

What is Online Dispute Resolution? A Guide for Merchants (brochure title)

What is Online Dispute Resolution?

Definition

Online Dispute Resolution (ODR) uses alternative dispute resolution processes to resolve a claim or dispute. Online Dispute Resolution can be used for disputes arising from an online, e-commerce transaction, or disputes arising from an issue not involving the Internet, called an “offline” dispute. Dispute Resolution is an alternative to the traditional legal process, which usually involves a court, judge, and possibly a jury to decide the dispute.

Online Dispute Resolution can involve the parties in mediation, arbitration, and negotiation. The parties may use the Internet and web-based technology in a variety of ways. Online Dispute Resolution can be done entirely on the Internet, or “online,” through email, videoconferencing, or both. The parties can also meet in person, or “off-line.” Sometimes, combinations of “online” and “off-line” methods are used in Online Dispute Resolution.

Some e-commerce companies provide Online Dispute Resolution as a service to customers. A growing number of organizations exist that provide Online Dispute Resolution services for consumers and e-commerce businesses. These organizations are called Online Dispute Resolution Providers.

Why use Online Dispute Resolution?

~~NOTE: I did some online research and came up with little statistical information. Most likely something, better out there.~~

E-commerce continues to grow. The U.S. Department of Commerce estimates approximately 304 million people worldwide have Internet access and roughly, half of those users are not ~~be~~ from North America. Forrester Research estimates that in the first quarter of 2000, U.S. retail e-commerce sales reached \$5.3 billion. The United States Federal Trade Commission estimates 30% of consumer complaints involve online disputes and 12% of these complaints involve an international transaction.

~~NOTE: I got this stat from the recent D.C. conference, but could not remember the person who said it.~~

Online Dispute Resolution has gained popularity in resolving e-commerce disputes among businesses and consumers. ~~Another Stat here????~~

Advantages of Online Dispute Resolution include:

- *Cost* – Online Dispute Resolution is often less expensive than the traditional legal process

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- *Efficiency* – Online Dispute Resolution can often resolve the dispute quickly
- *Participation and Control* – parties using Online Dispute Resolution must work with each other to resolve the dispute and often have more control of the outcome of the dispute. This process is very likely to be preferred by many Internet users considering the autonomous nature of the Internet and e-commerce.
- *Flexibility* – parties using Online Dispute Resolution can have more flexibility than the traditional legal process
- *Geographic flexibility*-- Online Dispute Resolution can allow parties in different locations or countries to avoid the costs and inconveniences of travel. ~~This flexibility is key as the traditional legal process struggles with questions such as what laws apply when the parties are from different countries. Discuss “Safe Harbor” EU/US debate as an example??.~~
- *Reliability and trust* – Internet users want to trust online transactions and know a reliable dispute resolution process exists in the event of a dispute and encourage customers to frequent your website.

What are Online Dispute Resolution Providers?

~~NOTE: This overview could be shortened, but most merchants may be unclear or misunderstand the ADR methods below.~~

Online Dispute Resolution can take a number of different forms. Below is a brief description of the most common methods of Online Dispute Resolution.

Mediation

Mediation is a private, voluntary process where a neutral third-person mediator helps the parties discuss and try to resolve the dispute. The parties have the opportunity to present their issues, present evidence, and argue for their desired resolution. This process can be done entirely online with Internet technology such as email or videoconferencing, or the parties can physically meet in the same room. Some Online Dispute Resolution methods involve a combination of these methods.

Regardless of the mediation method, the mediator does not have the power to make a decision, but does work with the parties to set rules to assist the parties' ability to identify points and issues where the parties agree and disagree. With the parties' consent, the mediator may evaluate the parties' rights and suggest possible settlements. The only people who can resolve the dispute in mediation are the parties themselves.

If they reach agreement, the parties complete a written agreement that contains the specific details of the settlement. In most instances, this agreement can be enforced by a court.

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Arbitration

Arbitration is a private process where a third party makes a decision about the dispute after hearing arguments and looking at evidence. Arbitration is different from mediation because the neutral arbitrator has the authority to make a decision about the dispute. Compared to traditional litigation, arbitration is less formal, has fewer rules of evidence, and can usually be completed more quickly.

As with Online Dispute Resolution mediation, this process can be done entirely online with Internet technology such as email or videoconferencing, or the parties can physically meet in the same room.

Arbitration is either binding or non-binding. Not all countries permit their consumers to submit to binding arbitration. In binding arbitration, ~~the parties are obligated to follow~~ the arbitrator's decision, generally after confirmation by a court, has the effect of a final judgment of a court. In non-binding arbitration, the arbitrator's decision is advisory and not binding, but can be followed if both parties agree. The decision may also be submitted as evidence if there are further court proceedings with regard to the dispute.

