


Online Dispute Resolution Moves From E-Commerce to the Courts

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Technology executive discusses use of internet to settle civil cases

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Projects: Civil Legal System Modernization

Technologies that have long helped to resolve disputes in the business world are making their way into the nation's civil justice system to help expand access to the courts and boost their efficiency.

Colin Rule has worked in the dispute resolution field for three decades and was one of the first to take online dispute resolution (ODR) from the commercial space to state and local courts. As vice president of ODR for Tyler Technologies, a software company, Rule works with courts and dispute resolution organizations on best practices and ethical guidelines from his office in San Jose, California. He served as director of ODR for eBay and PayPal from 2003 to 2011 before co-founding Modria, an ODR service provider that Tyler acquired in 2017. He has written two books about ODR: *Online Dispute Resolution for Business* (2002) and *The New Handshake: ODR and the Future of Consumer Protection* (2017).

Rule recently answered questions posed by Pew about the genesis, growth, and future of ODR, and his comments represent his personal views. The interview has been edited for clarity and length.

Q: What are the origins of online dispute resolution?

A: ODR is an outgrowth of alternative dispute resolution (ADR), which took off in the United States in the 1970s. ADR was an attempt to find better ways for people to resolve their disputes outside of the courts and proved very successful in raising awareness about techniques such as negotiation, mediation, and arbitration. For instance, most family courts now recommend mediation for custody and parenting disputes in advance of a formal hearing. ODR started as ADR plus technology, but over time we've realized that ODR opens new possibilities that just aren't practical in face-to-face processes.

ODR's growth coincided with the expansion of the internet in the late-1990s. Websites like eBay were growing like wildfire but didn't have a fast and fair way to resolve problems that arose. Executives quickly determined this was undermining user trust. ODR experts helped eBay—and many other e-commerce companies—create platforms that could identify

problems early and resolve them quickly, keeping users happy and making them more willing to buy things online. Eventually, eBay was resolving more than 60 million disputes per year through ODR, more than the entire U.S. civil court system.

Q: What changes were needed to implement ODR in a legal—rather than commercial—setting?

A: When disputes arise in an e-commerce marketplace, you know some things about the disputants: They're tech savvy enough to log on to a website and make a purchase, and they probably expect that any resolution will happen in the same environment where the dispute arose. ODR seems logical to them.

That's not necessarily the case in a legal dispute. Some people may be comfortable with technology, and others may not. Courts are expected to invest resources in ways that maximize access to justice for as many as possible, but many court users do not have access to computers or fast internet connections. People may only have internet access through their smartphones, or via public kiosks in a library, and they may not be comfortable expressing themselves in writing. Also, the types of issues that arise in e-commerce transactions (e.g. not receiving an item or not being happy with the item received) are usually less complicated than the kinds of issues filed in courts (e.g., workplace, landlord-tenant, or family matters). These factors required us to rethink our systems to better meet the needs of the wide spectrum of court users and dispute types, which wasn't easy.

Q: How many jurisdictions are using online dispute resolution?

A: Court ODR was pioneered outside of the United States in places such as Singapore, the Netherlands, and Canada. Over the past two years, U.S. courts have not only caught up but taken the lead. We estimate that ODR initiatives are underway in more than 50 county and statewide court systems in the U.S. I suspect that number will double over the next year.

Q: What issues do you see courts trying to address through online dispute resolution?

A: Courts are continually seeking ways to improve access to justice for all, which can be challenging as budgets are reduced. ODR offers ways to expand access while reducing operating costs through more efficient processes.

Courts also need to provide solutions for the rising number of self-represented litigants trying to navigate the process themselves because they can't afford lawyers. People in conflict may face many external pressures, such as working two jobs, responsibilities for child or elder care, or living in rural areas. As a result, many simply give up, deciding to either not file or not defend their case, when they really should be supported all the way through their journey to a fair outcome.

The challenges confronting the courts aren't only in expanding access. We've had senior judges confess they are worried the courts are getting caught in a "spiral of irrelevance." Society is digitizing left and right, and the courts aren't keeping up. People's expectations are now set by daily use of highly personalized websites such as Amazon, Facebook, and Google. If the courts only provide services in person on weekdays between 9 a.m. and 5 p.m. or require paper forms to be mailed or faxed in, a large part of the population may face obstacles in getting full access to the justice system. ODR helps keep courts relevant in our digital age by providing access online 24 hours a day, 7 days a week.

Q: What are the advantages of using ODR in civil courts?

A: First and foremost is convenience. People give higher satisfaction ratings for in-person service than for online service, but the preference numbers are off the charts in favor of online, and that's due to the convenience. For people who live in remote areas, ODR can be a tremendous benefit. Users love that they can access the system whenever it fits into their schedule.

We're seeing resolutions take one to two months for many face-to-face cases, but online resolutions are taking an average of six days, with some being resolved in a few hours. The majority of ODR agreements are reached outside of typical court hours—late in the evenings or over the weekend—because that's when people are free to engage and work out solutions.

The second major advantage is cost. Faster resolutions mean less time off work, less time away from family, fewer travel expenses, less administrative paper shuffling, and fewer scheduling delays.

The third factor is accessibility. For those who cannot easily afford an attorney or take time away from critical responsibilities, ODR may provide the only viable option for pursuing redress.

Q: What's your vision for the future of online dispute resolution in the civil court system?

A: We need to radically expand access to our justice system, and we need to match that expansion with improved efficiency in resolving disputes.

Every smartphone should be a point of access to justice—the courthouse of tomorrow. At eBay, we found users would rather lose disputes quickly than win over a long period of time, and the long period of time at eBay was 12 days. We need to help the courts deliver outcomes on timelines like that. I'm looking toward a future where access to the civil justice system is installed on every mobile phone and most low dollar value civil cases can be resolved in two weeks or less.

Case volumes may go up 100 or 200 percent with the launch of these systems, but the efficiency improvements will enable the courts to handle the increased volumes effectively. ODR presents the greatest opportunity to expand access to justice in the last 100 years. I'm optimistic that if we do it right, we'll deliver on the promise of justice for all in ways we couldn't have conceived just a decade or two ago.

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