In Practice

Electronically-Mediated Dispute Resolution and E-Commerce

Janice Nadler

Although the volume of internet commerce continues to increase, some consumers hesitate to conduct business transactions on the internet because of concerns about the trustworthiness of on-line merchants. The presence of readily available, on-line dispute resolution services can send a reassuring signal to consumers that allays their fears and encourages them to do business on-line. However, on-line dispute resolution systems designed to address disputes arising from e-commerce transactions rely on a communication medium that is impoverished, which can lead to lower trust in the process, and to the escalation of negative emotion and negative attributions about the other participants in the dispute resolution process, making successful resolution of the dispute more difficult. A mediator or arbitrator in an on-line setting who is aware of these potential problems can try to avert them by engaging in simple rapport-building procedures. However, facilitating acceptance of on-line dispute resolution decisions may be more difficult than in a traditional face-to-face environment because of the absence of cues that communicate the trustworthiness and neutrality of the third party, as well as acknowledgment of the societal standing of the disputant.

Commercial transactions increasingly are taking place over the internet. Although commerce on the internet was virtually nonexistent just five years ago, current estimates place the dollar amount of internet commerce in the...
United States alone at over $50 billion in 2000 (Nua Internet Surveys, November 16, 2000). Currently, more than one half (56 percent) of all internet users do shopping on-line, almost double the figure from just two years ago (Cyberatlas, October 25, 2000). In addition, on-line auctions have surged in popularity in recent years, and the number of on-line auction purchasers is estimated to be over six million by the end of the year 2002 (Cyberatlas, January 26, 1999). In yet another sector of the internet economy —- business-to-business e-commerce — the dollar amount in the U.S. alone was over $100 billion in 1999 (Cyberatlas, August 5, 1999).

Disputes arise from internet commercial transactions, just as they do from any type of business transaction. This essay explores some distinctive features of disputes arising from on-line commercial transactions, and of systems designed to resolve these disputes on-line. I first argue that there is a heightened need for readily available and highly visible dispute resolution services accessible to people who engage in e-commerce transactions. Next, I focus on difficulties that are likely to arise in the course of electronically-mediated dispute resolution processes due to the unique nature of the medium. I conclude by identifying and analyzing issues associated with acceptance of settlements reached via electronic dispute resolution.

The Special Need for Dispute Resolution Systems for On-line Transactions

A consumer or manager considering engaging in a business transaction must decide whether to perform the transaction on-line, off-line, or not at all. As Katsh and Rifkin (2001) point out, e-commerce participants do business in an environment that is problematic in ways that an off-line environment is not. A major concern for retail e-commerce is that it is often difficult for consumers to ascertain which websites are trustworthy. Websites lack many of the features that people typically rely on when making a judgment about whether a company is reputable. Businesses on websites often do not have a physical storefront, and as a result, consumers making judgments about trustworthiness do not have available to them the same cues that are available in the off-line world. For example, a physical storefront can give consumers information about how long the store has been in business, the volume of business transacted, and the identity of the clientele. With an off-line business, there are likely to be other consumers in the local community who are familiar with the business and who have an opinion of the quality of its goods or services. Physical storefronts allow customers to see, hear, smell, and touch products. Moreover, physical spaces have other cues that signal credibility. A fancy office with a plush reception area could signal that the company is well capitalized, has an established clientele, and is likely to stand by its products or services. Furthermore, face-to-face meetings between company employees and customers can function to build confidence and resolve any problems that might arise.
In the world of e-commerce, on the other hand, consumers often do not have an easy way of evaluating the reliability of on-line sellers. Brands that are already established off-line can communicate credibility, but companies that operate exclusively on-line can be, in the eyes of the consumer, indistinguishable from one another. Many of the cues available about companies with a physical storefront are absent on the internet, so that reputations of on-line businesses are frequently difficult for consumers to ascertain. Online commerce is by nature global, and the parties involved in an electronic transaction can be located anywhere in the world. Cultural differences easily can give rise to differing expectations, and ultimately, conflict. Moreover, the global nature of the on-line marketplace is unlike the off-line local community market in that one’s next-door neighbor would not necessarily know, for example, the reputation of any given on-line company. If consumers were dissatisfied with an on-line company’s service, other consumers would not easily find out about it. With these concerns in mind, the decision to transact business on any particular website is more difficult than the decision to transact business at a physical store. A cautious e-consumer will question whether to believe the information on the website, whether to trust the company enough to give it money, and what recourse is available if something goes wrong.

