

How and When Disputes Can Be Mediated On-Line

Presentation by
Giuseppe Leone & Cindy Alm

University of Hawaii at Manoa School of Law
Negotiation & ADR
Professor John Barkai
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Visual Aids: eBay and SquareTrade web sites.

[Check on internet access, laptop and projector.]

I. Introduction

A. Introduction and Background

B. Questions to Students

1. How many are familiar with mediation?
2. How many have used the internet to buy products or services?

II. Need for On-Line Mediation

A. e-Commerce required a suitable dispute resolution process

1. accessible worldwide
2. easy to use
3. affordable
4. outside legal system of states or countries where parties reside
5. convenient – don't need to take time off
6. no need to travel
7. trust

B. e-Bay pilot project

1. world's largest on-line auction site
2. buyers and sellers throughout the world
3. 4 million transaction a day, 4000 categories
4. value \$1 to \$50,000
5. at end of transaction, parties can leave feedback
6. when they have a disagreement, they can request mediation services

C. SquareTrade

1. Company Background

- a. Based on San Francisco
- b. Separate and independent, private, neutral company
- c. Pool of trained on-line mediators
- d. Each mediator is assigned a certain number of cases

2. Technical Aspects

- a. All communications by e-mail (text only)
- b. Asynchronous – parties are not on-line at the same time
- c. Security – password protected SquareTrade
- d. Text Based - all communication is preserved in a written record

D. Highlights of SquareTrade's Process

1. Voluntary and Confidential

2. Introductory Statement

- a. explains purpose of mediation, mediator's role, asks questions to help parties reach a mutually acceptable solution

- b. provides frame of reference throughout the process
- 3. Mediator's Messages – focused on helping parties to resolve the dispute with an outcome they both can accept
- 4. Unique Feature –Non-Binding Arbitration– if both parties request it, mediator can suggest a non-binding resolution that parties can accept or reject
- 5. Case Closing
 - a. Agreement - mediator helps parties finalize agreement
 - b. No Agreement – parties are free to pursue recourse through other means
- 6. Case Reopening – in rare cases, if one party does not comply with the mediated agreement, the mediation is reopened.
- 7. Internet is “Blind” – absence of prejudgment about age, gender, ethnic group, demeanor, etc.

III. How On-Line Mediation Works - Strategies and Techniques

- A. “Time” as a strategic tool - Parties and mediator don't need to respond immediately, and can think about their response
- B. Transparency as a way to build trust
 - 1. Parties know that their communication has gotten through to the other person, and that they have been heard
 - 2. Parties can see that mediator is treating parties evenhandedly
- C. Introductory Statement as a framework for the entire process: use introductory statement as a reference guide for the parties
- D. Case status information as a way to manage expectations: timely updates help parties “see” where they are in the process and whether progress is being made
- E. Simple, easy, neutral words to level playing field: Easy to understand, easy to read, keep it simple – so anyone can understand and respond

F. Diffusing Anger by Acknowledging and Refocusing

G. Roadmap For Negotiation and Decision-Making

1. Each message counts - a “back and forth” exchange is inefficient on-line
2. Explain why you are doing what you are doing, give parties available options, ask for action or decision, explain next steps

H. Sample Language saves Mediator’s Time

I. Reframing and Open Ended Questions can be used but are more effective face to face than on-line

IV. When On-Line Mediation is Useful for Resolving Disputes

A. Factors

1. Jurisdiction
2. Geography
3. Cost – Direct and Indirect
4. Safety Concern
5. Allowing Enough Time, Environment to Make Decision
6. Access to Email
7. Value of Transaction

B. Models

1. SquareTrade
2. Formula based, automated monetary settlement for finding out overlap; automated (Blind Bidding)
3. Videoconferencing, real-time
4. Federal Mediation and Conciliation Service – Technology Assisted Group Solutions

C. Other Applications and Uses of On-Line Dispute Resolution

V. Future Applications

A. Small Claims Court – Consumer Merchant

B. Business to Business

C. Insurance

D. Employment

E. Real Estate

F. Supplement to Face to Face

1. Before First Meeting

2. Between Sessions

3. Agreement Writing

G. Topics for Further Study

VI. Question and Answer

Selected Resources:

Hammond, A. “How Do You Write “Yes”? A Study on the Effectiveness of Online Dispute Resolution,” *Conflict Resolution Quarterly*, 20(3), 261-286 (2003).

Katsch, Rifkin, and Gaitenby, “E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of eBay Law,” *Ohio State Journal of Dispute Resolution*, 15(3), 705-734 (2000).

Katsch, E. and Rifkin, J. *On-Line Dispute Resolution: Resolving Conflicts in Cyberspace*. San Francisco: Jossey-Bass, 2001.

Rule, C. *On-Line Dispute Resolution for Business: For E-Commerce, B2B, Consumer, Employment, Insurance, and Other Commercial Conflicts*. San Francisco: Jossey-Bass, 2002.

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