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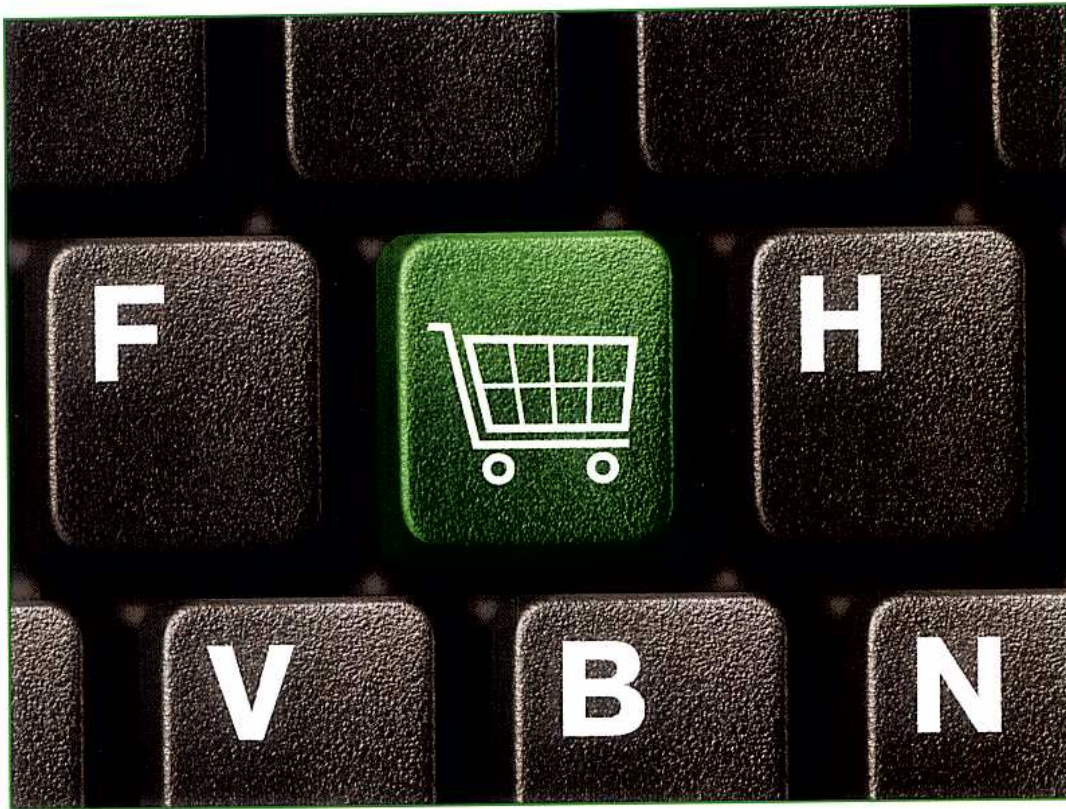
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## Resolving Consumer Disputes



# MAKING PEACE ON eBAY:



## Resolving Disputes in the World's Largest Marketplace

By Colin Rule

If you have any doubt that consumers are moving to online commerce, take a look at eBay, the online auction company. In the 13 years since it was founded, eBay has grown into the largest marketplace in the world. In the first half of 2008, there were more than one billion product listings added to eBay worldwide. At any given moment, there are more than 100 million listings around the world, and approximately 7.1 million listings are added each day. eBay users trade almost every kind of item imaginable, in more than 50,000 categories. On eBay, a pair of shoes sells every 7 seconds, a cell phone sells every 7 seconds, and a car sells every 56 seconds. The daily volume of trade on eBay is greater than the daily volume of the NASDAQ.

Unsurprisingly, all of these transactions generate a lot of consumer disputes. Even though less than 1 percent of purchases generate a problem, the incredible volume on the site means eBay handles more than 40 million disputes a year, in more than 16 different languages.

eBay has been at the forefront of online dispute resolution (ODR) for more than a decade. In fact, *The Perfect Store* (Little Brown, 2002), Adam Cohen's book about the early days of eBay, describes how dispute resolution was a part of eBay in the first months after Pierre Omidyar launched the site in his San José basement in 1995. As Cohen explains, eBay's first customer support employee "...spent a lot of time doing what Omidyar hated: stepping in and trying to resolve disputes."



In 1999, Professor Ethan Katsh launched a pilot program with eBay to resolve transaction disputes. After a link was put on a relatively obscure eBay help page urging people to report issues to Katsh's Online Ombuds Center at the University of Massachusetts Amherst, the Center was flooded with cases. That pilot program evolved into the startup company SquareTrade.com, which in turn grew to become the web's most successful online mediation service. Over the next eight years, SquareTrade mediators would resolve several million eBay disputes over "Feedback" (eBay's reputation management system in which buyers and sellers rate the performance of their trading partners). But there were many other non-feedback-related disputes that SquareTrade could not address as an independent, third-party service provider outside of the eBay network. As a result, eBay made the decision to bring ODR in-house, and that is when they asked me to become the first full-time employee devoted to dispute resolution between buyers and sellers.

