

## Online Dispute Resolution

Soon after the advent of the Internet as a way of doing business we needed to come up with a way to settle disputes. This has become known as "Online Dispute Resolution" (ODR). ODR is a form of Alternate Dispute Resolution (ADR). Both ODR and ADR are used for resolution of disputes on a form other than the traditional means of the judicial processes (Federal, 2003). Much enthusiasm exists for ODR because of the apparent speed, flexibility and affordability relative to traditional litigation in the courts, plus their ability to alleviate pressure on an already overloaded court system. There are many Advantages to ODR. The court system is a very expensive and very slow. That is why e-commerce is turning to ODR to replace litigation. ADR is cheaper, faster and more predictable than litigation. Instead of both sides paying for armies of lawyers, a single mediator or arbitrator can be used. This is one of the reasons ODR is extreme low cost because the high expensive lawyers are not needed. For a set low cost the natural ODR person will work with both parties to try to resolve the dispute (Online resolution). While there may be a dispute, a cost effective and confidential mechanism is much less likely to cause the animosity requisite to motivate parties to permanently terminate business relationships (Global, 2003). Some of the most common ways to handle ODR is through mediation, arbitration, Non-binding dispute resolution techniques (Federal, 2003)

Mediation can be used in virtually any type of dispute where negotiation is possible. The mediation process involves the parties trying to resolve the dispute, their advisors and a neutral third party mediator. Mediation generally works best where the parties themselves participate in the mediation sessions. Whether or not lawyers participate depends on the nature of the dispute and the preferences of the parties.

For some types of mediation, the parties attend the sessions alone and consult their lawyers between sessions and before signing a final agreement, while in others the lawyers attend and play a major role in the discussions. While negotiations tend to focus on the opposing positions of the parties, mediation encourages parties to examine the underlying interests of their positions in the dispute. Moving from positions to interests often allows the parties to craft solutions that meet everyone's needs. If the mediation results in an agreement the mediator records the agreement. Mediation gives the parties control over settlement of their dispute.

Arbitration can be used in any situation where the parties are legally capable of entering into an agreement to arbitrate. Many supply, purchase, sale or transaction contracts contain a clause, which requires disputes to be decided by arbitration. The parties involved in the dispute, their lawyers (if they have them) and the Arbitrator or Panel of Arbitrators. Parties to an arbitration typically have input on who will hear the matter, and they can acquire the services of a third party neutral who has special expertise in the subject matter of their dispute (American)

There are many advantages of Arbitration. Arbitration provides a quick, effective way to get a final decision on a dispute. Arbitration is more flexible than litigation. The parties can give the Arbitrator the power to decide issues that a court would refuse to decide. They can also agree to limit or expand the powers of the arbitrator. The parties can choose an Arbitrator who understands their business rather than taking the luck of the draw with a judge. In areas where the courts are crowded, and long waits for trials occur, it will be possible to use the ODR solution to resolve a dispute in hours, instead of waiting months for a trial date (Nova, 2002).

There are also some disadvantages to ODR. The blind bidding web sites are limited and inflexible and can apply to only a single variable conflict, typically a monetary dispute (Federal, 2003). Online arbitration can be particularly risky; parties give up all

due process rights to further pursue the dispute (Roemer, 2000). Break down in communications from the non-verbal cues that are available in face-to-face transactions are eliminated. There is a greater likelihood for misunderstanding in online dispute resolution because the means of communication are narrower and more restrained. Another problem is if a judgment is placed in your favor the defendant may not provide restitution. As of yet there are no sheriffs to enforce the ODR judgment (Miller & Jentz, 2002 pg. 65).

There are many ways you can make a complaint. The Internet provides a promising technological platform for resolving differences (Hornsby, 1999). For example, sites like Cybersettle and ClickNSettle have software that allows a party to submit a settlement offer without revealing the amount to the other side. Once the parties are close enough to reach agreement, the technology kicks in to strike a deal. These automated techniques and impasse-breakers substitute in part for the assisted negotiation services traditionally performed by lawyers (Federal, 2003). The Internet also provides a virtual forum in which the resolution to a dispute can be reached in a less mechanical way (Hornsby, 1999).

Steps to take to make a complaint vary from ODR provider to ODR provider. I listed the steps here from (onlineresolution); REFERRAL - Deciding to Use The Electronic Courthouse:

The parties consent to resolve their dispute online. INTAKE - Getting Started: The parties' register with The Electronic Courthouse. CONTRACT - Agreeing on the Rules: The parties agree to a Retainer and Rules of Engagement. INPUT - Presenting your Case: The parties enter their secure workrooms to prepare submissions.

ANALYSIS - Preparing for Your Resolution: The parties complete their submissions and file them in the Resolution Room. OUTPUT - Addressing Special Needs: The parties customize the process as required to address translation, telecommunications and other special needs. RESOLUTION SESSION - Resolving your Dispute: The parties participate with their Resolution Professional in a stepped mediation-arbitration process. SETTLEMENT OR DECISION - Getting it in Writing: The parties resolve their dispute through mediation or arbitration, which results in a final and binding decision that is enforceable like a judgment of the court.

You have to be very careful when selecting an ODR provider. As you can see from the above provider onlineresolution, they state that the settlement or decision is legal binding and enforceable just as a court judgment. Another site I looked at flat out stated the decision is not legally binding. You also must be very careful on what buttons you push. And at SquareTrade, a quick click on an "I agree" button when the mediator proposes a solution becomes a legally binding contract, according to the site's lawyer. (Roemer, 2000)

Another point stated above from onlineresolution is in the intake process. Here is the real trick to start the ODR process. You need to get the defendant to answer your complaint. There are many no shows after the complaint was answered. Also getting both parties to the table can be a real problem in Cyberspace. Cybertribunal, a site founded by a University of Montreal law professor, closed because in over half of the 500 cases Cybertribunal attempted to resolve, the "defendant" never responded to email requests for information. (Roemer, 2002)

I went over the facts of just what ODR is. Basically ODR is just another form of ADR where you would use the forms of Negotiation, Mediation, and Arbitration. From there I gave the advantages and disadvantages. Bottom line there was to be careful. I

also spoke about steps to take to file a complaint. While ODR is still kind of new it has the potential to strengthen traditional ADR.