For these reasons, a website that informs potential customers that an unresolved problem can be submitted to a third party for dispute resolution has the potential to allay the consumer’s fear of being taken advantage of. There are many ways of communicating the availability of on-line dispute resolution services, and to date, there are several companies that have partnered with retail and auction sites to provide such services to consumers engaged in e-commerce transactions.

For example, Squaretrade is a company that provides on-line mediation services to consumers, and its motto is “Building Trust in Transactions.” Squaretrade explicitly promotes its ability to “build trust between on-line buyers and sellers” because its seal is visible to potential customers. Squaretrade’s strategy suggests that the presence of a highly visible and readily available dispute resolution system for on-line transactions has two key beneficial effects: (1) it provides a guaranteed method for securing third-party assistance with a dispute should one arise; and (2) it sends a signal to potential customers that they will have recourse if the deal goes sour. This latter signaling feature allows consumers to proceed with the decision to transact business on-line when they are otherwise unsure about the trustworthiness of the company (see also Katsh and Rifkin 2001). The signal is itself, then, a reason for consumers to engage in a particular on-line transaction when they might hesitate otherwise. Thus, even if a consumer never uses the dispute resolution services being offered, the signal (of the availability of such services, and thus the trustworthiness of the merchant) adds value to the transaction, because it engenders a level of trust between the two parties that would not have been achieved in the absence of the signal.
On-line commercial transactions can occur in a variety of settings, and the demand for readily available dispute resolution systems varies across different contexts. For example, in a business-to-business setting where a supplier and buyer who are already known to one another engage in regular, predictable on-line transactions, the need for readily available on-line dispute resolution is likely to be low. On the other hand, in an on-line, business-to-consumer transaction, where the business is not backed by a well-recognized brand name, the consumer might have doubts about the quality of goods, or even about the legitimacy of the company. In this case, an easily available dispute resolution service can be reassuring to the consumer and can play a role in the decision to go forward with the transaction.

One setting where participants are perhaps most in need of assurance is a consumer-to-consumer transaction at an on-line auction site such as eBay. On-line auctions present special problems for several reasons. First, it is often the case that unique goods are being offered for sale, and thus the buyer's expectation about the nature of the good or about the procedure by which the deal is made can differ from that of the seller. Because the communication surrounding the transaction is performed on-line, it is often difficult for the seller to communicate all the information the buyer might find relevant. Secondly, in an on-line auction setting, it is often the case that both parties are consumers who have relatively little experience in the standards and practices of the relevant industry. Thus ample opportunity exists for problems to arise in consumer-to-consumer, on-line auction transactions.

As a way of addressing some of the difficulties inherent in on-line consumer auctions, eBay, which describes itself as “the world's largest personal on-line trading community,” partnered with Squaretrade to provide on-line dispute resolution services to eBay participants. Thus, eBay customers know that they have recourse if something goes wrong. The presence of the Squaretrade seal on eBay's website can serve to encourage consumers to participate in auction transactions when they would hesitate to do so otherwise.

