

'Yelp laws' aim to halt online review reprisals

September 28 2014, by Rob Lever

It's now law in California: consumers have a right to post negative reviews on Yelp and other websites, without fear of reprisals from companies they write about.

And a similar effort is under way in Washington to pass a national law to ensure the same rights.

The initiative comes in the wake of a handful of high-profile cases in which companies stung by bad reviews sought to take matters in their own hands, through fines or legal actions.

In one case, the Internet retailer KlearGear billed a customer \$350 for violating an "anti-disparagement" clause of its online terms, and when the buyer refused to pay, reported the incident to a credit agency.

A New York hotel meanwhile was charging customers \$500 for each negative review before rescinding the policy in the face of a backlash.

US Representative Eric Swalwell cited the cases when he introduced a bill this month to make it illegal for businesses to penalize customers who write negative reviews on online review sites such as Yelp or TripAdvisor.

The bill, co-sponsored by fellow California congressman Brad Sherman, was motivated by several examples of companies attempting to dissuade people from writing critical reviews with so-called non-disparagement clauses.

Free speech, free contracts?

"No country that values [free speech](#) would allow customers to be penalized for writing an honest review," said Swalwell as he introduced the "Consumer Review Freedom Act" which would make the non-disparagement clauses unenforceable.

Robert Weissman, president of the activist group Public Citizen, endorsed the proposal, saying that "hidden contract terms should not be used to bully consumers into silence."

Eric Goldman, director of the High Tech Law Institute at Santa Clara University and board member of the Public Participation Project, an online free speech group, said the incidence of reprisals for bad reviews appears to be growing.

"We shouldn't need these kinds of laws," Goldman told AFP.

"But despite the fact that gags on consumers reviews shouldn't be prevalent, they are increasingly so. The rise of consumer reviews as a major source of information has put pressure on businesses to manage that and shape that."

Goldman argued that consumer reviews play an increasingly important part of the online environment and help consumers make informed choices.

"Anything we can do to help consumer reviews grow organically is a good thing," he said.

Eugene Volokh, a law professor at University of California-Los Angeles specializing in free speech issues, said the debate is on contractual rather than constitutional issues because "you can waive your right to free

speech in a contract."

Volokh said consumer advocates have a valid point that some online terms are hidden so that people don't see or understand them.

But he said businesses have justifiably complained that some consumers seek to use reviews or threats of reviews to extort favorable treatment.

"I'm not sure what the right answer is," Volokh told AFP. "Generally speaking, people should be free to enter these contracts. But there is a strong case for pre-empting a contract (where the terms) are buried in fine print."

Volokh said the California law was written with vague language which could, if interpreted in a certain way, prevent a business from suing for libel. But he said the federal proposal is crafted more precisely.

Yelp said it was pleased with the passage of the law in California—and hopes other jurisdictions follow.

"From time to time, we hear about businesses that are so afraid of what their customers might say about them that they sneak clauses into consumer contracts designed to forbid their customers from saying anything bad about them on sites like Yelp," the company said in a blog post.

"Some of these contracts even threaten fines or legal action. These types of non-disparagement contracts not only seek to intimidate potential reviewers away from sharing their honest experiences online, but also threaten to deprive the public of useful consumer information."

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