitech, Motorola Solutions, IBM, Nintendo, Riot Games, Telltale, Shaw and PayPal) only seem to provide English forums.

Note, however, that some companies provide user forums in several languages, including Dell, Motorola Solutions (although not in French), Ubisoft and HP.

2.2.3 Forum Structure

The companies that feature one or more community forums on their website generally structure them in the same way, by dividing them by product. Hence, a consumer visiting the Apple forum could choose from among the sections on iPhone, iPad, Apple Watch, etc. and find discussions and questions that only pertain to the selected product. If a certain type of product involves several sub-products (such as for operating systems), there will be separate forum sections. If the company makes video games, the forum will be divided based on the various games available, as found with Ubisoft. Other companies will have broader categories (e.g. desktop computers, laptops, printers, storage media, monitors and projectors, software and operating systems, pre-sale question and spare parts), which will also be broken down into subsections.

A few forums did not have any special divisions. For instance, at BlackBerry, posts or questions are simply displayed from the most recent to the oldest. Lastly, some forums, like Microsoft's, also feature broader categories such as advice sharing, tips, etc. Similarly, Norton has the subcategories *Forum Feedback* and *Forum Clubhouse*.

Users can do searches among the various questions posted in the proposed categories, which are generally used to direct searches; they will attempt to identify, among the questions already posted, those that are closest to their own question, or will post a question themselves if they do not find a match.

In general, when a user wishes to post a question, he must select the category where to post it. The answers will appear below the questions, based on the date and time when posted. Some forums ask users to indicate which of the responses is the best one, or simply indicate the ones they liked.

Both forum users and moderators generally respond to questions that are posted. Dell's forum is an exception: answers to all questions are attributed to the same three or four employees. Therefore, on this forum, users will have the impression of seeing a transcript of a chat that may take place between customers and the company's customer service rather than a true exchange between users. HP's forum is also somewhat an exception by sometimes giving the impression of being an extension of the company's customer service. In fact, the moderators are sometimes the only ones to respond to user questions, whereas on other forums, one rarely sees many questions responded to only by moderators.

Depending on the company's products or forum users, discussions may be somewhat technical. IBM's developers' forum is highly technical. For instance, users may title their post as "WCM API Quick Start Sample Code using findByName" or "Validate JWT token using dynamic client Crypto certificate."

On some forums, not all questions are answered. For instance, on PayPal's forum, which contains close to a million members, hundreds of questions remain unanswered.

Some forums ask users to indicate the best solution that was proposed for their problem, or to indicate that their issue was resolved. Other forums, like Videotron's, allow users to place an icon next to a post or answer they liked. Lastly, companies such as Apple, Shaw and Rogers reward users when they provide, for instance, explanations or responses that other forum users especially liked. These rewards often take the form of badges or notifications on a user's profile indicating his helpfulness or the usefulness of his responses.

2.2.4 Registration

On all the forums that we reviewed, users are able to browse them without registering. However, users must be registered in order to post a question, which generally requires their full name and an e-mail address. When they register, users must accept the forum's rules of conduct, the privacy policies of the website hosting the forum, and the latter site's general terms and conditions.

We will be covering these documents in greater depth in the next chapter.

2.2.5 Forum Use

We found that business forums that market video games are very popular, with users discussing ways to move ahead in the game or the game itself (e.g. graphics, levels of difficulty). In the other forums, users often post technical questions (more specifically in the forums of electronics manufacturers); users are also given the possibility of posting suggestions, having discussions on more general topics, etc.

3. Detailed Study of a Sample of Forums

Out of all the forums presented in the previous chapter, we selected, for a more in-depth review in the five categories, a sample of 12 forums among the largest and most representative: Apple, Intel, Dell, Microsoft, Norton, HP, Rogers, Shaw, Videotron, Best Buy⁴², eBay and PayPal.

Whereas the forum content is generally accessible to everyone for viewing, only registered users can participate, i.e. post questions, answers or comments. When they register, users must comply with the forum's code or rules of conduct, and will also have to accept company website's terms of use and privacy policy. We therefore reviewed these three conventions for each forum.

3.1 Analysis of Forum Rules of Conduct

3.1.1 General Forum Operation

The rules of conduct for the various forums are basically all the same. Users must post under their own names; they must hold the intellectual property rights for their posts and agree to comply with applicable laws, be respectful and courteous, not use foul, racist, sexist or denigrating language, etc., not go off topic, respect users' privacy, etc. Typically, the clauses that deal with general forum operation are similar to those that follow, excerpted from Dell's statement:

Rules of Conduct. You understand and agree that:

Your use of the Site, including any content you submit, will comply with all applicable laws (including but not limited to laws governing competition, trade, false advertising and export control) and these Terms of Use.

You will not impersonate any other person or submit content on behalf of any other person or entity.

You will not submit content in exchange for payment or consideration received from any third party.

You will not collect information about other Site users without their consent.

You will treat other Site users with respect.

You will not submit any content that:

Infringes on the intellectual property rights or other rights of any person or entity;

Intentionally interferes with the Site's operation;

Violates any person's privacy or publicity rights or breaches any duty of confidentiality that you owe to anyone or provides any non-public

⁴² The Best Buy forum was no longer available in March 2018; we still decided to present our review since it was one of the only e-commerce retail business forums that we found.

information about Dell or any other company or person without authorization (including the names and contact information for Dell employees and Site users);

Is harassing, defamatory, abusive, pornographic, obscene or otherwise objectionable (in our sole judgment);

Contains or installs any viruses, worms, bugs, Trojan horses or other code, files or programs designed to, or capable of, disrupting, damaging or limiting the functionality of any software or hardware; or

Contains false or deceptive language, unsubstantiated or comparative claims regarding our or others' products, third party advertising, spam, chain letters, or any other solicitation, including solicitation of lawsuits. Links that connect to commercial websites will not be considered unauthorized solicitations unless the link or the website content appears to be intended as a means of solicitation or part of an "affiliate" program as determined by Dell in its sole discretion⁴³.

Another example: the general rules for the Hewlett-Packard (HP) forum, though conventional, fairly accurately reflect those of several of the other forums we reviewed:

Rules

To ensure a safe and productive forum, we ask that you observe these forum rules:

Be respectful. Respect your fellow users by keeping your tone positive and your comments constructive. Good or bad, your experiences are always welcome as long as they are offered in a courteous way. Respect people's time and attention by providing complete information about your question or problem, including product name and model number. People like helping those who ask good questions.

Be relevant. Make sure your contributions are relevant to this forum and to the specific category or board where you post. If you have a new question, start a new thread rather than interrupting a conversation. Solicitations inviting members to join, participate in, or buy something are never relevant.

Obey the law and keep your word. Don't post anything that would violate any law, or any contractual agreement that you have made.

Protect privacy – yours and others'. Don't share anything about yourself that you would not want to see on a road-side billboard. Don't post contact or other personal information-your own or anyone else's-or any content that you receive in one-to-one communications without the author's consent.

Remember this is user-generated content. You'll find plenty of good advice here, but remember that your situation, configuration, or use may vary from that of the individual sharing a solution. Some advice you find here may even be wrong. Apply the same good judgment here that you would apply to information anywhere on the Internet.

⁴³ DELL, *Forum Terms of Use*. [Online] <http://en.community.dell.com/p/tou> (Viewed on December 18, 2017).

Think before you post: You may not use, or allow others to use, your registration membership to post or transmit:

- a) *“Rants,” “slams,” or legal threats against HP, another company or any person.*
- b) *Political or religious statements, commentary or images.*
- c) *Discriminatory comments or images.*
- d) *Off-topic comments not related to a technical or usage issue regarding an HP product.*
- e) *Language that promotes illegal activity or discusses illegal activities with the intent to commit them.*
- f) *Duplicate posts.*
- g) *Do not move topics up. Placing a topic back at the top of the list will not help resolve your problem. Many of our experts who are trying to respond to the various questions first look for topics without any answers. If you move a topic up, it will disappear from the list of unanswered topics. Moderation will take measures to prevent this type of action. This is done so that your topic is placed in the proper search list, where you will have a greater chance of receiving a response.*
- h) *Hyperlinks that lead to sites that violate any of the forum guidelines.*
- i) *Any message that solicits or promotes the use of an illegal substance.*
- j) *If you are an HP employee you must identify yourself as one, you must always be clear that you speak for yourself only and not for HP, and follow HP policy.*

Do no harm: You may not interfere in any way with the operations in the forum or with a fellow user’s message box, including, but not limited to, mail or “post” bombing, news bombing, other flooding techniques, deliberate attempts to overload a system and broadcast attacks, or attempts to avoid messaging blocking.⁴⁴

Note a few specific points: whereas the first example prohibited abusive, defamatory and obscene posts, the second went so far as to prohibit political or religious statements, commentary or images, which are deemed likely to result in off-topic posts.

The HP example clearly shows the possible actions taken by a moderator, but only mentions actions that involve correcting the placement of user posts. Moreover, HP insists that its employees identify themselves and state that they are only speaking for themselves and not for the company. Later on, we will return to the standards that apply to users associated in one way or another with the company.

⁴⁴ HP, *HP Consumer Support Forum: Rules of Participation*. [Online] <https://h30434.www3.hp.com/t5/Rules-of-Participation/Rules-of-Participation/m-p/252325/highlight/true#M1> (Viewed on January 10, 2018).

Though HP, as a precautionary measure, encourages users to avoid certain topics, Videotron also advises them to avoid misunderstandings and off-topic discussions, and to pay attention to their tone.

