

RSI SPECIAL TOPICS

ONLINE DISPUTE RESOLUTION

RESOLUTION SYSTEMS INSTITUTE



RSI

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SPECIAL TOPIC

WHAT IS ONLINE DISPUTE RESOLUTION?

Online Dispute Resolution, or ODR, refers to a broad set of technologies meant to either supplement or replace ways in which people have traditionally resolved their disputes. ODR shares and builds upon the foundational characteristics of alternative dispute resolution, or ADR, emphasizing easier and more efficient methods of addressing conflict.

ODR makes use of various technologies and dispute resolution methods.

For example, an ODR platform might walk one party through all the issues to be resolved in a case with a multitude of issues, such as a parenting plan. Then the second party would review the first party's desires and indicate what they agree and disagree with. The parties might go back and forth until they resolve all they can or be referred to mediation – either in person or online – for further assistance.

ODR platforms that are seeking to resolve something more narrow – such as negotiating a dollar amount for a settlement – might support an exchange of chat messages between parties. They could convey demands and offers using the platform. This could happen synchronously or asynchronously, and a mediator may or may not be involved.

In another form of ODR, parties might participate in something that is more like a traditional mediation but is conducted via video conferencing with a mediator controlling who talks with whom and when. Depending on the platform, the parties may be able to jointly draft settlement language and access other documents during the mediation.

THE HISTORY OF ONLINE DISPUTE RESOLUTION

ODR's origins closely follow the history of digital interactions, particularly commercial transactions. As the volume of interactions increased, so too did the volume of disputes, and a need for redress native to the internet itself. While the internet dates back to the late '60s, its adoption for the first 25 years of its existence was limited largely to academic and military settings. Thus, grievances could often be resolved offline, as the parties were likely to be in the same real-world circles.

Courts' initial engagement with online disputes was more focused on how to resolve online disputes through traditional litigation than on engaging in solutions that utilized technology. For instance, a big issue courts confronted during the mid-1990s was related to where jurisdiction resided for disputes arising from online interactions. Additionally, the early adoption of internet use on college

campuses led to litigation around campus activities, touching on issues such as freedom of speech and harassment. While the issues discussed stemmed from online behavior, the dispute resolution process itself was still very analog.

A key step in the development of ODR came through the website eBay. Since 1999, the online marketplace giant has provided an internal system for parties to a transaction to settle their disputes online. Today, that system helps parties resolve over 60 million disputes each year — a number that closely resembles the total annual volume of cases filed in all US civil courts. This sort of capacity demonstrates what ODR is capable of, both in terms of the number of cases handled and the ability to empower parties to expeditiously resolve their own disputes.

The screenshot shows the eBay Resolution Center page. At the top is the eBay logo and a search bar. Below the logo is a link to 'Home > Resolution Center'. The main heading is 'Resolution Center'. There are two main sections: 'Resolve a problem' and 'Help'. The 'Resolve a problem' section has a yellow header and contains text encouraging communication and a form to select a problem type. The 'Help' section has a grey header and lists various help topics. At the bottom, there is a 'Your requests and cases' section with a yellow header and a link to sign in.

Shop by category Search for anything All Categories Search Advanced

Home > Resolution Center

Resolution Center

Resolve a problem

We always encourage our members to communicate with each other when there's a problem with a transaction. The first step is to contact the member through the Resolution Center and try to resolve the problem.

To start the resolution process, please tell us what your problem is:

I bought an item.

- ☒ I haven't received it yet.
- ☐ I received an item that does not match the seller's description.

I sold an item.

- ☐ I haven't received my payment yet.
- ☐ I need to cancel a transaction.

[Continue](#) | [My problem is not listed here](#)

Help

- [What is the eBay Money Back Guarantee?](#)
- [What to do when a buyer doesn't pay](#)
- [Canceling a transaction](#)
- [What to do when you don't receive your item or it's not as described](#)
- [Resolving buying problems](#)
- [Resolving selling problems](#)
- [Report a problem with a buyer](#)

Your requests and cases

[Sign in](#) to see your requests and cases.

The establishment of the eBay Dispute Resolution center is considered a watershed development in the history of online dispute resolution. (Screenshot by author, all rights reserved to eBay.)

Of late, courts have been embracing and championing ODR, much as they once turned to ADR as a means of managing their caseloads, improving outcomes and better serving litigants. Over the past few years, numerous stakeholder groups, such as the Conference of Chief Justices, the Joint Technology Commission, the National Center for State Courts and the Pew Charitable Trusts have called for bold and substantial changes to the civil justice system to incorporate ODR. Several state court administrative offices have put forward plans that call for the establishment of ODR. And some states, like Michigan and Utah, already have adopted ODR programs into their operations. As technology continues to advance, it stands to reason that ODR will continue to proliferate.

Sources for ODR History Section:

1. Katsh, Ethan, "ODR: A Look at History," Online Dispute Resolution Theory and Practice 21 (2013).
2. Katsh, Ethan, and Wing, Leah, Ten Years of Online Dispute Resolution: Looking at the Past and Constructing the Future, 38 University of Toledo Law Review 101 (2006).
3. Rule, Colin, "Designing a Global Online Dispute Resolution System: Lessons Learned from eBay," 13.2 U. of St. Thomas L.J. 353 (2017).

