A fact sheet from THE PEW CHARITABLE TRUSTS | Jan 2019

Online Dispute Resolution Offers a New Way to Access Local Courts

How private-sector technologies can be repurposed to serve the civil legal system

Overview

The internet has made it possible for people to shop, socialize, and pay bills from any location at any time of day or night. But filing or responding to a civil legal complaint still must be done at the courthouse during regular business hours, often in person. Millions of Americans face barriers, such as limited mobility or inflexible work schedules, that restrict their ability to access the civil legal system to resolve disputes—including landlord and tenant issues, divorce, and consumer debt.

The legal system was not designed to accommodate and support individuals who cannot appear in court, and the burden is widely felt. Civil court dockets are composed mainly of "high-volume" cases—routine legal matters that typically never reach a judge and instead become rote transactions that court staff manage and litigants usually handle themselves. For instance, more than three-quarters of civil cases in state and local courts involve claims of $5,200 or less, primarily contract disputes such as debt collection or landlord-tenant issues.[1] These kinds of cases, though relatively small in dollars, present significant financial and time challenges for millions of Americans every year. This experience was reflected in the findings of a national survey conducted by the nonprofit National Center for State Courts (NCSC), in which more than 80 percent of respondents said they want more online access to local courts, including the ability to ask for guidance from court staff rather than come to the courthouse.[2]

Existing digital technologies could provide part of the solution and increase people's remote access to the courts. In particular, online dispute resolution (ODR) is an electronic tool already in use in the private sector that helps resolve disagreements between consumers and online retailers. Major online retailers and auction sites use ODR to settle more than 60 million disputes a year, with 90 percent of financial cases resolved without the engagement of a judge or mediator.[3] Early research suggests that when applied in a court context, these innovations could make legal processes more efficient and provide hundreds of thousands of Americans with an alternative way to resolve legal issues—especially high-volume cases that clog the courts. However, more study is needed to address concerns raised by some stakeholders about whether and how well the private-sector success of ODR will translate into policy and ultimately the practice of law.

What is online dispute resolution?

ODR was developed in the private sector to facilitate the quick resolution of conflicts to the satisfaction of both parties.

Because of its utility in quickly resolving lower-value, high-volume cases, ODR has begun to spread from the private sector to public courts. Although courts around the country have adopted a range of online tools, the NCSC, which focuses on improving judicial administration around the world, considers a platform to be "court ODR" only if it is:

- **Court-annexed.** Hosted or supported by the judicial branch.
- **Public-facing.** Available for litigants to resolve disputes, rather than as an internal tool for court staff.
- **A digital space.** Online resources that can manage a case from start to finish and never require users to go into a courthouse.[4]

ODR has been adopted on a pilot basis in court systems on four continents.[5] In the past few years, courts in the U.S. including pilot sites in Michigan and Utah have deployed ODR tools.[6]

How does court ODR work?

Although ODR is not appropriate for every legal issue, it has promise for high-volume cases involving transactional disputes, such as traffic offenses, small claims, and low-conflict family court cases. The platform enables litigants to communicate about disputes online and reach a resolution that can be authorized and enforced by the courts. Some functions that can be built into court ODR systems include:

- **Asynchronous communication.** Individuals can access ODR at any time during or outside of court hours, leave messages for other parties, and be notified of responses.
- **Legal information.** The system can be built to provide legal information—without giving advice—about the procedural requirements and options available at each stage in the process to all parties to a dispute.
- **Triage.** ODR systems present users with different paths and provide them with the necessary information to make informed decisions, such as whether and when to request a mediator to assist with negotiations or to exit the ODR system and return to the traditional court process, each of which affects the amount of litigant and court resources required to proceed to resolution.
- **Electronic document management.** ODR can allow for easy sharing of materials with other parties and connect to platforms that allow participants to electronically file documents with the courts.

- **Mediators.** Courts can make trained mediators available to litigants via ODR systems to help them work through their disputes.
- **Negotiation spaces.** ODR systems can allow litigants to talk through the dispute with or without a mediator in a secure chat space.
- **Document creation.** The system can convert agreed-upon terms into court documents.
- **Payment methods.** ODR tools can allow individuals to submit agreed-upon payments through the ODR platform.

What would successful ODR platforms achieve?

Effective court ODR systems should deliver:

Speedier resolution. People who currently wait months to get their cases on crowded court dockets would encounter fewer such unnecessary delays. The American Bar Association's Commission on the Future of Legal Services suggests that successful court ODR would increase judicial efficiency.[7]

Greater engagement in the legal process. When court can be accessed via a computer or smartphone at any time, rather than only in person during business hours, both sides should be more able to actively participate in their case, with fewer no-shows and defaults.

Increased exercising of legal rights. ODR platforms that provide users with accessible and relevant information could help ordinary people better understand their legal rights and options and help them leverage the laws and precedents that support and protect those rights.

More fair outcomes. In the U.S. legal system, a just judgment is one that is rendered based on the law in full light of all relevant facts. ODR has the potential to improve the fairness of the civil legal system and increase the likelihood of just resolutions by reducing default rates, procedural mistakes, and other inefficiencies, providing legal information and access to key court processes, and helping to ensure that all parties to a case have an opportunity to participate.

More efficient court processes. Several parts of the court process must be modified to fit an ODR platform, such as certain notary and reporting requirements, docket scheduling, and document delivery rules. Implementation could enable judicial leaders to streamline and improve court processes for litigants, whether online or in court.

How is success measured?

Court ODR is gaining popularity around the country, but some questions have surfaced about its potential effects as courts deploy systems without recognized best practices or evidence of impact, which users benefit most, or the types of cases for which these tools yield the best return on investment. Practitioners, researchers, and court leadership can work together to identify and develop needed user protections and collect and share data to inform rigorous program evaluations. Key measures include:

- **Cost and benefit.** Court staff and online user time spent in ODR compared with traditional court cases; court time saved and diverted to complex cases; costs to taxpayers and users of implementing ODR platforms; costs to litigants of participating in ODR versus standard court processes.
- **Access.** Case filing and completion rates; representation rates; case durations; number of procedural errors.
- **Fairness.** Case outcomes when using ODR versus traditional court services; users' perceptions of the fairness of the ODR process.

Endnotes

1 National Center for State Courts, "The Landscape of Civil Litigation in State Courts" (2015), https://www.ncsc.org/~/media/Files/PDF/Research/CivilJusticeReport-2015.ashx.

2 GBA Strategies, "2017 State of the State Courts—Survey Analysis" (Nov. 15, 2017): 5, https://www.ncsc.org/~/media/Files/PDF/Topics/Public%20Trust%20and%20Confidence/SoSc-2017-Survey-Analysis.ashx.

3 Colin Rule, "Technology and the Future of Dispute Resolution," *Dispute Resolution Magazine* 21 (2015): 4, 6, http://law.scu.edu/wp-content/uploads/Rule-Technology-and-the-Future-of-Dispute-Resolution-copy.pdf.

4 Tom Clarke (vice president, research and technology), Paul Embley (chief information officer), Shelley Spacek Miller (court research associate), Paula Hannaford-Agor (principal court research consultant), and Jim Harris (principal court management consultant), National Center for State Courts, interview with The Pew Charitable Trusts, Sept. 13, 2018.

5 The National Center for Technology and Dispute Resolution, "Courts Using ODR," http://odr.info/courts-using-odr/.

6 Ibid.

7 American Bar Association Commission on the Future of Legal Services, "Report on the Future of Legal Services in the United States," Recommendation 5.4 (2016), https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.

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