

University of Missouri School of Law

University of Missouri School of Law Scholarship Repository

Faculty Blogs

Faculty Scholarship

5-7-2018

THE NEW HANDSHAKE: USING ODR TO CREATE VALUE FOR CONSUMERS AND BUSINESSES

John Lande

Follow this and additional works at: https://scholarship.law.missouri.edu/fac_blogs



Part of the [Dispute Resolution and Arbitration Commons](#)

THE NEW HANDSHAKE: USING ODR TO CREATE VALUE FOR CONSUMERS AND BUSINESSES

MAY 7, 2018 | JOHN LANDE | [LEAVE A COMMENT](#)

I joined the ABA Section of Dispute Resolution's Publications Board, which recruits people to write books, reviews book proposals, and oversees the Section's bookselling operation. I came to appreciate the importance of selling the Section's books, both as a way to help finance the Section and to disseminate our ideas. As part of that effort, I will write posts describing some of the books, which you may want to buy, use in your writing, and/or assign in your courses.

My first post is about [*The New Handshake: Online Dispute Resolution and the Future of Consumer Protection*](#), by ODR gurus Amy Schmitz and Colin Rule. It's a great collaboration that takes advantage of Amy's scholarship and Colin's practical experience from being eBay's ODR director and co-founder of Modria as well as from his work as Tyler Technology's VP for ODR, and now CEO of mediate.com.

ODR can help address a problem often referred to as "access to justice" (A2J). In the plenary program of the ABA Symposium on ADR in the Courts, "ADR and A2J in These Complex Times," retired Judge Eric Washington noted that the ADR and A2J movements generally haven't recognized their overlapping interests. Historically, people have thought of A2J in terms of access to lawyers and courts. Of course, this is important. And, of course, the legal system is unsatisfactory for handling most consumer problems. ADR – and in this case ODR – can provide people with ways to handle problems when there are no other practical alternatives or where the alternatives themselves are problematic. ODR can be especially valuable as a way to provide consumers with access to a process that could help them reasonably resolve their disputes efficiently.

Good ODR systems are ideal for situations involving large volumes of low-dollar issues. In many e-commerce disputes, the parties are not in the same geographic area and there is no court system that can effectively manage these disputes. ODR is especially well-suited for problems that can be easily sorted into clear categories such as non-delivery, damaged products, billing discrepancies, etc. This enables system designers to create automated "wizards" to guide people efficiently through steps to identify problems and resolve them.

Overview of the Book

I really like *The New Handshake* because it does a good job of explaining problems with the status quo, suggesting how ODR can improve handling of consumer problems, and identifying challenges in implementing ODR systems. Here's a description of the book, which is

designed to help ODR systems designers, online merchants, payment providers, marketplaces (both tangible goods and services), customer experience designers, lawyers, judges, students, consumer advocates, and policymakers envision and build the next generation of consumer protection. The aim of the book is to provide a context and blueprint for a next-generation consumer-focused redress process that will benefit both consumers and merchants, as well as to help update consumer protection programs to meet the needs and expectations of modern consumers.

This book describes the challenges facing consumers in e-commerce, discusses current strategies for addressing those challenges, details new approaches coming out of e-commerce and ODR, and then offers a design for a consumer-focused global online redress system to achieve those ends. The book then applies this design to several case studies and concludes with a recommended agenda for action.

Part 1 focuses on where we are now. It examines the lack of consumer remedies and customer care in B2C [business-to-consumer] e-commerce. It considers why consumers rarely pursue remedies on purchase complaints and explains how this dynamic undermines economic efficiency and consumer trust. It also details how these market dynamics foster contractual discrimination and enable companies to avoid consumer protection regulations. It then examines what consumers really want from their online redress processes. Finally, it analyzes the lessons learned from eBay's efforts to bolster consumer trust through the creation of a comprehensive system for resolving disputes between buyers and sellers.

Part 2 then looks at the need for resolutions from both the merchant and consumer advocacy perspectives. It lays out the business case for merchant investments in resolution processes, calculating the value of investments in resolutions, focusing especially on reducing costs and increasing future transaction volume. It then discusses how resolution data transparency can benefit consumer protection authorities, consumer advocacy organizations, and policymakers. Finally, it outlines ethical standards that must undergird any process that hopes to be efficient and effective over the long term.

