Mohamed S. Abdel Wahab, Ethan Katsh and Daniel Rainey (eds.)

_online dispute resolution: theory and practice_


(571 pages)

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The electronic technologies used in online dispute resolution (ODR) deal with the very essence of human society today. The fact is that many people "live" online. They shop online, date online, research through Google and use social media such as Facebook, Twitter and the like on a daily if not more frequent basis. Why not resolve disputes online as well?

eBay demonstrated the capacity of online dispute resolution to deal with millions of relatively low value disputes in an efficient and "just" manner. Changes in technologies, from the printing press to the telegraph, brought about immense and profound change. By mid-2013, over 2.7 billion people or nearly 40% of the world's population were Internet users.(2) We take technology for granted today yet compared to early computers, we need to remember that the processing speed has increased by a factor of 1,000+ in the last 10 years and algorithmic power has increased many times beyond that. These changes are already having a profound and irreversible impact on communication, dispute resolution and access to justice in general.

The first book on online dispute resolution (ODR), Ethan Katsh and Janet Rifkin's, _Online Dispute Resolution: Resolving Disputes in Cyberspace_ was published in 2001 and followed
shortly thereafter by Colin Rule's, *Online Dispute Resolution for Business* in 2002. Since that time there have been several other books and a proliferation of article literature.

But until now there has not been a comprehensive overview of the field. This has been remedied by the publication of *online dispute resolution: theory and practice*, which although subtitled "A Treatise on Technology and Dispute Resolution" is really a collection of well written essays documenting the extent to which ODR has developed and is developing worldwide. As stated in the introduction, "the idea for this book materialized when it became evident that the (sic) ODR has spawned a new culture of dispute resolution with new norms, schemes, and applications."

A simple working definition of ODR is dispute resolution which "takes advantage of the Internet, a resource that extends what we can do, where we can do and when we can do it." (3) Richard Susskind in his 2008 book, *The End of Lawyers? Rethinking the Nature of Legal Services* and his more recent, *Tomorrow's Lawyers* published in 2013 has called ODR a "disruptive technology". This is not necessarily an either "for," situation as ODR can enhance existing dispute resolution systems. We must also remember that in some situations, such as geographic distance, ODR may be the only feasible way of resolving disputes for some disputants.

In reading this book, Professor Susskind's meaning becomes very clear. The ODR field is vast and growing. The United Nations Commission on International Trade Law (UNCITRAL) working group III has been working on issues connected with the preparation of legal standards on ODR since 2010.(4)

The ODR Regulation (Regulation 524/2013) in the European Union (EU) came into force on 8 July 2013. The Regulation provides for the EU Commission to establish a free, interactive website through which parties can utilize alternative dispute resolution (ADR) in connection with online transactions. The use of ODR will require the consent of the parties to the transaction.

Member States in the EU must bring into force the legislation to comply with the ODR Regulation, which will, for the most part, take effect on January 9, 2016. Under the ODR Regulation, the European Commission will establish an ODR platform offering a single point of entry for consumers and traders seeking to resolve disputes out of court.

In order to be successful, the ODR platform must meet strict criteria to be among other things user-friendly, have the capacity to translate the complaint while providing strict confidentiality and protect personal data. This standard is at the forefront.

While much of the focus until quite recently has been on the use of ODR in E-Commerce related matters this is rapidly changing. In British Columbia (BC), Canada, "distance mediation" has been used successfully in family disputes and extensive guidelines have now been published.(5) The BC Civil Resolution Tribunal is scheduled to be in operation sometime in 2014 and will be an online tribunal replacing the existing small claims court system and also dealing with some types of strata/condominium disputes.(6) Finally, again in BC, there is also an online consumer dispute resolution pilot project in operation.(7)

ODR represents a worldwide shift in dispute resolution and this is reflected in this book, which is divided into an introduction and 24 chapters as follows:
Chapter 1 ODR: A Look At History - A Few Thoughts About The Present and Some Speculation About The Future.

Chapter 2 Online Dispute Resolution and The Development Of Theory.

Chapter 3 Lessons From Online Dispute Resolution For Dispute Systems Design.

Chapter 4 Artificial Intelligence and Online Dispute Resolution.

Chapter 5 Mobiles and ODR: Why We Should Care.


Chapter 7 ODR and E-Commerce.

Chapter 8 Online Dispute Resolution For Consumers - Online Dispute Resolution Methods Settling Business to Consumer Conflicts.

