

Please cite this paper as:

OECD (2002-06-04), "Resolving E-commerce Disputes Online: Asking the Right Questions about ADR", *OECD Digital Economy Papers*, No. 63, OECD Publishing, Paris.
<http://dx.doi.org/10.1787/233468177136>



OECD Digital Economy Papers No. 63

Resolving E-commerce Disputes Online

ASKING THE RIGHT QUESTIONS ABOUT ADR

OECD

Unclassified

DSTI/ICCP/REG/CP(2002)2/FINAL



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

04-Jun-2002

English - Or. English

**DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INDUSTRY
COMMITTEE FOR INFORMATION, COMPUTER AND COMMUNICATIONS POLICY
COMMITTEE ON CONSUMER POLICY**

Working Party on Information Security and Privacy

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ASKING THE RIGHT QUESTIONS ABOUT ADR**

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JT00127493

Document complet disponible sur OLIS dans son format d'origine
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FOREWORD

This document has been prepared by the Committee on Consumer Policy (CCP) and the Working Party on Information Security and Privacy (WPISP) of the Committee for Information, Computer and Communications Policy (ICCP). The OECD Secretariat recognises the special contributions by the Government of the Netherlands to this project. The CCP and ICCP agreed at their March 2002 meetings to the declassification of this document under a written procedure completed on 3 June 2002. It is published on the responsibility of the Secretary-General of the OECD.

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RESOLVING E-COMMERCE DISPUTES ONLINE: ASKING THE RIGHT QUESTIONS ABOUT ADR

Shopping online opens up a world of opportunity, convenience, choice, competitive prices and information. It may also raise some practical questions and concerns. What will happen if something goes wrong with your purchase? What if you don't get the products you ordered? What if they arrive damaged? What can you do?

Often, when you are browsing online, you can learn how a business will help resolve problems, simply by looking at its Web site. Some businesses provide information about their policies on dispute settlement. Enquire about the company's in-house customer complaint services or money-back guarantees. At the very least, you should make sure the site has a phone number or e-mail address so you can contact the company if something goes wrong. In addition, some online businesses are part of "seal" or "trustmark" programmes that certify that a business meets certain minimum standards. Click on the seal or trustmark for more information. Some companies offer escrow services, through which a third party can hold your money until you get the goods or services you ordered. Other companies offer insurance programmes through which you can get your money back if you don't get the products or services you ordered.

When you have a problem with a purchase you have made online, try to resolve the problem with the company directly, as a first step. If your attempts to fix a problem directly with the business are not successful, you may think that legal action is your only option. Often, however, there is a quicker and cheaper option through which you can try to resolve your dispute: using a neutral third party. This process is called alternative dispute resolution (ADR), and, increasingly, consumers and merchants are using it. Online ADR involves a process through which you can contact an ADR provider, file your complaint online, have the other party respond online, and resolve the entire dispute from the comfort of your own home with no need to travel and at minimal cost. If you have a dispute, be aware that some sites may require you to go through ADR before going to court; others may require you to waive your right to go to court. Check the terms and conditions of the sale first. Then, check with your local consumer protection agency to see if "mandatory" or "binding" ADR clauses are legal in your country. If you do not want to give up your immediate right to go to court, consider whether you want to enter into a transaction on the site. To determine whether online ADR can help you resolve your dispute, consider the following questions:

Key questions
<ol style="list-style-type: none"> 1) What should I think about before considering ADR? 2) What kinds of online ADR are available? 3) How do I choose a particular form of ADR? 4) How do I choose a particular ADR provider? 5) Where can I locate ADR providers that could meet my needs? 6) What if ADR can't help?

1) What should I think about before considering ADR?

 TIP 1 

Before trying ADR, ask yourself the following questions:

What remedy would satisfy me?

Clearly identify what solution would be acceptable to you. For example: Do you want your money back? Do you want the product to be replaced? Do you want the business to take other action?

Have I tried to resolve the problem directly with the business myself?



Usually, the best first step is to contact the business directly. Businesses often have excellent internal complaint handling systems that will help solve your problem quickly and efficiently.

Can my payment card issuer provide assistance?

 TIP 2 

If you paid for goods or services using a credit or debit card, you may benefit from special protections. Carefully read your payment card statements for information on contesting charges, and check with your local consumer protection agency to see whether any special protections apply in your country.

Do I suspect fraud or some other unlawful conduct?

If so, contact your national or local consumer protection or data protection authorities.  TIP 3 

2) What kinds of online ADR are available?

 TIP 4 

Mediation and arbitration are already well known and used in the offline world, and are increasingly available online. Automated negotiation is a new form of ADR that takes special advantage of the online environment.

What is mediation?

In mediation, a neutral third party – a mediator – helps you and the other party try to resolve the problem through facilitated dialogue. However, it's up to you and the other party to reach an agreement. Other names for similar approaches to ADR include “assisted negotiation”, “facilitation”, and “conciliation”.

What is arbitration?

Arbitration involves a neutral third party – an arbitrator – who gathers information from you and the other party and makes a decision. Frequently, the arbitrator's decision is intended to be binding.

What is automated negotiation?

Automated negotiation is a computerised process, mostly designed to settle disputes over monetary amounts. It is often based on a system of blind bidding, through which the parties enter successive bids in an attempt to reach agreement, but without knowing what the other party has offered. The process concludes when the bids become sufficiently close to one another and the computer programme can propose a solution. Read the terms and conditions of an automated negotiation carefully, as the outcome generated by the computer can be a legally binding contract.

