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Crowdsourced online dispute resolution

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In this chapter, we examine the past and the present CODR procedures. For the sake of systematic classification, we will divide the past and present CODR procedures into three groups, namely, CODR procedures functioning as (1) online opinion polls, (2) online mock jury systems, and (3) arbitration tribunals rendering self-enforceable decisions.¹ The functions of the online opinion polls are extraction and aggregation of information from the general public that may facilitate the resolution of disputes (see Jurca and Faltings, 2008, p. 119). The function of online mock jury systems is testing real cases before a mock jury (see Marder, 2006, p. 249). The function of arbitration tribunals rendering self-enforceable decisions is to resolve a dispute through a decision enforced by a private authority (see Van den Herik and Dimov 2011a).

Historically, CODR procedures that function as online opinion polls (see Section 3.1) and online mock jury systems (see Section 3.2) appeared in November 1999.² CODR procedures that function as arbitration tribunals rendering self-enforceable decisions (see Section 3.3) appeared in 2008 (Rule and Nagarajan, 2011, p. 99). In Section 3.4, we give our chapter conclusions.

3.1 ONLINE OPINION POLLS

Most CODR procedures are online opinion polls (cf. Marder, 2006, p. 240). Online opinion polls allow anyone to post his comment in relation to certain issues.³ Online opinion polls are a form of public opinion polls. The latter can be defined as the measurement of attitudes, feelings, needs, and intentions of a large body of people on important social, political, and economic issues (cf. Ugwuegbu, 2011, p. 186). The difference between the online opin-

1 It should be noted that the first two types have been distinguished by Marder (2006). Because there is a lack of literature on these two types of CODR, we will describe them mainly on the basis of the works by Marder. The third type of CODR was added by us.

2 The starting date of eJury can be found at http://www.ejury.com/about_co_bio.html (last visited Jan. 3, 2017). The starting date of iCourthouse can be found at http://www.icourthouse.com/main taf?area1_id=about&area2_id=pressreleases&redir=0 (last visited Jan. 3, 2017).

3 It should be noted that many public opinion polls are conducted online (cf. Renka, 2010). The difference between CODR procedures functioning as online opinion polls and online public opinion polls is that the former aim to facilitate the resolution of disputes, whereas the latter aim to measure the public opinion regarding certain matters.

ion polls and public opinion polls (cf. Friend and Singer, 2007) is that the online opinion polls are conducted through the Internet.

An analysis of the cases published on the online opinion poll called iCourthouse indicated that online opinion polls can be used to provide the parties involved with the public opinion about various kinds of disputes, including but not limited to family disputes, contract disputes, and personal injuries disputes.⁴

Because of their type of sampling (e.g., self-selected participants), online opinion polls are not representative. Moreover, it is possible for multiple voters to manipulate rating results (see Hong and Park, 2011, p. 3). Below, we partition this section into four parts. We examine (A) iCourthouse as an example of an online opinion poll. iCourthouse is the first CODR procedure functioning as an online opinion poll.⁵ Then, for comparison, we will provide brief descriptions of (B) two more opinion polls, viz. SideTaker and PeopleClaim. Subsequently, we discuss (C) the benefits of online opinion polls and (D) the drawbacks of online opinion polls.

A: *iCourthouse*

iCourthouse was founded in 1999 by Clyde Long and Claudia Hagadus Long, two lawyers from Lafayette, California, to provide a venue where the general online public can express its opinion about disputes posted by visitors of the website.⁶ Up until the present moment, 984 cases were published for resolution in iCourthouse.⁷ It should be noted that many of those cases contain meaningless messages.⁸ This clearly indicates the need for human moderation of the cases published on iCourthouse. Such moderation can be done by crowdsourcing workers or by the staff of iCourthouse.⁹

The dispute resolution procedure provided by iCourthouse is conducted entirely online. In order to participate in the procedure, the plaintiffs, the defendants, and the jurors should register at the website and accept iCourthouse's user agreement.¹⁰ The user agreement has a provision stating that (1) the users agree that iCourthouse, in its sole discretion, with or without

4 See the databases of cases published on iCourthouse - http://www.i-courthouse.com/main.taf?area1_id=cases (last visited Jan. 3, 2017).

