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## ALTERNATIVE DISPUTE RESOLUTION METHODS

By Juan Pablo Vargas,  
National Manager – eMarket Services  
ICEX, Spain

[www.emarketservices.com](http://www.emarketservices.com)

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## Introduction

There has recently been a significant rise in Internet use, which has contributed to the growing importance of electronic commerce. Quite clearly, together with the ability to buy and sell on-line, there is also the opportunity to resolve disputes via the Internet.

The costs and expenses which litigation entails can become prohibitive and quickly eclipse the value of the product or service giving rise to the dispute. These obstacles increase in the case of international disputes – the delays and expenses are greater and the enforceability of court orders is not so evident. Consequently, alternative dispute resolution mechanisms such as arbitration and mediation represent important relief for many small enterprises and consumers, the weaker parties in this context.

## How to avoid disputes

Most disputes are misunderstandings: the products do not meet the expectations created; the terms of delivery are not clear, etc. Transparency and clarity, as well as specific compliance with governing provisions, are quite clearly tools, which the virtual company can use to avoid this type of conflict. Additionally, a rigorous post-sale service and a policy of returning the amount paid to the user are also useful in keeping recourse to courts or dispute resolution as a last resort. However, disputes will inevitably arise, particularly in this new medium, in which deception and fraud are emerging and proliferating.

## Mediation and arbitration

Mediation is a quick, informal and cheap means of resolving conflicts or disputes. It enables the relationship between the parties to be preserved. Arbitration seeks to help in finding a solution, which suits both parties. They have to decide jointly on the involvement of a mediator (arbitrator). This is a neutral, independent third party who helps the parties to find a satisfactory solution.

At the end of the arbitration, if agreement is reached, the mediator issues a report which is contractually binding between the parties. The parties can discontinue the arbitration at any time. This model could be called reactive mediation. In the case of proactive mediation, the mediator has a more decisive role. Not only does the mediator intervene by helping communication flow between the parties and proposing alternative solutions, he also expresses an opinion, although this form of mediation is not binding.

It is not necessary to include a mediation clause explicitly in contracts, but it is advisable to do so.

## On-Line Dispute Resolution (ODR)

On-line arbitration applies new technologies to the traditional form of arbitration, which requires both parties involved and the mediator to be present at the same time. If the parties need to be present at the same time, on-line arbitration is referred to as synchronised; otherwise it is known as asynchronous arbitration. In the former, the parties and the arbitrator must be connected at the same time (via a video-conference link), and in the latter this is not necessary (it may be a "panel" discussion or by electronic mail). The advantage of on-line arbitration is that it does not need all the parties to be present at the same time, thus saving time and travel expenses. Another advantage of asynchronous arbitration lies in the fact that messages can be read or sent as soon as possible.

## European Consumer Centre

On 5 May 2000 the European Commission launched the "European Extra-Judicial Network" (EEJ-Net), which exists in all the Member States, Norway and Iceland. The EEJ-Net was set up to coordinate out-of-court mechanisms in Europe and to facilitate the resolution of international disputes. In most countries, these centres are part of the European Consumer Centres.

As the European Commission's Memorandum provides, the functions of the Information Exchange Centres are:

- To communicate and to provide information on independent dispute resolution organisations to consumers and to other national centres.
- To coordinate the processing of consumer complaints between Member States and the alternative dispute resolution (ADR) bodies.
- To participate in the work of the network.
- To disseminate information about the services offered.

## Consumer protection in the context of the OECD

In 2000 the OECD published guidelines aimed at preserving and protecting consumer interests in electronic commerce. Those guidelines, drawn up by the OECD's Committee on Consumer Policy, seek to ensure the effectiveness of alternative dispute resolution instruments, and provides a list of these instruments.

Salient amongst them are: *OnLine Mediators*, *eResolution*, *SquareTrade*, *CyberSettle*, *ClicknSettle* and *iCourt House*.