Chapter 9 ODR and Online Reputation Systems - Maintaining Trust and Accuracy Through Effective Redress.

Chapter 10 ODR and Culture.

Chapter 11 ODR and Interpersonal Trust.

Chapter 12 ODR And Government.

Chapter 13 ODR and Justice- An Evaluation Of Online Dispute Resolutions Interplay with Traditional Theories Of Justice.

Chapter 14 ODR and The Courts.

Chapter 15 Online Dispute Resolution And Ombudsmanship.

Chapter 16 ODR and e-Negotiation.

Chapter 17 e-Mediation.

Chapter 18 ODR and e-Arbitration - Trends and Challenges.

Chapter 19 ODR in North America.

Chapter 20 ODR in Europe.

Chapter 21 The Promise And Reality Of Online Dispute Resolution in Australia.

Chapter 22 Online Dispute Resolution in Asia.
Chapter 23 Online Dispute Resolution in Latin America - Challenges and Opportunities.

Chapter 24 Online Dispute Resolution for Africa.

From this exhaustive list it can be seen that this is not only an important book in its own right as an overview of "theory and practice", but also because it brings together in one place the most comprehensive writing on the subject. It provides a map that tells the reader where the field has been, and where it is likely going.

Of particular interest to all readers is the overview presented in Chapter 1 by Ethan Katsh who is one of the pioneers in the field. As well as providing a concise history of ODR to date, "his speculation about the future" is likely a very accurate predictor of where we are likely to see ODR in the next few years.

Written by a virtual "who's who" in the ODR world, the breadth of this far ranging survey of the state of ODR is quite astonishing. It includes new contributions to both ODR theory and practice. Most readers will not have been aware of the degree to which ODR has evolved over the last ten year and it is now difficult to describe ODR as anything other than a "fully legitimate" process. Many of the issues set out in the individual chapters will resonate with ADR practitioners as they are the same as those involved in the face to face Alternative Dispute Resolution (ADR) world. These include difficult issues of systems design, the creation of trust and questions about the cultural aspects of dispute resolution. The regional overview is particularly interesting but a number of chapters are particularly noteworthy and interesting.

Without in any way diminishing the importance of each individual topic covered in the book, perhaps the most understated and important topic covered is the increasing use of mobile technology and its impact on the access to dispute resolution and justice in general. This is especially important in those parts of the world where the traditional communications infrastructure is non-existent and the cost of providing it is beyond the means of most countries. This is an exciting development and may be the "tipping point" for the adoption of ODR on a larger scale.

With increased computer use worldwide and the continuing crisis in access to justice, the need for the option of online dispute resolution is obvious and will continue to grow. Many ADR and legal practitioners, and their clients remain skeptical of, if not strongly opposed to, ODR. But the time has come and gone for debate about whether or not we need or want ODR, it is here now. We must adapt to the use of technology or suffer the consequences of becoming marginalized in the field of dispute resolution as corporations, governments and other entities adopt ODR as part of the ADR toolkit. As Professor Katsh notes, referring to computer scientist Raymond Kurzweil's comment that the adoption of innovations today is faster "by an order of magnitude" compared dot the past, "it is not unreasonable to look at the field of dispute resolution and conclude that it may also need to change "by an order of magnitude", something only ODR could provide".

There are some "problems" holding back the adoption of ODR as a mainstream "tool" for dispute resolution. The first is enforcement of agreements made through ODR in national courts. The EU Directive and the adoption of the Civil Resolution Tribunal in BC go a long way on the road towards conferring legitimacy on ODR and hopefully we will see procedures put into place by various governments, whether through UNICITRAL or otherwise, that will
solve this problem. Another issue is that of the "digital divide" or access to online technology. As can be seen from the increasing number of Internet users worldwide and the adoption of mobile technology, this is likely to be a self-solving problem. These and it seems all conceivable aspects of ODR are addressed in an depth manner by the various authors.

This book is the definitive work on ODR to date and should be read by all who with an interest in this fast developing and important field of dispute resolution and access to justice.

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(4) http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html

(5) http://www.mediatebc.com/PDFs/1-14-Family-Mediation---FAQs/Guidelines_Mediating_from-a-Distance-(Second-editi.aspx

(6) http://www.ag.gov.bc.ca/legislation/civil-resolution-tribunal-act/

(7) http://www.consumerprotectionbc.ca/odr