The presence of a highly visible dispute resolution service on an on-line auction site like eBay is imperative because eBay transactions have been characterized as being particularly “relationshipless” (Katsh, Rifkin, and Gaitenby 2000). Unlike business-to-consumer transactions, where there is a possibility the customer will return to transact further business or will refer other customers to the business, eBay transactions often are a one-shot deal between a buyer and a seller for a unique item. Thus, at the outset the two people are strangers, and it is unlikely that these two people will ever interact again. Buyers are not sure if the seller is going to take advantage of them by sending a low-quality item or an item different from the one they had expected; and sellers are not sure whether the buyer is actually going to pay (unless payment is collected up front), or if the buyer is going to try to return the item without good reason.
On-line dispute resolution is therefore necessary for companies who want to win the trust of wary consumers, and for consumers who want to distinguish between unknown companies. Indeed, the recognition for the necessity of dispute resolution for on-line companies is growing. In June 2000, a consortium of seven large technology companies (called The Electronic Commerce and Consumer Protection Group) issued a set of guidelines for merchant-to-consumer transactions, in which it explicitly emphasized the importance of dispute resolution systems for on-line consumer transactions. The guidelines urge on-line businesses to provide consumers access to dispute resolution that is “fair, timely, and affordable.” (Guidelines 2000). In sum, the extent to which there is a need for dispute resolution systems for on-line commercial transactions depends, among other things, on the relationship between the parties to the transaction, the type of transaction, and the experience of the parties. The presence of dispute resolution systems for on-line transactions is already important, and its importance is likely to grow as commerce on the internet grows.

Getting to Settlement: Roadblocks and Thruways in On-line Dispute Resolution

The presence of a dispute resolution system can encourage e-consumers to transact business on a website offering such a service. If a problem does arise out of an electronic transaction that requires the involvement of a third party, dispute resolution process itself can, like the underlying transaction, also take place on-line. But on-line dispute resolution must rely exclusively on written communication, (almost exclusively email), and thus any benefits inherent in face-to-face or other verbal communication are foregone.

Trust and Emotion On-line

When dispute resolution occurs face-to-face, people have available to them a wide range of interpersonal cues that facilitate understanding that we often take for granted. Politeness rituals, such as smiling, nodding, making direct eye contact, and verbal acknowledgments (e.g., “uh-huh,” “ok”), help communicate both positive emotion and also indicate that the other person's message is understood. But on-line dispute resolution takes place in a socially impoverished environment. As a result of the absence of important cues, on-line communication is more difficult, and the process of resolving the dispute can deteriorate quickly (see also Landry 2000).

In on-line communication, humor, an important social lubricant, can be misinterpreted or simply absent. In addition, expression of positive emotion is often cumbersome — we can’t rely on smiling, eye contact, or verbal markers of understanding. In an on-line dispute environment, people may be tempted to use the strategy of being a squeaky wheel — using negative emotion tactics to extract the desired concessions from the opponent (Thompson et al. 2001). Disputes arising from on-line auction transactions may be particularly prone to negative emotion, because the parties are
strangers during the transaction, and they are now angry about the dispute (Katsh, Rifkin, and Gaitenby 2000).

The electronic medium can itself contribute to an atmosphere where the disputants view the mediator and each other with suspicion. In electronic communication where the absence of social cues leads to feelings of social distance, we tend to attribute malevolent motives to the other person. Negative emotion, blaming, and sinister attributions can quickly get out of control and escalate in on-line communication, more so than in a face-to-face situation (Morris et al. 2002). As a Squaretrade executive recently observed, the vulnerability of on-line consumers to initial feelings of hostility and mistrust lead them to suspect: “I am a scam victim!” (Lisco 2000).

Indeed, this proposition has been borne out in empirical studies. For example, Fortune and Brodt (2000) found that negotiators interacting electronically were more likely to mistrust and suspect the other party of lying or otherwise deceiving them, relative to negotiators interacting face-to-face. In reality, e-negotiators were, in fact, no more likely than face-to-face negotiators to deceive the other party. Thus, the increased suspicion of the other party on the part of e-negotiators had no factual basis. On-line disputants are therefore more vulnerable to attribute sinister motives to the other party and even to the third-party neutral.