### CHARACTERISTICS OF eBAY DISPUTES

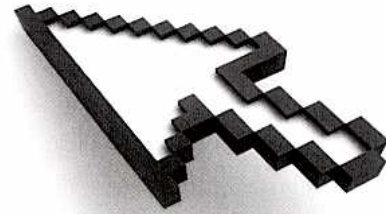
When I first arrived at eBay in 2003, I guessed that all eBay disputes probably looked the same. I also thought that eBay was well positioned to play a dispute resolution role, because it was neither the buyer nor the seller in each transaction. As a marketplace administrator with no stake in the outcome of the dispute other than a desire to maintain trust in the marketplace, eBay, I reasoned, could credibly play the role of mediator.

I quickly learned the truth. In reality, eBay has a wide variety of disputes, and like consumer issues that are not online, each is fraught with its own specific complexities. Some disputes are initiated by sellers (such as payment disputes), while other are initiated by buyers (such as item quality disputes). Some focus on reputation (feedback disputes) and others on intellectual property (owner rights disputes).

Most of these disputes are not over very large amounts of money. They can be for as little as \$5, such as a magazine, or as much as \$50,000, such as a car, but the average is probably around \$100. However, as dispute resolvers know well, dollar amount is usually not an accurate barometer of passion among disputants. And because eBay users are spread all over the world, eBay disputes can involve cultural misunderstandings, language barriers, and class differences.

I also learned that eBay has a very personal relationship with each user. eBay decides what fees will be charged, how listings should be regulated, and when accounts should be limited or suspended. eBay's decisions about which listings to promote, either in search results or in marketing materials, can

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result in huge swings in sales, and profits, for sellers. As such, eBay is rarely seen as an impartial figure.

Clearly, the first challenge I needed to tackle in designing the ODR system was the overwhelming volume of cases. With tens of millions of disputes, the math was obvious: even if I had built a staff of 1000 skilled online mediators, we would not be able to get through the torrent of cases. We called it "drinking from the fire hose." It was self-evident that the process needed to be as automated as possible.

Another major issue that had to be addressed was the culture around conflict on eBay. The way the eBay community approached transaction problems was a big part of the challenge. First of all, almost no one used the word "dispute." The language instead was very legalistic: case, report, complaint, claim. If a buyer did not pay, that situation was often referred to as a "non-paying bidder" or "deadbeat" buyer. If a seller did not deliver an item, the only option was for the buyer to file a "fraud alert." Obviously, this language made it very difficult to follow Roger Fisher and William Ury's well-known admonition



to “separate people from the problem” (*Getting To Yes*, Penguin, 1981). It was readily apparent to me that we would need to forge a new way to describe these situations so as to optimize the chance that they would be resolved.

Immediately after my arrival, some at eBay suggested that we should bring all dispute resolution in-house, and that we should eliminate our relationships with third party service providers like SquareTrade. I disagreed; since eBay’s relationship with each user was so complex, I argued, it was important to have an impartial third party organization that could credibly play a mediation role. However, it was clear to me that third party mediation was not sufficient to address the vast majority of disputes.

## DESIGNING AN ODR SYSTEM FOR EBAY

Ethan Katsh and Janet Rifkin’s book *Online Dispute Resolution* (Jossey-Bass, 2001) had introduced the concept of the *fourth party*, in which technology could play a dispute resolution role separate and apart from the human third party. In line with this concept, we decided to write a software program to assist the parties in resolving their disputes, and to involve human neutrals only on an exceptional basis.

How to do it was the key question. Some things that are particularly powerful offline (e.g. apologies) are much less effective online, due to the specific characteristics of computer-mediated communications. However, technology also can open new opportunities that are impossible when working face-to-face. For instance, in-person dispute resolution services are usually sought only after a dispute has reached a point of impasse. Most mediators and arbitrators actually have little opportunity to shape the perspectives of the parties at the earliest stages of the issue.

On eBay, however, we were in direct communication with the buyer and seller from the very beginning, from the purchase all the way through to resolution. That enabled us to work with the parties even before they really understood whether they had a problem. For instance, if a buyer made a purchase and the item had not arrived within three or four days, he or she might start to get concerned. eBay could then step in to reassure the buyer that the average delivery time for a package going from the seller’s location to his or her home was seven days. Then, the buyer’s anxiety would ease, and the package would later arrive on schedule. In a sense, we were able to resolve the issue before it even became a dispute.

An upside existed to the incredible volume of disputes coming through our systems. We knew an immense amount about the types of problems that occurred on the site because we had seen so many of them. We were rarely surprised by a

wholly new kind of dispute. Such familiarity with the spectrum of disputes enabled us to design dedicated systems tailored specifically to each dispute type.

For example, we knew that most item-related disputes fell into one of two categories: non-receipt (the buyer paid but never got anything) or not-as-described (the item arrived, but it was different than what the buyer expected). Then, within these dispute types we could again specialize to pinpoint the problem: How did the seller ship the item? Was shipping insurance purchased? In the case of a not-as-described item, was the item broken? Was it counterfeit? Was the difference a small one (e.g., wrong color), or a big one (e.g., the buyer bought a new laptop and got an old, broken one instead)?

