

FOREWORD

Is court a service or a place? When people or organizations are in dispute, must they congregate in physical courtrooms to resolve their differences?

It does seem to be deeply imbued in conventional Western thinking that when serious conflicts arise in society, then the warring people become parties and it is to some court that they head: at law school, students are often taught that the court is the definitive forum and mechanism for settling differences; in our literature, the courtroom is the theatre in which many disagreements are played out; and the lay perception of the administration of justice is frequently articulated in terms of wood paneled hearing rooms, arcane procedures and judges in robes.

Critics of the court system, however, have for long challenged whether courts are indeed the best placed institution and method for resolving many kinds of dispute. Opponents have argued, for example, that pursuing an action in the courts is too confrontational, too time-consuming and too costly. Many have gone further and called for the widespread adoption of ADR, alternative dispute resolution.

This collection of essays – written by undoubted authorities in the field – is concerned with one emerging category of alternative dispute resolution, known as online dispute resolution, or ODR. When a conflict is handled using ODR, a traditional courtroom is not employed. Instead, the process of resolving a dispute is entirely or largely conducted through the Internet. Of course, as this volume shows, this snapshot of ODR is an oversimplification. In the pages that follow, it is made clear that many techniques fall under the umbrella of ODR, such as e-mediation, e-negotiation, and e-arbitration, and that these techniques can be deployed in sorting out a wide range of disagreements – from consumer disputes to problems arising from e-commerce, from quarrels amongst citizens to conflicts between individuals and the state. The book also shows that ODR is already being embraced, albeit in varying degrees, in North America, Europe, Asia, Australia, Africa, and Latin America.

In a world in which the Internet is so firmly embedded, it should come as no revelation that online methods might be devised for sorting out at least some tensions and clashes that arise amongst human beings. And yet, most lawyers and many litigators have not yet heard of ODR. More disconcertingly, when seasoned legal advisers are introduced to the notion of ODR, they often regard it with distrust and as a curiosity that will remain forever

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on the edge of their world. The skeptics quickly question the fairness, openness, rigor and reliability of ODR. These misgivings are not to be dismissed lightly. Instead, in this book, measured, compelling and reassuring accounts of ODR are offered, addressing a wide range of related issues, including trust, justice, cultural context, and the interaction of ODR with traditional judicial systems. Even in the chapters that explore the potential of artificial intelligence and mobile technology for ODR, the tone is not evangelical.

Nonetheless, it is hard to digest the theory and case studies presented here and not feel a strong sense of optimism that we are on the threshold of a new era for dispute resolution; that we are being offered a glimpse of methods for settling disagreements that will incur costs that are, at last, proportionate to the amounts at issue. The credibility of legal systems around the world is currently being challenged by disgruntled users – from impoverished individuals through to multinational businesses – who claim that the courts are no longer an affordable or sensible forum for disposing of many of their conflicts.

In these difficult economic times, ODR offers the promise of robust and yet radically less expensive dispute resolution. And while it may seem alien or outlandish for lawyers, policymakers and opinion formers of today, few of these belong to the Internet generation. Future generations, for whom working and socialising online is second nature, may regard ODR as an entirely natural facility, much more so than conventional courts.

For long, I have described ODR as an example, in law, of a disruptive technology – one whose introduction can fundamentally challenge and change working practices of the past. For whom, though, is ODR disruptive? The harsh truth is that ODR is most disruptive for those who currently make a living from traditional litigation. For lawyers and public servants whose careers are in the courts, ODR may well be regarded as threatening. This should not deter us from evolving techniques that better meet the needs of Internet-based societies. It is not the purpose of the courts to provide lawyers with a livelihood. Crucially, what may be disruptive for law firms may be empowering for those who have problems to resolve.

As with all disruptive technologies, ODR is not therefore an uncontroversial field of theory and practice. That is why this book is so important. Until now, much discussion of ODR has been anecdotal and speculative. In gathering together the essays that follow, Mohamed Wahab, Ethan Katsh and Daniel Rainey have taken the debate and theory about ODR to a new level – a standard of discourse that is better informed, more systematic, and rooted more reliably in experience of live systems.

I wish the work every success.

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Professor Richard Susskind OBE
IT Adviser to the Lord Chief Justice of England and Wales
President of the Society for Computers and Law