*Humour: Humour on the internet is a delicate concept, as the perfect range of your emotions is difficult to transmit in your contribution. Culture, language and humour vary significantly from one internet user to the next. Think twice before making a joke.*⁴⁵

3.1.2 Copyright

Specifically with regard to copyright, the rules for the various business forums are fairly extensive: in contributing to the forum, users grant the company very broad licences. For instance, Videotron states:

*Copyright: By submitting your contribution, you accept and acknowledge that you are granting a non-exclusive, transferable and perpetual licence to Videotron to use your contribution in any and all media, now known or hereafter devised. You must, at all times, own all of the rights required, including, without limitation, intellectual property rights, for any contribution you make to the Community. Therefore, Videotron may, without any remuneration, publicly or privately broadcast, telecast, encode, distribute, reproduce (in whole or in part), modify, display, communicate, adapt, post, edit, publish, translate and, more generally, use your contribution. In addition, you hereby waive any moral right in your contribution. Subject to the rights granted above, you retain the intellectual property rights and copyrights to your contribution.*⁴⁶

Rogers, for its part, states:

*For any content that you submit, you hereby grant to Rogers a world-wide, non-exclusive, perpetual, irrevocable, fully sub-licensable, royalty-free and transferable right and licence to use, reproduce, copy, modify, compress, delete in its entirety, adapt, publish, translate, communicate, publicly perform, publicly display, create derivative works from and/or sell and/or distribute such content and/or incorporate such content into any form, medium or technology now known or later developed without compensation to you.*⁴⁷

Apple makes a similar, though more succinct, statement:

If you provide any ideas, suggestions, or recommendations on this site regarding Apple's products, technologies or services ("Feedback"), Apple may use such Feedback and incorporate it in Apple products, technologies, and

⁴⁵ VIDEOTRON, *Videotron Community User Guide*. [Online] <https://forum.videotron.com/t5/custom/page/page-id/UserGuide> (Viewed on January 19, 2018).

⁴⁶ *Ibid.*

⁴⁷ ROGERS, *Rogers Community Forum Terms of Use*. [Online] <http://communityforums.rogers.com/t5/Welcome-to-the-Rogers-Community/Terms-of-Use-and-Privacy-Policy/td-p/202861> (Viewed on January 20, 2018).

*services without paying royalties and without any other obligations or restrictions.*⁴⁸

3.1.3 Company's Liability

It would be logical to assume that most users who go to community forums directly on the companies' websites do so to obtain advice that is more legitimate than what can be found elsewhere online. Users are likely to give more credibility to advice provided on the forum of the company in question, and even more so if provided by a moderator or user who is openly associated with the company. Users may think that the information comes from the company and binds it, or that the advice can be followed without reservation because it was checked by the company.

However, to avoid or rule out this assumption, companies indicate in their terms of use that they disclaim any liability for their forum users' posts, some even stating that they also disclaim any liability for posts by their own moderators or employees.

For instance, Apple states:

*Apple involvement. Apple may respond to questions but does not formally provide technical support on the Site. Any information that is provided by Apple or Apple employees is offered on an "AS IS" basis without warranties of any kind.*⁴⁹

The terms of use for Shaw's forum, which are very succinct, take a similar line, without any special mention regarding users who are associated with the company:

*Shaw Communications is not responsible for, and disclaims any and all liability to the fullest extent permitted by law for the content of comments written by contributors to this page*⁵⁰.

Microsoft also disclaims any kind of liability, placing it entirely on the user:

*Microsoft is not responsible for the content of any user-created posting, listing or message. The decision to view content or engage with others is yours. We advise you to use your judgment.*⁵¹

eBay states, in the "Additional information" section of the *Discussion boards usage policy*:

*Content posted to eBay's public discussion boards or Answer Centre by eBay members is solely the opinion and responsibility of the author.*⁵²

PayPal states something similar, and seems to say that content that is "inaccurate, inappropriate or offensive" will not be moderated:

⁴⁸ APPLE, *Apple Support Communities Use Agreement*. [Online] <https://discussions.apple.com/docs/DOC-5952> (Viewed on December 15, 2017).

⁴⁹ *Ibid.*

⁵⁰ SHAW, *House Rules*, Shaw Support Community. [Online] <https://community.shaw.ca/docs/DOC-4938> (Viewed on January 28, 2018).

⁵¹ MICROSOFT, *Microsoft Community Code of Conduct*. <https://answers.microsoft.com/en-us/page/faq>

⁵² EBAY, *Discussion boards usage policy*. [Online] <https://pages.ebay.ca/help/policies/everyone-boards.html> (Viewed on January 19, 2018).

Each user's situation is different, so it is your responsibility to evaluate the accuracy, usefulness and applicability of User Content. PayPal does not endorse and is not responsible for the accuracy, usefulness or applicability of User Content. User Content may be inaccurate, inappropriate or offensive. If the possibility of encountering inaccurate, inappropriate or offensive User Content is not acceptable to you, you should not use the Community Forum.

[...]

Under no circumstances will PayPal be liable for any loss or damage caused by use of the Community Forum, reliance on information obtained through the Community Forum or otherwise arising from any Community Forum content.⁵³

Norton clearly indicates that its forum does not replace technical support or customer service, and that users are responsible for whether or not they follow the advice on the forum, also indicating that there may possibly be no moderator:

Most people are happy to help out on the boards, blogs and forums that make up the Norton Community, but remember that their advice is theirs only and that you are responsible for deciding whether or not to follow it. If the advice given by a community member sounds wrong to you, do not try it. Please also remember that Symantec does not specifically monitor, ensure, or confirm the accuracy of, or provide input or support for information posted by other community members. [...]

Symantec does not generally edit or monitor content posted by Norton Community participants. [...]

Such third-party content is the sole responsibility of the person originating the material. Symantec does not control and is not responsible for this third-party material.

Except where expressly provided otherwise, your use of the Norton Community website(s), content, and services are at your sole risk.⁵⁴

Best Buy also states that users are responsible for deciding whether or not to follow the advice obtained on the forum, regardless of whether it was given by another user or, surprisingly, from a Best Buy product specialist.

[TRANSLATION] Please be careful

Most people are happy to participate in the Forum by providing their help, but please remember that their advice is merely that: advice based on their own experience. You are responsible for following it or not. If you consider the advice given by a user, including Best Buy Canada Product Specialists, the manufacturer's representatives or any other partner of Best Buy Canada, to be incorrect, do not follow it or do not apply it. [...]

Disclaimer of warranties and limitation of liability

⁵³ PAYPAL, *Community Help Forum Agreement*. [Online] <https://www.paypal.com/us/webapps/mpp/ua/helpforum-full> (Viewed on January 8, 2018).

⁵⁴ Norton, *Norton Community Participation Guidelines*. [Online] <https://community.norton.com/en/norton-community-participation-guidelines> (Viewed on January 10, 2018).

*[...] Best Buy Canada does not control and is not responsible for this third-party material. Best Buy Canada does not make any representations nor does it provide any warranties on the topic of the forum and the content in it or related to it, and hereby disclaims all representations or warranties in this respect. More specifically, Best Buy does not warrant or guarantee the accuracy, reliability, completeness, usefulness, non-infringement on intellectual property rights, or quality of any material that appears in the Best Buy Canada Community Forums, regardless of who originates that material. You expressly understand and agree that you bear all risks associated with using or relying on the material. Best Buy Canada will not be liable or responsible in any way for any content in the Best Buy Canada Community Forums, including, but not limited to, any errors or omissions in the material, or for any losses or damage of any kind incurred as a result of the use of or reliance on any material.*⁵⁵

The Videotron Community terms of use differ markedly from those of the other companies; the company makes a clear distinction between the liability it will assume based on whether the participant is a moderator or just an employee of the company. Only responses provided by moderators will be deemed to be official Videotron responses.

*Official statements: Only the comments posted by the website moderators constitute official responses from Videotron. Videotron employees may participate in the Community in a personal capacity but they are not speaking for the company.*⁵⁶

The other forums refrain from specifically mentioning their liability regarding posts by their moderators. They clearly state that the company is not responsible for posts made by users or participants, but remain, with some exceptions, vaguer with respect to posts by their moderators or employees.

3.2 Review of Terms of Use of Websites That Host Forums

The websites' terms of use basically contain the same elements as the terms of use specific to forums, with additional elements that do not necessarily apply or are not related to forums, such as the accuracy of product pricing, product availability, etc.

3.2.1 Liability

Regarding the company's liability, eBay indicates in its website terms of use:

*Community content published or edited by our members is solely the opinion and responsibility of the persons posting the content.*⁵⁷

⁵⁵ BEST BUY, *Conditions d'utilisation des Forums de Best Buy*. [Online] <https://www.bestbuy.ca/fr-ca/help/conditions-d-utilisation-des-forums-de-best-buy/hc8163.aspx> (Viewed on December 20, 2017).

⁵⁶ VIDEOTRON, *Videotron Community User Guide*. [Online] <https://forum.videotron.com/t5/custom/page/page-id/UserGuide> (Viewed on January 10, 2018).

⁵⁷ EBAY, *Community Content Policy*. [Online] <https://pages.ebay.ca/help/policies/member-created-content-ov.html> (Viewed on January 19, 2018).

Apple states:

[...] YOU ASSUME TOTAL RESPONSIBILITY FOR YOUR USE OF THE SITE AND ANY LINKED SITES. YOUR SOLE REMEDY AGAINST APPLE FOR DISSATISFACTION WITH THE SITE OR ANY CONTENT IS TO STOP USING THE SITE OR ANY SUCH CONTENT. THIS LIMITATION OF RELIEF IS A PART OF THE BARGAIN BETWEEN THE PARTIES.

*The above disclaimer applies to any damages, liability or injuries caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction of or unauthorized access to, alteration of, or use, whether for breach of contract, tort, negligence or any other cause of action.*⁵⁸

Despite the fact that the company disclaims any liability, Intel states that users may have to indemnify or compensate it for any damage caused following the publication or transmission of content through the company's websites:

*Limitation of Liability: YOU EXPRESSLY UNDERSTAND AND AGREE THAT INTEL AND ITS LICENSORS **SHALL NOT BE LIABLE** TO YOU FOR:*

IN NO EVENT SHALL INTEL AND/OR ITS RESPECTIVE SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE OR OTHER TORTIOUS ACTION, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF ANY SOFTWARE, DOCUMENTS, PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR INFORMATION AVAILABLE FROM THE WEB SITE.

ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF ANY RELIANCE PLACED BY YOU ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY CONTENT, OR ANY CHANGES INTEL MAY MAKE TO THE SERVICES, DOCUMENTS, WEB SITE, CONTENT OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE WEB SITE (OR ANY FEATURES WITHIN THE WEB SITES); OR IF APPLICABLE, YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL;

THESE LIMITATIONS ON INTEL'S LIABILITY SHALL APPLY WHETHER OR NOT INTEL HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES.

