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A Blueprint for Online Dispute Resolution System Design

By Amy J. Schmitz

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A great deal of discussion focuses on how arbitration and similar private dispute resolution harms consumers, and how businesses seek ways to avoid helping consumers.¹ It is often assumed that companies and consumers are on opposing “teams.” In reality, however, consumers and companies enjoy more commonalities than contradictions. Both benefit when deals go well and disputes are resolved quickly and cheaply.

The problem is that face-to-face dispute resolution can be costly in terms of time and money. Furthermore, getting lawyers involved may inspire gamesmanship and adversarial antics aimed to protect one’s reputation for staying “strong” and refusing to settle or admit wrongdoing. The solution is a well-designed online dispute resolution (ODR) system that harnesses business and consumer commonalities, and creates a win-win for all stakeholders in eCommerce disputes.²

That is not to say that ODR is the “end-all-be-all” for eCommerce disputes. All ODR is not fair and efficient. In fact, it is tempting to slip into cynicism about ODR and the fate of consumers on the Internet. Consumers assume that businesses will always have the power—as if bad consumer experiences are inevitable. Some also assume that merchants who provide

internal ODR systems for solving eCommerce claims must have a hidden agenda, or unfair disadvantage.

Such assumed negativity regarding ODR is wrong. The Internet undoubtedly generates vulnerabilities for consumers, but it also creates opportunities for consumer empowerment. The time is right to take advantage of those opportunities. Merchants, payments providers, consumer groups, regulators, and other policymakers must join forces in addressing this challenge by creating a unified ODR system that provides fast and fair resolutions worldwide. Aiming to catalyze this effort, this essay will address design caveats and provide criteria for creating a just ODR system.

Addressing Asymmetries

There are many considerations for designing a just ODR system. The first is to address asymmetries that tilt the playing field in favor of merchants. Often commentators and policymakers discuss these asymmetries in terms of “repeat player advantages,” which have been documented and debated for quite some time with respect to arbitration, for example. This focuses on the fact that merchants generally are repeat players in dispute resolution processes, and thus gather information that gives them an advantage in resolving disputes toward their favor. Furthermore, these repeat player merchants usually have greater legal and financial resources than consumers, again causing the system to tilt in the merchants’ favor.

Said another way, merchants and consumers fare differently due to the volume asymmetry. Consider that most consumers only experience one or two problems with their eCommerce purchases in a given year, and rarely (if ever) do consumers experience problems with the same merchant. That means that even if a consumer experiences multiple purchase problems, it is likely that the consumer will have to navigate different complaints processes for each store or

merchant. They may call some companies seeking remedies, file claims with ODR systems where possible, write emails to other companies, etc. Consumers therefore gain no repeat player advantages with any one complaint system.

In contrast, sellers experience problems on approximately 1 to 3 percent of their overall sales volume. If a seller sells 100 items a month, that means 12 to 36 disputes a year. If they sell 1000 items a month, that is 120 to 360 disputes a year. As sales volume increases, so do disputes. This volume asymmetry gives the seller a significant advantage. Sellers are the proverbial “repeat player.” The merchants learn the system, and can afford to hire the requisite legal assistance to help them navigate complaints toward their favor.

This relates to the information asymmetry. The seller (or the customer service employees working for the seller) quickly develops a lot of expertise about how the resolution process works. Sellers know what policies govern the outcomes rendered by the process, and they know what evidence will likely sway a decisionmaker. The consumer likely enters the process with no awareness of how it works, while the merchant enters the process with a long track record of lessons learned. That also means that the consumer must learn the rules as they navigate the process, while the seller already knows how everything is going to proceed.

