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DISPUTE RESOLUTION AND THE  
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CHAPTER

3

## Lessons Learned on eBay

*Talking in the abstract about the challenges and expectations of modern consumers can only go so far. The new kinds of redress and protection programs that undergird the New Handshake have already been launched, scaled, and tested by the big Internet intermediaries, first and foremost the global eBay marketplace. The lessons learned from eBay's experiences are helpful in understanding the evolution taking place in global consumer protection.*

In 2007, eBay was the largest e-commerce marketplace in the world and PayPal (eBay's wholly owned payments subsidiary) was the largest online payment company in the world. eBay sells billions of items per year; at any given moment, there are more than 100 million items for sale on the site. eBay users trade almost every kind of item imaginable in more than 50,000 categories. On eBay, a pair of shoes sells every 7 seconds, a cell phone sells every 7 seconds, and a car sells every 56 seconds. The daily volume of trade on eBay is greater than the daily volume of the NASDAQ. PayPal has 192 million active digital wallets and is available in 203 markets, supporting more than 100 different currencies. PayPal's total payment volume (the total value of transactions) in the fourth quarter of 2014 was \$64.3 billion, meaning that PayPal transacted more than \$485,000 in total payment volume every minute or more than 11.5 million payments every day.

As the first global online e-commerce platform, eBay was the earliest company in the world to have to solve some of the difficult problems associated with the creation and maintenance of a cross-jurisdictional, high-volume, low-value marketplace. When eBay launched, the biggest challenge was that consumers simply did not trust that they would get what they paid for. eBay quickly realized that without consumer trust, the system could not work. In response, eBay created the first Trust and Safety (TnS) team, which was tasked with ensuring the trustworthiness of the eBay ecosystem. Today, almost every e-commerce and marketplace company has a TnS team, but the concept was invented at eBay. Within TnS, there are three main divisions (the "three legs of the trust stool"): Fraud Investigations (for catching and punishing the bad guys), Feedback and Reputation (for creating transparency and sharing information with users), and Protections/Resolutions.

The main objective for TnS was maintaining trust within eBay, which is much harder than it sounds. Trust is a somewhat slippery concept. It exists entirely within the mind of the user. Some websites are trusted even though they should not be, and some websites are not trusted even though they are doing everything right. Major new initiatives that were launched to tackle specific trust issues within eBay sometimes did not move the trust needle very much, but a marketing campaign or prominent media story would move the trust needle quite a bit. Trust exists in the minds of the individuals who experience it. Therefore, using self-reported perceptions of trust as a way to measure the effectiveness of any trust-building efforts is not necessarily a good way to determine if you are on track.

At the beginning of eBay, the approach was more along the lines of a classified site: Create a bulletin board where buyers and sellers can find each other, then let the users handle their own affairs. If a buyer wanted to be risky and purchase from a seller with a mixed reputation and track record, so be it. Over time, eBay realized that, even with the information provided about the transaction histories of all the users, buyers could not effectively protect themselves from being taken advantage of without some help. The information asymmetry and repeat-player advantage of sellers was too great for buyers to overcome. The bad experiences of buyers in this “caveat emptor” marketplace were harming the perceived trustworthiness of the site. Thus, eBay evolved into a “managed marketplace,” where eBay employees took on the responsibility to help buyers avoid bad experiences and resolve problems when they arose.

## eBay and Resolutions

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As you might imagine, these billions of purchases generated a lot of consumer issues. Even though only about 1 percent of purchases generated a problem, the incredible volume on eBay meant that eBay and PayPal handled more than 60 million disputes a year in more than 16 different languages. Depending on how you count, that daily volume is in excess of all civil filings in U.S. courts.

Building a resolution system for eBay was like building a civil justice system for a country. eBay’s 250 million users, if counted as citizens, would have made eBay the fifth largest country in the world. In designing appropriate resolution and protection flows, it was important to consider all of the effects such a system would have across the entire global eBay marketplace.

eBay has now been on the front lines of online dispute resolution (ODR) for more than two decades. In fact, *The Perfect Store*, Adam Cohen’s book about the early days of eBay, describes how dispute resolution was a part of eBay in the first months after Pierre Omidyar launched the site in his San José basement in 1995. As Cohen explained, eBay’s first customer support employee, Uncle Griff, “spent a lot of time doing what Omidyar hated: stepping in and trying to resolve disputes.”