Indemnification: You agree to indemnify and hold Intel and its officers, agents, employees, partners and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of content you submit, post, transmit or otherwise make available through the Web Sites or Materials, your use of the Web Sites or Materials, your connection to the Web Sites or Materials, your violation of these Terms of Use or site specific Terms of Use, or your violation of any rights of another.

Accuracy and Completeness: Intel does not warrant the accuracy or completeness of the information, text, graphics, links or other items contained within the Web Sites or Materials. [...]

These Terms also apply to any resources and tools provided through Intel Web Sites, including but not limited to developer tools, download areas, research areas, community forums, chat rooms, blogs, sharing sites and product information. [...]

⁵⁸ APPLE, *Apple Website Terms of Use*, Legal Information and Notices. <https://www.apple.com/ca/legal/internet-services/terms/site.html> (Viewed on December 15, 2017).

Third Party Content: Web Sites and Materials may contain user or third party submitted content; such content is not reviewed, approved or endorsed by Intel and is provided solely as a convenience to our customers and users. Under no circumstances will Intel be liable in any way for any third party submitted or provided content, including, but not limited to, any errors or omissions, or damages of any kind.⁵⁹

[Our underlining]

3.2.2 Intellectual Property

The points covering intellectual property on the websites' general terms of use are the same as those found in the forum terms of use. Microsoft clearly states that it does not intend to claim all users' rights to their postings, as the license, right to sub-license and right to publish the user's name with the content are obviously sufficient:

*Microsoft does not claim ownership of the materials you provide to Microsoft (including feedback and suggestions) or post, upload, input or submit to any Services or its associated services for review by the general public, or by the members of any public or private community, (each a "Submission" and collectively "Submissions"). However, by posting, uploading, inputting, providing or submitting ("Posting") your Submission you are granting Microsoft, its affiliated companies and necessary sublicensees permission to use your Submission in connection with the operation of their Internet businesses (including, without limitation, all Microsoft Services), including, without limitation, the license rights to: copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate and reformat your Submission; to publish your name in connection with your Submission; and the right to sublicense such rights to any supplier of the Services.*⁶⁰

3.3 Analysis of Privacy Policies of Websites That Host Forums

The various companies' privacy policies are all similar, and they mostly appear to generally observe the current rules. The companies state that they protect their clients' privacy, but that, under the law, information may be disclosed if the courts so require. Rogers includes a representative clause in this respect:

*We fully comply with Canadian privacy law and take active steps to fully safeguard the information of our customers. At the same time we are compelled by law to respond to federal, provincial and municipal government and law enforcement agencies when they have a legally valid request – like a search warrant or court order.*⁶¹

⁵⁹ INTEL, *Terms of Use*. <https://www.intel.com/content/www/us/en/legal/terms-of-use.html> (Viewed on February 1, 2018).

⁶⁰ MICROSOFT, *Microsoft Terms of Use*. [Online] <https://www.microsoft.com/en-us/legal/intellectualproperty/copyright/default.aspx> (Viewed on January 8, 2018).

⁶¹ ROGERS, *Privacy, CCTS & CRTC*. [Online] https://www.rogers.com/web/Rogers.portal?_nfpb=true&_pageLabel=NEW_GCT&_nfls=true&setLanguage=en&tempLate=Privacy-CRTC (Viewed on January 15, 2018).

Despite this type of statement of compliance with the rules regarding the protection of personal information, the issue of companies' sharing of users' personal information raises some questions and appears doubtful. In fact, participants who register for the forums share personal information with the company, and some companies go very far in their collection and potential use of such information. For example, Microsoft's privacy statement mentions that:

[Translation] Advertisers may choose to include our web beacons in their website to enable Microsoft to collect information such as activities, purchases and visits to the site; we will use this information to help our advertisers better target their advertising. We also share data directly with our service suppliers (such as Oath, AppNexus and Facebook) to enable them to provide services in our name or jointly with us for the selection and publication of ads for our advertising partners.⁶²

In general, companies reserve the right to share users' personal information with their business partners, as stated by Shaw:

Internally, only Shaw Employees with a business need to know, or whose duties reasonably so require, are granted access to Personal Information of Shaw's Customers, Web Site Users and Employees.

3.4.1 Customer Personal Information

Shaw may disclose Customer's Personal Information to:

- a) third parties who are acting on Shaw's behalf as our agents, suppliers or service providers who are subject to confidentiality requirements;*
- b) a company who will be involved in supplying the Customer with communications or communications directory-related products and/or services;*
- c) a company or individual who is acting on Shaw's behalf for the development, enhancement, promotion, marketing, sale or provision of any of Shaw's current products and/or services or for any new products and/or services of Shaw, including authorized resellers and sales agents, etc. subject to confidentiality requirements;*
- d) in conjunction with special offers or programs to program partners, or third party agents responsible for administering such offers or programs. Any such disclosure is made on a confidential basis;*
- e) an agent used by Shaw to evaluate the Customer's credit worthiness or to collect the Customer's account;*
- f) a credit reporting agency; and*
- g) a third party, where the Customer has given Shaw consent to such disclosure or if disclosure is permitted or required by law, in accordance with PIPEDA.⁶³*

⁶² MICROSOFT, *Microsoft Privacy Statement*. [Online] <https://privacy.microsoft.com/en-ca/privacystatement> (Viewed on February 16, 2018).

⁶³ SHAW, *Privacy Policy*. [Online] <https://www.shaw.ca/privacy-policy/#> (Viewed on February 2, 2018).

PayPal mentions in its Privacy Policy that, despite the fact the account is closed, PayPal may store personal information related to the user's account for an indeterminate period:

*If you close your PayPal account, we will mark your account in our database as "Closed," but may retain personal information from your account for a certain period of time and disclose it in a manner consistent with our practices under this Privacy Policy for accounts that are not closed.*⁶⁴

Ultimately, however, what we found objectionable were basically the clauses on possible changes to privacy policies. We will be covering them in the section that follows.

3.4 Other Worrisome Elements

The issue of possible changes to terms of use (those of the forums and of the websites) and to privacy policies merits further investigation. In fact, some companies state that if changes are made to the policies, said changes or a clear notice indicating that changes were made would be posted on the website. Others state that it is the users' responsibility to check whether any changes were made. In other words, before navigating through the forum, a user is required to read through all the various terms of use to determine whether any changes were made!

Norton is among the companies that state that website users will be notified of possible changes before they are implemented:

*We reserve the right to revise or modify this Statement. In such event, we will post a prominent notice on this website prior to the change becoming effective. If the changes would have the effect of introducing a purpose for the use of your Information that is inconsistent with this Statement, and where required by applicable law, we will either notify you or provide you with an opportunity to opt-out from Symantec making such use.*⁶⁵

HP also considers it important to notify users of any possible changes to its privacy policy:

*If we make significant changes to our Privacy Statement that materially alter our privacy practices, we may also notify you by other means, such as sending an email or posting a notice on our corporate website and/or social media pages prior to the changes taking effect. This Privacy Statement was last updated in October 2016.*⁶⁶

Best Buy, however, considers that users are responsible for regularly reading the company's privacy policy to determine whether any changes were made to it:

⁶⁴ PAYPAL, *Privacy Policy for PayPal Services*. [Online] https://www.paypal.com/ca/webapps/mpp/ua/privacy-full?locale.x=en_CA (Viewed on January 10, 2018).

⁶⁵ SYMANTEC, *Symantec Privacy Statement*. [Online] <https://www.symantec.com/en/uk/privacy/gps-english> (Viewed on January 25, 2018).

⁶⁶ HP, *HP Privacy Statement*. [Online] http://www8.hp.com/us/en/pdf/privacy/HP_October_2016_Privacy_Statement.pdf (Viewed on January 19, 2018).

*To accommodate changes in our services, changes in technology, and legal developments, this Privacy Policy may change over time without notice to you.*⁶⁷

Dell echoes this view and more explicitly encourages users to periodically review its policies:

*We will occasionally update this Privacy Statement. If we make changes to this Privacy Statement or make any material changes to how we use your Personal Information, we will revise this Privacy Statement to reflect such changes and revise this Privacy Statement's effective date, included at the end of this section. We encourage you to periodically review this Privacy Statement to be informed of how we are using and protecting your Personal Information.*⁶⁸

Shaw also does not consider it important to notify its website users of possible changes to its privacy policy, but still indicates in its policy the date of the most recent change, without, however, stating which changes were made:

*Any changes to Shaw's Privacy Policy shall be acknowledged in this Privacy Policy in a timely manner. Shaw may modify or remove portions of this Privacy Policy when it feels it is necessary and appropriate. You may determine when this Privacy Policy was last updated by referring to the date found at the top of the first page of this Privacy Policy "Privacy Policy last revised on:"*⁶⁹

Shaw also does not intend to notify its website users of changes to its Legal Notice. Rather, the company suggests that they review the Legal Notice each time they go to the site:

*Shaw reserves the right to add, modify or delete any information or content in the Legal Notice or on the Web site at any time, without notice. Accordingly, you are encouraged to review this Legal Notice each time that you access the Web site*⁷⁰.

In one of the upcoming chapters, we will compare against current legislation the various elements that we found questionable in the terms of use of the company forums and websites, as well as in their privacy policies.

⁶⁷ BEST BUY, *Privacy Policy*. [Online] <https://www.bestbuy.ca/en-ca/help/privacy-policy/hc1139.aspx?path=190119f7bb3221f7ec2b377835be7b8afr06&Lang=en-CA&HelpTitleId=hc1139&HelpCategoryId=Policies&CategoryName=Policies&ReferringPageTitle=Help%20Category%20List> (Viewed on January 15, 2018).

⁶⁸ DELL, *Privacy Statement Regarding Customer and Online Visitor Information*. [Online] <http://www.dell.com/learn/uk/en/ukcorp1/policies-privacy?s=corp> (Viewed on January 19, 2018).

