



Resolving disputes online

Best practices for
Online Dispute Resolution (ODR)
in B2C and C2C transactions

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FOREWORD

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ICC has produced the *ICC best practices for customer redress in online business* which describe how a well-functioning internal customer redress system should work. But what if the customer redress system fails to provide satisfaction? Are there further steps that can be taken to resolve disputes online? Many organizations exist which provide online dispute resolution for B2C and C2C disputes. But how should a company best use these services and what can the service providers do to help the businesses and consumers who use their services?

We consulted ICC members and experts in the field of B2C and C2C online dispute resolution to come up with a set of recommendations for both the users and providers of services in this emerging area. These recommendations will help to spread best practice in B2C and C2C online dispute resolution and promote the understanding and uptake of these essential services.

Dispute resolution services are a vital trust-building mechanism and are essential to cross-border B2C and C2C electronic commerce. I hope that these best practices help both businesses and consumers understand what to expect from these services and how best to use them.

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INTRODUCTION

Business to consumer (B2C) and consumer to consumer (C2C) online dispute resolution(ODR) can provide efficient, cost-effective ways to resolve cross-border disputes arising from e-business transactions. Types of B2C and C2C ODR services vary, from non-binding to binding, mediation and arbitration, and using information and communications technologies from simple email to facilitating real-time interaction of parties in different locations. As this type of service is new to many users, it is essential for service providers to provide clear information to users and develop open and accessible mechanisms for online interaction in dispute resolution procedures.

The *ICC Best Practices for ODR in online B2C and C2C Transactions* provide guidance for companies engaged in online transactions and for online dispute resolution service providers. These best practices are a practical measure to improve consumer confidence in doing business online. They have been developed in consultation with the ICC Court of Arbitration. They focus on the specific issues raised by conducting alternative dispute resolution online, and follow the recommendations and best practices emerging from industry and concerned organizations, and from previous ICC recommendations on B2C and C2C alternative dispute resolution. These best practices will help ensure effective services that consumers and businesses can both count on.

The *ICC Best Practices for ODR in online B2C and C2C Transactions* are a companion to the *ICC Best Practices on online customer redress*, and they build on previous ICC work, the *ICC Business-to-Consumer (B2C) and Consumer-to-Consumer (C2C) Alternative Dispute Resolution (ADR) Project*¹. This resource includes a report on the uses of ADR and an inventory of ADR services available to address B2C and C2C disputes arising from online transactions.

¹ <http://www.iccwbo.org/home/ADR/inventoryhome.asp>

ICC encourages companies engaged in online transactions with customers to, wherever practicable, use ODR when the companies' own customer redress mechanisms have been exhausted. Companies should communicate this option clearly to customers. ODR service providers should ensure that ODR mechanisms are fair, effective and transparent.

How to use these best practices

The best practices give information to :

- Online B2C companies on how to use ODR systems to resolve customer complaints that cannot be resolved by companies' own internal customer redress systems,
- ODR service providers on how to deliver effective and efficient service to business and consumers.
- Customers on what they may expect from an ODR process.

GUIDANCE TO COMPANIES

Companies engaged in online transactions with consumers should provide or promote to consumers readily accessible dispute resolution systems which meet recommendations set out for B2C and C2C ODR service providers below. Companies should have in place workable customer redress systems, in order to reduce the chance of disputes requiring external dispute resolution in the first place.

Such customer redress systems should also meet certain minimum standards, for example:

- **Accessibility**

Subject to issues of confidentiality, all relevant correspondence relating to a transaction should be easily accessible and made available to the customer upon request. Such practices allow businesses to more efficiently run their internal customer redress systems and facilitate any eventual outsourcing of a dispute to an external dispute resolution service provider.

- **Attentiveness**

Complaints should be responded to within a reasonable time period.

- **Global flexibility**

To the extent possible, response to a customer's complaint should be in the language of the original transaction, and should identify the transaction, the parties to it, the complaint as originally received, and the course of action proposed.

- **Compliance**

If the customer informs the company that he rejects the remedy proposed by the company's customer services and wishes to submit the dispute to a mutually agreed external dispute resolution service, the company should cooperate fully in the proceedings and comply with the result, even if the decision is agreed to be non-binding.

- **Nature of decision**

Generally, companies should not obligate consumers to agree to use binding dispute resolution processes prior to the materialization of a dispute. However, where permissible under local law, pre-dispute commitments to binding dispute resolution are acceptable if they are clearly disclosed before the initial transaction is completed. This will allow consumers to take the dispute resolution provision into consideration and make an informed choice about doing business with the company.