In 1999, Professor Ethan Katsh launched a pilot program with eBay to resolve disagreements between buyers and sellers. After a link was put on a relatively obscure eBay help page urging people to report issues, Katsh's Online Ombuds Center at the University of Massachusetts Amherst was flooded with cases. That pilot program evolved into a startup company, SquareTrade.com, which in turn grew to become the web's most successful online mediation service. Over the next four years, SquareTrade mediators would resolve several million eBay disputes. However, there were many other types of disputes that SquareTrade could not address as an independent, third-party service provider outside of the eBay ecosystem. As a result, eBay made the decision to bring ODR in-house in 2003.

## Characteristics of eBay Disputes

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eBay has a wide variety of disputes, and each type is fraught with its own specific complexities. Some disputes are initiated by sellers (e.g., payment disputes), whereas others are initiated by buyers (e.g., item quality disputes). Some disputes focus on reputation (feedback disputes) and others on intellectual property (owner rights disputes). Most of these disputes are not over very large amounts of money. They can be for as little as \$5, such as a magazine, or as much as \$50,000, such as a car, but the average is around \$100. However, as dispute resolvers know well, dollar amount is usually not an accurate barometer of passion among disputants. Also, because eBay users are spread all over the world, eBay disputes can involve cultural misunderstandings, language barriers, and class differences.

Clearly, the top challenge for eBay's ODR system is the overwhelming volume of cases. With tens of millions of disputes, the math was obvious: Even if eBay had built a staff of 10,000 skilled online mediators, it would be impossible to get through the torrent of cases. At the time, eBay had a total of 25,000 employees around the world. It was self-evident that the process needed to be as automated as possible.

## Designing an ODR System for eBay

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It was clear to everyone in TnS that the best path forward would be to write a software program to assist the parties in resolving their disputes and to involve human neutrals only on an exceptional basis. The question was how to do it. No one had ever built a system to handle such high volumes of cases.

eBay's advantage in resolutions lay in the fact that eBay was not a party in each individual transaction. As the marketplace administrator, eBay was a credible neutral third party in any transaction problem. eBay was also in direct communication with the buyer and seller from the very beginning, from the purchase all the way through to resolution. Additionally, eBay had absolute enforcement power because eBay could move money from one party to the other through PayPal. That enabled eBay to immediately connect with both parties, freeze the

funds in question pending the outcome, and ensure that resolutions could be immediately enforced.

One crucial factor was eBay's ability to work with the parties even before they really understood whether they had a problem. For instance, if a buyer made a purchase and the item had not arrived within three or four days, he or she might start to get concerned. eBay could then step in to reassure the buyer that the average delivery time for a package going from the seller's location to the buyer's home was seven days. Then the buyer's anxiety would ease, and the package would later arrive on schedule. In a sense, eBay was able to resolve the issue before it even became a dispute.

There was also an upside to the incredible volume of disputes coming through eBay's systems. eBay knew an immense amount about the types of problems that occurred on the site because so many of them had already come through the system. eBay's data warehouse was filled with millions of records that could be used to better understand what was going on. It was very rare to see a wholly new kind of dispute. Such familiarity with the full spectrum of issues within the marketplace enabled the design of dedicated and automated systems tailored specifically to each dispute type.

For example, most item-related disputes fell into one of two categories: non-receipt (the buyer paid but never got anything) or not as described (the item arrived but was different than what the buyer expected). Then, within these dispute types, further questions could pinpoint the problem: How did the seller ship the item? Was shipping insurance purchased? In the case of a not-as-described item, was the item broken? Was it counterfeit? Was the difference a small one (e.g., wrong color) or a big one (e.g., the buyer bought a new laptop and got an old, broken one instead)?

The language used on the site also had to promote resolution. "Fraud alerts" became "item not received" disputes. A "Dispute Console" made the tracking and resolution of problems much easier. The console enabled users to see all of their transaction problems in one place, communicate easily with their transaction partners, and track them to resolution. Soon after, community members began using this language to talk about their transaction problems in the discussion forums. Several years later, the Dispute Console turned into the Resolution Center. The language used helped to change the way users thought about consumer problems on eBay, increasing the likelihood of resolution.