Flaming and other expressions of negative emotions are more likely to erupt over electronic media, in part because people pay less attention to etiquette in this context, and in part because people perceive the squeaky wheel strategy as the best method for getting their preferred outcomes from the dispute. In fact, one study found that people are eight times more likely to flame in electronic discussion than in face-to-face discussion (Dubrovsky et al. 1991). To help email communicators combat this phenomenon through self-regulation, the makers of Eudora 5.0, a popular email program, have incorporated a feature called “Moodwatch” into the program. Moodwatch acts as an “emotion monitor” for the email writer and flags any message that is “aggressive, demeaning, or rude.” (Eudora 5.0: Moodwatch [n.d.]). The program rates messages containing questionable language and marks them with one, two, or three chili peppers to indicate the level of an e-mail’s emotional hotness. The Moodwatch feature is designed to let the writer know that they are about to send an email message that they might later regret. The tendency of email communicators to behave more rashly than face-to-face communicators is well-recognized, even among software manufacturers. Participants in on-line mediation or arbitration are also likely to find that conflicts escalate more quickly than they do face-to-face, and this process of conflict escalation frequently functions as a roadblock in the process of information exchange required for a mutually beneficial decision or settlement.

On the other hand, the same remoteness that prompts flaming and suspicion also can allow cooler heads to prevail. Emotion might be diffused more easily on-line than face-to-face because disputants have more time to
think and cool down. In an electronic setting, the person who made you so angry initially is not physically in front of you to make you more angry. The third party can use the asynchronous nature of the exchange to encourage cooler heads. It is therefore important in an on-line dispute resolution context to give people the opportunity to vent their frustrations and negative attributions. This exercise makes people feel better and also gives the third party an opportunity to understand where the deal went wrong and what negative attributions parties are making, and thereby successfully identify a solution that will satisfy both sides. For example, the Squaretrade “direct negotiation” process is structured so that participants are provided an opportunity to communicate their frustrations, but only after they are first greeted with a screen that provides encouraging information about the online dispute resolution procedure they would be using (“Over 80 percent of [users] . . . said they would use the service again.”) [Katsh and Rifkin 2001]).

**Temporal Asynchrony**

When disputants meet face-to-face with a mediator, or appear in person before an arbitrator, they can explain their concerns verbally, and wait to see the third party’s reaction to their side of the story. In addition, any questions about the process that a disputant might have can be posed in such a face-to-face meeting and answered on the spot. In a face-to-face arbitration, disputants have an opportunity to present their side of the story verbally to the arbitrator, and they ordinarily have the opportunity to hear the other side’s story at the same time. In simple disputes, the entire process frequently takes place over the course of one meeting or hearing. Conversations that occur in a face-to-face setting also benefit from the natural verbal back-and-forth rhythm present in a normal conversation (Gumperz 1982).

When dispute resolution occurs on-line, by contrast, the communication is necessarily asynchronous. Asynchronous communication can be frustrating for many reasons. For example, a party might tell the mediator the basic facts of the dispute, and not receive any response or acknowledgment for hours or days. A party might have a question about how the process works that she wants answered before she agrees to provide information. If the mediator or arbitrator needs more facts, she must write the party an email asking for clarification. One party might send the mediator a proposal for what he thinks is an entirely reasonable solution that would make everyone happy and put an end to the dispute, but then might get frustrated when he checks his email the next morning and still has not received any response. When the mediation process begins, parties are often already angry. The halting pace inherent in on-line communication might only make matters worse.

In face-to-face mediation or arbitration, there is an immediate two-way flow of information. But in an on-line mediation or arbitration setting, communication is distributed over time and has a pace that is uncertain. A party who sends an email message to the mediator may receive a response within
minutes, days, or even weeks, without any way of knowing which to expect. By contrast, in face-to-face mediation, as in all face-to-face communication, there is an expectation of some type of response or acknowledgment of each communication within a few seconds (think of how awkward we feel in a face-to-face conversation when there is silence for a minute or more).

