

## Online Dispute Resolution (ODR) and the Future of Law Beth Trent & Colin Rule

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Commercial transactions routinely circle the globe in milliseconds. But if a problem arises, resolutions are still largely tied to paper-bound, in-person processes. Business has gone virtual, but the resolution of disputes is still primarily a face-to-face endeavor. To stay relevant to the challenges presented by global business we need to adapt our resolution systems to the new realities of a networked world.

This is the focus of the field of Online Dispute Resolution, or ODR, the application of information and communications technology to the task of resolving disputes. ODR emerged as dispute resolution for online commerce in the late 1990s, but it has since expanded to most areas of civil redress. As ODR solutions have evolved they have increasingly been applied to higher value and more complex cases. Because ODR need not be tied to

precedent or jurisdiction, ODR solutions work the way the internet works: distributed, customized and scalable.

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The chief challenge faced by ODR is that the pace of change in the law is often frustratingly slow. It is tempting to explain this slowness by saying that lawyers are resistant to change, but the new generation of legal leaders are far more open to technology than their predecessors. The reality is that the law is intentionally designed to move slowly and deliberately. For the law, a system in which due process is essential, “creative disruption” (the mantra of technology innovators) is anathema.

The law, however, is not immune to change. Driven by pressures to provide greater access to justice, greater relevance to the needs of today's economy, and the growing importance of information security—the law is evolving to incorporate ODR because this solution is uniquely capable of keeping pace with those issues. As technology creates opportunity, it also poses new challenges, and technology is essential to addressing those challenges.

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For example, as technology has expanded our reach, legal systems around the world are facing extraordinary challenges in providing access to justice. Twenty years ago, the only entities with cross-border, international disputes were businesses, and most likely the average value of those disputes was in the hundreds of thousands, if not the millions, of dollars. Dispute resolution techniques were tailored to their needs, and current costs

reflect that. Today, any consumer with a Web browser can make a purchase anywhere in the world. Teenagers have commercial disputes that can touch several continents in a matter of milliseconds. The expensive and manual commercial arbitration processes of old won't work for these new kinds of disputes. While the rich can afford high priced lawyers, the poor—and, increasingly, the middle class—are left to fend for themselves as pro se litigants. We need a more streamlined and efficient form of dispute resolution that works for all types of cases and litigants. Over the next few years, ODR will help to meet that need, and in so doing, will expand access to fair and effective dispute resolution to populations that are currently underserved—not only facilitating the resolution of commercial disputes, but increasing access to justice across other realms of human existence.

The promise of ODR is driven home by the market's response to the U.S. Supreme Court's decision in the AT&T v. Concepcion case. Companies are rapidly incorporating mandatory arbitration into their consumer contracts, eliminating the prospect of class action or court based hearings in those cases. The benefits of this approach go beyond more efficient dispute resolution. As one major corporation and CPR member recently observed, its consumer arbitration program has improved its customer service across

the board because it enhances the company's ability to engage with a customer in the earliest stage of a dispute, and uses information gleaned from individual cases to identify and address issues for its consumers as a whole.

There is, however, a significant challenge embedded in taking this approach. Available arbitration mechanisms are still largely paper-based, manual processes. The minimum filing fee for these processes can be in excess of \$1,000. How is it that these consumer arbitration cases, many of which will be only for a couple hundred dollars, will be addressed through flows that cost more than a thousand dollars to initiate? The only answer is technology. Online arbitration can offer streamlined flows at a price point that can handle these kinds of low dollar value consumer cases while still providing a procedurally fair and unbiased process. Equally, important, as research by eBay and PayPal has shown, as ODR expands access to effective dispute resolution, it will enhance relationships and build customer loyalty.

These fundamentals drive adoption of ODR and fund creation of an ODR infrastructure, but that infrastructure is not limited to commercial uses. Governmental entities are embracing ODR to better serve citizens, courts are embracing ODR in areas such as family law, and ODR has the potential to

enable the law to leapfrog traditional impediments to access to justice in the same way that mobile phones have enabled people around the world to escape the limits of landlines.

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Likewise, ODR addresses information security--an issue that is critical to business success and to individual peace of mind. In today's networked world, the very network and innovation that drives business can also threaten business, and most critically, its customers. Every time an in-house lawyer sends a legal document via email, they are essentially engaging in ODR—only a very primitive and not necessarily secure version. Managing threats to the security of data when it is in the hand of others is on the mind of every general counsel and chief risk officer. Dispute resolvers in particular have a professional obligation to ensure the security of information shared in resolution processes. Effective, secure and formal ODR is the only way to ensure that confidential information remains protected, and that dispute resolution service providers meet their ethical obligations.

### **A Word to the Wise Inside-Counsel**

Through its unique ability to go beyond addressing challenges and to provide processes that better meet all users' needs, ODR has huge potential to transform every aspect of dispute resolution. This transformation will include all forms of dispute resolution, including the traditional forms of arbitration, and will introduce new approaches to dispute resolution as well. Technology-facilitated resolution will expand the reach and scope of dispute resolution across all types of modern business, large and small, for cases, large and small. Using ODR, will enable businesses to enhance dispute resolution for all customers, including consumers, and in so doing, enhance business itself.

We see a bright future for ODR. A future in which the value of ODR to all is so obvious that we will one day say "what took us so long?"

—By Beth Trent, International Institute for Conflict Prevention & Resolution Inc, and Colin Rule, Modria.com



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## ABOUT CPR

CPR is the only independent nonprofit organization whose mission is to help global business and their lawyers resolve commercial disputes more cost effectively and efficiently. For over 30 years, the legal community has trusted CPR to deliver superior arbitrators and mediators and innovative solutions to business conflict.

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