## Building a Framework for ODR

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In designing the framework for the eBay dispute resolution system, it was vital to design a process that would resolve every issue reported. A purely facilitative model that left the outcome up to the parties would generate a lot of frustration. It would leave many of the toughest cases unresolved. Also, some parties had an interest in not reaching an agreement (for instance, a seller in the case of a not-as-described dispute). In such a case, a party, usually the seller, simply does not want to pay. The party therefore has a strong incentive to stonewall or refuse to negotiate in good faith.

Accordingly, the ODR framework for eBay took a staircase design. It began with problem diagnosis and working directly with the complainant, then escalated to direct negotiation assisted by technology, and finally moved to an evaluation phase where eBay would decide the case if the transaction partners could not do so. Each party could decide unilaterally when it wanted the process to move on to the next phase. The goal of the system was to prevent as many disputes as possible, amicably resolve as many as possible, and then decide the remainder as quickly and fairly as possible. Each stage acted like a filter, with the objective being to minimize the flow of cases that made it to the end.

It was very clear that eBay users did not want to spend a lot of time in extensive processes intended to build a long-term trustworthy relationship. Most eBay transactions were between strangers and most buyers did not buy more than one item from any individual seller. Thus there was little interest in approaches that did not match this purely transactional orientation. What users wanted was communication, transparency, efficiency, and a fair outcome, in as little time as possible. The priorities were speed, minimizing effort, and fairness.

eBay discussed filing fees for their dispute processes because the mediations through SquareTrade had required filing fees. However, it is difficult to convince a disputant to pay \$30 to resolve a \$50 dispute, and nearly impossible to convince him or her to pay \$50 to resolve a \$50 dispute. The disputant might as well just give the money to the other side and save the time associated with the process. Moving ODR inside eBay was a much more natural way to address the funding problem. Instead of thinking about the costs on a per-case basis, as one does with a third-party provider, eBay evaluated the cost for the system on a revenue-enablement basis, which made much more economic sense. Extensive economic analysis was conducted to determine the cost-benefit ratio of the resolution program. The analysis demonstrated clearly that the savings from reduced contacts with customer service, improved loyalty from users, and increased transaction activity more than justified the investments in ODR.

From the beginning, eBay's ODR processes were designed to be learning systems. There was no shortage of data available; eBay has total visibility into each user's usage patterns, history, and account data. Also, eBay routinely surveys users to get their feedback on the resolution processes they have used. eBay uses these data to monitor the performance of their systems and improve them as marketplace conditions change.

## **Aiming for 100 Percent Automation: Payment Disputes**

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The biggest volume of disputes at eBay had to do with nonpayment. The issue of consumers bidding on items and not following through to pay was causing great consternation in the marketplace. The system in place to deal with those issues was very manual. Sellers were quite upset at what they saw as eBay taking

money from them for no reason because buyers never followed through and paid. At the annual eBay Live! Conference, there were sessions with hundreds of angry sellers expressing great aggravation with the existing processes. Consumers were frustrated as well by the nontransparent way they were penalized for nonpayment.

On eBay, sellers paid two times when they sold an item. They paid a small insertion fee to list the item and then a small “final value fee” when the item was purchased. The final value fee was based on the final sales price. Therefore, a seller may list a Ferrari on eBay and a teenager may bid on the car as a joke with a very high amount. When the auction closes, the seller thinks the item is sold, even though the buyer will never follow through and pay. eBay charges the seller the final value fee as soon as the item closes based on the sales price. The seller then has to wait for the buyer to follow through and pay. If the buyer does not pay, the seller is still out the fee paid to eBay.

eBay users informally called this process the “deadbeat bidder” process. In official documents, it was called the “nonpaying bidder” process. The language used to describe the process went a long way toward defining how users thought of it. eBay concluded that the name of the process had to change because it is never wise to name the process something that indicates who is at fault (in this case, the bidder) and possibly even insults them (in the case of “deadbeat”). There are legitimate reasons for a buyer not to follow through and pay for an item they committed to buy on eBay—perhaps a seller changed the shipping price after the auction closed or refused to include a component that was advertised in the original listing. In these cases, the buyer should not actually follow through and pay, and as such does not deserve to be called a deadbeat.

Sellers were aggrieved because they felt that eBay should not be profiting off of transactions that were not completed. They felt the process to receive reimbursements for final value fees was overly onerous with lots of hidden deadlines, which maximized the chance that sellers would miss their filing windows and give up on trying to get refunds. They also felt that they should not receive feedback from buyers who did not follow through and pay for items they had purchased. The sellers’ rationale was that if the buyer did not complete the transaction by paying, then they should not have the right to leave a public comment on the seller’s profile.

