

Introduction

There was a time when merchants and consumers would meet in person to do business. They would discuss the terms, assess the trustworthiness and character of their contracting partners, and conclude the deal with a handshake. This handshake was more than a kind gesture. It helped to reassure both parties that the other side was committed to the deal and would ensure correction of any problems that might arise. Reputations and respect mattered most because individuals worked in the same community and knew each other's friends and business partners. That handshake sealed the deal. It was a personal trustmark.

Those days are gone. We rarely do deals on a handshake anymore. It is no longer realistic for us to insist upon face-to-face (F2F) meetings for all of our transactions in a digitized society. We text, Skype, FaceTime, and send e-mails. We cannot shake the other party's hand in person because so many of our transactions are now conducted online. Consumers increasingly turn to the Internet for their buying needs, both large and small. A physical handshake is simply impractical in these business-to-consumer (B2C) transactions. "Buying local" may be in vogue for farmers' markets and hip restaurants, but it is impractical for consumers shifting into the online world.

For consumers, e-commerce offers an enticing universe of possible connections. However, it also creates significant disconnections. There is little question that the Internet has become a gateway to an ever-expanding and globalized e-marketplace for consumer goods and services. It gives businesses access to multitudes of customers and introduces consumers to companies they would never otherwise encounter in the physical world. Nonetheless, the Internet has generated challenges for consumers as well by enabling some companies to easily hide from responsibility behind the anonymity and jurisdictional confusion of the Internet. Customer service representatives operating wholly online do not have to look customers in the eye when refusing to provide adequate remedies when purchases go awry. These anonymous representatives also may feel little to no loyalty to customers that are replaceable by a seemingly bottomless barrel of buyers unconstrained by geographic limitations.

The Internet also gives businesses an advantage in crafting and controlling the terms of consumer contracts. Businesses have access to reams of information across millions of transactions, and they have the power to set the terms of the exchange and insert their own fine print. They know that consumers do not read contracts. This is especially true when they are purchasing online. Some unscrupulous merchants can use this information and experience to their advantage, perhaps leading

their buyers toward resolutions that are less advantageous, or even delaying events beyond filing windows to ensure the buyers lose their eligibility to register a claim.

As repeat players, merchants also enjoy an advantage in understanding all the precedent, policies, and procedural wrinkles in the systems they use to resolve issues with their buyers. Merchants may encounter hundreds, if not thousands, of disputes every month. They go through the resolution process over and over again, and they learn the ins and outs of typical and atypical cases. Consumers, on the other hand, probably encounter a resolution process once or twice every couple of years. Furthermore, when businesses unilaterally select redress processes such as arbitration, consumers rarely have any say in how the process works or any assurance that their interests will be protected.

These issues are further compounded because merchants are often reluctant to talk about the possibility of eventual problems at the time of the transaction. Merchants may fear that inklings of potential problems will dissuade buyers from completing their purchases. Furthermore, when a problem does eventually arise, information about contractually prescribed resolution processes may be buried in the fine print. Some businesses may also require complex procedural steps in order to dissuade consumers from pursuing redress. Also, merchants may be prone to appease the small number of customers who are determined enough to proactively seek redress in order to quiet these complainers without fixing the fundamental problems. This leaves a much larger pool of silent sufferers who are uninformed and unsatisfied.

In spite of these challenges, the Internet offers many structural advantages to consumers. The Internet enables consumers to share information in unprecedented ways. Consumers increasingly air their complaints on social media and review websites, helping other consumers identify bad actors so that other buyers can shop elsewhere. Suddenly, businesses have a huge stake in improving and protecting their reputations online. If consumers besmirch a business with a bad review, it may seriously harm that business's future prospects. Having a good reputation is now viewed as an essential asset that online merchants must carefully safeguard. Businesses that are successful in improving and protecting their reputations are the ones who grow and succeed.

This creates a strong incentive for merchants to be proactive about resolving buyer problems. If a business does not address difficulties encountered by their customers, word spreads quickly online. This puts buyers and sellers on the same side when it comes to quickly and effectively solving problems. Online platforms truly shine when they enable buyers and sellers to communicate and collaborate on an unprecedented scale. Whenever an issue arises, the buyer can immediately reach out to the seller and begin an online communication focused on getting the problem addressed. When parties reach a solution, they can immediately close the dispute and move on to the next transaction. This kind of instant collaboration, unconstrained by time and geography, would not be possible without the Internet.

In the past, debates about consumer protection have seemed zero-sum, with any advantage on one side seemingly connected to an equivalent disadvantage on

the other. Business and consumer advocates have felt that they have little common ground. Wise businesses, however, now realize that building fast and fair consumer redress is extremely important for growing their customer base. In-depth analysis of large data sets in e-commerce demonstrates that effective resolution systems are enormously beneficial to businesses because they reduce costs of customer support and legal liability, while at the same time increasing customer loyalty. This means that the long-term economic benefits of effective resolution programs far outweigh the short-term costs associated with the programs' implementation.