The third asymmetry is the resource asymmetry. Sellers have the resources to support a long and extended resolution process, while consumers do not. Sellers also have the funds to retain counsel to deal with larger claims, and to apply policies for “paying off” the squeaky wheels, or highly valued consumers due to their zip codes or history for large purchases. However, such policies may harm those with the lowest incomes—essentially the consumer “have-nots.”³ These consumers are on their own in navigating remedy processes and seeking any sort of relief. That means that a well-designed and fair redress process must be built for any user, regardless of

education or resources. It must require no legal representation, understanding of policies and precedents, or presentation of evidence.

Accordingly, there is danger that volume, information and resource asymmetries will converge to tilt any ODR processes to favor merchants. However, we can design a resolution process that simultaneously compensates for the repeat player advantage and the three types of asymmetry. The solution is to give consumers control, while providing extensive help content and algorithmic support to counteract the information asymmetry that sellers enjoy. Control comes from simplicity. Consumers gain a sense of empowerment and control when they can easily navigate a resolution process without need for legal assistance or advanced education. In other words, online consumer redress processes must be very simple and straightforward for the consumer so that consumers are not disadvantaged by their lack of prior experience.

Furthermore, algorithmic support addresses the information asymmetry by digesting data from prior cases and complaints, and suggesting fair resolutions. A well designed ODR system must therefore leverage information drawn from the experiences of thousands of other buyers. Armed with data regarding prior cases and resolutions, consumers will not be left “in the dark” navigating their way toward a resolution. Furthermore, system monitoring and external auditing of the ODR process and any algorithms used should be added to catch repeat player problems when they arise. Indeed, it is easier to test ODR fairness than traditional processes due to the ease of system data collection and use of data auditing techniques.

Setting a Dollar Limit

One of the major debates regarding UNCITRAL Working Group III on ODR focused on the intended scope of a global ODR system and the definition of Business-to-Consumer (B2C) verses Business-to-Business (B2B) cases. Determining whether a buyer is a consumer or a

buisness is not a simple matter. Some businesses go online to buy large amounts of goods to stock their brick-and-mortar stores, while other sole proprietors make very few small dollar purchases and feel like “little guys” in eCommerce. It also is difficult to tell whether a seller is a professional or a hobbyist. If a seller is posting homemade mittens out of her kitchen, is she a consumer or a professional seller? At what point does one switch from being a consumer to being a merchant, and should it matter for determining the scope of a global ODR system?

Accordingly, it seems wise to bypass the debate regarding what qualifies as a “business” to define scope for a global ODR system. Instead, the best way to handle the issue is to simply set a dollar limit for the system, and include all transactions under that limit regardless of whether one would view them as B2C or B2B. This value may be different in different geographies, and it will change over time. Of course, the meaning of “low value” claims comes with its own difficulties, but it is much easier to tackle. It is nonetheless possible to set an amount, such as \$1,000 and other currency equivalents, as a starting point. The amount could rise to \$5,000 and currency equivalents, as \$5,000 often is used for small claims courts in the United States. This would be a better starting point than getting hung up on the question of how to effectively triage cases into B2C and B2B buckets.

Bypassing the Binding vs. Non-Binding Debate

The question of whether ODR systems should deliver binding outcomes has complicated many of the discussions around consumer redress. Indeed, dissention remains regarding the legitimacy of any binding ODR for resolution of B2C claims. There are strong arguments for evaluative approaches: Evaluative outcomes can provide 100 percent closure and can be extremely efficient to deliver at volume. Some parties also desire an evaluative determination in order to know whether they are “right.” Furthermore, parties gain assured access to remedies

from final determinations. This gives disputants an incentive to put forth all their evidence, not holding facts back for future litigation, as may occur in non-binding facilitative processes.

That said, policymakers, scholars, and consumer representatives have criticized binding arbitration in face-to-face consumer processes. They argue that pre-dispute binding arbitration clauses undermine valid consent and the enforcement of statutory consumer protections and other public rights. Many legal jurisdictions in Europe, for example, forbid the use of pre-dispute binding arbitration clauses in consumer transactions. They often reserve evaluative decision making only for public bodies, such as Ombuds Offices or Consumer Courts. In these geographies, it would not be legal to require ODR outcomes to be binding on consumers.

