

Online Dispute Resolution

**Using technology to provide dispute resolution services
and facilitate business and trade**

Yufei Yuan
Wayne C. Fox Chair in Business Innovation

Norm Archer
Professor Emeritus

McMaster eBusiness Research Centre (MeRC)
McMaster University

April 2004

PREFACE

This is a brief description of Alternative Dispute Resolution (ADR) in Canada and its online version Online Dispute Resolution (ODR). ADR has been tested and implemented successfully over the years as a method to avoid the high costs and delays of court-based litigation, and in some cases to restore business relationships between the litigants. ODR uses the same sound principles online, resulting in further reductions in costs and delays. Promoting this approach to dispute resolution was one of the recommendations of the 2000 Canadian e-Business Roundtable “Fast Forward” study. Since that time, there have been several research studies of ODR, and ODR is now available commercially to Canadian firms.

TABLE OF CONTENTS

- I. Purpose
- II. Global Sourcing and Dispute Resolution
- III. Finding Solutions – the Legal Profession, Technology and Business
- IV. Online Dispute Resolution (ODR) in Action
- V. Conclusions

APPENDICES

- A. Commercial ODR Services
- B. Research Projects in Canada

I. Purpose

This report is intended to help you understand the workings of online dispute resolution (ODR) and its primary benefits in terms of facilitating business and trade. The paper also outlines, in Appendices A and B, some available ODR services and research studies on ODR.

II. Global Sourcing and Dispute Resolution

The last decade has seen tremendous growth in global commerce as Canadian companies take advantage of trade opportunities and the emergence of global supply chains supported by the Internet. Indeed, Canadian companies participate fully in global supply networks where production, shipment and delivery are often coordinated down to the hour and the minute.

At the same time, global commerce continues to be hampered by an age-old challenge for business: how to handle and resolve disputes efficiently and quickly. Disputes over delivery and performance are part and parcel of doing business, whether done face-to-face or globally with firms operating at a distance and relying on electronic systems.

To put it simply, companies cannot afford to have talented people tied up trying to resolve disputes with partners. All parties have an interest in resolving disputes as quickly and as efficiently as possible and to avoid the disruption and costs of protracted litigation. This business imperative was highlighted in 2000 by the Canadian e-Business Opportunities Roundtable,¹ which recommended the establishment of a Canadian branded international forum for dispute resolution.

III. Finding Solutions: The Legal Profession, Technology and Business

Online Dispute Resolution (ODR) is a relatively new development but it uses sound principles and practices which have evolved and been tested over the years in the field of Alternative Dispute Resolution (ADR). Before addressing what is new about ODR, let us consider what works so well already in ADR.

Over the past thirty years, the legal profession has pioneered Alternative Dispute Resolution (ADR) as a response to the delays and costs involved in court-based litigation. There is now a large body of experience with many lawyers using ADR as a valued

¹ “Fast Forward: Accelerating Canada’s Leadership in the Internet Economy”, available at [http://strategis.ic.gc.ca/epic/internet/inecic-ceac.nsf/vwrapj/roundtable.pdf/\\$File/roundtable.pdf](http://strategis.ic.gc.ca/epic/internet/inecic-ceac.nsf/vwrapj/roundtable.pdf/$File/roundtable.pdf)

approach to help their business clients². In ADR cases, the parties agree to refer their dispute to an arbitrator and to use a more informal set of procedures to arrive at a clarification of facts and issues in dispute.

ADR has proven itself to save time and money, and in many instances, to help the parties to restore their business relationships and avoid the acrimony of extended litigation. Indeed, many provincial law societies now require lawyers, as a matter of professional conduct, to consider the use of ADR for every dispute, and if appropriate, to inform the client of ADR options.

ADR is becoming a best practice in supply chains where parties agree from the outset in their contracts to forego court-based litigation and to rely instead on ADR. Parties can be located in the same jurisdiction or province, or they can be in different jurisdictions and still use ADR because they opt in by contract to a set of rules for dispute settlement.

Lawyers who practice ADR are well positioned to tap the potential of the Internet to resolve business disputes. Indeed, the next stage of development is underway as ADR professionals start using the Internet and Web-based software to facilitate negotiations and arrive at solutions with greater convenience for those involved. This shift in ADR to the take advantage of the Internet is referred to as Online Dispute Resolution (ODR). See [Appendix A](#) for information on ODR service providers and contacts where you can obtain further information on ODR.

IV. Online Dispute Resolution (ODR) in Action

In general, ODR involves four components:

- Similar to ADR, companies agree to resolve their disputes outside the courts, the difference being to use the Internet to enhance the process,
- Professionals guide the parties and apply their ADR experience to support the Internet process,
- ADR rules and practices are adapted to the Internet environment, and
- Software tools are used to enhance Internet exchanges.

New Web-based services offering ODR are being tested and introduced which feature software that enables parties and arbitrators to:

- Meet online and work in shared, protected work spaces,
- Access databases with precedents,
- Retrieve and manage key documents, and
- Hold meetings with voice and video conferencing as desired and with translation services as needed.

² Finding an ADR Professional in your vicinity: Many lawyers practice ADR along with business law. Contact your provincial law society to obtain a list of lawyers in your area who practice ADR.

There have been several university research projects on ODR in Canada. Appendix B lists several relevant research projects that provide reviews of the use of ODR in the business environment.

ODR can be used by companies in any field to resolve disputes. The transaction in question may have been concluded verbally, on paper, or through electronic commerce. As an e-business solution, ODR offers online tools that make it possible for managers to participate in a process that resolves disputes quickly and efficiently.

