

ETHAN KATSH AND ORNA RABINOVICH-EINY, DIGITAL JUSTICE: TECHNOLOGY AND THE INTERNET OF DISPUTES (2017).

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## **Online Dispute Resolution: Will Courtrooms Become Obsolete?**

*“Expanding access to justice through ODR involves three major shifts in dispute resolution practices. These are the shift from a physical, face-to-face setting to a virtual one; the shift from human intervention and decision making to software-supported processes; and the shift from an emphasis on the value of confidentiality to an emphasis on collecting, using, and reusing data in order to prevent disputes.”<sup>1</sup>*

Ethan Katsh and Orna Rabinovich-Einy, the authors of *Digital Justice*, highlight how our traditional legal system is not well equipped to handle disputes. The authors discuss how brick and mortar courtrooms are at full capacity and that a significant number of disputes go unresolved. They also suggest that alternative dispute resolution, as it exists today, poses problems for the legal world. Katsh and Rabinovich-Einy discuss the barriers standing in the way of dispute resolution. They provide examples of how legal disputes arise in healthcare, social media, e-commerce, and employment. They suggest a shift from courtrooms and traditional alternative dispute resolution to online dispute resolution. They purport that

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<sup>1 1</sup> ETHAN KATSH & ORNA RABINOVICH-EINY, DIGITAL JUSTICE: TECHNOLOGY AND THE INTERNET OF DISPUTES 47-48 (2017).

technology is rapidly developing and with this growing technology, online dispute resolution has the potential to remove or lower geographic, socioeconomic, psychological, linguistic, and cultural barriers to justice.

This book review highlights the importance of our rapidly developing technological world and the need to remove traditional barriers that prevent access to justice. It is evident courtrooms are at capacity, and there is significant room for improvement through online dispute resolution. This review specifically focuses on socioeconomic barriers that prevent many citizens from accessing the justice system. Gaps in socioeconomic status unequally impact people who seek legal help. With greater focus on online dispute resolution, many people who face these barriers can have a greater access to justice.

Ethan Katsh, graduate of Yale Law School, is the Director of the National Center for Technology and Dispute Resolution and is a Professor Emeritus of Legal Studies at the University of Massachusetts, Amherst.<sup>2</sup> He has been widely recognized as one of the founders of online dispute resolution.<sup>3</sup> He helped conduct the eBay Pilot Project in 1999 that led to eBay's current system that handles over 60 million disputes each year.<sup>4</sup> His previous novel, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (2001), was the first book about online dispute resolution.<sup>5</sup> Additionally, he was the winner of the 2017 D'Alemberte-Raven Award from the American Bar Association Section of Dispute Resolution.<sup>6</sup>

Orna Rabinovich-Einy, graduate of Columbia University Law School, is a fellow of the Haifa Forum of Law and Society, the Haifa Center for Law and Technology, and the National

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<sup>2</sup> See *Ethan Katsh*, ODR.INFO THE NATIONAL CENTER FOR TECHNOLOGY AND DISPUTE RESOLUTION (last visited Dec. 3, 2017), archived at <https://perma.cc/952P-3USC>.

<sup>3</sup> See *id.*

<sup>4</sup> See *id.*

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

Center for Information Technology and Dispute Resolution at the University of Massachusetts, Amherst.<sup>7</sup> She is also an associate professor at the Faculty of Law at the University of Haifa, Israel.<sup>8</sup> She has been widely recognized for her work in alternative dispute resolution, online dispute resolution, and civil procedure.<sup>9</sup> She has done extensive research focusing on the relationship between formal and informal justice systems, dispute resolution system design, and the impact of technology on dispute resolution.<sup>10</sup> She is also admitted to the Bar in Israel, and is certified as a mediator in New York by the Safe Horizon Mediation Center.<sup>11</sup>

Generally, *Digital Justice* discusses law as it relates to current technology. The book focuses on the growth opportunities for online dispute resolution. It also suggests a shift from brick and mortar courtrooms to an online virtual world in order to lower barriers that prevent access to justice. The book consists of an Introduction, Part I, Part II, and a Conclusion:

- Introduction

- Part I: Online Dispute Resolution and Access to Justice

- Chapter 1: Online Dispute Resolution and Prevention: A Historical Overview
  - Chapter 2: Access to Digital Justice

- Part II: Between Digital Injustice and Digital Justice

- Chapter 3: E-Commerce and the Internet of Money
  - Chapter 4: The Internet of On-Demand Healthcare
  - Chapter 5: The Challenge of Social and Anti-Social Media
  - Chapter 6: Labor and the Network of Work
  - Chapter 7: ODR In Courts and Other Public Institutions

- Conclusion: The Present and Future of Digital Justice and the “Moving Frontier of Injustice”

With each of these sections, the book examines how technology can be harnessed to both resolve and prevent disputes. In order to effectively breakdown barriers to justice, the legal profession and system should implement online dispute resolution.

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<sup>7</sup> See Orna Rabinovich-Einy, ODR.INFO THE NATIONAL CENTER FOR TECHNOLOGY AND DISPUTE RESOLUTION (last visited Dec. 3, 2017), archived at <https://perma.cc/PWD6-JX89>.

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

The authors contend that the legal system as we know it today is not effective at handling disputes, and that many disputes go unresolved. By citing case studies in their book, and highlighting statistically the issue with our current legal system, there is validity to the authors' argument. Noting that in the 1960's about 11.5% of cases in the federal courts went to trial, while in 2002 it was a mere 1.8%, further supports the authors' argument. More so, highlighting that in the first decade of the 21<sup>st</sup> century Internet use skyrocketed as smartphones became the primary vehicle for online access, further supports the need for advancements in legal technology. Also, the authors' explanation of today's technological implications involving online harassment, intellectual property breaches, invasions of online privacy, and e-commerce transactions, further support the contention that our current courtrooms are not equipped to handle the new-age of disputes.

The authors also discuss how traditional brick and mortar courtrooms with alternative dispute resolution should shift towards complete online dispute resolution to prevent barriers to justice. One specific focus is on gaps in socioeconomic status that raise concerns for traditional courtroom settings. The authors cite to legal studies which validate their argument. For example, they discuss research conducted about the costs of litigation. Filing fees, hiring an attorney, missing work, and attending court sessions disparately impact low-income disputants. Additionally, they cite to socioeconomic studies regarding the traditional court system that highlight the plethora of disputes that go unresolved. Many low-income disputants are afraid to become involved in a litigation procedure due to the lengthy, and oftentimes intrusive, legal process. These studies further support the contention that our current courtrooms are not equipped to handle disputes.

The authors have both done extensive work in alternative dispute resolution. They understand the weaknesses and strengths in our current legal system. The authors provide consistent, clear examples and facts to support their thesis. The overall idea of an online dispute resolution system to be the primary method of resolving conflicts is continuously supported throughout the work.

The book is a valuable contribution to the legal field. Our society is a rapidly developing technological world, and there should be a shift in thought from traditional brick and mortar courtroom settings to online dispute resolution. The emphasis of removing physical, face-to-face interactions and replacing them with a virtual world would significantly lower costs and potentially lower barriers for low-income disputants to seek conflict resolution. Also, the idea of a software-supported dispute resolution process could potentially eliminate implicit bias in human mediation and decision-making allowing for low-income disputants to seek out remedies due to a feeling of improved fairness in the process. The disparate impact currently present in the traditional legal setting could be eliminated by online dispute resolution. Our society is heavily focused on technology, and just like how the authors contend, our focus should change the way we think about the legal system.

Overall, the book is very relatable and informative. The book accurately informs readers about the disparate impact that low-income disputants face. It is convincing that socioeconomic barriers to justice can potentially be eliminated with online dispute resolution. Also, the authors' clear and factual examples are very convincing as to how current courtrooms are understaffed and overworked. Our society deals with technology daily, and there is significant potential to use this technology to change the way we look at the legal system. The book is applicable to

students, academics, and professionals who understand the need for legal development. It is a good read for people who work in courtrooms and our legal system, as well.