It should be noted that there are ways to deliver evaluative outcomes in a manner that abides by due process and fairness standards. For example, increasing transparency and adding external audits assist fairness of binding processes. Evaluative determinations could be published on a central portal after appropriate redaction of private information. This portal could be easily searchable, and allow consumers and consumer advocates to learn about recently resolved cases. Although some companies may be uncomfortable with such transparency, others would welcome opportunity to garner goodwill and competitive differentiation by complying with consumer protections and providing remedies to deserving consumers.

Ultimately, however, consumers should have free choice. They should not be compelled to abide by a binding private resolution without full information to weigh the benefits and costs. Consumers should retain the right to seek public redress. Therefore, ODR systems should not block access to the courts for consumers. But if the systems are well designed, they will resolve 99.99 percent of consumer cases without need for judicial redress. Moreover, the process would expand access to any remedies, since most low dollar consumer claims would never go to court

anyway. Consumers often are simply left with no recourse because the costs of pursuing claims outweigh any likely redress. A free or cheap ODR process would therefore open avenues to remedies, and advance consumer protection.

Dealing with Mass Claims

Isolating claims in private redress systems prevents the public from learning about major consumer protection issues. That is a major criticism of arbitration as it currently operates. If every matter is viewed as a single case, the onus always is on the complainant to report the incident in order to get their particular situation addressed. Complainants often do not have the full picture, as they only know their particular experience. This makes it very difficult to connect the dots to identify more systemic problems.

Advocates for mass claim processes such as class actions argue that resolution processes that require each aggrieved consumer to file an individual case will inevitably under-report problems because some percentage of consumers will not bother to report their issues. This means that the full extent of the situation will not be remedied. Class actions, they argue, are the only means for bringing justice to individuals with low dollar claims and shedding light on the full scope of the problem to be resolved.

These criticisms have merit, and class actions can be very powerful. Effective ODR design, however, can address transparency and allow for new means of consumer protection without the costs and drawbacks of class actions. One potential approach can be drawn from Consumer Ombuds offices in the European Union. European countries do not have class actions as we do in the United States; but they are committed to providing strong consumer protection. A global ODR system can borrow from their design by including a tripwire-like mechanism. The tripwire is triggered when a certain number of cases are filed that fit the same fact pattern.

To some extent, this is happening in the United States with the Consumer Financial Protection Bureau (CFPB). As consumers report issues in the CFPB's complaint portal, staffers with the CFPB look for patterns in the reports. If enough similar reports are filed, the tripwire is activated, and the CFPB will notify the business and require them to do an investigation to see how many consumers might have been similarly affected.

It would be very easy to build in such a tripwire for a global ODR system. Resolutions always should start at the individual case level, but effective data collection can enable pattern detection algorithms that make it easier to detect more systemic issues. Some companies may dislike this idea, as it allows regulators to "catch" bad actors, but companies should embrace this idea. It would allow them to learn of issues before they escalate into costly class claims. Moreover, the "good guys" benefit when the regulators and consumers become aware of the "bad guy" practices and products. Next generation consumer redress systems must therefore provide resolutions that scale from single issues to mass claims within the same platform if they are to be truly effective.

Building an ODR Trustmark

Merchant and sales platforms have been designed to rely heavily on seals or badges to indicate that a merchant is a trustworthy and reliable transaction partner. In many environments, these trustmarks, such as the Better Business Bureau "BBB" seal, or the TRUSTe logo, are a valuable tool for businesses looking to establish their legitimacy online. When an eCommerce merchant first enters a market or region, the consumers in that region may have no idea whether it is trustworthy. Trustmarks, particularly those issued by a well-respected organization or public agency, can help new customers feel that merchant is safe and competent.