⁶⁹ SHAW, *Privacy Policy*. [Online] <https://www.shaw.ca/privacy-policy/> (Viewed on January 28, 2018).

⁷⁰ SHAW, *Terms of Use*. [Online] <https://www.shaw.ca/terms-of-use/> (Viewed on January 28, 2018).

4. Consultation of Certain Key Players

4.1 Methodology

As part of our research, we had agreed to consult several interested parties, regulatory authorities and companies whose forums we had examined in greater depth, in order to obtain additional data as well as their opinion on the study topic. In particular, we wanted to know the number and type of complaints that business community forums could generate.

To better identify the potential problems associated with the community forums available on the various company websites, we directly contacted the relevant federal and provincial agencies from whom we tried to obtain additional information, i.e. basically whether they received any complaints associated with said forums. To this end, we sent them a short questionnaire preceded by a brief presentation of the project⁷¹ involving the number and type of complaints they received. We also asked them whether the problems that may have been reported to them had made them wonder about possible solutions aimed at cleaning up market practices. In November 2017, we sent our questionnaire to provincial consumer protection offices as well as to the Commissioner for Complaints for Telecommunications Services (CCTS), the Competition Bureau, the Radio-television and Telecommunications Commission (CRTC), and the Office of the Privacy Commissioner of Canada (OPCC).

Two federal regulatory agencies (OPCC and the Competition Bureau) and five provincial authorities (Newfoundland and Labrador, Quebec, Ontario, Alberta and British Columbia) responded to our request.

To better define the internal operation of forums (e.g. moderation, response time, time taken to respond to complaints), we directly contacted the companies whose forums we examined in greater depth. In February 2018, we sent a brief presentation of the project to 12 companies (Apple, Intel, Dell, Microsoft, Norton, HP, Rogers, Shaw, Videotron, Best Buy, eBay and PayPal) followed by a short questionnaire⁷² on the number and type of complaints they received, the way in which the complaints were handled, and on the solutions to the problems that may have been identified. We also asked them whether any statements or advice that should be corrected were regularly reported to them, along with the company's method and time of response in these cases. When we could not find an e-mail address where we could send our questionnaire, we registered with the forum where we sent our questionnaire to the moderators by asking them to send it to the appropriate people, or we used the company's live chat to find to whom to send the questionnaire.

After sending out our questionnaire or contacting the companies, five of them (Videotron, Shaw, Microsoft, Rogers and Best Buy) responded in one way or another to our request for information.

⁷¹ The questionnaire can be found in Appendix 1.

⁷² The questionnaire can be found in Appendix 2.

4.2 Results of the Consultation

The aim of our survey of the various government and non-government players was to determine whether consumers filed any complaints regarding business forums and if so, what were the main problems reported. We also asked participants whether in such a case they had thought about possible solutions.

4.2.1 Feedback From Regulatory and Consumer Protection Authorities

Unfortunately, the problems associated with community forums would not, in their opinion, be covered by legislation which any of the regulatory bodies was in charge of applying, with the possible exception, for certain aspects, of the Office of the Privacy Commissioner of Canada (OPCC). It would also appear that community forums do not generate many complaints.

At the federal level, the Competition Bureau thanked us for having taken the time to bring this matter to their attention and mentioned having sent our request to a competition law officer who was to contact us. However, the Competition Bureau did not contact us again to provide us with the number and type of complaints that had been filed.

The Office of the Privacy Commissioner of Canada (OPCC) told us that since 2004, it had investigated only 10 complaints that partly involved discussion forums, and that it had received four reports of privacy breaches over the same period. Moreover, the OPCC informed us that by law they were not allowed to provide us with more details on these complaints. We were therefore unable to determine whether the complaints involved business forums or more general forums available online.

At the provincial level, Ontario's Ministry of Government and Consumer Services told us that the issue of business community forums was outside its jurisdiction.

In Alberta, our request was forwarded to the Consumer Investigation Unit, which told us that the Fair Trading Act does not cover the sale of goods or services to businesses and that as a result, business forums were beyond its purview.

In British Columbia, Consumer Protection BC informed us that its complaint management platform did not include the statistics we were looking for, and that furthermore, it was not a problem for which consumers had contacted the organization.

We received a similar response in Quebec where the Office de la protection du consommateur (OPC) told us that there were no codes in their system to identify a complaint specific to such forums. Furthermore, the OPC mentioned that even if we asked them the question for a specific forum (Apple or eBay, for instance), they would need to review hundreds of complaints one by one to see whether any of them covered the forum issue from the company in question.

Lastly, in Newfoundland and Labrador, the Consumer Affairs Division told us that they did not have any formal complaints on record regarding this type of forum.

4.2.2 Feedback from Businesses

Although it would have been highly useful to obtain information on the complaints or problems which forums may generate directly from companies, it would appear that none of them, with some exceptions, wanted to answer our questions.

Shaw simply chose to ignore our request, which was filtered and never appeared on the forum, which is an indication, however, that Shaw moderates posts on its forum before posting them!

Videotron, where we used live chat to determine to whom to send our questionnaire, simply disconnected us from live chat when we explained what we were looking for. We subsequently filed a complaint with the company, which never contacted us.

We asked Best Buy the same questions as the other companies, but we also asked what led the company to close its forum. Best Buy answered that it wanted to focus on other ways to interact with its customers in a context where the means of communication and the tools used are constantly developing. Best Buy did not respond to our other questions.

Microsoft told us that it was trying to find someone to respond to our questionnaire. When the name of this person was provided to us, we contacted them and were then told that unfortunately information on operational procedures and internal data could not be shared.

Rogers forwarded our request to an employee who asked us for an English version of the questionnaire so that it could be sent to the appropriate person. We sent the questionnaire in the requested language, but did not hear from the company again.

The seven other companies did not respond to our request.

5. Legislative Framework for Community Forums in Canada

The issue of a regulatory framework applicable to community forums hosted on company websites is a relatively complex one. The applicable frameworks may cover several aspects of this type of service, and the interaction, in Canada, of provincial and federal laws makes the issue even more complex. Legislation likely to apply to community forums, in particular, therefore includes the consumer protection laws from the various provinces and territories, the Copyright Act, laws on privacy and the collection of personal information, and the Competition Act.

We will first look at the issue of consumer protection. In Canada, the various consumer protection laws have numerous similarities; our focus will therefore be on the relevant provisions in Quebec and Ontario legislation, namely, the Quebec Consumer Protection Act (CPA) and the Ontario Consumer Protection Act, 2002 (CPA-Ont). We will refer in passing to the Civil Code of Québec (CCQ).

We will then briefly look at the federal Competition Act, Copyright Act and Personal Information Protection and Electronic Documents Act, with the provincial laws with the same effect being basically similar.

Our research enabled us to identify various clauses in the forum and website terms of use and in privacy policies that may appear problematic: clauses involving unilateral changes to terms of use, exclusion and limitation clauses, etc. In this section, we will examine certain clauses more in depth to determine whether they are likely to contravene certain legislative provisions.

Note, however, that the concerns we are raising in this chapter are theoretical; in fact, neither our field investigation nor literature review revealed any concrete cases indicating an urgent issue. We still believe that some questions must be asked to ensure that the services provided to consumers comply with the frameworks put in place to ensure their protection, or to determine whether said frameworks are correctly designed to find a practical application with respect to this new type of service that meets and is suitable for a current communications approach.

5.1 Quebec and Ontario Consumer Protection Laws and the Civil Code of Québec

Consumer protection laws are designed to guarantee certain rights to consumers in relation to the contracts they enter into with merchants.

The first question is whether a consumer's use of a business community forum constitutes a consumer contract.

In a 2011 decision, the Superior Court of Quebec ruled that since the service was completely free of charge, there was no consumer contract between Facebook and its users⁷³. However, later decisions rendered by the same Court did not follow this precedent; a recent Superior Court decision⁷⁴, based on a Supreme Court ruling — in which the relationship between

⁷³ St-Arnaud c. Facebook Inc., 2011 QCCS 1506 (CanLII). The judgment was appealed, but no decision was made by the Court of Appeal, as the parties agreed to settle.

⁷⁴ Demers c. Yahoo! Inc., 2017 QCCS 4154, which cites Douez v. Facebook, Inc., 2017 CSC 33, [2017] 1 R.C.S. 751.

Facebook and its users was clearly qualified as a consumer and membership contract — addresses the issue and concludes that despite being free, this type of contract is definitely a consumer contract.

Since business community forums are a service provided by merchants to which consumers are bound through membership contracts, there should be no doubt that a consumer contract is involved. This type of contract is deemed to be entered into in the consumer's province of residence.

This having been said, do certain clauses in the various community forum terms of use contravene the provisions of the CPA, CPA-Ont or CCQ?

Note that it would be difficult to posit that consumers who go to forums for advice, answers to their questions, etc. but do not register are still entering into a contract with the company just by visiting the forum. Without adopting a definitive position on the issue, we will assume, in the current context, that the protections that apply only when a consumer contract is concluded will therefore likely not apply to them.

LIABILITY

As previously seen, companies generally decline all liability in the terms of use for posts on the forums they host, and warn consumers that they follow the advice dispensed in forums at their own risk and peril (often urging them to be careful). Some companies also state that they also disclaim all liability for what their own employees, representatives and moderators may say.

However, as mentioned earlier, one may think that consumers go to a company website or are looking for answers there precisely because they would have more faith in the posts on the site than elsewhere on the Internet; if this were true, it seems paradoxical to see companies disclaiming any liability for what is being posted on their forum.

Can companies lawfully be released from any liability regarding the advice that may be posted on the forums they administer?

In Quebec, Section 10 of the CPA states: *Any stipulation whereby a merchant is liberated from the consequences of his own act or the act of his representative is prohibited.*⁷⁵

Under the CPA (sect. 1), a representative is “a person acting for a merchant or a manufacturer or regarding whom a merchant or a manufacturer has given reasonable cause to believe that such person is acting for him.”

A user may rightfully believe that forum moderators are the company's representatives on the forum, when the company's name, for instance, is found right next to the user's name. All the more so if the user in question is also the moderator.

