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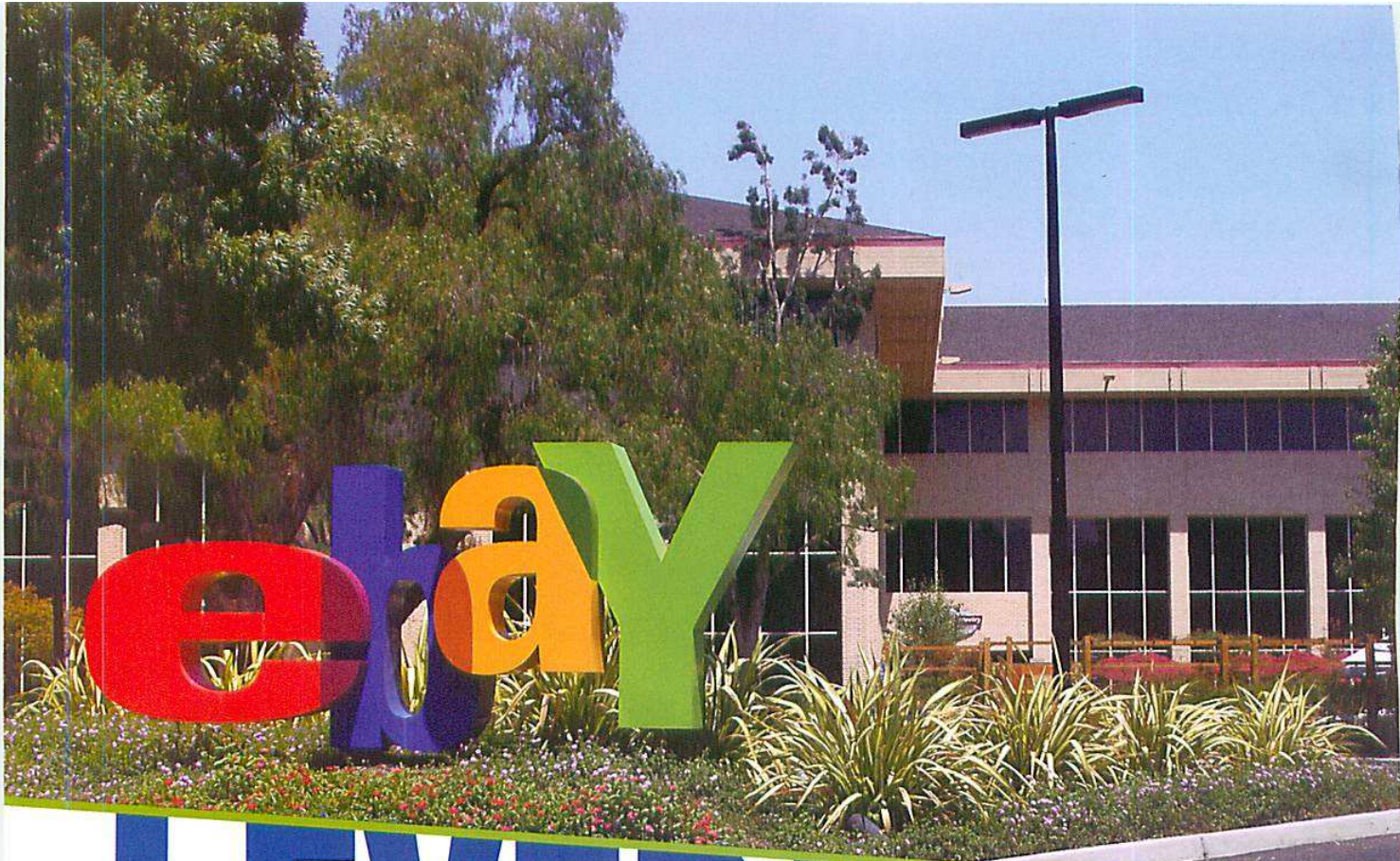
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LEVERAGING THE WISDOM OF CROWDS: The eBay Community Court and the Future of Online Dispute Resolution

By Colin Rule and Chittu Nagarajan

As the internet has expanded its reach over the last decade, the number of online disputes has risen at an exponential rate. Every day, new types of interactions appear online that have the potential to generate disputes: harsh restaurant reviews on Yelp, privacy violations on Facebook, non-working music and movie downloads on iTunes, or faulty virtual tractor purchases in Farmville, to name only a handful. Unofficial estimates put the number of online disputes into the hundreds of millions of cases per year, maybe even into the billions. It would seem obvious, therefore, that this growing tsunami of disputes warrants the rapid expansion of quality online dispute resolution (ODR) services.