Imagine the following scenario that was actually experienced in a pilot of an ODR service: A manufacturer in Canada experienced late delivery from a supplier in the U.S. The two firms had spent two years on a previous dispute; they had other shipments pending so they agreed to arbitrate using a pilot ODR service. The two firms used online forms to tell their side of the story and to submit documentation to an ADR lawyer with plenty of experience with their industry sector. No travel was required and within a week it was possible to organize an online session with voice conferencing. The ADR professional took the parties through a complete arbitration in one session, producing a clear resolution, allowing the parties to move on and build their business relationship.

V. Conclusions

Online Dispute Resolution (ODR) is a new and powerful way to resolve business disputes which has the potential to save companies much time and money, and to build stronger relationships between trading partners.

ODR has much to offer because it draws on experienced ADR professionals. It adapts ADR rules and practices to take advantage of the Internet and to provide parties with Web-enabled tools to enhance problem solving.

ODR by its very nature is well suited to facilitate electronic commerce and supply chains but it can help companies in any field to better handle disputes and keep their business relationships strong and free of costly litigation. Please see [Appendix A](#) for ODR service providers and contacts where you can obtain further information on ODR.

APPENDICES

The following appendices were prepared in April 2004. Updates and additions are welcomed.

Appendix A - Commercial ODR Services

Note: This listing is strictly for information purposes, and is not intended to imply a recommendation for any or all of these services.

Canadian ODR Services

The Electronic Courthouse provides an ODR service geared to meet needs of global trade and commerce. It features a range of Web-based software tools and the involvement of experienced ADR professionals. **The Electronic Courthouse** solution was developed with assistance from the National Research Council and the CANARIE program, and has been field tested with more than 200 companies. For more information, see www.ElectronicCourthouse.com.

ODR Services Offered From Outside Canada

Online Resolution provides a range of online dispute resolution services to help deal with conflicts. Online processes offered include: negotiation, mediation, expert evaluation, and arbitration. See <http://www.onlineresolution.com/partners.cfm> for more information.

Conflict Resolution specializes in all forms of Alternative Dispute Resolution techniques, including: mediation, arbitration, conflict strategy, dispute management, negotiation techniques, ADR consulting, and neutral fact finding. This company specializes in high-end conflicts, typically with at least \$1M U.S. or greater in dispute. More at <http://www.internetneutral.com/>

SquareTrade's mission is to build trust in transactions and to create a better online trading experience. Their services aim to help buyers identify trustworthy sellers they can buy from safely, as well as help good sellers show buyers that they can be trusted. This company offers two complementary services: the SquareTrade Seal, allowing buyers to recognize good sellers, and Dispute Resolution, a way for buyers and sellers to work out problems. See <http://www.squaretrade.com/>

SmartSettle spans the gamut from simple single-issue two-party cases to complex problems involving any number of decision makers with conflicting objectives on both quantitative and qualitative issues. It provides an unattended, automated process for simple cases and a facilitated process for more complex cases. Negotiators may exchange conventional proposals or consider confidential acceptance of suggestions that are generated (a type of blind bidding). The SmartSettle Internet network connects

multiple parties located anywhere in the world and uses optimization to transform conflicting objectives into fair and efficient solutions. More at <http://www.smartsettle.com/>

Appendix B - Research Projects in Canada

1. ECODIR is a research project conducted by the Centre de recherche en droit public at the Université de Montréal, to provide legal and economic analysis of online mechanisms to resolve disputes and to test prototype mechanisms. For more information, see <http://www.crdp.umontreal.ca/fr/recherche/projets.php>

2. A Business Model for e-Negotiation in Electronic Commerce, Dr. Yufei Yuan and Ofir Turel, Michael G. DeGroot School of Business, McMaster University, Ontario, Canada.

Abstract: With the rapid growth of electronic commerce, there is growing demand and great potential for online negotiation and alternative dispute resolution (ADR) services. However, it is unclear whether “e-negotiation” and “e-ADR” services will succeed by providing real business value and making profit. In this paper, we propose a high-level e-negotiation and e-ADR business model and use it to analyze key issues for the success of these services. Specifically, we focus on the value proposition of e-negotiation and e-ADR systems, and examine it by surveying potential market segments. While previous literature assesses the efficiency and effectiveness of various online “negotiation support” methods, this exploratory research examines the online negotiation and ADR service itself and its potential from the business users’ perspective. Our survey demonstrates that there is a low awareness of e-negotiation and e-ADR services, though organizations spend large amounts on negotiations each year. Moving some of the traditional face-to-face negotiations to the Internet sphere could reduce the associated costs. In accordance with our assumptions, the benefits of e-negotiation and e-ADR are clear to the surveyed managers, and so are the challenges. Most managers believe that there is a great market potential for online negotiation services and that they will use it as services mature. Based on the survey, we identify critical factors to the success of online negotiation and dispute resolution services and suggest some ways to remove the hurdles and create a critical mass of users.

For an online description of this project, see:

http://interneg.org/interneg/research/projects/enegotiation/projects/business_models/index.html

For a full copy of the working paper on the business model study described above, see the first working paper in 2004 “*A Business Model for e-Negotiation in Electronic Commerce*” at: <http://interneg.org/interneg/research/papers/index.html>

3. Online Dispute Resolution and Avoidance In Electronic Commerce, by Christine Hart, LL.B., published by the Uniform Law Conference of Canada. Download available at <http://www.law.ualberta.ca/alri/ulc/current/hart.htm>