Trustmarks are especially important for new merchants in providing consumers with some means to trust and make purchases. New merchants do not have ratings or track records. Accordingly, it would help consumers to feel comfortable buying from new or smaller vendors if these vendors have earned the right to post an ODR trustmark that signifies the vendor's commitment to an ODR protocol for providing a fair redress mechanism for consumers to obtain remedies if purchases go awry. Furthermore, this trustmark would go beyond unmonitored review sites and clear a way toward justice in eCommerce.

That is not to say all trustmarks have value. It can be extremely difficult for the organizations that issue the trustmarks to manually monitor the behavior of all of the organizations who have opted into the trustmark program. Even the BBB has been criticized for not sufficiently monitoring businesses under its seal. In addition, other organizations may create fake or less stringent trustmarks, thereby impairing the value of all trustmarks and causing confusion as to which trustmarks are trustworthy. Eventually trustmarks lose meaning and consumers no longer care about their existence when deciding where and how to make purchases.

At the same time, some argue that trustmarks are unnecessary due to review sites such as Yelp and TripAdvisor, and purchaser reviews on merchant sites such as Amazon. The argument is that because these sites aggregate information from thousands of users, the four or five star rating of a merchant can be trusted as a good indicator of their reliability. The problem is that these sites also have lost credibility due to "flogging," or posting fake blogs and reviews lauding products and services. Merchants also hire individuals to post fake reviews touting their own businesses and/or criticizing competitors. Furthermore, these reviews generally are unmonitored and their veracity is suspect. Deciphering reviews also is difficult because they rely on the subjective thoughts of the poster. This makes reviews a poor stand-in for more thorough external

performance auditing, leaving consumers even more vulnerable to misleading information and bad experiences.

Accordingly, a well-conceived and monitored trustmark system would be beneficial for building an ODR system. There could be one unifying trustmark that earns respect through proper creation. Private entities could work in collaboration with government regulators and other external auditors to ensure that the trustmark system is ethically administered. Specifically, merchants would earn the right to post the trustmark by agreeing to follow prescribed ODR standards of speed, fairness, and accountability. A public/private consortium would then monitor the system. A certain amount of this work could be done digitally with algorithms that catch patterns or lack of response, but there also would be some costs from human monitoring. Small subscription fees could help cover these costs.

Synthesizing Design Criteria

The challenge now is to take these observations and distill them into a plan of action. The following is a nutshell meant to catalyze discussion and development.⁴ Indeed, the time is ripe to bring global ODR to fruition.

H2Fast, Free and Fair

First and foremost, we know that consumers want fast and easy resolutions. Individuals have no desire or time to pick up the phone and wait on hold or waste time haggling over a fair solution. Consumers have endured that pain for far too long. Consumers also will run from any fees for using a process for simply getting what they were promised. ODR, therefore, must be simple to access, free to consumers, and easy to understand.

This also means that the initiation for the process should reside in exactly the same location where the transaction originally took place: on the merchant's Web site. The consumer should be

easily able to report an issue, and should get a solution as quickly as possible. Instant determinations would be best; failing that, however, a resolution in hours or days instead of weeks or months.

Online guides and wizards should be available to enable consumers to easily educate themselves about their rights, evidentiary obligations, procedural steps, and likely outcomes. Consumers must know exactly what they are getting into when they initiate the process. They must never feel surprised or misled by a procedural development that they did not know about prior to filing the case.

Furthermore, consumers using the system should not fear retribution for filing a claim. Data collected should be scrubbed of personally identifying information, and merchants should be prohibited from “punishing” consumers for filing to seek redress. The consumers that will use this process are likely to feel that they have been treated unfairly once, and that is the reason why they decided to try ODR. We must do everything in our power to ensure that they do not feel doubly mistreated by this redress design, and that it is as easy and straightforward as it can be, in order to ensure the consumer feels the process was fast and fair.