However, the number of ODR services around the world with sizable and sustained caseloads continues to be quite limited. Many for-profit online dispute resolution service

providers have found it difficult to find enough volume to keep their doors open, and several companies have decided to throw in the towel and shut down. Why have online dispute resolution service providers had such limited success in finding disputes to resolve, when there are so many disputes cropping up each day?

There are several reasons. First and foremost is cost. The average value of online disputes is usually less than \$100, and quite often less than \$20. Delivering an appropriate dispute resolution process (as such processes have been traditionally defined) at a price deemed acceptable to the disputants and the platform administrators is extremely difficult to manage. Disputants want to pay a couple dollars at most, while most mediators and arbitrators are used to getting 10 or 20 times that amount per hour. That disconnect has proven extremely difficult to reconcile.

The second reason service providers have limited success in finding online disputes to resolve is speed. On the internet, people expect services to be available 24 hours a day, seven days a week. When internet users have a transaction, they expect it to be completed in a matter of minutes, not days. Traditional dispute resolution systems are usually designed to be deliberate and thorough, so as to ensure a quality outcome for each case; rarely are they optimized for raw speed. Dispute resolution professionals also are not used to providing immediate responses to their parties, especially in the middle of the night.

The third reason is manpower. Traditional models of dispute resolution, including online dispute resolution, require human intervention. When the tally of disputes runs into the millions, human-powered dispute resolution cannot handle the scale of disputes. eBay has about 15,000 employees in total and takes on about 60 million disputes a year. If all of our employees were to resolve 10 disputes a day, which is no easy feat in and of itself, and if every employee spent every work day just resolving these disputes, the employees could only get through two-thirds of the volume before the year would be over. The math makes clear an alternative strategy is required.

There is no question that face-to-face dispute resolution offers a rich well of wisdom and experience to inform online dispute resolution, and most effective ODR platforms have based their design on traditional face-to-face models. But it is increasingly clear that the expectations of online disputants are quite different than face-to-face disputants. The challenge confronting ODR systems designers is coming up with a system that is both procedurally consistent with the tenets of dispute resolution practice and scalable to meet the needs of these new online disputes.

“Crowd Sourcing” ODR: The Community Court

We have all seen that scene in *Who Wants to be a Millionaire* when the contestant in the hot seat comes up blank as to which answer to pick, so she uses a lifeline to ask the audience for help. When viewed from a particular angle, the internet resembles one big “Ask the Audience” lifeline. We leverage the wisdom of crowds every time we do a Google search, look up a factoid on Wikipedia, or evaluate a hotel on TripAdvisor. A big part of the meaning of “web 2.0” is user generated content (UGC); website administrators know it is a lot easier and more profitable to set the general parameters for your platform and enable the wider internet

to evaluate everything submitted, pushing the most desirable items to the top.

In techie parlance, this dynamic has come to be called “crowd sourcing,” or using the wisdom of crowds to find the answers to very hard questions. At its essence, crowd sourcing can be viewed as an evolution of democracy; as every online user votes with his or her clicks, technology can aggregate the information to determine which elements win. The dynamic works the same in offline markets (e.g. the most popular newspaper gets the most advertisers, the most creative TV shows get the most viewers), but the technology and scale of the internet takes everything to the next level.

Both eBay and PayPal have long wrestled with the challenges presented by enormous dispute volumes. Our experience with online dispute resolution tools and techniques, combined with the volume of cases that come through the system, has enabled the construction of advanced tools that resolve the vast majority of cases without requiring the involvement of a human mediator or arbitrator. But the number of cases that do require an eventual determination is still significant, and some of these cases involve issues that are extremely difficult for eBay to effectively decide. As eBay’s ODR team brainstormed possible alternatives for providing that determination in a more scalable and effective way, it considered crowd sourcing. From that realization, the eBay Community Court (ebaycourt.com) was born in December 2008.