GUIDANCE TO B2C AND C2C ODR SERVICE PROVIDERS

B2C and C2C ODR service providers should ensure that their web sites contain simple, comprehensive, and accessible explanations for first-time users who may be completely unfamiliar with alternative dispute resolution processes.

Information and communication technology should be used to enhance the quality and delivery of B2C and C2C ODR services to users, taking full advantage of new technologies to provide innovative and user-driven services.

The privacy of all B2C and C2C ODR service users must be of paramount concern to service providers. Information security principles and current best practice should be an inherent part of the information systems design of a B2C and C2C ODR service.

B2C and C2C ODR systems should be easily accessible from any country, and formal requirements for case submission should be kept to the necessary minimum. Appropriate solutions should be implemented for any problems that may result from different languages being used by the merchant, the B2C and C2C ODR provider and the consumer. ODR systems should resolve disputes quickly if they are to meet the needs of both consumers and businesses. Costs of ODR services should be kept as low as possible to avoid creating a barrier to consumers.

Dispute resolution personnel should be impartial. Impartiality should be guaranteed by adequate auditing and procedural review arrangements. Dispute resolution professionals should have sufficient skills and training to fulfill their function, but need not be licensed legal practitioners. ODR systems should function according to the rules of procedure published by the service provider.

Users should be informed at the outset about what the ODR service entails and how it works.

The following is therefore recommended to the ODR service providers:

1. Accessibility, convenience and technology

System accessibility

- The B2C and C2C ODR system should be available to users 24 hours a day, seven days a week and all year round, with the exception of scheduled downtime.
- Users should have access to the process and to their own case information 24 hours a day, with the exception of maintenance downtimes, to allow ease of use in different time zones.

Convenience

- Provide contact information, including email addresses of the providers, on the web site of the providers. Include details of a contact point and telephone number whenever possible.
- Provide trained and knowledgeable technical and dispute resolution process support.

Privacy and confidentiality

- Post privacy and confidentiality information about the B2C and C2C ODR system for users on the website, and observe data protection rules where appropriate.
- Maintain a high level of security and authentication with appropriate procedures for access to case files and other data.
- Keep confidential the communications between each party and the mediator or arbitrator, as appropriate for each process.
- Follow relevant security best practices, taking note of, for example, ISO standard IS17799, the 2002 OECD Guidelines for the security of networks and information systems, sectoral codes and industry best practice as appropriate.

- Conduct risk assessments, formulate, implement and regularly review an organization-wide information security policy, and prepare a business continuity plan for unforeseen adverse circumstances.

2. User information and process

B2C and C2C service providers should clearly and conspicuously make available to users all pertinent information about the dispute resolution process such as:

- Whether the process is meant to be exclusively online, or both offline and online, and what it entails.
- An explanation about what is a neutral mediator, arbitrator, third party and other terms with which consumers may be unfamiliar.
- Where mediation and arbitration are offered, simple and clear information for users about the differences between the services offered. For example, unlike arbitrators, mediators do not make decisions for the parties or otherwise act like judges, but may help the parties reaching an agreement to settle their dispute.
- Clear and unambiguous information about the processes involved and how users can best manage their cases.
- Time limitations.
- Indication of fees and costs.
- Whether the service provides binding or non-binding outcomes.
- Whether the decisions are displayed online which can enhance consumer confidence in case of transparency of the decisions rendered and complied with.
- In case of arbitration, how the award is delivered.

3. Third parties

The procedure followed should provide a reasonable opportunity for all parties concerned to present their rendition of the facts and controversy to the dispute resolution professional. Parties should retain their right to be represented or assisted by a third party at all stages of the procedure.

Mediator or arbitrator neutrality

Mediator or arbitrator compensation should not be linked to successful case settlement or to a recommendation or decision in favor of any particular party.

Mediator or arbitrator assignment

Assignment methods should be posted for the user, giving the user the opportunity to request another mediator or arbitrator where possible.

Assessment

Service providers should make publicly available information concerning their aggregated and anonymized caseload history (i.e. cases received, cases resolved, status of unresolved cases, etc.) so that users can make informed choices on choosing service providers.

Required credentials

Information should be provided about the credentials and experience of the dispute resolution service professionals.

- Where appropriate, information about the adherence of the mediator or arbitrator to established professional ethical standards and her qualifications and professional memberships.
- Information about the roles of mediators and arbitrators, explaining that the mediator or arbitrator does not act as legal counsel.

