



THE 7TH EDITION OF THE INTERNATIONAL CONFERENCE
**EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES**

**Electronic Commerce – An International Phenomenon, Generating
Commercial Litigations**

Angelica Roșu¹

Abstract: Although the e-commerce boom of the past few years has produced plenty of satisfied e-shoppers and successful Web-based companies, many consumers and businesses are left wondering where they can go to resolve their online disputes. The legal system (such as the court system and classical arbitration) cannot effectively respond to the challenges posed by conducting electronic commerce and this paper is proposed to analyse the types of disputes that can arise from those e-commerce operations. The aim of this approach is represented by our attempt to explain why conflict resolution cannot be reasonably accomplished using traditional legal system and consequently the measures that have been taken by the international bodies to facilitate consumers' right to a fair and effective trial services.

Keywords: electronic commerce; commercial litigations; online dispute legislation

1. Introduction

The Internet has created a new economic ecosystem, the e-commerce marketplace, and it has become the virtual main street of the world.

Providing a quick and convenient way of exchanging goods and services both regionally and globally, e-commerce has boomed. Business-to-business and business-to-consumer which represent the main categories of electronic commerce has rapidly developed over the past decade, based largely on the exponential diffusion of the internet, increased broadband access and the rise of mobile commerce throughout the world.

Along with this extraordinary development of electronic commerce the number of conflicts has increased considerably in this area. E-commerce disputes originate with particular characteristics due to the way internet transactions are entered to.

Disputes arising in the online context are diverse, and include failure to deliver, late delivery, false or deceptive information on price and product.

Those disputes were difficult for courts to handle for a variety of reasons, which included high volume of small value claims, the contrast between the low value of the transaction and the high cost of litigation, questions of applicable law in both electronic commerce and consumer protection contexts and difficulties of enforcement of foreign judgments.

On the one hand, as electronic commerce develops at a furious pace all over the world it is becoming clearer that traditional means of dispute resolution are not well-suited to the fast-paced and relentlessly globalized world of business-to-consumer electronic commerce.

E-disputants experiences are that in court litigation cost is very high (due to its international element) and delays are very long. This provokes resistance to the risk of court litigation. In other words, the way national courts work sometimes lacks flexibility, rapidity and the specialization demanded in dealing with cyberspace cases.

¹ Associate Professor, PhD, "Danubius" University of Galati, Faculty of Law, Romania, Address: 3 Galati Blvd, Galati, Romania, tel: +40372 361 102, fax: +40372 361 290, Corresponding author: rosuangelica@univ-danubius.ro.

Secondly, given that electronic commerce has become an international phenomenon it needs more than similar national frameworks; as through e-commerce it is possible to obtain access to goods from all over the world wherever one is connected to the net, it is obviously that national legislations, characterized by the principle of territoriality, are inappropriate to regulate the virtual market. Judges have problems to conciliate the e-commerce's nature with the traditional competent jurisdiction and choice of law concepts, which have been funded by the notion of *territoriality*.

Thus, we can say without risk of mistake that traditional legal system which is organized according to national boundaries is outdated in a world organized into networks and internet services providers.

In this research, we proposed to use the observation as a common method, after using some court resolutions in matter of electronic commerce.

2. The Adjustment of E-Commerce to National Legislation

In addition to differences in substantive law, countries have different approaches toward regulation. Consumer rights and obligations, for example, vary considerably from one jurisdiction to another. Some countries use generic regulation, developed in other consumer protection contexts, to address e-commerce issues, while others have adopted regulation dealing specifically with e-commerce and consumers.

A difficult question in cross-border consumer redress related to the determination of the appropriate forum, and the legal consequences attached thereto. That solution, which may be ideal for consumers, raised a number of practical problems if transposed to the international level, the most obvious being the difficulty for the consumer to utilize enforcement remedies and for the vendor to handle large volumes of claims in many different countries where consumers were located.

3. Online Dispute Resolution

Considering all the forgoing, it is clear that electronic commerce disputes will form a significant proportion of complaints in the coming years and, in this context, they require tailored mechanisms that do not impose costs, delays and burdens that are disproportionate to the economic value at stake.

Thus, the dramatic growth of e-commerce transactions has brought about increased interest in the development of specific dispute settlement procedures (Nick & Field 2000), making possible a virtual resolution of disputes through the use of the Internet which is commonly known as online dispute resolution (ODR).

ODR can be practically defined as a dispute resolution method that takes advantage of internet features. For our purpose it means ADR procedures conducted with the assistance of computer technology.