Strictly speaking, is the user in question who is associated with the company actually acting for the merchant? As we have seen, companies instead have a tendency to indicate in the forum terms of use that they are not liable for what users post, even sometimes going so far as stating that this includes employees as well as moderators.

⁷⁵ Consumer Protection Act, CQLR, c. P-40.1.

However, since this disclaimer is only found in the terms of use, could a consumer still allege that the company administering the forum “provided reasonable grounds to believe” that a user associated with it is acting on its behalf, namely because the consumer did not notice the disclaimer?⁷⁶

The answer to this question is unclear. However, the opinion of the Supreme Court in *Richard v. Time*⁷⁷ on the general impression given to consumers by merchants could definitely influence a decision-maker having to rule on this matter, given the consumer’s possible expectations regarding a site administered by the company.

In Ontario, the following provisions also prohibit a company from disclaiming liability:

*SECT 7 (1) The substantive and procedural rights given under this Act apply despite any agreement or waiver to the contrary.*⁷⁸

The following is stated in the first section of the Ontario Act:

“supplier” means a person who is in the business of selling, leasing or trading in goods or services [...] and includes an agent of the supplier and a person who holds themselves out to be a supplier or an agent of the supplier.

One could assume that the preceding observations would also apply here.

In Quebec, a forum user wishing to invoke the company’s liability could, if he has not entered into a contract with said company, use the tortious (rather than the contractual) regime of the Civil Code of Québec and claim that the merchant who posted or allowed to be posted information on its forum that caused injury was at fault.

1474. A person may not exclude or limit his liability for material injury caused to another through an intentional or gross fault; a gross fault is a fault which shows gross recklessness, gross carelessness or gross negligence.

He may not in any way exclude or limit his liability for bodily or moral injury caused to another.

The question of the limitation or exclusion of liability which would only be found in a contract which a mere user of the forum would not have entered into would constitute an interesting discussion, just like the qualification that could apply to an unmoderated or poorly moderated forum: could the company be held liable through recklessness, carelessness or negligence, and could these be considered gross acts? And could the liability exclusion clauses in the agreements be in each case qualified as notices under the meaning of Article 1476 C.C.Q. and allow the company to mitigate damages?

1476. A person may not by way of a notice exclude or limit his obligation to make reparation in respect of third persons; such a notice may, however, constitute a warning of a danger.

⁷⁶ The opinions given by certain users associated with the company who state that it is only a personal opinion that does not bind the company could in fact be cited by companies arguing that the consumer had no reasonable grounds to believe that these users were acting on behalf of the company.

⁷⁷ *Richard v. Time Inc*, 2012 SCC 8, [2010] 2 SCR 310

⁷⁸ Consumer Protection Act, 2002, S.O. 2002, Chap. 30, Schedule A.

As we mentioned, consumer protection laws can generally only be invoked by a consumer who has entered into a contract with the merchant. We also submitted that consumers who do not register at forums as participants have not entered into a contract with the company relative to said forum. However, one could easily imagine that a consumer could go to a company forum to find answers following a problem encountered with a product or service for which he has in fact entered into a contract with the company; could said pre-existing contract be invoked by a consumer who was harmed as a result of using the forum? Would this contractual relationship then allow the consumer to benefit from the protections afforded by consumer protection laws? This assumption is possibly not so unlikely if forums are seen as a kind of customer service or after-sale service provided by the company and that would undoubtedly engage its liability.

WARRANTIES

In Quebec, certain provisions of Chapter III of the CPA on warranties could also likely, insofar as they apply to services, apply to community forums on company websites.

Hence, the Act stipulates that the *services provided must conform to the description made of them in the contract* (Section 40) as well as to the *statements regarding them made by the merchant* (Section 41). Furthermore, *a written or verbal statement by the representative of a merchant or of a manufacturer respecting goods or services is binding on that merchant or manufacturer* (Section 42).⁷⁹

In Ontario, the Consumer Protection Act, 2002 states that:

9 (1) The supplier is deemed to warrant that the services supplied under a consumer agreement are of a reasonably acceptable quality.

*(3) Any term or acknowledgement, whether part of the consumer agreement or not, that purports to negate or vary any implied condition or warranty under the Sale of Goods Act or any deemed condition or warranty under this Act is void.*⁸⁰

As we have seen, the representations made by businesses regarding their forums are generally fairly brief. If we had to apply the criterion of general impression to what these brief representations are likely to give in order to determine consumers' expectations and companies' warranty obligations, the latter may at times have a hard time arguing that forums do not provide any warranties, despite the reservations often found in contracts.

A consumer could rightfully claim that he was expecting to receive answers from Apple or its representatives on a forum that is presented as follows: *Welcome to Apple Support. We're here to help.* To complicate matters even further, note that a user who reaches this forum without going through the home page (by being directly taken to one of the forum pages through a search engine) would not see these any representations from the company.

This being said, we find it difficult to consider any appropriate action which a consumer could undertake based on the legal warranty associated with a community forum or non-compliance with said warranty by the company.

⁷⁹ Consumer Protection Act, CQLR, c. P-40.1.

⁸⁰ Consumer Protection Act, 2002, S.O. 2002, Chap. 30, Schedule A.

MISLEADING REPRESENTATIONS

In Quebec, under section 219 of the CPA, *No merchant, manufacturer or advertiser may, by any means whatever, make false or misleading representations to a consumer.*⁸¹ Such a representation constitutes a prohibited practice (Sect. 215). Section 216 stipulates that the term “representation” also includes affirmations and omissions, and Section 228 adds that the merchant may not fail to mention an important fact in any representation.

A similar provision in Section 14 of the Consumer Protection Act, 2002 prohibits false, misleading, deceptive or unconscionable representations, which it qualifies as unfair practices. Based on the definition, “misleading representation” consists of an “exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive.”⁸²

Could the example we gave earlier (a company that says “We’re here to help,” whereas this only applies to the users it claims not being liable for) be considered a misleading representation? Is the fact of telling users “*You will find answers*” and of stating in the fine print that these answers may not be accurate not misleading to some extent? Does the original statement fail to state any material facts?

Recall that under Section 218 of the CPA, “*To determine whether or not a representation constitutes a prohibited practice, the general impression it gives, and, as the case may be, the literal meaning of the terms used therein must be taken into account,*” and the Supreme Court clearly stated that it is not by carefully analyzing the representation or the context (or, by extension, by reading the various clauses of a contract) that a consumer forms a general impression. Hence, a merchant would have a hard time arguing that the Court should not consider a general impression which reading the fine print of a contract could have corrected.

Though these questions are likely to present a certain theoretical interest, the practical application of possible answers to these questions may be fairly limited. In fact, if a consumer were to establish that a company made misleading representations with respect to its forum, what actual remedies would be available to the consumer? Terminating the contract related to the use of the forum? Such a recourse would be pointless, as the consumer can stop using the forum at any time, without penalty, and without any future obligation on his part.

Could a consumer argue that the false representations related to the forum caused him harm for which he should be compensated? Or that the company’s malice or carelessness should lead to the payment of punitive damages? This seems unlikely.

The issue of false representations that may be found in posts seems more relevant, but also more complex.

Although the process for qualifying representations remains the same, there is a further issue: could the posts and comments on a community forum hosted by a company be considered representations by the company?

This question brings us back to our discussion earlier on the issue of the company’s liability. At first glance, it would be difficult to associate what is being posted by mere users of a forum with representations made by the company. However, could posts by moderators and other users

⁸¹ Consumer Protection Act, CQLR, c. P-40.1.

⁸² Consumer Protection Act, 2002, S.O. 2002, Chap. 30, Schedule A.

identified as being linked to the company on forums not be attributable to the merchant and thus constitute representations by the company?

After raising all of these questions on the company's liability with respect to posts on the forum by various types of users, one question remains: what can be qualified as a false representation in a post by a user on a forum? Could bad advice posted by a user (or moderator) be considered a false representation? Obviously, posts that are improper, inappropriate, etc. would not fall in this category but in a different one.

At what point can one say that a material fact was not stated? When a user (or moderator) suggests an action which, for a user without the necessary dexterity, could prove dangerous, and the user who posted the suggestion does not mention it?

Whereas all of these questions are theoretical since we did not find any complaints from users regarding concrete examples, we will refrain from drawing up hypothetical representations here and attempt to find answers to them. The question will remain unanswered for the time being.

5.2 Competition Act

The provisions that concern us in the Competition Act are those that involve false or misleading representations. The Competition Act in fact prohibits any person from making or allowing to be made to the public, by any means whatsoever, a representation that is false or misleading in a material respect. To determine the false or misleading nature of a representation, the general impression given by the representation must be taken into account.

The purposes of these provisions is to ensure that the representations given to the public on a product contain all the information needed to enable a consumer to make an informed decision. The Competition Act provides criminal and civil regimes to address false or misleading representations.

Section 52 of the Act, a criminal provision, states that:

52 (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.⁸³

The Competition Bureau explains the application of the above provision as follows:

It prohibits knowingly or recklessly making, or permitting the making of, a representation to the public, in any form whatever, that is false or misleading in a material respect. Under this provision, it is not necessary to demonstrate that any person was deceived or misled; that any member of the public to whom the representation was made was within Canada; or that the representation was made in a place to which the public had access. Subsection 52(4) directs that the general impression conveyed by a representation, as well as its literal meaning, be taken into account when

⁸³ Competition Act, R.S. (1985), c. C-34.

*determining whether or not the representation is false or misleading in a material respect.*⁸⁴ [Our underlining]

Section 74.01(1)a) of the Act reiterates the wording of Section 52 to apply its effects civilly. Section 74.03(5) stipulates that the general impression and literal meaning requirement once again applies here.

By indicating that not only are misleading representations prohibited, but also *the making of a representation to the public, knowingly or recklessly, that is false or misleading in a material respect*, the Competition Act goes further than provincial legislation; provided that it is possible to establish that the company was reckless, such a provision could be used to claim that a company was liable for any content found on its forum, since it provides a platform for the words to be published and does not remove them.

If the Competition Bureau can take legal action based on the above two provisions, a consumer also has a legal remedy, under Section 36 of the Act, if he or she has suffered loss or damage as a result of a breach of Section 52⁸⁵ (found in Part VI, Offences in Relation to Competition).