Typically in face-to-face conversation, we take turns speaking so that we develop a conversational rhythm. This pattern of synchronous rhythm gives us an opportunity to anticipate our turn to speak, acknowledge understanding, request clarification, or express a reaction or a new idea. By contrast, in on-line communication, we do not have the opportunity to engage in the same kind of instantaneous clarifications and spontaneous reactions that we have in face-to-face communications. Instead, on-line communicators tend to rely on longer, more complex messages without being interrupted by the other person (Morris et al. 2002). In a mediation context, this allows for the conveyance of more semantic information in a given message, but at the same time, it does not allow for brief, on-line verbal interjections to check understanding (“so what you’re saying is. . .”). Moreover, participants in on-line mediation are missing other cues, such as tacit ongoing requests for clarification (e.g., facial expressions of puzzlement, or a verbal “hmm?”), and brief contemporaneous indications of understanding (e.g., head nods or a verbal “uh-huh” [Thompson and Nadler 2002]).

Empirical research on the effects of on-line dispute resolution is just beginning. However, we can expect that the result of electronically mediated dispute resolution and its attendant missing signals would be a greater potential for misunderstanding and, ultimately, a greater likelihood of impasse in e-mediation compared to face-to-face mediation. Empirical research on e-negotiation supports this hypothesis (Morris et al. 2002). Compared to face-to-face negotiators, people who negotiate using email become frustrated with the inability to ask for information repeatedly and receive immediate responses. Delays in receiving replies can quickly become a source of irritation, as negotiators attempt to unilaterally force progress by jumping to final proposals rather than letting them emerge naturally (e.g., “If I don’t get your answer by tomorrow, then I assume that you agree with my proposal.” [Morris et al. 2000]). In general, e-negotiators have less trust than face-to-face negotiators that their opponent is bargaining in good faith (Fortune and Brodt 2000). Mutual distrust, breakdown of communication, and impasse are often the consequence. It is therefore imperative in an on-line dispute resolution context that the parties are provided clear expectations at the outset about the ground rules and pace of the process, and of the importance of clear and explicit statements of fact and responses to minimize the misunderstandings that arise from the impoverished on-line medium.

**Developing Rapport**

In addition to temporal differences between face-to-face and on-line communication, the absence of social cues in on-line communication discussed earlier (e.g., facial expression, gestures, tone of voice, and verbal acknowled-
edgments) can cause participants (both disputants and third-party neutrals) in an on-line mediation to feel that they are not “in sync” with each other. As a result, the mediator may be unable to develop a rapport with the disputants that would otherwise assist in encouraging disputants’ trust in the mediator, the other party, and the process itself. In other words, in the absence of rapport there is a danger that participants will assume the worst about one another.

Such lack of rapport is often present when people do not have the opportunity to engage in politeness rituals. For example, empirical research in negotiation has revealed that people instructed to negotiate side-by-side without access to nonverbal cues are less able to coordinate because they do not have the opportunity to develop the same rapport as face-to-face negotiators. As a result, they achieve worse outcomes (Drolet and Morris 2000). In addition, people who negotiate face-to-face develop more rapport than those who negotiate over the telephone (Drolet and Morris 2000). Consequently, people communicating face-to-face are more likely to cooperate on a task that requires coordination than people who use the telephone. In general, the less a medium allows for synchronous expression of verbal and nonverbal communication cues, the less likely it is that rapport will develop between the communicators (Drolet and Morris 2000).

When a mediator is unable to develop rapport with the disputants, it is more difficult to reach a mutually agreeable and beneficial solution to the conflict. Indeed, as has been empirically demonstrated in the negotiation context, the danger of impasse increases radically when participants negotiate on line, as opposed to face-to-face (Morris et al. 2002; Fortune and Brodt 2000). Despite their ability to take time to think about possible settlements and present detailed offers, negotiators who use email are at a higher risk of failing to discover mutually beneficial solutions, compared to people who negotiate in person. This failure has been attributed to the tendency for people negotiating over email to engage in less “schmoozing” than those negotiating in person (Morris et al. 2002). E-mail negotiators overlook the importance of “breaking the ice” by revealing information about themselves, and by mentioning background or peripheral subjects before delving into the more contentious business issues.