The Arbitration process is similar to a trial, but different in that the parties do not have to follow trial rules of evidence and in ~~some~~most cases the arbitrator is not required to apply the governing law. After the hearing, the arbitrator issues a decision. Sometimes, but not always, the arbitrator writes an opinion or an explanation for the decision. A court can enforce the arbitrator's decision if the parties have agreed to binding arbitration. Only in rare cases can the arbitrator's decision be appealed or overturned.

Negotiation

Negotiation is a voluntary, usually informal process used by disputing parties to reach an agreement. Attorneys in the negotiation may represent the disputing parties. Negotiation is different from mediation in that there usually is no third-party neutral.

Online Dispute Resolution uses Internet technology for negotiation, such as email or videoconferencing, or the parties can physically meet in the same room. Some Online Dispute Resolution Providers help parties negotiate online through a process called "blind bidding." Blind bidding involves each party making a settlement bid unknown to the other party to a computer system. At certain times, the computer system combines each party's suggestion and announces a settlement amount to both parties.

Negotiation can involve a combination of these methods.

If we participate in Online Dispute Resolution, can we later file a lawsuit?

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In most instances, participation in a non-binding Online Dispute Resolution process does not prevent parties from later pursuing their case in court. Parties can use dispute resolution before or after they have filed a case in court. Binding arbitration, however, prevents the parties from later filing the same case in court.

Do we need an attorney to participate in Online Dispute Resolution?

In many instances, you do not need an attorney to participate in non-binding Online Dispute Resolution; in binding processes, it may be more important for the parties to have counsel. The role of an attorney in Online Dispute Resolution varies depending upon the nature of the dispute and type of Online Dispute Resolution the parties use.

What are things my company should look for in an Online Dispute Resolution Provider?

Currently there are no uniform standards or a formal monitoring system for Online Dispute Resolution methods. Online Dispute Resolution Providers are informally evaluated by their reputation. Some businesses have internal Online Dispute Resolution procedures and require customers use the internal process before consulting an Online Dispute Resolution Provider

When considering Online Dispute Resolution Provider, consider the following:

- What are the qualifications of the neutral, third party?
- Are the policies easily understood and found quickly?
- Is the Online Dispute Resolution Provider impartial, having no relationship with either party?
- Can you easily find the physical location, address, and phone number of the Online Dispute Resolution Provider?
- Is the Online Dispute Resolution accessible regarding different languages and accommodations for parties with disabilities?
- Is the confidentiality policy clear and fair?
- Is the cost less than traditional litigation methods?

~~To contribute to this discussion and learn more about these issues, see the information regarding the ABA E-commerce and ADR Task Force at the end of this brochure.~~

~~*If we participate in Online Dispute Resolution, can we later file a lawsuit?*~~

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The American Bar Association, Section of Dispute Resolution is one of the ABA's fastest growing Sections. One of the Section's objectives is providing information on Alternative Dispute Resolution processes to members, legislators, government departments, and the general public.

ABA E-Commerce and ADR Task Force

The ABA E-commerce and ADR Task Force provides a forum to discuss and debate issues facing Online Dispute Resolution and creates workable guidelines and standards that can be implemented by parties to online transactions and by Online Dispute Resolution Providers. For more information, or to participate in a survey regarding ODR and e-commerce issues, please contact the Task Force's website at: <http://www.law.washington.edu/ABA-eADR/home.html>

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<http://www.abanet.org/dispute>

For more information:

~~**NOTE:** Resources could be split into two or three categories. Some suggestions are below. Perhaps Neal would know of additional or more appropriate web sites.~~

ODR Standards and Jurisdiction issues

Global Cyberspace Jurisdiction Project
<http://www.abanet.org/buslaw/cyber/initiatives/jurisdiction.html>

General ADR resources

[ABA Task Force on E-commerce and ADR](http://www.law.washington.edu/ABA-eADR/home.html)
<http://www.law.washington.edu/ABA-eADR/home.html>

Conflict Resolution and Information Network
<http://www.CRInfo.org>

~~CPR Institute for Dispute Resolution~~
<http://www.cpradr.org>

[Electronic Commerce Dispute Resolution \(ECODIR\)](http://www.ecodir.org)
<http://www.ecodir.org>

Mediation Information and Resource Center
<http://www.mediate.com>

[U.S. Federal Trade Commission](http://www.econsumer.gov)
<http://www.econsumer.gov> and www.ftc.gov

Field Code Changed