5 <http://www.i-courthouse.com/> (last visited Jan. 3, 2017).

6 See http://www.i-courthouse.com/main.taf?area1_id=about&area2_id=pressreleases&redir=0 (last visited Jan. 3, 2017).

7 See http://www.i-courthouse.com/main.taf?area1_id=cases&area2_id=&start=0&page=1 (last visited Jan. 3, 2017).

8 For example, the complaint in case number 2016-11665 states: "fife fe f tea fe qef". The complaint in case number 016-11664 states "ka". The complaint in case number 2016-11663 states: "testtr".

9 For example, crowdsourcing workers can moderate the cases by enforcing quality control standards similar to the quality control standards enforced by Wikipedia contributors. For more information on these standards, see https://en.wikipedia.org/wiki/Wikipedia:Quality_control (last visited Jan. 3, 2017).

10 The user agreement of iCourthouse is available at http://www.i-courthouse.com/main.taf?area1_id=front&area2_id=useragreement (last visited Jan. 3, 2017).

notice, may terminate their use of the website and remove and discard any content within the website for any reason, and that (2) iCourthouse shall not be liable to the users or any third party in such an event.

Plaintiffs join iCourthouse, file their claim, and subsequently receive a case number and password. Then, plaintiffs and defendants submit their arguments and evidence to iCourthouse. The jurors select the cases they would like to decide from a list of all cases, i.e., the jurors are self-selected. Jurors review the contents of the submissions and are entitled to post questions to the litigants. Every juror is entitled to post his “verdict” and thus help the parties to reach an agreement. As it can be seen in Figure 3, the number of verdicts for the plaintiff (4) and for the defendant (1) are posted under the summary of the case. This is all that is made public. iCourthouse does not render aggregate decisions.

In case number 2005-11320, the plaintiff stated that the defendant did not perform his contractual obligation to pay the sum of USD 4500 in exchange for receiving an online character in a game. Five jurors posted verdicts in the case. Four of the verdicts were in favour of the plaintiff and one in favour of the defendant.¹¹

CASE NUMBER 2005-11320	View plaintiff's trial book
Type of claim: Collect a Debt	View defendant's trial book
	Questions to Litigants
	Render a Verdict
<p>CASE SUMMARY: Offered to sell online character in game, Everquest. Buyer agreed to purchase for sum of \$4,500, on 3/4/05. Buyer insisted that I give him rights to the character and account before he paid, just to make sure all was as advertised. Gave buyer rights to character on 3/6/05. Buyer has not paid, as of 5/3/05. Requesting money from buyer. Am suing for breach of express contract.</p>	
<p>CASE STATUS: Verdicts for plaintiff: 4 Verdicts for defendant: 1</p>	

Figure 3. Case Number 2005-11320 published on iCourthouse.com

The procedure offered by iCourthouse is a form of CODR because it falls within the scope of our definition of CODR.¹² Based on our definition, iCourthouse has to comply with the following three elements: (1) being an ADR or court procedure; (2) using the Internet as a part of the dispute resolution process; and (3) using crowdsourcing as a part of the dispute resolution process.

As regards to the first element (ADR or court proceedings), it should be noted that ADR procedures do not need actually to resolve the disputes.

11 Since iCourthouse does not specify how many jurors should vote in a case for a final decision to be rendered, it is not clear whether the plaintiff won case number 2005-11320. According to a “Frequently Asked Questions” document published by iCourthouse, if disputants want to get a final decision, they have to agree that “only the verdicts given before a specific date and time will count, or that only the first given number of verdicts will count.” See http://www.i-courthouse.com/main.taf?area1_id=front&area2_id=faqs (last visited Jan. 3, 2017).