H2 Highly Scalable

This global ODR system should not simply benefit consumers. It also must benefit merchants or they will never “sign on” and adopt the system. Scalability is therefore a must. Scalability makes ODR a problem-solver for merchants across the globe.

Merchants face an incredible volume of disputes through eCommerce (projected to be more than 1 billion disputes per year in 2017 and beyond). This volume of disputes simply cannot be resolved through human powered resolution procedures. It is much too expensive for merchants to hire sufficient customer service representatives and lawyers to deal with all the disputes

eCommerce generates. This makes algorithms incredibly effective and efficient for resolving eCommerce disputes. For example, algorithms using data regarding similar disputes could help generate quick remedies and settlements.

Critics of algorithms argue that computers should never decide disputes because they eliminate the compassion and empathy of in-person interactions. However, that ignores the fact eCommerce is generated online and over the Internet—by and through computers. Most, if not all, purchasers and merchants over the Internet do not care about personal connections. They simply want swift transactions and remedies when purchases go wrong. Algorithms that are carefully constructed and closely monitored have the power to provide the type of fast and fair resolutions consumers crave.

That said, not every case can be effectively resolved by algorithm. The ODR system must work like a filter, where algorithmic resolutions handle the easily resolvable cases. This would leave a much smaller volume that requires human attention. That means that algorithms will use data to suggest settlements, thereby leading to resolutions of nearly all cases. Nonetheless, online mediators and arbitrators could handle the few cases left unresolved. Telephone and in-person assistance also could be available as a last resort.

This approach is the only way to make the system sustainable. Consider that most eCommerce purchases are under \$100. It is very hard to imagine a human-powered resolution process that will be able to handle cases at that price point on a cost-effective basis. Companies would have to spend exponential amounts to build up customer service, along with an abundance of mediators and arbitrators to resolve all of these claims. An ODR process that handles most issues through algorithms would therefore save companies costs in dealing with complaints.

Moreover, such ODR would be built to scale, thus helping solve the customer service problem and assisting merchants to retain happy and loyal customers.

H2Secure

The daily news is filled with stories of scams and data privacy disasters. Consumers nonetheless are eager to continue making purchases online. In the process, however, they want to be sure that their privacy is respected. Consumers want to receive exactly what they were told they were going to get when they agreed to the transaction, and they do not want to be stuck with things without consent. They certainly do not want to learn that their data has been sold and used in improper ways.

This brings in security and privacy. Part of being treated with respect is a commitment to maintaining consumer privacy. Consumers know that businesses are tracking when they make online purchases, use store loyalty cards, or pay for goods or services using their credit and debit cards. Data brokers track spending habits, how long one lingers on a Web site, consumers' online searching histories, family information, and even postings on social sites such as Facebook. Consumers may tolerate this data collection if it is used to improve their shopping experience, but they are intolerant of businesses treating their private data like another product to be bought and sold.

This is especially true when seeking remedies and settlement. A global ODR process must therefore respect privacy and preclude any sale of collected data. Some data about claims and issues may be collected, but it only should be used *to improve the process and assist in predicting proper remedies* based on similar cases. Again, that data must be scrubbed of personally identifying information. Moreover, data security must be a central component of the system. The ODR platform must be encrypted—and certainly much safer than email.

Amicably Toned

Tone is incredibly important. A global ODR system must set the right tone or it will fail at the outset. This is especially true given the variety of cultures and backgrounds of its users. Therefore, systems built under the presumption that all reported issues are fraud will generate frustration and inspire claims. The data shows that problems are inevitable, and the majority of them are resolvable through direct communication. Consumers and merchants want to have successful transactions, and they can be trusted to do the right thing most of the time.

This means that an ODR system should provide guided communication flows that provide a proper mindset. If the language used within a redress flow presumes ill intent (*e.g.*, filing a “fraud alert” instead of “reporting a problem”) then the users within that system similarly will assume that the other side is a bad actor that needs to be punished. The better approach is to provide simple flows starting with “item not received” or “item not as promised.” Factual flows from these basic starting points keep the communications focused on finding a solution in good faith.