The first change that eBay made was to rename the flow as the “unpaid item (UPI) process.” Although this may seem relatively trivial, translating a new name into 16 languages around the world and updating thousands of help pages is not a minor task. Second, eBay designed a new system for managing UPI cases. This new system was designed from inception to be technology only. No human customer service representatives would be required to work with the buyer and seller in order to resolve the issue.

The UPI process had a fairly simple flow. The seller would come to the Dispute Console and report an item as unpaid by entering in the item number.

The buyer would then be notified of the new case and was asked to respond. When a buyer responded to the dispute, he or she had several response options:

1. I have already paid for this item.
2. I would like to pay for this item now.
3. I do not want to pay for this item.

The seller then had the ability to respond to the buyer. Each side could post messages in the joint discussion. The seller had the unilateral ability to end the discussion at any point and give the buyer an unpaid item strike. If the buyer received too many unpaid item strikes in too short a period of time, then their account would be suspended.

Buyers and sellers could also cancel the transaction by mutual agreement. If the seller indicated that he or she was willing to release the buyer from his or her obligation to purchase the item and the buyer indicated that he or she agreed to the cancellation as well, then the purchase was cancelled in the eBay system. The seller received his or her reimbursement, and no action was taken against the buyer.

The only human involvement in the UPI process was when a buyer appealed an unpaid item strike. The buyer filled out a form explaining why he or she thought the strike was received in error, and a customer service representative evaluated the information submitted in order to make a decision. What the buyer did not know was that all first appeals from buyers are granted automatically, so only the second appeal is actually reviewed by a person. This means that a caseload of more than 30 million cases per year can run automatically, requiring only a couple thousand manual reviews per year.

Originally, any buyer who received three strikes was thrown off of the system. However, some high-volume buyers (e.g., professional buyers) said that this arbitrary number was unfair because they engaged in so many more transactions and it created jeopardy for them in their account. Eventually, the policy was changed so that buyers were thrown off of eBay if they received too many UPI strikes in too short a period of time. That gave eBay the flexibility to adjust the criteria based on a buyer's transaction volume.

## Combatting Gaming

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One consistent concern in all of eBay's ODR flows was gameability. Because there were millions of users working through the UPI process, there were plenty of attempts from individuals to find ways to exploit the system. As soon as any new flow was launched publicly, there were users who would test it out from every angle, looking to see if there was a way to take advantage of it.

For example, a major concern at eBay was a problem called "shill bidding." This happens when a user lists an item under one account and then logs in as a second account to bid up the price on the item. eBay had advanced technology in

place to catch any sellers who tried something like this, as was often discovered by a casual seller who bid on his own item from his wife's account or from the same IP address. eBay has zero tolerance for shill bidding, and sellers who were found engaging in it were immediately thrown off the site. This happened to some very large sellers, at great expense to eBay.

Shill bidders would occasionally win their own items, which of course they did not want to follow through with. The UPI process was part of shill bidding because if the seller could not get his or her final value fee refunded, shill bidding was a losing proposition. Shill bidding was a problem that could not be tolerated without a significant reduction in trust, so the UPI process had to help catch the bad actors. Because the UPI process was entirely automated, it was important that it be highly impervious to this type of gaming. Checks and reports were built into the UPI process to help eBay find this kind of abusive behavior. Verification steps from buyers and sellers were also added to make automation of this process impossible.

## Lessons Learned

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Now that the systems built at eBay have processed hundreds of millions of disputes, much has been learned about what modern consumers expect in terms of resolutions and protections. These lessons have helped eBay to validate the conclusions from the prior chapter around what consumers really want. Although the scope of lessons learned at eBay is wide, for the purposes of the *New Handshake* we can summarize the key ones in 10 main areas, which emphasize many of the points previously discussed in Chapter 2.

## Resolutions Should Be Fast and Easy

The lesson learned again and again by eBay was that users just want the marketplace to work. The consumer relationship with eBay is very straightforward: I buy it, you get it to me, and we are good. If a problem arises, consumers want to get it resolved quickly and easily so that they do not have to waste time worrying about it. In that sense, consumer resolutions are kind of like the dentist's office: No one walks around all day thinking about how much he or she loves the dentist's office (except maybe dentists). However, if you have a toothache, all you can think about is getting to the dentist's office. Once the toothache is gone, you walk out the door and do not think about the dentist any more. Resolutions and protections are there to solve a problem. When buyers need this help, they want it to work quickly and effectively so that they can put the issue to bed and get on with their lives. That is what success looks like.