Third parties can partially compensate for the effects of lack of on-line rapport by making conscious efforts to build rapport on-line. In the negotiation context, a brief, getting-to-know-you conversation can help parties achieve better outcomes and trusting relationships (Moore et al. 1999 and Morris et al. 2002). Similarly, mediators can encourage schmoozing and personal contact in the beginning of the dispute resolution process to achieve a higher level of trust and rapport between the mediator and each disputant. These steps cost relatively little and are simple to implement; at the same time, they have the potential to reap large rewards.

It is important for designers of dispute resolution systems and for third parties to be aware of the perils of on-line dispute resolution in order to take
steps to avoid these pitfalls to the extent that is possible. As I will explore in further detail in the next section, a satisfactory on-line dispute resolution process allows participants to feel better not only about the original transaction, but also about returning to the site and conducting more business there.

Facilitating Acceptance of an Electronic Dispute Resolution Decision in the E-Commerce Environment

Because electronic dispute resolution makes use of new technologies, its procedures are inevitably different from traditional dispute resolution procedures. Disputants and third parties in electronic mediation do not communicate face-to-face; electronic communication is distributed over time; and the overall volume of communication is often lower in electronic communication compared to face-to-face communication.

These procedural differences raise questions regarding the aftermath of the dispute. Once a settlement (or decision, in the case of arbitration) is reached using procedures that depend on electronic communication, what is the likelihood that the parties will accept and abide by the settlement? Do the unique procedural features of electronic dispute resolution make any difference to disputants’ satisfaction after settlement is reached? Of course, these questions are best answered with data gleaned from empirical investigation. Because new communication technologies have only recently been used in dispute resolution systems, few (if any) empirical investigations of e-disputant attitudes toward settlement have been undertaken to date. We can, however, set forth hypotheses about the effects of electronic communication technology on disputants’ acceptance of and satisfaction with dispute resolution outcomes, on the basis of existing theory and research in the social psychology of procedural justice.

Procedural Justice and Dispute Resolution

Generally speaking, in most conflict situations the disputants are more concerned with issues of exoneration, with obtaining an adequate hearing, and with being treated respectfully than they are with the actual award that they obtain (MacCoun et al. 1992). Such judgments about the adequacy and fairness of the procedure by which the dispute is resolved can have profound effects on obedience to the third-party neutral’s authority and on the acceptance of rulings and settlements.

Studies of procedural justice judgments in dispute resolution contexts have revealed that the degree to which disputants are willing to accept the decision of a third party is determined substantially by procedural justice judgments. Specifically, disputants use a fairness heuristic to decide whether they are satisfied with the outcome of the dispute resolution process (Lind et al. 1993). For example, one study examined litigants who were referred to court-annexed arbitration. In this program, arbitration decisions were non-binding, so that after the arbitration award was made, a litigant could either accept the award, or reject the award and go to trial. Litigants’ decisions
about whether to accept or reject the arbitration decision depended crucially on the extent to which the procedures used in the arbitration were perceived as fair. Litigants who felt that they had been treated fairly in the arbitration were more likely to accept the arbitration decision; conversely, litigants who felt they were treated unfairly were more likely to reject the arbitration decision. Moreover, these procedural justice effects operated independently of whether a litigant won or lost the arbitration (see Lind et al. 1993). Thus, in many circumstances, disputants care at least as much (if not more) about being treated fairly, than they do about securing a particular settlement or decision.

What does it mean for a disputant to feel that he or she has been treated fairly? Research on procedural justice has revealed three separate components to the fairness heuristic (Lind 1996). The relative importance of each component depends, to some extent, on the context of the conflict. The three key components of procedural justice judgments, as applied from the point of view of a disputant in a dispute resolution context are:

• **Perceived Trust** — Did the third party fully consider my views and needs?