ODR CONSIDERATIONS FOR COURTS

The National Center for State Courts [defines court ODR](#) as “a public-facing digital space in which parties can convene to resolve their dispute or case.”

The first experiments in court ODR have involved traffic citations; small claims, such as eviction and debt collection; and family cases. Court ODR exists in relation to (1) courts’ current use of technology, such as case management systems; (2) courts’ overall change in the use of technology, such as e-filing, video arraignments and text reminders for court dates; and (3) courts’ existing ADR programs.

If your court is looking to successfully bring ODR into its operations, you may want to look at the Michigan Supreme Court’s “[Considerations in Implementing Court ODR Systems](#).” For a comprehensive approach to developing ADR in a court ADR environment, see RSI’s [Guide to Program Success](#) (“the Guide”). The following sections outline some of the most critical issues for court ODR.

Problem Identification and Goal Setting

Building programs to achieve specific goals is a hallmark of the program design articulated in [the Guide](#), and we view ODR as no different in this regard. When considering whether to adopt ODR, you should ask yourself, “**What problem am I hoping technology can solve?**” Once you’ve defined the problem to solve, you can then begin to explore which technologies help you meet that need, and how to design a process that utilizes that technology to solve that problem. For instance, a program that uses ODR as a way to triage cases will look different from a program that uses ODR to connect remote parties with a mediator.

You’ll also be able to set objectives that help you determine whether ODR is helping you achieve these goals, or if you need to tweak your process. Sometimes, you will also arrive at a solution that doesn’t require a new technology, or perhaps requires it to a lesser extent than you considered.

Engaging Stakeholders

As much as ODR can offer amazing new opportunities, some stakeholders who are involved in the traditional system — even the established court ADR system — may balk at new uses of technology. Reaching out early and engaging all the stakeholder groups throughout planning can avoid a revolt by an interest group on the eve of launch.

Process

As mentioned above, there are a variety of different ODR technologies that a court can use. When thinking about how these technologies can serve litigants and your court, consider how the technology could serve the process, rather than allowing the technology to dictate the process.

As an example, we have laid out the steps to participation for one of RSI’s foreclosure mediation programs below, in the left-hand column. The right-hand column imagines a hypothetical program in which ODR is used.

Step in Non-ODR Mediation Program	Corresponding Step in Hypothetical ODR program
Defaulting borrower calls program staff during regular business hours after being served with foreclosure summons and completes intake.	Defaulting borrower logs onto web portal at their convenience after being served with foreclosure summons and completes online intake.
Borrower travels to in-person meeting with housing counselor to review documents they must submit to the lender for loan modification application and discusses options to retain their home.	Borrower uploads documents to web portal and schedules video session with housing counselor. Housing counselor can utilize screen-sharing technology and document annotation to go over documents in depth with homeowner and point out whether there are any issues with their paperwork.
Homeowner submits loan modification application, whereupon it is reviewed by lender who can make an offer, deny the application, or request further information. Lender sends decision to borrower via USPS.	Borrower submits packet via web portal, where lender can log on and review. Lender can annotate document to highlight where there is missing or unclear information and notify borrower as issues come up. At this stage, a mediator could be assigned and could facilitate a chat-based dialogue with the parties to streamline the document exchange process.
Program staff schedules mediation, in which the mediator, borrower and lender's attorney attend in person, with a lender representative on the phone.	Once the case is ready for mediation, a scheduling app collects the parties' availability, finds a mutually agreeable time, and schedules the case with all parties and the mediator. The mediation is conducted using a video conferencing app through which all parties have access to the documents that have been submitted.

Tracking and Evaluating Your Court ODR Process

To achieve goals, you need a way to measure success. When an ODR system is developed, the tools for tracking and evaluating have to be built into the system. This means you will want to consult with an evaluator early in the process.

The idea of constant improvement is part of technological innovation, so you will need to understand what analytics are available to inform those improvements. But tracking and evaluating a court ODR system is about more than data analytics. You will want to be sure that ways to assess ADR concepts such as procedural justice are baked into your ODR process.

Cost

Nearly every decision in court administration has cost considerations, and implementing ODR is no different. A big threshold question is whether you *buy* an existing software solution or *build* your own. Using an already existing platform can cut down on costs tremendously. However, such solutions may not be optimized to help you meet the goals you've set out to accomplish. As with any project, you will want to determine the costs of operating the program, not just the development costs.

Some of the costs involved in operating an ODR program include: dispute system design, developing software, paying to have your platform hosted online, ongoing maintenance and improvements to the platform, technical support for court administrators and disputants, managing neutrals if your ODR process includes them, and conducting outreach and educating users.

