

Review by Colm Brannigan, 'Julia Hörnle, Cross-border Internet Dispute Resolution' [2009] 4 *Web JCLI*
<http://webjcli.ncl.ac.uk/2009/issue4/brannigan4.html>

Julia Hörnle, Cross-border Internet Dispute Resolution

Cambridge University Press, Cambridge, 2009, 318 pages, £60.00
ISBN 978-0-521-89620-7

Available at <http://www.cambridge.org/uk/catalogue/catalogue.asp?isbn=9780521896207>

Reviewed by Colm Brannigan

colm@mediate.ca

A former litigation lawyer, Colm practices alternative dispute resolution in commercial and technology matters as the principal of Mediate.ca Dispute Resolution Services in Toronto, Canada. He is a Chartered Mediator (ADR Institute of Canada), a Certified Mediator (International Mediation Institute) and a part-time instructor in law at Humber College Institute of Technology & Advanced Learning.

Copyright © 2009 Colm Brannigan

First published in Web Journal of Current Legal Issues.

The interface of Alternative Dispute Resolution (ADR) and technology is both fascinating and of extreme importance to the future of dispute resolution in general. There are at least two distinct aspects to this. First is the use of technology to enhance existing face-to-face ADR processes and the second is Online Dispute Resolution (ODR). This book is focused on the latter.

The author, Julie Hörnle is a Senior Lecturer in Law at Queen Mary University in London. She is an expert on ODR and has written extensively on several aspects of Internet Law and ODR. The book is the product of four years of research and is a valuable contribution to the growing body of literature on the subject.¹

It is now obvious that the internet has in a relatively short period of time increased the number of disputes between its users. This is particularly so in Business to Consumer (B2C) or Consumer to Consumer (C2C) disputes. In trying to resolve many internet disputes, traditional legal mechanisms are ineffective. There are problems of jurisdiction and even if that can be determined, the low value of most consumer internet dealings compared to the high cost of litigation, makes it unlikely that many could afford to seek redress for their disputes.

¹ The first book on ODR appeared in 2001. See Ethan Katsh and Janet Rifkin, *Online Dispute Resolution: Resolving Disputes in Cyberspace*, (San Francisco, Jossey-Bass, 2001) followed shortly thereafter by Colin Rule's, *Online Dispute Resolution for Business*, (San Francisco, Jossey-Bass, 2002).

In many situations, ODR is not an alternative dispute resolution system; it is the only practical dispute resolution available. ODR takes advantage of the advances in information technology and communication to help disputants deal with these relatively low level disputes in a cost efficient manner. It is important both as a development of ADR and in providing access to justice.

ODR has for the most part grown out of mainstream face-to-face ADR. It uses many of the same processes including negotiation, mediation and arbitration. But it is much more than this. The combination of various technologies with ADR produces what are, in the words of the author, “transformative processes.”

The book is logically set out as follows:

1. Introduction
2. The concepts of fairness
3. Internet disputes
4. ADR and applicable law
5. ODR and access
6. Arbitration and due process
7. Internet disputes and fair arbitration
8. A model of dispute resolution for the internet.

The book begins with a detailed exploration of the meaning of fairness or due process in dispute resolution and sets the stage for an exploration of various processes for dispute resolution. The application and use of communications technology in mediation and arbitration is considered as a way of reducing cost and delay. One obvious significant cost saving benefit is that ODR takes away the need for lawyers and disputants to meet face to face in order to bring about resolution of disputes.

ODR as it now exists is reviewed. The key question for the book is how ODR processes should be structured in the context of cross-border internet disputes and concludes that the optimal choice is online arbitration.

Arbitration is a highly legalistic process with significant and difficult legal and fairness issues especially in B2C disputes. The whole question of whether arbitration should be used in these disputes is very controversial at the present time especially in the United States. However on-line arbitration, if conducted in a procedurally fair way is far better than no dispute resolution mechanism and has potential for far more than this. The ICANN Domain Name Dispute Resolution System (UDRP) is considered as a potential model for other types of Internet disputes.² There has been a fair amount of literature on the UDRP, much of it critical. However with some improvements around due process, it is certainly a place to start.

In the last chapter the author sets out a comprehensive model for an online arbitration system which modifies the principles of traditional commercial arbitration in order to provide consumers in B2C disputes with additional process protection. This is especially important given the obvious power

² For a similar consideration of the applicability of ICANN’s UDRP to other internet disputes see: Andrew F. Christie, *The ICANN Domain Name Dispute Resolution System as a Model for Resolving other Intellectual Property Disputes on the Internet*, (2002) 5 (1) *Journal of World Intellectual Property*. Article abstract available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=319201

imbalances between the parties. The centre of the debate in the US over consumer arbitration is focused on this important point.

The author focused her research on English and American law although it does go beyond these at certain points. She indicates that this choice was made as it is in these jurisdictions “that the debate on ADR and arbitration is most developed.” That was certainly true in the recent past, but there is a high level of interest and work in the subject in Europe, Australia and other places such as Singapore. It would be impossible to cover all jurisdictions in a book of this size so her decision is reasonable.

This is particularly so when we consider that the aim of the book is not to canvass the whole world of ODR but to “develop a fair model for the resolution of such Internet disputes, piecing together different methods of dispute resolution into one jigsaw puzzle.” It does this and more. By setting out standards for ODR, and in particular online arbitration, the author takes the debate from theory to practice. Her ideas can be implemented in the real world. It remains to be seen if and when they are.

As a mediator, I would have liked to have seen more information about online mediation. While there is some coverage of mediation, it was not in sufficient detail to allow a comprehensive understanding of what I actually see as the most potentially powerful ODR process. However, given the book’s clear focus on online arbitration, this is probably not a fair criticism. And it does leave open a significant area for future research and writing.

In his recent work, *The End of Lawyers*,³ Richard Susskind identified ten “disruptive technologies” which will fundamentally change the face of legal practice and Online Dispute Resolution is one of the ten.

Given the rise of a generation who grew up with the internet and will demand access to dispute resolution on it, it is important that lawyers and ADR practitioners begin to realize that ODR is here to stay. The dramatic continuing decrease in cost, combined with the exponential increase in quality and capability of technology has the potential to transform dispute resolution in general. This book will be part of the debate that must take place on ODR.

³ Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services*, (Oxford, Oxford University Press, 2008). See: <http://ukcatalogue.oup.com/product/9780199541720.do>