• **Standing** — Did the third party demonstrate that I am a full-fledged member of society by treating me with politeness, dignity and respect?

• **Neutrality** — Did the third party treat me in an evenhanded, nondiscriminatory way by behaving in an open, fact-based fashion?

These factors predict the extent to which disputants perceive that they have been treated fairly or whether they have been exploited, excluded, or otherwise taken advantage of.

The first factor, perceived trust, often takes the form of a judgment on the part of a disputant about the extent to which he or she is afforded “voice.” The opportunity to voice one’s concerns enables disputants to feel that their views are important and are being given full consideration, and is thus an important component in disputants’ judgments about the justice of the dispute resolution process. Indeed, the extent to which disputants are satisfied with a settlement and are willing abide by the terms of the settlement in the future can be strongly influenced by the feeling that they have been given an opportunity to tell their side of the story. However, the effectiveness of telling one’s own side of the story depends on the perception of being heard, and not merely the opportunity to talk. Shapiro and Brett (1993) found that the “voice effect” turns on whether the third-party neutral is seen as giving adequate consideration to the disputants’ views. If a disputant perceives that the third-party neutral is not listening or not considering her point of view, then the mere opportunity to talk will not significantly enhance her satisfaction with or likelihood of accepting the settlement or decision. That is, procedural justice judgments are not improved when disputants have an opportunity to speak but the authority does not give their views adequate consideration.
The effects of voice are at bottom about social relations. People care about the opportunity to tell their story not only because they have a simple instrumental belief that the third party will think their reasoning so compelling that they will receive a favorable outcome as a result. More importantly, people are concerned with feeling that they are included in society, and that they are held in high regard by important institutions and authorities. Thus, disputants are concerned with telling their story and being heard not so much because they think it will lead to a particular favorable outcome, but more because being heard is a signal that the authority (mediator, arbitrator, etc.) can be trusted to view them and treat them in a way that is benevolent and fair (Lind 1998; Tyler 1990).

Similarly, being treated with dignity and respect is also important to the question of whether a decision or settlement will be complied with and viewed with satisfaction. On the level of the structure of the dispute resolution procedure itself, the more a procedure is viewed as dignified, the more procedurally fair it seems to the disputants. In one study, researchers comparing disputants’ ratings of arbitration, settlement conferences, and trial, found that disputants viewed arbitration as very fair because it was perceived as dignified, and they viewed settlement conferences as very unfair because it was seen as undignified (Lind et al 1990). On the level of social interaction between a disputant and the third party disputant satisfaction is predicted by the feeling that the third party respects the disputant’s rights and treats the disputant politely (Lind and Tyler, 1988). Finally, disputant concerns with neutrality focus on questions about whether the third party seems unbiased and is concerned with achieving an accurate understanding of the facts underlying the dispute. In sum, acceptance of and satisfaction with a settlement or a decision does not depend as much on favorable outcome as it does on the extent to which the procedure is perceived as fair.

**On-line Dispute Resolution and Perceptions of Justice**

A dispute resolution process that takes place in cyberspace has unique characteristics that potentially affect disputants’ perceptions of the fairness of the procedure. In an electronic dispute resolution, there are some ways in which disputants might have more control over the process compared with traditional face-to-face dispute resolution systems. For example, unlike disputants in traditional mediation who must rely on their own verbal accounts of the dispute, disputants who have the opportunity to tell their side of the story via email or other written procedure can take the time to prepare a carefully written account of everything they want the mediator to know. Absent structural limits on the length of messages, e-disputants can craft a written message that highlights points that they deem most relevant, and include all background facts that they think would be useful to the mediator. In this sense, e-disputants may feel that they have more control over the process compared to disputants in traditional mediation systems. This sense of process control may, in turn, contribute to a sense of fairness and satisfaction with the process.
On the other hand, e-disputants do not achieve an immediate sense they are being heard, because they do not have access to the same visual cues available to disputants in a traditional mediation. For example, in a face-to-face mediation, the mediator can signal listening understanding by nodding their head or saying “I understand.” An e-disputant, on the other hand, might send a lengthy message to the mediator and subsequently wonder whether the mediator will read it, or whether the mediator has read it carefully, or has understood the key facts. So, while e-disputants may have more control over which and how much information is presented compared to face-to-face disputants, e-disputants may not have clear or immediate feedback that signals that their story is being heard and understood. This, in turn, might lead disputants to have less trust in the mediator and in the process itself.

