

# What You Should Know About Online Dispute Resolution

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## Hon. Arthur M. Monty Ahalt

served as an associate judge on the Circuit Court for Prince George's County, Maryland from 1982 until his retirement in 1999. He served that court in many capacities including civil case management coordinator. Since his retirement he has been recalled to sit on specially assigned trials. He also is an active mediator, arbitrator, and neutral case evaluator and serves as CEO of VirtualCourthouse.com™. For more detailed information see <http://montyahalt.com/aboutmontyahalt.html>. Substantial portions of this article have been previously published at the 2008 American Bar Association Tech Show presentation *On Line Dispute Resolution: Where We Have Been and Where We Are Going*, by Judge Arthur M Monty Ahalt (ret.) and David Glynn. See [www.MontyAhalt.com](http://www.MontyAhalt.com).

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**Online dispute resolution (ODR) has all of the advantages of other forms of ADR—and it is faster and more cost-effective.**

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**LESS THAN** 15 years ago the legal community struggled to incorporate alternative dispute resolution (ADR) into the case management programs of federal and state trial courts. This effort was largely motivated by overcrowded trial dockets which allowed cases to remain pending four and five years before a trial date. Now ADR is an accepted component of most case management programs of any trial court and reaches into almost every segment of our lives. Schools, prisons, communities, businesses, consumers, and families now have ready access to alternative dispute resolution training and specialists. Many state courts have established conflict resolutions programs such as the highly effective and award-winning Mediation and Conflict Resolution Office (MACRO) of the Maryland Judiciary. See <http://www.courts.state.md.us/macro/>.

ADR has been around in commerce since the 1920s and the founding of the American Arbitration Association. Many date ADR to biblical times and King Solomon. Originally the focus was on providing commercial entities with alternatives to adjudicating their disputes in the court. During the next eight decades many barriers have been overcome; however, the paper-based alternatives of the past that paved the way for ADR have become expensive and time-consuming: in some cases it

is as if a new ADR bureaucracy has replaced the old judicial bureaucracy. Although face-to-face and paper-based alternative dispute resolution is not as time-consuming and expensive as litigation in the courtroom, the time and expense of paper and face-to-face meetings denies many parties the opportunity of a fair and neutral resolution of a genuine dispute.

The ability of technology—especially the Internet—to make many business processes more efficient is now making it clear that online dispute resolution (ODR) is the next frontier of ADR. The Internet promises to make more disputes reachable by ADR and to facilitate the resolution of disputes faster and at a lower cost. But like many shifts from paper to technology, a clear strategic pathway has yet to appear.

### **WHAT IS ONLINE DISPUTE RESOLUTION?**

• ODR provides the ability for two (or more) disparate parties to settle their dispute using the Internet. Sometimes this involves lawyers and mediators and sometimes it does not. It depends on the vehicle/provider that the parties agree to use to resolve their claim.

### **History Of Online Dispute Resolution**

The concept of ODR has been discussed in academic circles since the mid 1990s. See [www.odr.info](http://www.odr.info). Professor Ethan Katish was a leading researcher and developer of concepts of ODR. From 1997 to 1999, Professor Katish mediated a variety of disputes online, involving domain name/trademark issues, other intellectual property conflicts, disputes with Internet Service Providers, and others. In the spring of 1999, he supervised a project with the online auction site eBay, in which over 150 disputes were mediated during a two-week period. During the summer of 1999, he co-founded Disputes.org, which later worked with eResolution to become one of four providers accredited by ICANN to resolve domain name disputes. Professor Katish

is also an adviser to SquareTrade.com, an Internet start-up focusing on online ADR. There are over 40 Internet companies listed on the ODR.info site that provide ODR online services.

As a Judge of the Circuit Court for Prince Georges County, Maryland in conjunction with my activities directing the nation's first electronic filing pilot project and managing the courts civil docket, I realized that dispute resolution could be aided by the Internet. The ideas were first published in a series of online articles by VirtualCourthouse beginning in 1996. See <http://www.montyahalt.com/vc.htm>. VirtualCourthouse.com™ was founded in 2001.

The VirtualCourthouse dispute resolution process models a court dispute resolution process delivered on the Internet using Web-based technologies:

- A case is initiated and a list of neutrals is selected and the neutrals are ranked;
- A system-generated email is sent to the other party, inviting it to join the case;
- The other party joins the case and a neutral is agreed upon;
- The neutral reviews the case initiation, and sends an email to both parties, confirming the type of proceeding and the fees;
- The claimant prepares a case presentation and uploads the scanned documents into the online case;
- Once complete, a system-generated email is sent to the respondent, advising it that the claimant has completed its presentation, and now it is time for the respondent to submit its case presentation;
- Once the case presentations are complete, a system-generated email is sent to the neutral advising him or her to review the evidence and render a decision;

- Once reviewed, a verdict is submitted online, and a system-generated email is sent to both parties notifying them that a verdict has been rendered.

VirtualCourthouse creates a marketplace by recruiting the neutrals, administering the electronic case file, and providing access to the system to members of the plaintiff and defense bar, including insurance staff counsel, claims agents, and the parties. It also provides an independent forum by enabling parties to select qualified neutrals (typically judges or attorneys with specific experience), submit digitized materials, schedule an ADR event and track other activities throughout the effort to resolve the claim. Critical to the design of this service is its neutrality: VirtualCourthouse impartially facilitates neutral selection by providing structured communication among parties via a controlled and secure message service. Any party can attach digital exhibits such as digital photographs or scanned images of medical records. The neutral can use the message service to communicate with parties. VirtualCourthouse streamlines every step in the process and minimizes the need and costs of unnecessary face-to-face meetings, mailing, and copying.

The VirtualCourthouse Dispute Resolution Engine (DRE) is a combination of multimedia technologies and business processes, integrated with a customer-friendly user interface. The DRE replicates the current process of dispute resolution in an online environment, removing constraints of time, expense, and distance. The engine is a sequence of events utilizing Internet-based media technologies that are designed to resolve conflicts between two or more parties. The DRE enables the resolution of disputes by functioning as a “middleware” to connect the disparate business processes of attorneys, claimants, and neutrals. The DRE permits the exchange of data between these business processes which would otherwise lack the technology interfaces essential to working together electronically.

The engine, centralized through VirtualCourthouse.com™, is the electronic “glue” that binds these users of otherwise unrelated systems into a virtual private data and business process network.

The Internet creates an online marketplace for dispute resolution by bringing together parties with disputes and neutrals seeking a storefront for their services. Registered users are able to visit the “virtual” court 24/7, review the docket, and conduct any proceedings under way. Lawyers are able to check on the status of their cases, view documents, and make filings at any time. Case administration for the parties and the neutral by a case administrator is minimized, as case administration activities are automated through the virtual private data and business process network.

### **How Can ODR Help ADR?**

ODR promises to enable ADR to become more efficient, faster, and less expensive. By achieving those three improvements ODR will make ADR a real alternative to a greater number of disputes thereby bringing all of the advantages of ADR to a greater number of people. An examination of the ADR process, and the barriers to ADR, will allow a deeper examination of the potential of ODR. The ADR process usually unfolds this way:

- One party decides to pursue ADR, an existing agreement requires it, or a court or other authority requires it;
- A neutral is selected. (This can be by suggestion and negotiation of the parties, identification of the neutral in an existing agreement, or appointment of the neutral by a court or other authority);
- The parties provide the neutral with written documentation of their respective positions;
- An ADR session is scheduled;
- An ADR session is held and conducted; and
- A decision or report is rendered by the neutral.