36 (1) Any person who has suffered loss or damage as a result of:

a) conduct that is contrary to any provision of Part VI;

[...]

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

The above provision would, in theory, enable a consumer to circumvent, to some extent, the problems we found in provincial legislation regarding a company's liability regarding the representations on its forum, regardless of what they involve.

Neither does the legislation limit remedies only to the contracting parties but to any person affected by the representations, provided that it was established that they were false or misleading representations on a key issue.

The damages that may be claimed are direct damages, since the Act only provides for the recovery of "an amount equal to the loss or damage proved to have been suffered by him."

With respect to posts by third parties, the words "permitting the making of a representation to the public," "knowingly or recklessly," and "in any form whatever" appear to establish strict liability for a forum administrator; however, the doctrine significantly tempers expectations, with the word "permitting" being of critical importance. In fact:

⁸⁴ COMPETITION BUREAU, *False or misleading representations*, Government of Canada, Canada, February 22, 2018. [Online] <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/00513.html> (Viewed on March 15, 2018).

⁸⁵ The wording of the provision does not prohibit such an action from being carried out collectively. The limitations regarding the amounts that may be claimed — an amount equal to the loss or damage proved to have been suffered — may, however, constitute a serious obstacle to taking such legal action. See: Brenda PRITCHARD and Susan VOGT, *Advertising and Marketing Law in Canada*, 5th Ed., LexisNexis, Markham, 2015, p. 7.

[TRANSLATION] *[T]he degree of liability attributed to a given party will largely depend on the level of control said party has on the content and of the issue of determining whether the party played a role in the decision to present the advertising or not.*⁸⁶

5.3 Personal Information Protection and Electronic Documents Act

Among the elements that we found worrisome when we reviewed the various documents which forum users must comply with, the issue of unilateral changes to privacy policies was of particular interest to us.

The fact that some companies reserve, as we have seen, the right to modify their contracts and policies without specifically notifying users, asking them to regularly review the various documents to see whether anything has changed appears abnormal to us.

In terms of the collection and use of personal information, the universal principle that applies is that of prior consent. The principles applied by the Personal Information Protection and Electronic Documents Act are as follows:

4.3.1 Consent is required for the collection of personal information and the subsequent use or disclosure of this information. Typically, an organization will seek consent for the use or disclosure of the information at the time of collection. In certain circumstances, consent with respect to use or disclosure may be sought after the information has been collected but before use (for example, when an organization wants to use information for a purpose not previously identified).

*4.3.2 The principle requires “knowledge and consent.” Organizations shall make a reasonable effort to ensure that the individual is advised of the purposes for which the information will be used. To make the consent meaningful, the purposes must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed.*⁸⁷

In our opinion, the principle of consent is already, in itself, deficient. We believe that consumers are still unable to properly determine the value of the personal information that concerns them and the risks associated with their dissemination for informed consent to their collection and use to be possible. Consumers also do not appear to be able to clearly assess the various uses that can be made of such information and how companies may profit from them. Furthermore, we find the information which consumers are to use to give their consent to be too vague and are often found in overlong long and daunting documents.

What is more, companies’ privacy policies are often simply mentioned in passing, with an invitation to read them by following a hyperlink. Consumers are too gullible and pressed for time to read all of these documents, and not sufficiently informed to fully understand them. Arguing consumer consent appears to us in these conditions to be a pipe dream.

⁸⁶ Sonia RASQUINHA *et al.*, “Pratiques commerciales trompeuses en ligne: intermédiaires, quels risques juridiques courez-vous?,” in *Le Droit de savoir*, Lavery, August 2017. [Online] <https://edoctrine.caij.qc.ca/publications-cabinets/lavery/2017/a80959/fr/PC-a101057>.

⁸⁷ Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5.

If a company further tells us that the initial consent implies prior consent for any changes that may be made to such policies, and that the consumer is responsible for regularly reading through all of the company's policies, we believe this is going too far.

In our opinion, and in accordance with the principles on which the Act is based, a company may not modify its privacy protection policy without making reasonable efforts to ensure that the persons concerned by the changes being made are specifically made aware of said changes.

This conclusion clearly shows that the practices of companies that do not make these explicit disclosures are in breach of the Personal Information Protection and Electronic Documents Act.

5.4 Copyright Act

In the documents we reviewed, we noted that almost all the companies granted themselves licences on the content generated by the users of their forum.

The Copyright Act stipulates the following:

Ownership of copyright

13 (1) Subject to this Act, the author of a work shall be the first owner of the copyright therein.

Assignments and licences

(4) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations relating to territory, medium or sector of the market or other limitations relating to the scope of the assignment, and either for the whole term of the copyright or for any other part thereof, and may grant any interest in the right by licence, but no assignment or grant is valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by the owner's duly authorized agent.⁸⁸

[Our underlining]

In the case that concerns us, registered forum users in fact grant, as we have seen, a very broad licence to the forum administrator on the content they generate, but do so through mass acceptance of the various contract clauses. Although this way of obtaining a licence that is perpetual, irrevocable, etc. is not manifestly illegal (the surrender clause is in writing and acceptance of the terms is equivalent to a signature), it still seems to be somewhat unfair and does not appear to comply with the spirit of the law.

⁸⁸ Copyright Act, R.S.C. (1985), c. C-42.

6. Special Measures: An Example in the United States

With the advent of new technologies, U.S. lawmakers intervened to respond to issues which some uses of the new technologies could present, with one of these interventions being applicable to community forums.

In 1996, the Communications Decency Act (CDA) was made part of the Telecommunications Act. The CDA made the distribution of pornographic content on the Internet a criminal act. However, there was an immunity clause in in Section 230:

*No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.*⁸⁹

Although some provisions of the CDA were successfully challenged in U.S. courts because they set unacceptable limitations to freedom of speech, which is protected by the First Amendment in the American Constitution, the same could not be said for Section 230.

On the contrary, the scope of this provision was broadened over time as court judgments were rendered (despite a few setbacks).⁹⁰

The extended use of this provision is namely explained by the very broad definition which the FDA gives to the term “*interactive computer service*”:

*interactive computer service: any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions*⁹¹.

In short, all interactive websites that allow third parties to post content fall under this definition. This means that companies that give access to forums (providers) cannot be held responsible for any content posted by a third party. Neither can any users of these forums evidently be held responsible for content posted by a third party.

The issue was brought before the courts: can a company that was notified that a third party posted offensive content on the site be held responsible for not having removed the content? The courts said no. To hold the company liable, it would have to be admitted that it made a mistake by not doing work that is traditionally done by a publisher, whereas the purpose of Section 230(c)(1) is in fact to prevent providers from being treated as such⁹².

⁸⁹ 47 U.S.C. § 230(c)(1)

⁹⁰ Authors report that the decision rendered in *Doe v. GTE Corp.*, 347 F.3d 655, 660 (7th Cir. 2003) attempted to limit the use of this provision for purposes of immunity. Note, however, that such immunity does not apply to federal criminal matters, copyright laws or the Electronic Communications Privacy Act.

⁹¹ 47 U.S.C. § 230(f)(2)

⁹² However, the situation could be different if the company, once notified, agreed to remove the content, but did not do so. See: Edward FENNO and Christina HUMPHRIES, *Protection Under CDA § 230 and Responsibility for “Development” of Third-Party Content*, Communications Lawyer, Volume 28, Number 2, August 2011. [Online] http://www.fennolaw.com/uploads/Protection_Under_CDA_230.pdf (Viewed on May 25, 2018).

American courts have also generally agreed that it is up to businesses to determine whether they intended to review the content posted on their websites, and that their choice did not entail any liability, since this task was also part of the traditional duties of a publisher⁹³.

However, what about the content posted by agents, representatives or employees of the company that was making the forum available to users? Though the courts appear until now to stick to a strict definition of an employment relationship (and the functions arising from said employment relationship), the issue does not appear to have been settled as clearly as some of the others. However, it seems clear that a business cannot be held accountable for the content posted by the moderator of an independent forum or the actions of an employee over whom it has no control⁹⁴.

In 1996, President Bill Clinton signed the Communications Decency Act (CDA). The portion that is specifically helpful to community managers is Section 230.

Section 230 of the CDA protects community owners and managers from liability for information posted on the community by other parties. In other words, if someone joins your community and posts something that is libelous or false, the person who posted that information is the one that should be held responsible, not the community that is hosting that information.

This is not a reason to be lazy or to simply allow people to say whatever they want, because Section 230 exists. In fact, the beauty of Section 230 is that it further empowers community managers to manage the community at their discretion⁹⁵.

The existence of this provision, cited by both businesses seeking to protect themselves against any liability and free speech advocates — users will have a far greater freedom of expression if businesses do not censure what they say for fear of being held responsible —, possibly explains why businesses systematically state in their policies that they are not responsible for the content of their forums or any harm which following advice that is provided in them may cause.

However, there is nothing similar to this in Canada.

⁹³ *Ibid.*

⁹⁴ Eric GOLDMAN, *Stress-Relieving Company Gets Anti-SLAPPed Per 230*, Technology and Marketing LawBlog, December 24, 2008 <https://blog.ericgoldman.org/archives/2008/12/stressrelieving.htm>

⁹⁵ Patrick O'KEEFE, *U.S. Community Managers: Get to Know the Communications Decency and SPEECH Acts*, managingcommunities.com, United States, February 11, 2013. [Online] <http://www.managingcommunities.com/2013/02/11/online-communities-and-section-230-speech-act/> (Viewed on March 22, 2018).

Conclusions

Consumers have increasingly more sources of information to learn about a product or service. They talk to friends, their family, read newspapers and magazines, but also to a large extent search for information online. They behave similarly when a product breaks or no longer works as required, or when they were not satisfied with a service for a number of reasons: they perform searches, refer to different sources, and share their experience. And the locations where they can obtain information or express their opinions online are growing.

In this regard, community forums appear as the ideal place for discussions and the sharing of information, and their influence is huge.