Ultimately, it is best when consumers and merchants can resolve a matter through mutual agreement and direct communication. That is the best outcome for a reported problem. This brings us back to the binding/non-binding debate regarding arbitration noted above. When evaluative systems impose a punitive, victim-offender narrative on problems at the outset, one party always will leave the case feeling frustrated. Accordingly, ODR guided flows focused on facts and not judgment lead to the highest satisfaction.

H2Consistent

An immediate concern regarding ODR is that it eventually will skew toward the repeat players, as noted above. Of course, as soon as a redress system is launched, potential users

immediately test it. They may generate a barrage of cases and try out the different scenarios to see if they can find a seam in the design that they can exploit. Consider the individual who continually tries different scenarios in TurboTax hoping to lower one's taxes.

Accordingly, it is of utmost importance that the global ODR system be designed to combat this type of gaming. When vulnerabilities or perverse incentives are discovered in the flow, they must be addressed quickly. As the system matures, and designers re-code, reconsider, and redraft policies, new opportunities emerge for the delicate power balance between participants to be negatively affected. This is especially problematic when the profit motive comes into play. Good intentions at launch can come unstuck over the years if the systems administrators pay too much attention to maximizing the revenue stream. This is a challenge for all redress systems, public or private, but private interests may be even more susceptible.

That is not to say that private companies should not play a vital role in creating ODR processes. Indeed, they are essential because only they are able to stay abreast of rapidly evolving developments in technology and the global eCommerce marketplace. But independent evaluators should play a role in ensuring the fairness of these privately created processes.

This can begin with tripwires that notify public regulators and non-profit oversight organizations not only of large volumes of claims regarding the same products, but also when it appears that outcomes have become skewed. Once filings cross the specified threshold or indicate that outcomes may be skewed to favor a certain merchant, regulators may be automatically notified of possible grounds for an investigation or enforcement action. Also, these tripwires may result in an automatic public notification to inform other consumers of a potential recurring problem. This type of automated action could be important especially to catch "gamers" and to alert the public of health or safety issues are at stake.

These automated notification systems also could ease companies' overall dispute resolution costs by making the entire redress process more cost effective and efficient. The trust benefit obtained by participating businesses would provide more than enough economic benefit to justify participation. Furthermore, companies' participation in the ODR process should help them avoid any potential enforcement actions and class claims, and the courts should view participation in externally audited third party resolution systems as a strong signal that companies are committed to treating their customers fairly.

Beneficial Trustmark

As noted above, building a trustmark for ODR could be beneficial to companies and consumers. This trustmark should (a) communicate to buyers that this system is a safe and effective place for them to resolve purchase problems; (b) earn positive notoriety to set it apart from the morass of other redress schemes promoted across the Internet; and (c) be cross-culturally valid and appropriate in a wide variety of geographies.

Ideally the trustmark should create an affiliative halo from participation if respected public and private entities contribute their reputations to the administration and management of the system. Quality merchants will be eager to associate themselves with leading consumer protection and advocacy organizations, even if participation does generate additional responsibilities. The goal is to build a reliable resolution process that consumers will come to understand and utilize, and businesses will realize a trust benefit from their participation.

Such an ODR trustmark should not be a goal in itself. Instead, it should be valuable to both consumers and merchants. It should be the backbone of a new ODR opt-in mechanism to provide buyers a tool that they can utilize should a purchase go wrong. At the same time, it should give merchants credibility, and help them obtain and retain loyal customers. Accordingly, the

program must include mechanisms to throw out underperforming merchants from the program. The credibility of the system is dependent on strict enforcement of the merchant guidelines. If businesses repeatedly flout the rules and do not resolve buyer complaints, yet remain in the system, the trustworthiness of the overall program may be irreparably damaged.

