

ODR System Design: An Analytical Framework with Examples*

Janet Martinez & Mayu Watanabe**

Abstract

Dispute system design is the study of one or more processes adopted to prevent, manage or resolve a stream of disputes connected to a given organization or institution. In real life, many of us will have opportunities to think about a particular class of disputes – family, landlord-tenant, employment, community, governmental services, business-consumer in brick and mortar offices or online stores. Diverse people may be in a position to design – a computer programmer, a user, a consumer advocate, a dispute settlement provider, a lawyer, a mediator or an organizational leader.

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In a previous work, the authors have examined how systems compare and what elements seem critical to designing or redesigning an effective system. In their presentation, they shared the analytic framework they have developed¹ and examples of online dispute resolution systems in the United States, Canada and Japan.

1 Analytic Framework

The proposed analytic framework for dispute system design highlights six elements. Those elements may have different levels of importance in a given system and may be addressed in any sequence, but ‘Goals’ are likely the dominant issue. Unless the goals are identified early and concretely, it will be more difficult to assess whether the system is effective.

* Presented at the ODR Forum March 2023, Bengaluru, India

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1 Lisa Amsler, Janet Martinez, and Stephanie Smith, *Dispute System Design: Preventing, Managing, and Resolving Conflict*, Stanford University Press, 2020.

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GOALS

- What do the system's decision makers seek to accomplish?
- Which types of conflicts does the system seek to address?

STAKEHOLDERS

- Who are the stakeholders?
- What is their relative power?
- What are their interests, and how are their interests represented in the system?

CONTEXT AND CULTURE

- How does the context of the DSD affect its viability and success?
- What aspects of culture (organizational, social, national economic or other) affect the working of the system?
- What are the norms for communication and conflict management?

PROCESSES AND STRUCTURE

- Which processes are used to prevent, manage and resolve disputes?
- If more than one process, are they linked, sequenced or integrated?
- What are the incentives and disincentives for using the system?
- What is the system's interaction with the formal legal system?

RESOURCES

- What financial resources support the system?
- What human resources support the system?
- What technological resources facilitate the system's operation?

SUCCESS AND ACCOUNTABILITY

- How transparent is the system?
- Does the system include monitoring, learning and evaluation?
- Is the system successful?

FORUM 2023 Bengaluru focused on online dispute resolution (ODR) as one class of systems. Over the last twenty years, ODR has been customized to address a myriad of disputes from the Internet Corporation for Assigned Names and Numbers (ICANN), to e-commerce, administrative tribunals, private businesses, nonprofits and courts. The array of goals that motivate these systems may emphasize the law, efficiency, user experience or other qualities.

For example, the goal may be to increase access to justice. That, in turn, may stress understanding the law; access to lawyers; applying the law to resolution of filed complaints; enforcing rights and compliance with the law. Another overarching goal may be efficiency, that is, increasing case management capacity; increasing efficiency of case handling (time and expense), users' experience, including that of parties, lawyers and court administrators. That user experience might relate to repairing or enhancing relationships, improving reputation of the system, offering a less adversarial process, providing a flexible, tailored choice of dispute resolution processes that include more participatory and interest-driven options and delivery of fair and predictable outcomes. With the advent of AI, a key goal may be to increase data collection for improved analysis and decision making.

An important consideration in implementing these goals is to identify who controls the system design overall in response to whose goals? Is the system designer a collaboration of all parties and stakeholders? One party? A third party? An inside or external adviser? Who selects the process for a given case, granting agency and voice in that choice? A disputant? A third-party neutral? A fourth party (technology)?

In the next section, we describe ODR examples.

2 ODR Examples

This brief example overview compares the goals, processes and designers for four distinct systems. eBay developed its online dispute-handling system because there was no feasible alternative.² A number of courts have developed custom and off-the-shelf systems for integrating case management with mediation and adjudication.³ NextDoor⁴ was formed in 2008 in San Francisco to promote neighbourliness in geographic communities. Kleros was established to resolve cryptocurrency disputes.⁵

DSD Element	eBay	Court	NextDoor Social Media	Kleros
Goals	Fast and fair resolutions for online commerce problems	Efficiency, streamlined user experience and justice	Intervene on fake news and bullying; promote civility, politeness and neighbourliness	Fair, transparent, scalable and self-administering
Processes	Diagnosis, negotiation, facilitation, evaluations	Settlement, mediation, trial	Discussion forums, technology-based coaching and advice, facilitative process	Online evaluation, crowd-sourced jurors and incentivized participation
Designer	eBay	Court with external vendors/partners	NextDoor	Kleros and the worldwide developer community

2 Schmitz and Rule, *The New Handshake: Online Dispute Resolution and the Future of Consumer Protection*, American Bar Association (2018).