How eBay’s Community Court Works

The process is simple. If a seller on eBay India feels that he has received a bad review from one of his buyers that he did not deserve, he can log into the Community Court and explain why. Once inside the platform, the seller has the ability to upload images, text or other digital files he thinks best illuminate his perspective. Once he is finished making his case, the Community Court automatically contacts the buyer and provides her with the same opportunity. The buyer has the benefit of seeing the seller’s submissions, and the buyer can offer whatever text or images the buyer feels are relevant to backing up the feedback she left. Once the buyer’s submission is complete, the seller has one final opportunity to rebut the buyer’s points, in text only.

Once the submissions from the buyer and seller are complete, the Community Court puts the case in front of a randomly selected panel of jurors. Jurors in the Community Court are eBay members who have previously applied to be jurors and met the fairly stringent eligibility criteria (e.g. a

significant period of time on the eBay site, a positive feedback rating, and ample transactions as either a buyer or a seller). Each juror reviews the information submitted by the seller and buyer in its entirety before making a decision. The juror is merely asked if he or she agrees with the buyer, with the seller, or if they feel they cannot make the decision.

Each case in the eBay India Community Court is heard by 21 jurors (though it could easily be more if the community were larger). If more than half of those jurors agree with the seller, then the case is decided in the seller's favor and the feedback is removed from eBay's system. If more than half of the jurors disagree with the seller, then the feedback stands as left by the buyer. So far, the Community Court has resolved more than 2,400 cases in India. The platform has more than 580 jurors, and there are 250 cases pending.

Lessons Learned

The year of experience eBay has had administering the Community Court has enabled the team to learn about the strengths and weaknesses of the model and to refine it accordingly. We also have been fortunate to have support from several academic institutions in analyzing the performance of the platform in depth. The development of the court has been supported by four externs, three from the Dispute Resolution programs at Creighton and Pepperdine and one from Haverford College. We also were lucky to secure the help of two JD candidates from Harvard Law School, who devoted their Spring semester to evaluating the performance of the Court to date. They conducted surveys with every buyer, seller and juror who had used the platform, as well as surveys of eBay users outside of India who were familiar with the concept but had never used the platform themselves.

One element we learned to handle differently is case assignment. When a new filing is received in the Community Court, the system does not reach out to 21 jurors to inform them that they have been assigned to a case. Instead, the Community Court assigns cases out to jurors on a first-come, first-served basis. The jurors only have access to the case for a limited period of time, and they cannot log out of the platform and come back to that particular case—that constraint ensures that jurors will not contact buyers or the sellers to peddle influence or gather inappropriate information. The platform also makes sure that the jurors have never transacted with either the buyer or seller in the case in question.

One of our initial hypotheses was that each jury should be balanced between buyers and sellers for fairness because

we suspected that buyers would be more likely to decide in favor of buyers and vice-versa. What we have found, however, is that sellers are often harder on their fellow sellers than buyers. This is likely because sellers understand their obligations better than buyers and can more accurately assess the performance of other sellers against those obligations. In addition, sellers understand that any "bad" behavior from one particular seller reflects negatively on the overall community of sellers, so they have an incentive to maintain high standards.

Our original concern was that we would not get many applicants to be jurors, but in fact we have received more than enough applications to support our case volume. Jurors are not paid for their services, but we have planned for certain incentives to be provided to jurors to thank them for their work. To date, however, no incentive payouts have been needed because the jurors are willing to participate out of their sense of service to the community. This may be a particular feature of eBay (for example, we have long had an Answer Center board where thousands of eBay members have provided free advice to their fellow users), so we will have to see if Community Court implementations on other sites demonstrate a similar ongoing commitment from the community.

We also have developed several models to monitor juror verdicts and identify troublesome patterns. We actively look to see how many times jurors are in the minority on a decision, how long they review the information submitted by the buyer and seller, and the rationale they provide to back up their decisions. If a juror displays some concerning patterns, we may refer them cases that have already reached an outcome (for example, more than half have already voted one way or another, so the resolution is already known) as a test, or we may stop referring them cases altogether.

