

Alternative Dispute Resolution For Consumer Transactions in the Borderless Online Marketplace

Comments by iCourthouse.com

iCourthouse.com, located at www.icourthouse.com, submits the following comments to the Federal Trade Commission for consideration at its upcoming Workshop.

Introduction

The Borderless online Marketplace challenges traditional ADR models. At the same time, online technology offers ADR solutions never before possible. iCourthouse provides online jury trials as a flexible, patent-pending solution to the problem of resolving disputes in the Borderless Marketplace. Unlike other ADR models, iCourthouse allows parties to submit their claims and defenses to a jury of online individuals for decision. The jury can be limited and selected by the parties by demographic information, to conform to local customs, or can be offered to the entire Internet public for decision. Disputes can be resolved privately through the Panel system, or publicly through the Peer system. Decisions can be binding by contract or agreement, or can be advisory, to aid in individual, voluntary resolution.

How iCourthouse works

At iCourthouse, a dispute is resolved through the verdicts and comments of jurors. Case presentation is a simplified, consumer-friendly version of traditional case presentation. A complaining party begins by registering. He or she then fills out a claim form in which the party designates the case as Peer (open to public comment) or Panel (for review only by selected jurors,) and gives a brief summary of the case. The opposing party is summoned to iCourthouse to respond to the claim. Both parties complete a trial book containing an opening statement, evidence (including written testimony, exhibits, and digital files of any kind) and arguments. The matter is then submitted to the jury for decision.

If a Panel (private) forum is selected, parties enter demographic criteria for the jurors desired, and the system selects jurors who most nearly fit the requirement. The parties may voir dire the jurors to determine their suitability to the case. The jurors are then selected and the case proceeds. If a Peer (public) forum is selected, the jurors are not pre-selected, and the case is open to unlimited numbers of iCourthouse jurors who wish to participate. Jurors may question the parties and answers are posted in the parties' trial books for all jurors to review. Jurors then render verdicts along with comments and feedback for the parties.

Jurisdiction

iCourthouse was designed to serve as the Internet courthouse. Because there is no political jurisdiction that covers Internet commerce, crossing as it does local, state and national lines, there is no single court jurisdiction or forum to resolve disputes. iCourthouse offers that forum through **contractual jurisdiction**. Much like the arbitration provisions that appear in many contracts today, an agreement to resolve disputes through iCourthouse can appear in contracts for Internet transactions or in credit card issuer agreements. However, it is not necessary to contract for iCourthouse jurisdiction in advance of a transaction. If a dispute arises, parties may file a case at iCourthouse, and invite the opposing party to participate.

Binding vs. non-binding

It is important that online ADR systems be scaled for flexibility, so that parties can control the process to meet their needs. At iCourthouse, the parties may elect either to abide by the verdict of the jurors, or to accept the verdict as advisory only (similar to non-binding arbitration) and use the result to assist in reaching a more reality-based solution through negotiation or mediation.

Enforceability

All online ADR mechanisms suffer from enforceability problems, except for VISA's chargeback system. iCourthouse offers enforceable verdicts as well as advisory verdicts. Currently, iCourthouse offers contractual enforcement, in which the parties agree that the verdict will be binding. iCourthouse is developing a form of incentive-based enforcement, whereby the parties use credit cards to secure enforcement of a decision. If the verdict is favorable to the Plaintiff, the amount of the verdict is charged to the defendant. If the verdict is favorable to the Defendant, a "transaction fee" is charged against the Plaintiff's account, and paid to the Defendant. Incentive-based enforcement mirrors the British system in which losing parties pay fees to the winner. It discourages inflated claims and it gives defendants an incentive to participate where they otherwise might ignore a claim.

Accountability

While iCourthouse is supportive of other forms of ADR, concerns always arise as to the accountability and selection of mediators and arbitrators. Given the additional Internet burdens of distance and anonymity these concerns can be magnified. The iCourthouse system makes bias and "wild card" results less likely. A virtue of iCourthouse's jury pool is its sheer size. The pool is international, and is so large and diverse that biases and prejudices balance each other out to a much greater extent than in traditional jury systems. Further, and by design, no racial, religious or ethnic information is collected or permitted, making iCourthouse a neutral, equal access court system.

Conclusion

Online technology can be harnessed to serve the ADR needs of the online marketplace. iCourthouse provides a unique solution to Borderless Market disputes. It can be used alone or in conjunction with other ADR forms, it can be binding or advisory, and it can be enforced automatically or as a contract. It is a simple, consumer-friendly system, and it addresses the three most difficult problems Internet ADR faces: It is enforceable, it provides incentives for defendants to participate, and it crosses all borders easily.

Panelist for Workshop

iCourthouse would like to participate as a panelist of the Workshop and address issues including jurisdiction, fairness and enforceability.

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