3 National Center for State Courts. NSCS.org and <https://odr.info/courts-using-odr/>.

4 Nextdoor.com.

5 Luis Bergolla, Karen Seif, Can Ekin, "Kleros: A Socio-Legal Case Study of Decentralized Justice and Block Chain Arbitration," *Ohio State Journal on Dispute Resolution*, Vol. 37 (2022).

3 Canada: First Online Tribunal: Civil Resolution Tribunal

The Civil Resolution Tribunal (CRT)⁶ is Canada's first online tribunal in British Columbia.⁷ The guiding principles of CRT are being timely, flexible, accessible, affordable and efficient, to offer a way to resolve many types of civil law disputes without needing a lawyer or attending court. The *goal* of British Columbia's ODR system is to provide easier access to the users, including the judiciary. CRT started its service initially to handle disputes within condominium associations and other housing complexes, known as STRATA disputes, in 2016. Before CRT was established, the residents in BC needed to file a case to the provincial Supreme Court to solve the disputes among residents. People welcomed the CRT's services, and the satisfaction rate is high.⁸ With the success of solving STRATA disputes on their platform, CRT expanded their jurisdictions to include small claims, motor vehicle accidents, and cooperatives disputes.

The *process* has four main stages: (1) apply or respond (Solution Explorer), (2) negotiation, (3) facilitation, and (4) CRT decision. The unique feature of CRT is 'Solution Explorer' which is the first step in the CRT claims process.⁹ Solution Explorer is a self-help tool that provides online triage function so that people can get customized legal information and options.¹⁰

The designer of CRT's ODR platform is the BC government, with the support of private system vendors. The initial investment to develop the platform was CAN\$18.5 million, and CRT spends about CAN\$1.2 million annually on Information Systems and Technology. Resource is one of the critical elements for maintaining the platform for the long term; the system designer needs to consider how to secure and maintain the necessary financial and human resources for its ODR services.

4 Japan: Developing Government Policy for ODR

The Japanese government started the policy discussion on ODR in 2017. Initially, the scope was only up to court digitalization, then it expanded its reach to the ODR provided by the private sector. The Ministry of Justice published the "Fundamental Policy on the Promotion of ODR – Action Plans for Making ODR More Accessible to the Public" in March 2022.¹¹

The fundamental policy states two goals: short-term goal (2-3 years) and mid-term goal (5 years).

Short-term goal: While supporting the entry of private companies into the ODR market, the first step is to establish a foundation for the promotion of ODR

6 Conversations in 2023 with Kandis McCall, Executive Director and Registrar, Civil Resolution Tribunal.

7 <https://civilresolutionbc.ca/>.

8 <https://civilresolutionbc.ca/blog/>.

9 <https://civilresolutionbc.ca/solution-explorer/>.

10 <https://civilresolutionbc.ca/crt-process/>.

11 <https://www.moj.go.jp/content/001370368.pdf>.

by having as many people as possible learn about ODR and experience the convenience.

Mid-term goal: Implement the world's highest quality ODR in terms of functionality and design. And make ODR accessible so people can receive effective support for dispute resolution anytime, anywhere with a single device such as a smartphone.

The initial scope of the fundamental policy is to promote private ADR/ODR. Therefore, the processes will vary depending on the ADR/ODR service providers, but the flow will be similar to CRT's processes. Diagnosis, negotiation and mediation will mainly use chat and video-conferencing systems.

The Ministry of Justice is initiating the pilot project, and a private vendor was selected through bidding. The designer of the ODR pilot platform is the Ministry of Justice in collaboration with a private vendor. ODR services for money claims are planned for 2023-2024 with results of the pilot phase within the fiscal year.

5 Conclusion

This session aimed to introduce the notion of dispute system design, offer an analytic framework to guide design (or re-design of an existing system) and share examples drawn from the ODR domain. The early development and experience of ODR was generated by the need for handling ICANN and e-commerce disputes. Since, the arc of ODR adoption around the world, accelerated by the pandemic, has since borne significant advances in online options. Delivering justice calls for an intentional balancing of competing considerations: interests and rights, equity and efficiency, voice and administrative feasibility and prevention and enforcement. Who designs a system and sets the goal priorities shapes how that balance is achieved and assessed over time. The ODR Forums provide a rich and ongoing opportunity to evaluate and improve ODR systems.