We also renamed the processes on the site to promote resolution. “Non-paying bidder” or “deadbeat buyer” reports became “Unpaid Item” disputes. “Fraud alerts” became “Item Not Received” disputes. We built a “Dispute Console” so that users could see all their transaction problems in one place, communicate easily with their transaction partners, and track them to resolution. Soon after, we started to see community members using this language to talk about their transaction problems in the discussion forums. Now, several years later, the language around problem resolution has changed completely.

## BUILDING A FRAMEWORK FOR ODR

In designing the framework for the eBay dispute resolution system, we needed to design a process that would resolve every issue reported to us. A purely facilitative model that left the outcome up to the parties would generate a lot of frustration, and it would leave many of the toughest cases unresolved. Also, some parties had an interest in not reaching an agreement (for instance, a seller in the case of a not-as-described dispute), so there was a strong incentive to stonewall or not negotiate in good faith.

We decided to take a staircase approach, beginning with problem diagnosis and working with the complainant, then escalating to direct negotiation assisted by technology, and finally moving to an evaluation phase where eBay and its payment system provider, PayPal, would decide the case if the transaction partners could not do so. Each party could decide unilaterally when it wanted the process to move on to the next phase. The goal of the system was to prevent as many disputes as possible, then amicably resolve as many as possible, and then decide the remainder as quickly and fairly as possible. Each stage acted like a filter, with the objective being to minimize the flow of cases that made it to the end.

It was very clear that eBay users did not want to spend



a lot of time in long, drawn out processes intended to build a long-term trustworthy relationship. Most eBay transactions were between strangers, and most buyers did not buy more than one item from any individual seller, so there was little interest in approaches that did not match this purely transactional orientation. What users wanted was communication, transparency, efficiency, and a fair outcome.

We discussed filing fees for our dispute processes, but it is difficult to convince a disputant to pay \$30 to resolve a \$50 dispute, and near impossible to convince him or her to pay \$50 to resolve a \$50 dispute. The disputant might as well just give the money to the other side and save the time associated with the process. Moving online dispute resolution inside eBay was a much more natural way to address the funding problem. Instead of thinking about the costs on a per-case basis, as one does with a third party provider, eBay evaluated the cost for the system on a revenue enablement basis, which made much more economic sense. eBay's internal economic analysis has shown that the savings from reduced contacts with customer service, retained activity from users, and increased transaction activity more than justify the investments in ODR.

From the beginning, we designed eBay's ODR processes to be learning systems. There is no shortage of data available; eBay has total visibility into each user's usage patterns, history, and account data. Also, eBay routinely surveys users to gauge their satisfaction with the resolution processes they have used. We use these data to monitor the performance of our systems and improve them as marketplace conditions change.

eBay has the reach to manage the interaction between the parties upstream to the actual purchase, so we can rapidly evolve and adapt the total user experience to minimize the chance of post-transaction disputes. For example, when many of our disputes were found to be related to confusing policies around returns and exchanges, eBay changed the listing process to make the collection of return data more structured and transparent. As a result, disputes around returns dropped dramatically.

## MOVING FORWARD

The story of ODR is still in its initial chapters. As information and communication technology evolves, its utility in the field of dispute resolution will similarly expand. Activities that

are not possible in one year may become commonplace the next. For example, when I started at eBay the available forms of videoconferencing were quite primitive: postage-stamp sized video with long lag times and fuzzy audio. Today, five years later, telepresence systems offer full high-definition resolution conferencing systems with high fidelity audio and imperceptible lag times. Right now those systems may be too expensive for the average mediator, but in a few years, they will become standard. The line between ADR and ODR will continue to blur.

About a decade ago, Robert Bordone wrote a piece for the *Harvard Negotiation Law Review* titled "Electronic Online Dispute Resolution: A Systems Approach – Potential, Problems, and a Proposal." In his conclusion, Bordone

wrote, "The failure of the ADR community to involve itself in the growing debate among legal scholars as to how to regulate, govern, and legislate the Internet would represent not only a missed opportunity but also a tragic abdication of responsibility in contributing the ideas it has developed during the past twenty years... The time has arrived for the ADR community to engage Cyberspace and make its presence known... [W]e must choose to become stewards instead of speculators, innovators instead

of copycats, normative rather than alternative. In Cyberspace, 'alternative' dispute resolution can become the mainstream dispute resolving option."

I absolutely agree, even now, 10 years later. If our field is to survive and flourish we must move boldly into new areas and think expansively about what we have to offer. In this spirit, I believe we in the dispute resolution field must embrace consumer dispute resolution, particularly in the e-commerce context. We must be creative in re-thinking how we describe ourselves, and open to changing our offerings to respond to the needs of our customers. Unless we engage the future, both on eBay and elsewhere, it will almost certainly pass us by. 🌐



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