In retrospect, the early frustration with disputes on eBay was not a problem of policy; rather, it was a problem of complexity. Without a console to track issues and a simple process for getting them worked out, resolving

problems was too hard. That was what most annoyed eBay users. The issue was not the outcomes achieved so much as the difficulty of the process required to achieve the outcomes. Once eBay built an easy-to-use hub for managing problems and a clear process that tracked every matter to closure, the frustration went away.

## Discoverability and Easy Access Are Very Important

Before eBay created the Resolution Center, the fastest way to access the filing form for a new matter (then called the “fraud alert”) was seven not-very-obvious clicks from the homepage. Even if that program had been well designed, it would not have mattered much because no one could find it. Once the process was improved and rebranded as the Resolution Center, links to it were added to the top and bottom of every page on the site. Prominent links were also placed on the “Items I’ve Purchased” page for every user, enabling them to report a problem with a single click. These changes increased the overall volume of problems reported, which initially caused concern. However, these issues had always existed—eBay just had not known about them before because reporting them had been too onerous. Over time, eBay realized that it was a good thing to know about these issues because then eBay could help resolve them, which improved buyer loyalty. If eBay did not know about the problem, the buyer would suffer in silence, likely leaving eBay and never coming back.

As it turns out, because the software built to automate resolutions was so effective, the net number of disputes that had to be worked by a customer service representative decreased. This was true although the total number of reported cases increased significantly. Now, eBay almost begs consumers to report problems because the data have demonstrated so conclusively that problem resolution is such a powerful way to build loyalty—even more effective than promotions, marketing, or high-touch customer service.

## Consumers Are Not Motivated by Giveaways

Some people at eBay argued that less time should be spent on resolving problems, and consumers should just be paid off every time they encountered a problem. For a time, this perspective held sway, and the approach was put into practice. Hundreds of millions of dollars were spent providing instant refunds, gift card incentives, and eBay-branded giveaways. Users were always surprised when these unexpected presents arrived and they were polite in communicating their thanks, but the data were very clear that these initiatives did not build customer loyalty or increased transaction activity. Plus, these initiatives were enormously expensive. The individuals who advanced this approach are no longer working at eBay.

## Satisfaction Is Not a Good Way to Measure the Effectiveness of Resolutions Programs

We found that it was nearly impossible to evaluate the success of our efforts based on self-reported satisfaction surveys. eBay users would sometimes insist up and down that a certain new feature would massively improve their satisfaction; however, when eBay launched it, it had little effect. Conversely, eBay would launch a new feature that users previously indicated they were indifferent about, but which generated a major increase in satisfaction. Finally, users often misreported how satisfied they were or how that satisfaction affected their usage of our site. They might say they were going to close their account and never come back as the result of a bad experience, but they were back on the site two days later, using the services more than they had ever used them before. It was very difficult to use satisfaction metrics to guide strategic decision making because they were often so disconnected from actuality. Also, as previously mentioned, user perceptions of trust on the site seemed more correlated to marketing campaigns than site functionality. eBay had to find other metrics that gave a better idea of the real impact of their initiatives (such as loyalty and reactivation).

## Sellers Have the Advantage

It is important to design resolution flows that are cognizant of the structural advantages enjoyed by sellers. These advantages do not mean that sellers are doing anything wrong or that they are necessarily exploiting their buyers. It simply means that the additional experience and information enjoyed by sellers does not provide a level playing field with buyers if a problem arises.

As a systems designer for e-commerce resolution systems, it is always easier to listen to sellers than it is to listen to buyers. Sellers make their living in the marketplace, so they are there every day. They track every change in policy and know who to contact if they are unhappy about something. If you hold a big conference and invite buyers and sellers, 95 percent of the people who show up will be sellers, because a) they are willing to spend the money to attend, and b) they have a bigger financial stake in the future of the marketplace than do the buyers.

The voices of consumers are harder to hear. There are many more buyers, but they are not as organized. They do not follow every development within the marketplace assiduously because they may be buying in a variety of different environments. They do not know who to call if they encounter a problem. However, their voices are just as important, if not more important, than those of the sellers. eBay found that if you have the buyers (e.g., the demand), the sellers will appear. If you have the sellers (e.g., the supply), the buyers will not necessarily come—unless they trust that they will have a good experience and that problems will be quickly resolved.