12 We defined CODR in Section 2.3.

ADR procedures may simply provide the parties with an evaluation of their cases (Bansal, 2009, p. 7). This form of ADR procedures is called early neutral evaluation. The early neutral evaluation is an “ADR process which is preventive in nature, the object of which is to settle the dispute amicably at the earliest stage” (Bansal, 2009, p. 7). The early neutral evaluation aims to facilitate negotiations, not to decide the case (Carper and McKinsey, 2011, p. 178).

iCourthouse provides the parties with an evaluation report indicating the number of verdicts for the plaintiff and for the defendant. While the evaluation report is not binding, it may facilitate the negotiations between the parties. Consequently, the procedure provided by iCourthouse is a form of early neutral evaluation and, therefore, meets the first requirement for qualifying as a CODR procedure.

Concerning the second element (using the Internet), it should be noted that the early neutral evaluation procedure provided by iCourthouse is conducted entirely online. The parties submit their statements and evidences online. The jurors post their verdicts online. No part of the procedure can be conducted offline. Therefore, iCourthouse complies with the second element of our definition of CODR.

As for the third element (using crowdsourcing), we need to examine whether the procedure provided by iCourthouse uses crowdsourcing. In order to do so, we will assess whether the procedure falls within the scope of the definition of crowdsourcing provided by Howe (2006).¹³

The early neutral evaluation is usually performed by a judge, lawyer, arbitrator, or expert in a discipline relevant to the nature of the dispute (Ramsey and Telford, 2007, p. 885). iCourthouse outsources the function to be performed by a judge, lawyer, arbitrator, and expert. It does so to an undefined (and generally large) network of people in the form of an open call. The network is undefined (and generally large) because any Internet user can become a juror in iCourthouse.

Because (1) iCourthouse allows any Internet user to participate in the early neutral evaluation procedure and (2) the call is made publicly available on the website of iCourthouse, the call used by iCourthouse to outsource the function of evaluator falls within the scope of our definition of “open call”.¹⁴

On the basis of the foregoing observations, we may conclude that iCourthouse falls within the scope of the definition of crowdsourcing provided by Howe (2006). Therefore, the procedure offered by iCourthouse meets the third requirement for qualifying as a CODR procedure.

B: Two more online opinion polls

Below, we briefly discuss two additional examples of online opinion polls, namely, (B1) SideTaker and (B2) PeopleClaim.

13 The definition of crowdsourcing provided by Howe (2006) is examined in Section 2.1.

14 The term “open call” was defined in Section 2.1.

B1: SideTaker (www.sidetaker.com).

SideTaker allows U.S. residents complying with the Terms of Use of SideTaker to submit a claim by using the Internet and tell their part of the story.¹⁵ Then, SideTaker will send an email to the defendant to an email address provided by the claimant and invite the defendant to submit his response to SideTaker by using the Internet. In comparison to iCourthouse, SideTaker does not display the number of the decisions for and against the disputants, but instead displays the percentage reflecting the votes for and against the disputants (see Figure 4).



Figure 4. A screenshot of SideTaker

Figure 4 displays the percentage reflecting the votes for and against the disputants in three disputes, namely, “Letting Kids Sleep On Hotel Comforter”, “Interns are Ruining the Workplace”, “Wanting a Keurig But Getting a Mr. Coffee”. The first dispute relates to whether hotel comforters are sufficiently clean so as to ensure that the children sleeping on them will not become sick. The second dispute concerns the advantages and disadvantages of hiring interns (also known as trainees). The third dispute relates to whether the beverage brewing system “Keurig” is better than the beverage brewing system “Mr. Coffee”.

Furthermore, the procedure offered by SideTaker does not allow the parties to submit multiple files containing evidence. The parties can only submit textual information and a photo. The disputes in Sidetaker are grouped in fifteen categories, namely, (1) Bitter ex, (2) Dating, (3) Entertainment, (4) Family, (5) Friends, (6) General, (7) Marriage, (8) Money, (9) Neighbours, (10) Parent/Child, (11) Parenting, (12) Politics, (13) Roommates, (14) Technology, and (15) Workplace/Co-workers.