Expanding Horizons

eBay is not the only organization that has come to acknowledge the promise of crowd sourcing dispute resolution. An Israeli start-up site, AllRise.com, has pioneered similar approaches. Even the daytime television program *The People's Court* has put together a website, peoplescourtraw.com, that leverages similar techniques to resolve a wide variety of disputes using video testimonials. In July, the Berkman Center at Harvard Law School hosted a one-day symposium on crowd sourcing ODR, and new experiments using the technology seem to be cropping up in the eDemocracy and legal spheres on a regular basis.

We designed the Community Court to exist completely separate from eBay and PayPal's code base, so it is easy to customize and extend the platform to work in other contexts. Several online marketplaces have expressed great interest in developing Community Courts of their own, seamlessly integrated into their own site and wrapped in a matching look-and-feel. But it is not only online communities that can benefit from a process like the Community Court. Offline disputes may be able to leverage the approach as well.

For example, it is not hard to see how the Community Court could prove useful in face-to-face civil disputes. Imagine if a district court could have its own Community Court, where citizens could meet their jury duty obligations online and disputants could file their small claims cases online. There are definitely advantages to working out disputes in person, but for low-dollar-value cases it is not difficult to envision the vast majority of citizens preferring an online channel due to cost and convenience. In fact, judges in India already have expressed significant interest in a mechanism along these lines, no doubt due in part to the reality that civil disputes in India have a six year backlog in getting resolution.

The Community Court also offers opportunities in the developing world. eBay is currently in discussion with leaders at the National Defense University in Washington, DC regarding an idea called the M-Jirga, which is a cell phone-only implementation of the Community Court, intended for Afghanistan. Disputants in Afghanistan will be given a number they can call on their cell phones to initiate the M-Jirga process. Once both sides are recorded, the system will proactively call out to elders in the appropriate regions, who will listen to both sides and then register their decisions. This process closely mirrors the face-to-face Jirga process, which is the primary way civil disputes are handled in Afghanistan. The Community Court is simply using mobile technology to facilitate a process that has been conducted in Afghanistan for hundreds of years, and improving access to justice at the same time. There is no reason to think a similar approach would not be equally valuable in developing countries around the world.

Conclusion

In his recent keynote address at the ACR conference, Wallace Warfield challenged professional conflict resolvers to question some of the iconic knowledge, skills and abilities that have traditionally defined our practice so that we can avoid being relegated to the margins of the significant conflicts our soci-

ety currently faces. As Warfield and several of his panelists noted, this is becoming a common topic in conflict resolution circles, expressed most eloquently in Bernie Mayer's book *Beyond Neutrality* (Jossey-Bass, 2004).

The conflict resolution field has long been criticized as being too inward-looking, too monastic in its devotion to its specialized language and hallowed tenets, and too inflexible in shaping its procedures around the needs of its customers, as opposed to the rules laid down by the field's founders. We have long struggled with our inability to achieve the growth and penetration we have always felt our work deserves. More often than not, these shortcomings have been chalked up to bad marketing—closely followed by the presumption that if we could finally get our message out, everyone would see the value of what we have to offer, and they would beat our doors down.

The recent struggles of the field lay bare the reality that we are in dire need of reinvention and reinvigoration, as our old models do not seem to achieve the adoption, satisfaction and growth rates we always presumed they would. Instead of operating in "the shadow of the law" and limiting our practice to a few well-understood processes (e.g. mediation, arbitration, facilitation), the time has come for us to realize that by defining ourselves as an alternative to judicial processes we have an almost infinite palette of resolution options from which to choose. Our position enables us to be endlessly inventive in experimenting with new approaches and creatively responding to the needs and expectations of our customers.

Online Dispute Resolution is one such area where the need is overwhelming and the opportunity for creativity is empowering. The Community Court is just one example of how the new tools of information and communications technology can release us from prior constraints around how things must be done, and potentially drive us toward a future with more access to justice and more fair resolutions for more people than was ever possible before.



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