The time is thus ripe for a new approach to consumer redress: one that addresses the shortcomings in current consumer protection systems and revives the sense of responsibility that underscored the "old handshake" of yore. We must leverage the power of the Internet to expand and equalize access to consumer redress. Fortunately, we have a model for how to achieve this. It is called online dispute resolution (ODR), and it marries information and communications technologies to the offline processes of negotiation, mediation, and arbitration—opening the door to a *New Handshake* for the Internet age.

This *New Handshake* is especially needed for the resolution of low-dollar claims, such as those in most B2C contexts. Consumers will inevitably lose trust in online marketplaces that lack reasonable remedy systems for these claims. ODR creates new hope for these consumers by operating swiftly and independently of the courts, eliminating procedural complexities and choice of law concerns. Furthermore, resolution processes can be integrated directly into the websites where transactions take place. ODR systems lower the costs and burdens of pursuing purchase complaints. Consumers who experience purchase problems can get easy access to a dispute resolution process on the same site where they made the purchase. They are not stuck searching for contract terms they likely never read and even more likely lost or failed to retain. This allows all consumers, regardless of power and resources, to feel comfortable seeking assistance.

Online resolution systems also create transparency around seller behavior and raise visibility with outside auditors who may then police market fairness. These regulators may give notice regarding purchase problems, thereby empowering consumers to "vote with their feet" by walking away from underperforming merchants. This transparency is important for addressing the current cynicism in the marketplace. Indeed, shedding light on purchase problems and facilitating resolution of these problems will finally address the structural limitations that have hampered traditional regulatory and legal approaches to online consumer protection.

We do not need to envision these systems from scratch. There have already been several global ODR systems that have tested a variety of approaches and found which work best. A prime example is eBay's ODR system. As the first truly global online e-commerce marketplace, eBay realized it had to provide fast and fair resolutions to all its users, and in response created the largest ODR system in the world to address the challenges consumers face when transacting online. This system has now handled hundreds of millions of disputes, serving as a powerful laboratory for online dispute resolution system design.

It is essential to lay the groundwork for an Internet-wide ODR system that can streamline global e-commerce, generating win-win outcomes for companies and consumers. This new system should incorporate reputation management, transparency, and cutting-edge resolution software to level the playing field and restore consumer confidence. It will be a major step forward in building a new justice system—one that is custom built for the Internet and able to provide fast and fair resolutions to any consumer, no matter in which legal jurisdiction he or she currently resides.

This is not to say that all ODR systems are inherently fair or that shifting from regulatory and judicial resolution to ODR systems will be easy. There are many continuing challenges to keep in mind as these systems are rolled out: ensuring effective enforcement, supporting consolidated and mass resolutions, addressing predispute binding consumer systems, and preserving judicial fora for certain policy-related claims. However, if we can find answers to these questions, then ODR may move us toward a future where universal access to fast and fair redress for online consumers is finally possible. This is vital to fill a void in consumer protection.

The Goal of This Book

The New Handshake is designed to help ODR systems designers, online merchants, payment providers, marketplaces (both tangible goods and services), customer experience designers, lawyers, judges, students, consumer advocates, and policy-makers envision and build the next generation of consumer protection. The aim of the book is to provide a context and blueprint for a next-generation consumer-focused redress process that will benefit both consumers and merchants, as well as to help update consumer protection programs to meet the needs and expectations of modern consumers.

The Plan of This Book

This book describes the challenges facing consumers in e-commerce, discusses current strategies for addressing those challenges, details new approaches coming out of e-commerce and ODR, and then offers a design for a consumer-focused global online redress system to achieve those ends. The book then applies this design to several case studies and concludes with a recommended agenda for action.

Part 1 focuses on where we are now. It examines the lack of consumer remedies and customer care in B2C e-commerce. It considers why consumers rarely pursue remedies on purchase complaints and explains how this dynamic undermines economic efficiency and consumer trust. It also details how these market dynamics foster contractual discrimination and enable companies to avoid consumer protection regulations. It then examines what consumers really want from

their online redress processes. Finally, it analyzes the lessons learned from eBay's efforts to bolster consumer trust through the creation of a comprehensive system for resolving disputes between buyers and sellers.

Part 2 then looks at the need for resolutions from both the merchant and consumer advocacy perspectives. It lays out the business case for merchant investments in resolution processes, calculating the value of investments in resolutions, focusing especially on reducing costs and increasing future transaction volume. It then discusses how resolution data transparency can benefit consumer protection authorities, consumer advocacy organizations, and policymakers. Finally, it outlines ethical standards that must undergird any process that hopes to be efficient and effective over the long term.

Part 3 distills these observations into a specific set of design criteria. It examines the power imbalances an effective systems design must address to be truly fast and fair. It then details a specific proposed design for a global e-commerce ODR that addresses the challenges facing consumers and merchants in B2C transactions. This part then presents a series of next steps toward making this proposed system a reality and risk factors that could cause the design to fail to achieve its objectives. It then applies the proposed design to a variety of case studies to illustrate how it will work in practice. In conclusion, the book examines what tools and technologies may emerge in the future to make the system more accessible and effective over time.