Below is a framework for considering how to raise the funds for ODR programs, based on a February 2019 presentation by Tom Clarke for the National Center for State Courts:

Source	Pros	Cons
Subsidized Development	Grants and foundations can provide outside investment in your court	It tends to be short-term and might not sustain ongoing costs
Filing Fees	Fees can allow program to become self-sustaining	Imposing fees can block access to justice
Funding Reallocation	It can optimize court funding to prioritize new technology	Replacing existing court programs with ODR alternative carries risk
Public-Private Partnership	Private company can take on some of the costs to develop and implement the ODR program	ODR provider and court interests might not align

Customer and Tech Support

At the heart of a court ODR program is the technology that makes it work. But even the best software isn't immune from causing confusion both for the public that uses it and for the court staff who rely on it.

When individuals need assistance with your ODR program, who can they contact? Do you plan on having your clerk's office, law library or a program administrator fill this role?

Does your court have an in-house information technology team to provide support? Do they have the skills, training and time to manage an ODR platform?

Consider that many users will access an ODR platform outside of normal court business hours. How will you help them? Does it make sense for you to outsource technical support to a firm that can operate at unusual hours? If not, how will you meet this need?

Selecting and Managing Your Neutrals

ODR does not always mean that there will be no humans involved in dispute resolution. You may find that some of the neutrals who participate in your in-person ADR programs will be interested in ODR and others may not be. Some may enjoy family mediations because they like to work in person with parents and may not want to use video connections. You may also find that not all your neutrals are well suited to ODR. The requirements may be different, for example, for conducting an in-person arbitration compared with deciding cases on documents only. On the other hand, you may find new neutrals who are drawn to ODR and bring critical new skills.

Ethical Concerns

There are no standards specifically addressing court ODR. Two versions of standards for ODR more generally have been produced. One is [Ethical Principles for ODR](#) by the National Center for Technology and Dispute Resolution. The other is a somewhat more [condensed version](#) by the International Council for Online Dispute Resolution. These standards articulate the ways in which ODR should be accessible, accountable, competent, confidential, equal, fair/impartial/neutral, legal, secure and transparent.

There are also many ethical standards for various forms of ADR. If you are adapting a typical court ADR process to an online environment, you will need to abide by the existing standards for the ADR process. For example, if you are conducting mediations via video-conferencing, you will need to operate within mediation standards that provide for party self-determination, confidentiality and mediator neutrality, along with the standards for ODR. If, on the other hand, you are creating an entirely new way to resolve disputes, you may need to extrapolate from ADR, legal and ODR ethics. For example, if the parties reach partial agreement using ODR, you will need to determine who decides if those terms will be reported to the court. That decision may hinge on long-standing legal principles about admissibility of settlement discussions.

Access

ODR has the potential to help bridge the gap in access to justice for litigants, but it can also entrench existing divisions between certain groups. Here is a non-exhaustive list to get your court thinking about these issues:

- While many of us take internet access for granted, for many — particularly those who already face issues in accessing our justice system — there are significant obstacles to getting online, such as the high cost of service or a person's geography.
- Many individuals primarily access the internet through their smartphones, using limited data plans. Consider whether the applications you want to use are mobile-friendly from the perspective of both their design and data usage.
- Still others will need to utilize a computer at a public institution like a library. If your court can offer computer terminals for people to access your ODR platform, that could prove to be a huge boon. You should also consider certain design features to accommodate disputants who will be potentially submitting sensitive information in a public space, such as an automatic log off feature.
- Access to justice advocates recommend that language be written at a fourth-grade reading level.
- Will there be support for non-English speakers?
- ODR naturally appeals to individuals who rely on hourly wages or caregivers, among others, for whom taking a day off to go to court is overly burdensome. Are there steps of the process that will require them to follow up during regular business hours, and is there a way to accommodate those users?

- Consider the needs of individuals with disabilities, and have them be part of your design and testing process.
- Integrate resources such as guides and links to legal aid within your ODR.
- Some users will just not be able to navigate the technology without assistance. It is a good idea to create some redundant/backup systems for these individuals.

RSI PUBLICATIONS ON ODR

Resolution Systems Institute has authored a number of works on ODR, including:

- A number of blog posts on [our Just Court ADR blog](#)
- [Online Dispute Resolution for Debt and Small Claims Cases: A Report on a Pilot Program in a Justice of the Peace Court in Collin County, Texas](#), examining a pilot ODR program for debt and small claims cases, with an emphasis on usage and outcomes
- [Online Dispute Resolution for Post-Judgment Family Law Cases: A Report to the Ottawa County, Michigan, Friend of the Court](#), providing insight into participant experience with ODR and ODR's impact on outcomes and efficiency
- [Family Court Online Dispute Resolution for Thinly Resourced Parents, Courts and Communities: Impediment, Improvement or Impossible Dream?](#), harnessing the expertise of 37 national experts to lay out a blueprint to develop family ODR that is accessible, ethical, effective and feasible

ADDITIONAL COURT ODR RESOURCES

For further information on court ODR, we recommend the following:

- [odr.info](#)
- [National Center for State Courts ODR Topic](#)
- [National Center for Technology & Dispute Resolution Online Dispute Resolution Bibliography](#)
- [Case Studies in ODR for Courts, and other publications by the Joint Technology Commission](#)
- [Pew Charitable Trusts ODR Fact Sheet](#)
- [Eight Lessons to Consider for ODR Implementation](#)