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Online Dispute Resolution Is Powerful Tool for GCs, Say Experts

Sue Reisinger, Corporate Counsel

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The New Handshake

Online Dispute Resolution
and the Future of
Consumer Protection

AMY J. SCHMITZ AND COLIN RULE

Courtesy of the publisher

A consumer can buy items from all over the world with a few clicks of a computer mouse or a few swipes on a smartphone, but what happens when something goes wrong with the deal?

University of Missouri law professor Amy Schmitz and high tech businessman Colin Rule are proposing a global solution.

In their new book, "The New

Handshake: Online Dispute Resolution and the Future of Consumer Protection," the authors offer a key message for general counsel of major companies about embracing their dispute resolution concept.

Schmitz, a consumer advocate, said in an interview that online dispute resolution is good for business as well as for solving legal problems before they can become big headaches.

"Data gathered from an ODR is valuable to a general counsel and a company," she explained. "If widget A is defective, finding that out quickly from complaints can help avoid lawsuits and class actions."

She said most companies would rather deal with a problem internally before it goes viral.

ODR also has a profit motive, Schmitz said, and they have numbers to back up that claim.

"A chapter in the book is devoted to data showing that

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companies reap a huge return on investments in dispute resolution," she said. "They gain loyalty, they gain customers and they end up making money from it."

She cited eBay Inc. and Amazon.com Inc. as e-commerce companies that have strong ODR policies, and have profited as a result.

Co-author Rule previously served as director of ODR for eBay and PayPal Holdings Inc. He created those companies' ODR mechanisms. "The lessons from his eBay data are an important part of the book," Schmitz said.

Rule currently is director of ODR at Tyler Technologies Inc., which acquired his company, Modria.com, an ODR provider. Schmitz worked in law firms in Seattle and Minneapolis before becoming the Elwood L. Thomas Missouri Endowed Professor of Law at Missouri.

"Colin and I have very different backgrounds—he hails from the high-tech industry, and I work in academia—but we both are committed to providing consumers with free access to remedies while saving businesses from the costs and complexities of court," Schmitz said.

Their book, published in late April by the American Bar Association and available on its website, proposes a global solution. Companies would pay a small fee for the ODR service, and in return could display a "trustmark" on their website signaling consumers that they are trustworthy.

If a consumer is dissatisfied or feels cheated, he or she can click on the icon and be taken to an online resolution center to explain the problem. "Most times a company would fix the problem right away, in order to get a better review from the consumer," Schmitz said.

What if a company repeatedly offends consumers or fails to make good on its deals? The company would lose its trustmark, Schmitz said, and serious violations could trigger a mechanism to alert regulators to the company's behavior.

She said the dispute mechanism would contain elements of due process, such as time limits to respond, an appeal process and an agreement to bring in a mediator for larger issues.

She believes the time is right for their concept to take hold globally. In a 2016 ALM article Kimberly Taylor, chief operating officer of dispute resolution provider JAMS agreed with her.

"The European Union already has a regulation that requires each member state to create an ODR system for e-commerce claims," Schmitz said. "British Columbia and the Netherlands

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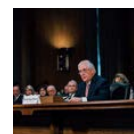
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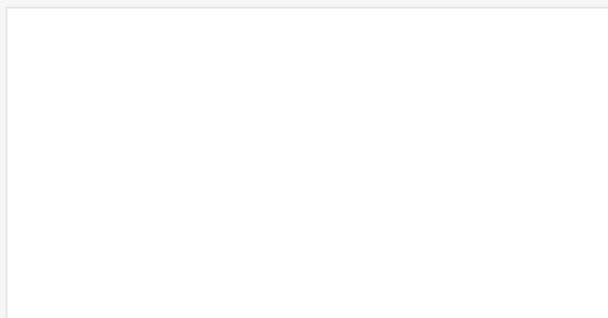
even do online divorces now." She added that the United Nations has a working group continuing to study and draft procedural rules to resolve disputes arising out of cross-border, e-commerce transactions.

"It's a brave new world of online dispute resolution, and we are at the tipping point," Schmitz said.

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