Part 3 distills these observations into a specific set of design criteria. It examines the power imbalances an effective systems design must address to be truly fast and fair. It

then details a specific proposed design for a global e-commerce ODR that addresses the challenges facing consumers and merchants in B2C transactions. This part then presents a series of next steps toward making this proposed system a reality and risk factors that could cause the design to fail to achieve its objectives. It then applies the proposed design to a variety of case studies to illustrate how it will work in practice. In conclusion, the book examines what tools and technologies may emerge in the future to make the system more accessible and effective over time.

Creating Value with ODR

I bet that every reader has had some extremely maddening consumer experiences trying to resolve problems with purchased goods or services. Although calling customer service agents sometimes can be satisfying and efficient, the experience often is frustrating, time-consuming, and ultimately ineffective. You wouldn't consider going to small claims court except in very unusual situations. Government consumer protection agencies and class action lawsuits often aren't available at all or are ineffective for solving consumers' problems. So sometimes you are just stuck. Indeed, some businesses use these systems to avoid re-dressing problems unless consumers are especially determined, i.e., if they are "squeaky wheels."

Enlightened businesses realize that it is in their economic self-interest to provide satisfying dispute resolution processes for consumers. eBay developed an ODR system addressing consumers' interests and found that it increased sales (compared with consumers who didn't have a dispute). Even consumers who used the system and received an unfavorable result generated increased sales compared with consumers who didn't have a dispute.

On reflection, this finding isn't as surprising as it might seem at first. eBay and its customers have an interest in maintaining a good long-term relationship. Certainly eBay wants customers to continue buying things on its website. Customers know that problems happen and get reassured when they feel that the resolution process satisfies their procedural interests. This makes them more willing to buy again from eBay, with some confidence that problems will get worked out.

Thus businesses that provide good resolution systems create value, a holy grail of dispute resolution. In other words, a good dispute resolution system can be good for both businesses and consumers.

Developing ODR Systems

The New Handshake pulls together a lot of material to identify useful design criteria for developing consumer ODR systems and it offers a general blueprint of how to design such systems. Of course, each system should be tailored to the particular circumstances, but the set of design criteria provide a very useful checklist of considerations for people to design these systems.

As with all ADR – and human – systems, ODR is no panacea and the book highlights some potential problems that system designers must consider. For one thing, technical systems can be poorly designed and frustrate users. Who hasn't had that experience? There can be bad actors who try to game the systems and, of course, unintended adverse consequences. These systems will increasingly use artificial intelligence and seemingly innocuous assumptions built into algorithms could be problematic. The book includes an entire chapter devoted to ethical considerations in developing ODR systems and it advocates use of monitoring processes to identify and correct problems.

Ultimately, developing consumer ODR systems is a dispute system design process. As Sheila Purcell emphasized during an ABA conference program on integrating ODR in the courts, this requires appropriate engagement of stakeholders and not simply reliance on technical system designers. In another conference program, David Larson recounted his ill-fated efforts to help design a state ODR system to handle debt collection cases. Although the planners reached out to stakeholders during the planning process, one group did not participate until the end and effectively mobilized to kill the plan. The state court system is continuing to explore other possibilities for an ODR system and hopefully it will succeed in developing a good system that is fair to consumers.

In that same program, Jean Sternlight argued that, not surprisingly, dispute system design processes will reflect underlying power dynamics and that powerful stakeholder groups are likely to design systems to advance their self-interest. In some situations, like eBay, there will be a lot of mutual interest in developing a system that satisfies the weaker, one-shot parties. This is less likely to occur when powerful stakeholders are less concerned about maintaining ongoing relationships with the one-shotters.

The Future of ODR

Amy and Colin say that ODR is evolving rapidly and will become more sophisticated as we are moving from the Dark Age of ODR to the Digital Age. In their chapter, "What's Next," they anticipate some possible changes.

They conclude, "This book was designed to begin the conversation, not end it. Now is the time for ODR systems designers, online merchants, payment providers, marketplace admin-

istrators, consumer advocates, lawyers, judges, students, and policy makers to work together to build the next generation of consumer protection. The design presented in this book is intended to be a launching point, not an ending point, for that effort.”

Undoubtedly, ODR will become an increasingly important part of the dispute resolution universe. I think that *The New Handshake* is valuable as an introduction for people like me, who have wanted to keep our heads in the sand about ODR, as well as for those who have already embraced ODR and want to learn some of the best current thinking.

◀ CIVIL JUSTICE ◀ DID YOU HEAR ABOUT? ◀ DISPUTE SYSTEM DESIGN ◀ ONLINE DISPUTE RESOLUTION
◀ TECHNOLOGY

This site uses Akismet to reduce spam. [Learn how your comment data is processed.](#)