Enforceable

Any ODR system that leaves merchants free to ignore resolutions is useless. Currently, some online marketplaces have not done the work required to enable effective enforcement of outcomes. For example, some classified sites do not enable buyers and sellers to hold their transaction partners accountable for performance once the transaction is complete. Users may have no fixed username or account, and no concrete way of getting a remedy once payment is made. The consumer may know nothing tangible about the merchant, and may be unable to contact them with any questions or problems.

For example, if an online marketplace provides only a disposable forwarding email address for a transaction partner, and the parties make a cash deal in person, there is no way to resolve a later problem. Consider the buyer who pays \$500 in cash for a laptop, meeting the seller in a parking lot, and then later discovers the laptop is completely non-functional. The buyer has no way to contact the seller to ask a question, and there is no way to reverse the payment made in cash.

In contrast, an ODR system must be built to allow for tracking and enforcement. Delivering resolutions to consumers that must then find ways to enforce is not an effective design. Enforcement should be automated, effective, and integrated into the transaction from inception. Merchant contacts must be tested and tracking must be part of the ODR system. Furthermore, merchants who fail to abide by resolutions and settlements must lose ability to post the

trustmark. Ultimately, they must be eliminated from the program, thus harming their ability to gather and retain customers.

Adaptable

One of the key attributes of ODR is its adaptability. Any computer coder or software designer will tell you that no solution is perfect on the first try. No matter how much research, planning, and testing one does in advance of bringing a system live, adjustments always are required. Furthermore, regardless of whether a system seems to be working at launch, conditions always are changing, which requires any platform to be able to evolve and adjust if it is to remain effective over the longer term.

A global ODR system must therefore be ready to adapt and change. This will be fueled by scalability, and the high volume caseloads in eCommerce disputes. The system itself will generate a lot of data, and effective systems designers will then be able to analyze the data to learn from that flow and continuously improve the system over time. ODR systems also have the advantage of being able to engage problems much earlier in the lifecycle of the issue, and early resolutions are the most effective. ODR systems also can offer valuable insights upstream of disputes, so that the transaction environment itself may be able to adjust to prevent later misunderstandings that can turn into problems and disputes. This discipline of continuous improvement and learning should be integrated into the ODR system's design from inception to ensure continued relevance and effectiveness.

Conclusion

It is not simple to design and build a global ODR system that can handle high volumes, cross cultures, and continuously improve. Key debates around asymmetries, scope, consent, class claims, and trust have stymied development of such a system since UNCITRAL Working Group

III ended in 2016. These debates, however, can be addressed. There are ways to design an ODR system that will be effective over the long term. This article aimed to crystalize key considerations and lay out design criteria to create a foundation for this system. The challenge now is to engage private and public entities to take the lead and work with merchants and consumers on a global level to take these observations and craft a systems design that integrates them into an implementable ODR solution for global eCommerce claims.

NOTES

¹ Consumer Financial Protection Bureau, Final Rule, Arbitration, Nov. 1, 2017, at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/arbitration-agreements>. On Nov. 1, 2017, the President signed a joint resolution passed by Congress disapproving the Arbitration Agreements Rule under the Congressional Review Act (CRA). This essentially overturned the CFPB's proposed rule that would have precluded enforcement of predispute arbitration clauses in consumer financial product and service agreements where it would hinder class actions.

² See generally, Amy J. Schmitz & Colin Rule, THE NEW HANDSHAKE: ONLINE DISPUTE RESOLUTION AND THE FUTURE OF CONSUMER PROTECTION (2017). Again, the ideas in this essay are further distilled and explored in this book.

³ Amy J. Schmitz, Secret Consumer Scores and Segmentations: Separating Consumer "Haves" from "Have-Nots," 2014 *Mich. St. L. Rev.* 1411-1473 (2015).

⁴ These ideas are further explored in my book with Colin Rule, *supra* n.2.