Research has shown that information created within online forums is just as influential in a consumer's decision making as their own experiences and is more influential than traditional word of mouth.⁹⁶

Online community forums have thus quickly become legitimate sites where Internet users gather to exchange information. Regardless of whether they are hosted by companies, the information, advice and ideas exchanged at forums are of all types, often extending beyond the initial strict scope when the forum was created. Forums thus allow users to obtain information quickly, at any time, from peers whom consumers trust more than companies.

Given the appeal to consumers of this type of forum content, several companies set up forums on their websites and find that they have several benefits: acquisition of visitors (namely because the forum content is indexed by search engines), consumer retention, product support, feedback and sharing of knowledge among users which may help improve products, reduced cost of information, etc. [TRANSLATION] "Moreover, though still not empirically validated, they are considered a relational marketing channel that helps build the site or company's image as well as stronger consumer relations, and favours member engagement and loyalty⁹⁷."

Though the forums present benefits for users, they are not without risks: they may, in fact, contain incorrect information, suggestions that could affect the operation of electronic equipment, offensive language, the abundant collection and use of personal information, etc. These risks may, for the most part, be ruled out if the company conducts strict moderation; however, such a practice would increase the cost of forums for companies, which could put their survival at risk, and would further affect one of the features that constitute one of the main appeals of forums, namely, the speed of unfiltered discussions among peers.

During our research, we attempted to determine whether consumers obtained, through the community forums available on company websites, services that met their expectations and needs, whether these types of forums complied with the various legislative and other frameworks which they were subject to, and whether companies were attempting, through the use of forums, to free themselves from obligations that should fall under customer service.

⁹⁶ J. BYRNE and V. O'ROURKE, *Evaluating the influence of online forums*, *Op. cit.*, Note 4.

⁹⁷ Imène BEN YAHIA, Denis GUIOT, *Effets de la participation de l'entreprise dans les activités de sa communauté virtuelle de support sur sa relation avec les membres*, Cairn. info [Online] https://www.cairn.info/article_p.php?ID_ARTICLE=MAV_032_0113

First, note that some of our starting assumptions could not be confirmed with certainty. One of them consisted in consumers putting greater trust in forum user opinions if they were found on business forums. If there are any indications in this respect, they do not appear to be adequate, without a solidly based confirmation, so that it may be concluded that users are systematically expecting accurate information from other users and that companies should therefore be held automatically liable for any content on their forum.

However, our visit of the various forums nonetheless revealed that companies are not making a real effort to warn visitors or users coming to their forums with the impression that the forum content is checked by the company.

We had also determined that we would be unable to find cases involving consumers who had encountered major problems following their use of a forum or after following advice they were given there. What we found on the Internet was anecdotal, and our survey among the players involved (businesses and government monitoring agencies) did not enable us to obtain any specific information on the number and type of complaints made by consumers; from the few responses received, we understood that complaints in this regard were virtually non-existent. Our concerns in this respect therefore remain, at this stage, largely theoretical.

With respect to the applicable frameworks, we quickly concluded that the practices that were developed appeared fairly consistent; the forums that we reviewed were all built on basically similar models, and the contracts stating the respective obligations of the company and forum users basically contain the same types of clauses from one company to another. However, there is no established standard to guide companies in setting up a community forum, despite the guides that may have been developed by some authors.⁹⁸

Since the issue of disclosure to users on the reliability of the information they were likely to find on the forum concerned us, we looked at companies' representations in this regard, as well as those pertaining to the companies' liability regarding such content.

As previously mentioned, companies do not make major efforts to caution visitors. The forum home page generally presents the mission of the pages in a minimal, and of course positive, manner; the representations may merely consist of "Find answers." Our review of Quebec and Ontario consumer protection laws as well as the Competition Act lead us to believe that these minimal representations may be considered misleading. That being said, there are still many unanswered questions as to the types of legal action that could be taken regarding the potential "victims" of such representations, the damages that can be claimed, etc. In short, we consider the possible remedies on this basis to be highly theoretical. And there is an additional problem: forum users will frequently come to a forum indirectly (meaning, without going through the forum home page): someone who has encountered a problem with a product or service may tend to search for a solution using key words rather than go to the company's website to see whether it has a forum, whether he finds a reference to his problem, etc. Similarly, a consumer who goes to the company's website may well use the site's search feature, which will take him directly to the relevant page of the forum rather than the forum home page.

With respect to the actual content, i.e. posts by users, we noted that companies generally mention in the forum terms of use that they are not liable for any comments posted on the

⁹⁸ For instance, the Université de Montréal's *Centre de recherche en droit public* devotes a section of its *Guide des droits sur Internet* to discussion forums, and presents advice and warnings for moderators. CRDP, *Guide des droits sur Internet*, *Op. cit.*, Note 7.

forum. Consumer protection laws (though they may only be invoked if the user wishing to invoke the company's liability is bound to the company through a contract) and to some extent the Civil Code, prohibit this type of disclaimer.

However, it would be plausible to believe that the messages or answers posted by a user who states being associated with the company or acts on its behalf as a moderator will be considered by users as coming from the company (or at the very least, being approved by it). It is still difficult to draw any conclusions, at this stage, on the direction courts would take if a user who suffered an injury as a result of a comment posted on a forum were to take legal action.

Of course, the opinions provided by certain users associated with the company as employees, for instance, indicating that their answer is only given on a personal basis and does not bind the company, help clarify the situation for someone reading the response. However, this practice is extremely uncommon.

We did not find any legislation or decision in Canada specifically dealing with the issue of forum administrator liability. The widespread use of clauses through which companies disclaim any liability for the content posted on their forums (some companies state "by users" – which include, unless otherwise indicated, the moderators, others mention that they are also not liable for the content posted by the moderators; only one of the forums reviewed said it was liable for the content posted by its moderators) clearly reflects, however, the legal status of forum administrators in the U.S. Legislation and jurisprudence release the administrator from any liability regarding the content posted by a third party on a site that gives access to such content, except for the one over which the administrator would have direct control. And it has been well established in jurisprudence that an administrator has no legal obligation to control the content.

With respect to privacy issues, we noted a certain number of troubling facts during the course of our research: besides the consent obtained for the collection and sharing of personal information based on vague clauses, the fact that many companies do not consider it important to notify forum users of changes, even major ones, which they may make to their privacy or confidentiality policy appears to us to contravene both the spirit and the letter of the Personal Information Protection and Electronic Documents Act.

Lastly, the fact that all the companies require users to grant them very broad licences through their membership contract appears excessive to us.

Are community forums hosted on business websites adequately monitored?

Our conclusions in this respect are that existing legislative frameworks, despite the fact of applying to some of the issues that may arise with forums, at best have a shaky application, and the available remedies under the various applicable laws are clearly not suited to this type of service that meets and is suitable for a contemporary communications approach.

Our various observations led us to draw up a number of recommendations, some of which involve forum moderation. In fact, based on our observations, moderating may be one of the means through which several problems can be avoided that users are likely to encounter on a forum, including the issue of user expectations and of the company's liability. Forum moderation should ensure, in our opinion, that the information that is provided is accurate and complete. For the sake of the users and the company, someone who is on a business forum must be assured that their question will not go unanswered, that the proposed answers have been confirmed, etc.

The other important element which our recommendations address is disclosure, namely, disclosure related to moderation as well as the type of forums and their content. The company must make sure that a user who comes to a forum through the home page as well as a user taken to one of the forum pages by a search engine will be given important information on the forum in keeping with their expectations.

Our study led us to draw up several recommendations, mainly intended for regulatory authorities and companies. They are similar, on several points, with some of the recommendations which the Internet Rights Forum (*Forum des droits de l'Internet*) drew up in 2003 as part of a review of the basic principles of liability law and liability of Internet stakeholders (*Principes généraux du droit de la responsabilité et responsabilité des acteurs de l'internet*), pertaining to forums:

[TRANSLATION] 1) *Adopt and post clear participation charters to incite compliance with existing legislation, respect of others' reputation and courtesy. An example of a discussion forum users' charter is provided by the Internet Rights Forum. The charter will also serve to recall the forum's operating rules. [...]*

3) *Indicate how moderating is to be done.*

4) *Observe a fast turnaround time for subsequent moderation, basically after abuse has been reported;*

5) *Do not take ownership of the posts, as these belong to their authors;*⁹⁹

To conclude, are companies considering replacing customer service with this type of forum in order to be relieved of the responsibility of dealing directly with consumers and have volunteers attempt to resolve the problems they may encounter? Forums and moderation will definitely entail costs for companies,¹⁰⁰ and some companies may wrongly believe that forums can be an alternative.

For instance, Public Mobile states the following on its website: "We don't have call centres. Instead, we have an awesome online Community where you can get answers to your questions 24/7."¹⁰¹

Despite some advantages presented by community forums, we find that such a practice (which apparently appears isolated) would not be a desirable. Fortunately, on this point, marketing experts appear to agree with us.

[TRANSLATION] *Adopting a community support system will therefore be all the more useful when products and services have sufficient affinity to develop a community of experts. Also, service must be perceived from the outset as a way to enhance the customer relationship and customer engagement in conjunction with brand customer service. Setting up this type of project must*

⁹⁹ Valérie SÉDALLIAN, *Principes généraux du droit de la responsabilité et responsabilité des acteurs de l'internet*, France, [date unknown]. [Online] <http://eduscol.education.fr/chrqt/responsabilite-acteurs-internet.pdf> (Viewed on March 24, 2018).

¹⁰⁰ It would probably be interesting to examine the financial issues related to business forums. However, this aspect was beyond the scope of our study. Furthermore, studying this issue may be complicated by the fact that the data will not be easily accessible and companies do not necessarily want to address this aspect.

¹⁰¹ PUBLIC MOBILE, Canada, date unknown. [Online] <https://www.publicmobile.ca/en/bc/> (Viewed on April 20, 2018).

*also include ways to benefit from it beyond a mere technological gadget. In terms of customer relations, community chat is thus more of a “vitamin supplement” than a “meal replacement.”*¹⁰²

¹⁰² V. PLACER, *Les consommateurs vont-ils remplacer les services clients?* Op. cit. Note 33.