3) How do I choose a particular form of ADR?

Some online merchants specify in their terms and conditions that a particular form of ADR will be used if there is a dispute about the transaction. Read those terms and conditions carefully, and ensure that you are comfortable with them before making your purchase. With other merchants, you may be able to initiate the ADR proceeding yourself. In thinking about which form of ADR would be best for your dispute, ask yourself the following questions to help you determine which ADR programme to use.

What role do I want the third party to play?

In arbitration, the third party makes the decision. In mediation the role of the third party may vary, but your own active involvement in proposing compromises and finding solutions is essential. In automated negotiation, a solution is generated by a computer programme.

Should the third party have special qualifications/expertise?

Arbitrators and mediators may have formal qualifications. If your dispute is highly technical, or requires a particular area of expertise, make sure the third party has sufficient and appropriate expertise. If it is a simple dispute where, for example, you and the business disagree on the facts, formal qualifications may be less necessary. In either case, having a third party with experience in the subject matter of your dispute will be helpful.

Do I want to agree to be bound by the outcome?



You may be bound to obey the outcome of an arbitration. In other words, you may have exhausted your options – and may not be able to sue the company in court. However, in some countries, consumers are not allowed to give up their right to go to court. Check with your local consumer protection or data protection agency.

4) How do I choose a particular ADR provider?

Consider the following:

Does the provider adhere to a code of conduct or guidelines?

An ADR provider may refer to a set of guidelines or a code of conduct. Usually, this means that the ADR provider has voluntarily agreed to respect certain rules. Check the Web site of the ADR provider for details about these types of measures.

What will it cost to use this ADR programme?

Some programmes are free. Others charge a flat rate or a rate based on your ability to pay. Check the merchant's site and the ADR provider's site to see who will pay the ADR costs.

How long will the process take?



It varies. Often, ADR can be much speedier than going to court.

Can I go through the process in my own language?

Inquire whether you can use your own language during the process. Sometimes translation may be available but inquire about the cost and availability of a translator.

How will I present my case?

 TIP 7 

The actual process of communicating may take many different forms, ranging from a simple exchange of e-mails to all parties being “present” via Web cams. Consider:

- *Timing*: If the problem is complex, you may want time to think, before having to respond.
- *Technology*: You can send an e-mail any time from home, but can you videoconference?
- *Security*: Messages sent by ordinary e-mail generally have no special security protections. The level of security needed will depend on the sensitivity of the information sent. Although many small-value disputes will not require confidentiality, you should avoid sending highly sensitive personal information in an e-mail. If the dispute itself involves highly sensitive personal information, consider using ADR programmes that have secure Web pages to transmit information.

Does the provider have a privacy statement?

Consider whether the provider has a privacy statement, or otherwise indicates how your personal information will be used. Some ADR providers may ask your consent to make an anonymised version of the outcome of your dispute public. This information can be useful to other consumers evaluating whether to use a particular ADR provider and inform consumers with similar disputes about possible solutions.

5) Where can I locate ADR providers that could meet my needs?

 TIP 8 

There are a number of ADR inventories you can consult.

6) What if ADR can't help?

If you have tried ADR unsuccessfully, or decided not to try ADR, your last resort may be legal action.

TIPS

1. These questions address the issue of dispute resolution. However, before deciding to interact or do business with a Web site there are many other important factors to consider. Some considerations relate to privacy. For links to online information sources regarding privacy protections, visit the OECD's privacy resource page: <http://cs3-hq.oecd.org/scripts/pwv3/privcontacts.htm>. Other considerations relate to consumer protection. You can find information about the protections you should expect while shopping online at: <http://www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-44-1-no-24-320-44,FF.html>. For additional information about safe shopping online, visit: <http://www.econsumer.gov/english/consed.htm>.
2. The OECD has prepared a set of *Frequently Asked Questions* that discuss the safe use of payment cards online and the protections available in case something goes wrong: <http://www.oecd.org/sti/consumer-policy>. For links to consumer protection agencies, visit: <http://www.econsumer.gov/english/contact.htm>.
3. To file a cross-border e-commerce complaint about consumer protection or privacy issues, visit <http://www.econsumer.gov>. For links to online information sources regarding privacy protections, visit the OECD's privacy resource page: <http://cs3-hq.oecd.org/scripts/pwv3/privcontacts.htm>.
4. OECD countries differ in the way that they classify and define these ADR forms. In your country, special forms of ADR may be available for you to use.
5. Links to consumer protection authorities can be found at: <http://www.econsumer.gov/english/contact.htm>. Links to data protection authorities can be found at: <http://cs3-hq.oecd.org/scripts/pwv3/privcontacts.htm>.
6. When you consider timing issues, keep in mind that most OECD countries have laws that limit the amount time that you have to bring a claim to court. Ensure that the ADR proceeding will be concluded within sufficient time for you to go to court, if that should become necessary.
7. To verify that your information is secure, make sure the Web address (URL) for the ADR form begins with "https:" instead of "http:" and look for an icon (for example, a closed padlock or a key) at the bottom of your computer screen to signal that your transmission will be secure.
8. The European Commission provides ADR provider information through its EEJ-Net project, available at: http://europa.eu.int/comm/consumers/policy/developments/acce_just/acce_just14_en.pdf. Consumers International has assessed a number of ADR providers. Results are available at: http://www.consumersinternational.org/campaigns/electronic/update_disputes_in_cyberspace_2001.pdf.