In addition to the perception of being heard, electronic dispute resolution also raises questions about disputants’ perception that the third party is treating them with dignity and respect. In a face-to-face interaction, people are accustomed to attending to particular symbols and politeness rituals that signal respect and dignity. These include the decorum of the physical space, the way people are dressed, shaking hands, tone of voice, eye contact, facial expressions (such as smiling), and gestures. In cyberspace, most of these cues are missing, so attempts to signal dignity and respect must be made explicitly to be effectively communicated. But interpersonal understandings such as dignity and respect are, in many ways, impossible to communicate electronically. For example, a mediator can make explicit statements of understanding or sympathy (e.g., “You have made a valid point” or “I understand why you would be upset”) but statements of this kind are more effective in establishing trust concerns such as voice, rather than standing concerns such as the disputant’s status as a respected member of society.

The difficulties associated with achieving interpersonal understanding electronically raise questions about the aftermath of dispute resolution processes that operate in cyberspace. If electronic dispute resolution systems lack many interpersonal and institutional cues that signal inclusion, esteem, respect, and dignity, then disputants may come away feeling like the process was not fair. As a result, they may be less satisfied with the outcome, and less likely to comply with the settlement or decision. In addition, a disputant who is dissatisfied or feels unfairly treated in an electronic dispute resolution procedure may decide not to pursue further business on the site where the dispute arose or, in an extreme case, may decide not to transact business on-line at all in the future. It must be noted, however, that while the concerns raised here are hypothesized based upon established theory in the face-to-face context, empirical investigations of the consequences of electronically-mediated dispute resolution on participants fairness perceptions are in the very early stages. It is not until empirical data are made available that we will have a good understanding of these phenomena. A major question for future research is whether there is a similar level of long-term
willingness to adhere to a decision that was part of an on-line mediation process, compared to face-to-face processes.

**Concluding Thoughts**

Despite the concerns raised here, electronic dispute resolution appears to be a viable alternative to traditional systems of dispute resolution. Although on-line dispute resolution is still a new phenomenon, there are nonetheless numerous examples of successful mediation and arbitration systems that operate in cyberspace. Among these are: Squaretrade (partnered with eBay); World Intellectual Property Organization Mediation and Arbitration Center (international disputes between commercial parties, including domain name disputes); ClickNsettle.com (insurance claims); Cybersettle.com (insurance claims); On-line Resolution (general); Mediate-net (family law); Internet Neutral (commercial contracts).

This list is not meant to be exhaustive, but rather illustrative. Many of these organizations have very good success rates, suggesting the possibility that on-line dispute resolution systems incorporate certain successful aspects of traditional dispute resolution, as well as uniquely successful characteristics of the on-line environment that compensate for the deficits described earlier.

We must keep in mind, however, that at this early stage, we do not yet have the benefit of empirical evidence upon which to base these hypotheses; until such empirical research is done, any discussion regarding the relative success of on-line and off-line dispute resolution systems, and the factors underlying such success remains speculative.

**NOTE**

1. This essay evolved from presentations made during a September, 2000 conference called auctions and negotiations.com, sponsored by the Dispute Resolution Research Center (DRRC) at the Kellogg School of Management, Northwestern University.

**REFERENCES**