Recommendations

Regarding moderation

- Whereas online business forums are increasingly widespread;
- Whereas consumers are increasingly using community forums to search for and share information;
- Whereas the speed at which users can obtain answers is one of the forums' main advantages;
- Whereas studies agree that moderation is important for the efficiency and success of a business forum;
- Whereas companies must make sure that their forums are moderated to ensure a minimum level of rigour in posts and instill trust in users;
- Whereas companies must make sure that their forums are moderated to ensure that no questions are unanswered;
- Whereas companies offer comprehensive moderation services to businesses that do not have the resources to do so themselves;
- Whereas a moderator who is associated with the company will reinforce the user's relationship and loyalty toward said company;
- Whereas the company may not want the moderator's representations to be attributed to it;
- Whereas users must be informed of the type and scope of moderation done on the forum;

Union des consommateurs is recommending that companies

1. Make sure that their forum is quickly and efficiently moderated;
2. Clearly indicate the type of moderation that is being done, the time when it is done, its type and scope;
3. Require a moderator whose representations, in whole or in part, should not be identified with those of the company to indicate it clearly in the post or posts on the forum;

Regarding privacy

- Whereas online business forums are likely to raise questions regarding invasions of privacy;
- Whereas users must provide informed consent before any collection or use of their personal information;
- Whereas prior consent to policies on the collection or use of personal information that will be unilaterally modified without users being informed of the changes that are made is counter to the principle of prior consent, which is one of the foundations of the Personal Information Protection and Electronic Documents Act;
- Whereas privacy policies are often found in long and complex documents which consumers must accept as a whole;
- Whereas acceptance of privacy policies is mandatory when subscribing to a forum;
- Whereas it is unlikely that when a consumer subscribes to a forum, he will read all the documents in full or will understand their scope, and will accept the contents based on full knowledge of the facts by checking the box signifying his acceptance;
- Whereas some companies share information on their forum users with their business or other partners;

Union des consommateurs is recommending that companies

4. Limit, on their website community forums, the collection, use and communication of personal information to what is strictly needed for the forum's use and proper operation;
5. Provide in a timely manner to consumers all the necessary information for them to provide informed consent to the collection and use of the information they are being asked to provide or for which they are being asked to authorize access;
6. Provide such information in short and understandable documents;
7. Inform subscribers of any changes to confidentiality policies so that they find out about the type and scope of the changes that have been made or are being proposed;
8. Enable subscribers who do not accept them to refuse to have their personal information used under the new policies.

Regarding copyright

- Whereas companies impose on their forum subscribers virtually limitless licence concessions on the content of the posts;
- Whereas the information related to the licences which users grant through mass acceptance of the forum terms of use is not readily available;
- Whereas this way of obtaining such a concession appears somewhat excessive and does not seem to observe the spirit of the law;

Union des consommateurs is recommending that companies

9. Limit the scope of the licences they are asking forum subscribers to grant them;
10. Clearly indicate to users when they subscribe to the forum, for the purpose of informed and explicit acceptance, the content and scope of said licences in short, clear and easily understandable texts.

Regarding disclosure to consumers

- Whereas the forum contracts and website terms of use contain forbidden and other clauses likely to lead consumers to believe that they have fewer rights than under applicable laws in Canada;
- Whereas the various documents which users must accept when subscribing to a forum include clauses that are not easy to understand by the average consumer;
- Whereas the extent to which the posts published by users are associated with the company (employees, moderators, and others) engage the company's liability;
- Whereas the advertising which some businesses do regarding their forums may mislead consumers as to the type of help they can find there;
- Whereas a user who comes to a forum does not necessarily get there through the home page;

Union des consommateurs is recommending that companies

11. Make sure their forums are presented realistically, so as to not create any false expectations among users;
12. Provide clear, accurate and easily accessible information on their liability related to the posts on the forum by the various types of users;
13. Make sure that these announcements and warnings are accessible to all users, whether they access the forum by the home page or not;
14. Provide the important information contained in the various contracts which forum subscribers must agree to in the form of brief, clear and easily understandable texts so that consumers are able to provide informed consent when registering in the forum;

UC is recommending that provincial consumer protection agencies

15. Draw up standards to guide companies so that they provide forum users with all the relevant information (e.g. liability, moderation) in a clear and easily accessible manner;
16. Monitor the implementation of these standards and take action in the event of non-compliance;

UC is recommending that the Office of the Privacy Commissioner

17. Draw up standards which business forums must observe in order to protect the privacy of forum users;
18. Monitor the application of these standards and of the law and take action against any violations.

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APPENDIX 1: Questionnaire à l'attention des organismes de réglementation

Bonjour,

Union des consommateurs réalise actuellement un projet de recherche sur les forums communautaires sur les sites d'entreprise. Le projet, intitulé *Peut-on se fier aux forums d'entreprises?* est financé par le Bureau de la consommation d'Innovation, Sciences et Développement économique Canada. À travers ce projet de recherche, nous cherchons à examiner les avantages et inconvénients de ces forums, mais surtout nous souhaitons effectuer une étude détaillée de la conformité de leurs pratiques en regard de leurs engagements en matière de service à la clientèle, de leurs obligations en matière de représentations, de protection de la vie privée et de droit d'auteur. Nous cherchons à vérifier si ces forums présentent une information aussi exacte et exhaustive que la documentation officielle de l'entreprise, si l'information présentée par la communauté est validée par des modérateurs, si les forums respectent toutes les obligations en matière de protection du consommateur, de protection de la vie privée, etc.

Afin de compléter notre étude, nous aimerions savoir si vous avez reçu des plaintes concernant des forums présents sur des sites d'entreprises. Si oui, combien et de quelle nature ? Le cas échéant, nous aimerions savoir si les problèmes qui ont pu vous être rapportés vous ont amené à envisager de possibles solutions afin d'assainir les pratiques du marché?

Merci d'avance pour votre collaboration à notre étude,
Au plaisir d'avoir de vos nouvelles,

Sophie Roussin
Union des consommateurs

APPENDIX 2: Questionnaire for Regulatory Bodies – English Version

Hi,

Union des consommateurs is currently conducting a research project on community forums on corporate sites. The project, entitled *Peut-on se fier aux forums d'entreprises?* (Can business forums be trusted?) is funded by Innovation, Science and Economic Development Canada's Office of Consumer Affairs. Through this research project, we seek to examine the advantages and disadvantages of these forums, but above all we want to make a detailed study of the conformity of their practices with respect to their commitments in terms of customer service, representations, privacy and copyright. We seek to verify whether the information these forums provide is as accurate and comprehensive as the official documentation issued by the company, whether the information presented by the community is validated by moderators, whether the forums conform to the enterprises obligations regarding consumer protection, privacy, and so on.

In order to complete our study, we would like to know if you received any complaints about business forums. If so, how much and what about? We would also like to know if consumer complaints had you examine possible solutions in order to clean up market's practices?

Thank you in advance for your collaboration in our study,
Looking forward to hearing from you,

Sophie Roussin
Union des consommateurs

APPENDIX 3: Questionnaire à l'attention des entreprises – version française

Bonjour,

Union des consommateurs réalise actuellement un projet de recherche sur les forums communautaires des entreprises. Le projet, intitulé *Peut-on se fier aux forums d'entreprises?* est financé par le Bureau de la consommation d'Innovation, Sciences et Développement économique Canada. À travers ce projet de recherche, nous cherchons à examiner les avantages et inconvénients de ces forums, mais surtout nous souhaitons effectuer une étude détaillée de la conformité de leurs pratiques en regard de leurs engagements en matière de service à la clientèle, de leurs obligations en matière de représentations, de protection de la vie privée et de droit d'auteur. Nous cherchons à vérifier si ces forums présentent une information aussi exacte et exhaustive que la documentation officielle de l'entreprise, si l'information présentée par la communauté est validée par des modérateurs, si les forums respectent toutes les obligations en matière de protection du consommateur, de protection de la vie privée, etc.

Nous avons constaté que vous disposez d'un forum communautaire intégré au site Web de votre entreprise. Afin de compléter notre étude, nous aimerions savoir si votre entreprise a déjà reçu des plaintes (ton des messages, exactitude des conseils, conséquences négatives du suivi d'un conseil, manque de réactivité des modérateurs, etc.) par rapport à ce forum ? Si oui, combien et de quelle nature ?

Le cas échéant, nous aimerions savoir si les problèmes qui ont pu vous être rapportés vous ont amené à envisager de possibles solutions ou correctifs?

Est-ce que l'on vous rapporte régulièrement des propos, conseils ou autres qui méritent d'être effacés ou corrigés, pour toutes sortes de raisons? Quel est votre temps de réaction dans ces cas?

Effectuez-vous une veille régulière des propos publiés sur votre forum ? À quelle fréquence?

Merci d'avance pour votre collaboration à notre étude.
Au plaisir d'avoir de vos nouvelles.

Sophie Roussin
Union des consommateurs

ANNEXE 4: Questionnaire for Businesses – English Version

Hi,

Union des consommateurs is currently conducting a research project on community forums on corporate sites. The project, entitled *Peut-on se fier aux forums d'entreprises?* (Can business forums be trusted?) is funded by Innovation, Science and Economic Development Canada's Office of Consumer Affairs. Through this research project, we seek to examine the advantages and disadvantages of these forums, but above all we want to make a detailed study of the conformity of their practices with respect to their commitments in terms of customer service, representations, privacy and copyright. We seek to verify whether the information these forums provide is as accurate and comprehensive as the official documentation issued by the company, whether the information presented by the community is validated by moderators, whether the forums conform to the enterprises obligations regarding consumer protection, privacy, and so on.

We have noticed that your company's website gives access to a community forum. In order to complete our study, we would like to know if you ever received complaints (tone of messages, accuracy of advice, negative consequences of follow-up advice, lack of responsiveness of moderators, etc.) about that forum? If so, how much and what was the expressed concern?

If any, we would like to know if the problems that have been reported to you have led you to consider or apply possible solutions or corrective?

Do you regularly hear about posts that would deserve to be erased, for all kinds of reasons? What is your reaction time in these cases?

Do you regularly monitor the comments published on your forum? How often?

Thank you in advance for your collaboration in our study.
Looking forward to hearing from you.

Sophie Roussin
Union des consommateurs