## You Have Got to Set the Right Tone

Language matters, particularly in an environment where everyone is interacting asynchronously, via online text, and never meeting face-to-face. The language used to describe the issues that arise and the tools that are available to resolve those issues must frame the matters in a way that promotes reason and resolution. If the framing instead warns of fraud, deception, and chicanery, it will be that much harder to craft agreement.

eBay found that the first message posted in a thread really sets the tone for the conversation from there on out. If the first message has a negative tone, then the tone of the overall thread is usually negative. It was the rare message thread that started out negative and then had the tone turn around. Usually, there was one message posted by the seller or buyer that asked to reset the tone of the communication and improve it. Maybe the item arrived and the buyer admitted to overreacting, or the seller apologized and took responsibility. However, usually when the first message was aggressive, the whole discussion thread would be aggressive.

The challenge is that the buyer is usually the complainant in item-related disputes, and the buyer is usually frustrated. Buyers also have little incentive to be reasonable. Buyers do not care about negative feedback or bad reviews; there is no financial downside for buyers who receive negative feedback.

As a result, eBay structured the resolution process so that the first post from the buyer was intermediated by technology. The buyer filled out a series of very comprehensive forms where they picked the reason for their dispute. From these selections, eBay could compose a first post for them that accurately described the nature of their complaint but avoided any threats or insults. The buyer was not given an open text box to explain their situation because of the risk that they would use that opportunity to sling threats or insults at the seller.

The seller, on the other hand, had great incentives to resolve the case amicably. If a seller got negative feedback, that might serve to reduce the willingness of future buyers to make purchases from him. It also might besmirch the seller in the eyes of eBay. The seller already had the ideal outcome for the transaction: He or she had the money and the buyer had the item. If the payment was reversed, then the seller would be annoyed. Therefore, sellers have a very strong incentive to work out the problem. As such, eBay gave sellers the first opportunity to post an open message because they were likely to set a positive tone. This kind of artful system design can be very helpful in maximizing the number of transaction problems resolved through mutual agreement.

## Do Not Presume Everything Is Fraud

One of the core values at eBay is the belief that people are good. In some respects, eBay can be viewed as a giant sociological experiment testing that proposition. By any objective standard, it must be concluded that the hypothesis is true: People are good, at least the vast majority of the time. eBay has facilitated billions of transactions

where one stranger sends money to another stranger on the promise that the second stranger will follow through with his or her obligation. Most of the time, it works without a hitch.

However, it is human nature to see malevolent intentions in others even when no such malevolent intentions exist. This kind of fundamental attribution error plays out every day within the eBay marketplace—the “people are good” value notwithstanding. When an item does not arrive, consumers are often very quick to jump to the conclusion that their seller is a fraudster who is looking to play them for a fool. In fact, after observing hundreds of millions of cases, the vast majority of transaction problems are misunderstandings—the item was delivered next door by accident, the husband received the package from the delivery man and put it in the garage without telling the wife, or the seller forgot to take the box to the post office and it is still sitting in his or her trunk. Healthy marketplaces like eBay see a small percentage of their transactions generate some sort of problem, but only a fraction of those problems are fraud. The vast majority of problems are misunderstandings, usually the result of human mistakes or inefficiency. It does not make sense to build resolution systems that presume ill intent in most cases.

## Outcomes Have to Be Consistent and Fair

Sellers were convinced that the eBay resolution process was biased toward buyers, and buyers were convinced that the eBay resolution process was biased toward sellers. In a complex resolution ecosystem like eBay, that may be as close as you can reasonably get to a level playing field. eBay users posted endless messages in the discussion forums comparing the outcomes they got from the various resolutions processes on the site. Buyers and sellers were constantly checking with each other to see if the policies on eBay were being enforced consistently and discussing what seemed fair or unfair.

This is one of the problems with automatic refunds in isolation. If a buyer files a dispute in an online marketplace and gets an immediate reimbursement, that is good. However, the question remains: What will ensure that this does not happen again to other buyers? Is the marketplace simply paying off buyers who experience problems but not addressing the causes of those problems? Buyers want to know that their resolution will have ramifications beyond just their specific case. If a consumer feels that the reimbursement is just papering over problems in the marketplace, he or she may feel encouraged to engage in buyer fraud, thinking that if it is easy to click a button and get an instant reimbursement without any questions asked, the incentives to overreport problems is strong.