Currently, in many countries have developed specific techniques for resolving these conflicts e-commerce, this development could be explained by the fact that the evidence which led the parties to use electronic commerce in place of classical one must be respected in terms of disputes between them.

ODR procedure is designed to enable a simple and effective resolution of disputes; the hallmark of the ODR is using the Internet to conduct the procedure. ODR procedure tends to find remedies by reference to a body of rules (general conditions, codes of conduct, the choice of applicable law).

4. International Frameworks of E-Commerce

Now days, the regulatory frameworks for e-commerce vary among countries. At international level, this situation has generated reactions in the international or regional bodies for the purposes of support a possible future work on online dispute resolution in e-commerce transactions.

It has been recognized that Online Dispute Resolution will be a helpful means of solving the growing number of e-disputes. In many cases they will be far more efficient than regular dispute resolution methods¹, which will often involve lengthy and expensive legal procedures.

This issue has been addressed both internationally and nationally. In the European Union, despite the improved legal framework resulting from the adoption of a number of directives in the field of consumer protection and electronic commerce², the remaining differences in the European Union (EU) between the various national regulatory frameworks, in particular consumer protection rules, required that e-shops, irrespective of their location, whether inside or outside the EU, comply with varying national sets of consumer protection rules of the EU member States³).

Moreover, the European Commission maintained a central database of alternative dispute resolution bodies for consumer complaints, which were considered to be in conformity with the European Commission's Recommendations on Dispute Resolution.

Also, it is notably the non-governmental organizations' activities which have developed many different types of systems and guidelines that have contributed to resolving domestic and cross-border disputes arising from online transactions.

Those mechanisms provided good results when based on a framework of best practice standards, model codes of conduct, and standards from international organizations such as the OECD and the Global Business Dialogue on e-Society (GBDe). It constitutes an international complaint -handling network for cross-border on-line shopping.

ODR specialists are convening that as traditional judicial mechanisms for legal recourse do not offer an adequate solution for cross-border electronic commerce disputes, the solution - providing a quick resolution and enforcement of disputes across borders - lies in a global online dispute resolution system for small value, high volume business-to-business and business-to-consumer disputes.

The creation of a global online dispute resolution system based on general principles and generic rules of fairness and commercial practices that can be adapted to local needs will have to answer a series of challenges.

Some of the challenges faced in designing a global online dispute resolution system are of a technical nature and relate to the ability to create a system which is able to continue functioning effectively as the number of cases increases and a central structure for data communication protocols that ensures that all the various endpoints of the network can communicate in real time with each other, despite existing differences in language and culture.

Another key challenge for development of online dispute resolution is the absence of the online environment and infrastructure in certain countries. Some of the challenges are of a legal nature, and relate to the difficulty of capturing a global definition of "consumer", and of designing a global conciliation and arbitration system to deal specifically with online disputes, which would be fully compliant with due process requirements and able to provide fair results to all parties involved.

¹ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts , OJ L 144, p. 19–27 (June 4, 1997).

² Directive 2000/31/EC, European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the internal market "Directive on electronic commerce", OJ L 178 (June 8, 2000).

³ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 on unfair business-to-consumer commercial practices in the internal market , OJ L 149, p. 22-39 (June 11, 2005).

5. Conclusion

E-commerce is a reality, governments and legal practitioners must provide useful assistance by offering effective, practical, executable legal solutions for those who find themselves involved in e-commerce disputes.

The characteristics that have encouraged increased computer use among contracting parties are the same justifying the adoption of ODR methods.

Consequently, Online Dispute Resolution is gaining new momentum as a desired extra-judicial procedure for the fair and expeditious settlement of such disputes we think it is necessary that participants must also be vigilant so that technology does not dominate and subsume the human element that is at the core of ADR values and procedures.

6. References

Nick, J. & Field, R. (2000). *E-Commerce, Critical Success Factors that will make or break your online business*. Canada: CDG Books.

Esther van den Heuvel, *Online Dispute Resolution as a Solution to Cross-Border E-Disputes. An Introduction to ODR*, available on: <http://www.oecd.org/dataoecd/63/57/1878940.pdf>.

***Directive 2000/31/EC, European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the internal market "Directive on electronic commerce", OJ L 178 (June 8, 2000).

***Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 on unfair business-to-consumer commercial practices in the internal market, OJ L 149, p. 22-39 (June 11, 2005).

***Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts , OJ L 144, p. 19-27 (June 4, 1997).