

# TACD

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## ALTERNATIVE DISPUTE RESOLUTION IN THE CONTEXT OF ELECTRONIC COMMERCE

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Electronic commerce (e-commerce) makes it possible for consumers to transact with companies or other individuals without regard to geographic location, but it also raises the question of how disputes will be resolved, especially when the buyer and seller are physically distant. While consumers are generally protected by the laws of their jurisdictions, and vendors are also subject to legal oversight in the countries in which they are located, cost and other factors may make it difficult for consumers to obtain redress for cross-border complaints. Alternative dispute resolution (ADR) can be very helpful to both parties in electronic transactions, especially in cross-border complaints. At the same time, consumers and those who represent their interests must retain the right to resort to the courts of the consumers' countries. There are different models for ADR systems. This resolution concerns the development of alternative dispute resolution systems for e-commerce which leave open to consumers the ability to pursue other avenues of recourse.

Among the benefits that ADR systems can offer are:

- **Accessibility and convenience.** Links to ADR systems can be provided by governments, consumer organizations, businesses and others to make it easy for consumers to find and reach them. Complaints and responses can be submitted online. If it is desirable to bring the parties together electronically for "real time" discussion, this can be scheduled at a mutually acceptable time.
- **Speedy resolution.** ADR can be faster than the traditional legal process.
- **Full airing of grievances.** Some issues that might not be considered relevant in a court or other legal fora may be important to the parties to air and discuss. ADR can provide that opportunity.
- **Creative resolutions.** Courts or other legal fora may offer limited options for resolving disputes. ADR can be more flexible and creative in finding solutions that satisfy the parties.
- **Fairness.** The ADR process may be perceived as treating the parties more equitably and fairly than a formal legal process.
- **Low cost.** The cost of ADR can be significantly less than that of formal legal action.
- **Non-traditional sales.** ADR systems can help to resolve disputes between individuals that might not be appropriate for other avenues of redress.
- **Reduce strain on the formal legal system.** Resolving disputes through ADR reduces the number of cases that must be heard by courts or other adjudication systems.

However, possible negative impacts of ADR systems include:

- **Lack of consumer choice.** Vendors may attempt to require consumers to use ADR mechanisms whether they wish to or not.

- **Binding arbitration.** If one or both parties are bound by the decision, their ability to seek legal redress if they are not satisfied may be restricted or blocked altogether.
- **Intervention by others.** If complaints are not brought to legal authorities or enforcers of codes of conduct, they may be unaware of problems that merit their attention. Moreover, ADR that is binding on consumers may prevent their cases from being used by legal authorities, code enforcers or others representing consumers' interests in broader actions to stop fraud or abuse.
- **Disparity between the parties.** Differences in language, cultures, and expertise in specific subjects may make it difficult for the parties to understand each other, and may lead to unfair results. Furthermore, if ADR systems lack adequate independence, the parties may not be treated equitably and decisions may be biased.
- **Costs.** If costs are assessed to support the operation of ADR systems, they may be prohibitively high for consumers or small businesses.
- **Enforcement.** If parties fail to comply with decisions and there is no practical means of enforcement, the ADR process may be an exercise in futility.

ADR systems that are easily accessible, fair, and provide swift resolution of individual problems will help foster confidence in e-commerce. They will also benefit governments, consumers and businesses by mitigating the need to involve more formal systems of adjudication. Governments should consider legislation that would authorize and promote ADR systems that meet certain standards but that do not prevent consumers or those representing consumers' interests from using other avenues of recourse. Companies engaged in e-commerce should help develop and support such systems.

### **Resolved:**

ADR systems to resolve consumer complaints in the context of e-commerce should be based on the following principles.

1. The necessary framework and standards for ADR systems should be set by legislation.
2. ADR systems should be easily accessible and convenient. Businesses who participate in such systems should provide links from their websites. Governments, consumer organizations, trade associations and others should also provide links to make it easy for consumers to find help. Disputes and responses should be able to be made online as well as offline. "Real time" discussions should be scheduled at the convenience of the parties. Physical or technical barriers to the ease of use for either party should be avoided.
3. Information about the types of disputes handled, the procedures, the costs, the languages that can be accommodated, the basis for decisions (codes of conduct, etc.), the enforceability of decisions, and other details should be provided prominently and clearly.
4. ADR systems should be designed and presented as a voluntary option for consumers, not as a legal or contractual requirement.
5. ADR systems should be free or low-cost. If the consumer is obliged to pay a fee for this service, the other party should refund the cost if the consumer prevails.
6. ADR systems should be independent. They should be operated by reputable third parties, which could include government, nonprofit organizations, for-profit entities that are not

directly involved in the disputes, or any combination thereof. If ADR systems are offered by trade associations or other industry groups, they should be separate and independent, and operate in consultation with consumer organizations. ADR personnel should have no direct interests in the disputes or the parties involved. If funding for ADR systems comes from the business sector, that commitment should be honored regardless of the decisions that are rendered.

7. ADR personnel should be trained both in basic legal concepts and in mediation skills. If it is a collegiate body that will consider the dispute, equal representation should be given to consumers and businesses. If one individual will consider the complaint, both disputants should be consulted in selecting that person, or the person should have been previously appointed by consumers and industry together.
8. ADR systems should handle complaints in an expeditious manner. There should be reasonable time limits set for considering disputes, rendering decisions, and complying with decisions. If the parties are allowed to submit or ask to share documents or other evidence prior to the dispute being considered, there should be reasonable time limits set for that process.
9. ADR systems should treat the parties equitably and fairly. While the parties should have the right to advice from legal counsel or others, the parties should represent themselves in the proceedings. If necessary, ADR systems should provide for translation or outside expertise.
10. Decisions on behalf of consumers should be binding on the other party, except that appeals could be made on grounds of mathematical mistake or other technical problems. Meaningful enforcement of decisions rendered through ADR is essential. If ADR systems are operated by trade associations or other industry groups to which companies belong, compliance with ADR decisions should be a requirement for maintaining membership. Failure to comply with ADR decisions should also be a basis for those who facilitate the vendor's sales, such as online auction sites, operators of billing systems, etc. to deny future services to the seller. In addition, governments should adopt and, to the extent possible, harmonize legal frameworks to make ADR decisions in favor of consumers enforceable. Consumers should have the choice of enforcing ADR decisions through the legal framework of either their or the vendors' countries.
11. Consumers who submit disputes to ADR systems should not be asked to waive their legal rights, nor should they be restricted or blocked from resorting to other avenues of recourse that would normally be available if they are not satisfied with the outcome. Furthermore, consumers' use of ADR systems should not prevent law enforcement authorities, code enforcers, or others representing consumers' interests from using their cases in actions to stop fraud or abuse.
12. In order to ensure that patterns of abuse do not escape the notice of legal authorities or relevant code enforcers, ADR systems should report all cases to a central clearinghouse from which that information would be accessible to the public.

In consideration of the special and complex issues raised by cross-border e-commerce disputes, further work will be necessary to develop specific guidelines for how ADR systems should be designed to provide the most efficient and effective redress for consumers.