To a certain extent, it is more important that the outcomes be consistent than fair. Fairness can very much be in the eye of the beholder. Supreme Court Justice Oliver Wendell Holmes was known for expressing his distaste for the title “Justice” because he thought that justice was too high a standard. Justice was meted out by God, he argued; his job was to interpret the law. eBay could not

ensure that every user was given exactly what they deserved in every exchange. However, eBay could create policies and processes that consistently administered the publicly displayed rules, and the confidence that resulted from that consistency was a powerful bulwark to trust.

## Resolution Processes Do Not Need to Be Binding

The UNCITRAL Working Group spent an inordinate amount of time on a simple, fundamental disagreement: whether the outcomes of the ODR process should be legally binding. The U.S. delegation argued that they should (in line with the *Concepcion* decision rendered by the Supreme Court), and the European Union steadfastly opposed the idea. Endless hours of negotiating were devoted to this particular disagreement. Despite over six years of discussions, it was never resolved. From the eBay perspective, this question is moot. The courts were and are irrelevant to most eBay consumers and merchants. No court wants to hear a case over a \$75 eBay purchase, and no lawyer wants to take that case, especially when the transaction might cross borders.

The eBay resolution process did not explicitly block customer redress in a court. Users always had the ability to escalate their case by filing it in another channel, whether that was a credit card chargeback, an advocacy organization (e.g., the Better Business Bureau), a state consumer protection authority, or the courts. Because users trust the eBay process, the matters are almost never pursued beyond the eBay resolution flows. If consumers and merchants trust a resolution process to be fair, consistent, transparent, and easy to use, then they do not require an additional layer of redress. Additionally, eBay has the ability to immediately enforce any outcomes achieved, so there was no reason to rely upon the courts for enforcement. The eBay experience demonstrates that private resolution mechanisms can be wholly effective without relying on the legal system in any way.

## Resolution Systems Need to Be Continuously Learning

Because eBay had so much volume coming into the system, the company was rarely surprised by a new dispute filing. They had pretty much seen every kind of dispute before. However, there were circumstances where eBay learned something about disputes that urged them to reform the upstream processes.

One good example is return-related disputes. In a large number of cases, the buyer and seller disagreed over item returns. Maybe the buyer said he wanted to return the item after the seller's specified return window. Maybe the seller charged a restocking fee or refunded the buyer in store credit instead of cash. In most cases, the seller insisted that the buyer pay for return shipping, and the buyer was not happy about it. When a buyer received an item that she thought was inaccurately described in the listing, she felt that she should be able to return it and get

all her money back. Sellers usually disagreed because they were out the shipping price on the original item purchase, and they were not excited about having to pay shipping again.

eBay realized that the best way to tackle these disputes was not after they arose, but upstream in the process. So they took their learnings and went to the “Sell Your Item” team, who owned the form that sellers used to list their items for sale on the site. Working with that team, a listing feature was added to capture return information in a much more detailed fashion. Sellers could specify their return window, how they delivered returns, and whether or not they would cover return shipping. eBay also raised the profile of this information in the listing view, so buyers would be aware of it when they were deciding to make a purchase. As a result, there was a big drop off in the volume of dispute filings related to returns disputes.

Online consumer resolution systems must be constantly learning from the cases flowing through the system and updating the rules and processes accordingly. No ODR solution is perfect right out of the box. Instead, every process must evolve with the marketplace. Without this layer of continuous feedback, an effective resolution process may slowly get out of sync with the needs of consumers and become less and less effective over time.

## Takeaways

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The global eBay marketplace is as huge as it is pioneering. The company tackled many trust-related challenges for the first time and learned a lot from those experiences. However, eBay always knew this was only one part of the e-commerce elephant. There were other marketplaces and merchants growing bigger than eBay, particularly in Asia, and there was an even bigger segment of overall transaction volume that was being processed directly through websites that merchants put up themselves, with no overarching marketplace administrator ensuring consumer protection or fair resolutions. It was obvious that at some point the lessons learned at eBay would have to be applied to a much larger systems-design exercise—one that looked at global e-commerce as a whole instead of thinking only about the transactions within our particular walled garden. That was the bigger challenge, and that is what the *New Handshake* is all about.