The procedure provided by SideTaker qualifies as a CODR procedure within the meaning of our definition of CODR because it: (1) is a form of early neutral evaluation; (2) is conducted entirely online; and (3) uses crowd-

15 Pursuant to the Terms of Use of SideTaker, the users of SideTaker have to comply with the following requirements: (1) the registration information submitted by them should be truthful and accurate; (2) the users should maintain the accuracy of registration information; (3) the users should be 13 years of age or older; (4) the users should be residents of the United States of America; and (5) by using SideTaker, the users should not violate any applicable law or regulation. See the Terms of Use of SideTaker available on <http://www.sidetaker.com/terms.php> (last visited Jan. 3, 2017).

sourcing. More particularly, the procedure provided by SideTaker uses crowdsourcing because it takes the function of evaluator once performed by a judge, lawyer, arbitrator, or expert, and outsources it to an undefined (and generally large) network of people in the form of an open call.

B2: PeopleClaim (www.peopleclaim.com)

PeopleClaim provides the disputants with a web-based negotiation platform.¹⁶ In order to use the platform, the disputants need to register an account on PeopleClaim. The negotiation platform allows the claimant to submit a claim of up to 20,000 characters. After the claimant finishes writing the claim, PeopleClaim requests him to mention what kind of resolution he seeks, e.g., money or non-cash settlement. The next step of filing the complaint is the insertion of the contact details of the respondent. Afterwards, the claimant can send the complaint to the respondent. An important characteristic of PeopleClaim is that, by ticking a box before sending the complaint, the claimant will send the claim not only to the respondent, but also to regulators, watchdogs, and media as well as to lawyers and mediators who are willing to provide a free legal consultation.

Having received the claim, the respondent can use the platform provided by PeopleClaim to negotiate a settlement of the dispute. The negotiations between the disputants are private, i.e., the communications between the disputants are not made publicly available. If the disputants do not resolve their dispute through negotiation, the claimant can make his claim public. Then, any Internet user will be able to comment on the claim and propose suggestions for the resolution of the dispute. The comments are visible in a section titled “Suggestions from the public.” For example, in case 47048 posted on PeopleClaim, an Internet user suggested to the victim of a fraudulent act to send letters describing his complaint to the U.S. Federal Trade Commission, the Attorney General of Arizona, and the U.S. General Attorney (see Figure 5).



Figure 5. A screenshot of a comment of an Internet visitor in relation to case 47048 posted on PeopleClaim

16 As of 30th of December 2016, more than 50,000 businesses and consumers have used PeopleClaim.com. See <http://www.peopleclaim.com/> (last visited Jan. 3, 2017). PeopleClaim has a particular significance in the field of CODR as it demonstrates that CODR can effectively use not only adjudicative processes, but also facilitative processes.

PeopleClaim qualifies as a CODR procedure within the meaning of our definition of CODR because PeopleClaim complies with the three elements of the definition.

In relation to the first element (ADR or court proceedings), PeopleClaim uses a procedure known as expert opinion. The expert opinion refers to an ADR procedure allowing the parties to request an expert opinion concerning one or more aspects of the case at any stage of a dispute (See Paulsson, 1999, p. 111). For example, the International Chamber of Commerce offers “expert advice in settling business disputes.”¹⁷ The procedure provided by PeopleClaim allows the parties to request the opinion of Internet users having expertise related to the resolution of the dispute at stake. Therefore, being an ADR procedure, the procedure provided by PeopleClaim meets the first element of our definition of CODR.

Pertaining to the second element (using the Internet), the expert opinion procedure provided by People Claim is conducted entirely online. More particularly, the negotiations between the parties are conducted online and the third parties provide their opinion online. Therefore, PeopleClaim meets the second requirement for qualifying as a CODR procedure.

Pertaining to the third element (using crowdsourcing), the expert opinion in ADR is usually provided by an independent expert on the basis of an independent contractor agreement (see Paulsson, 1999, p. 111). PeopleClaim outsources the function once performed by an independent expert and outsources it to an undefined (and generally large) network of people in the form of an open call. The network is undefined (and generally large) because any Internet user may provide his opinion in relation to a dispute published on PeopleClaim. Therefore, PeopleClaim meets the third element of our definition of CODR.

C: Benefits of online opinion polls

An online opinion poll brings five benefits to the parties participating in the dispute (cf. Marder, 2006, pp. 242-247). They are stated below.

- (1) A party who feels wronged has a place to give an expression to its feeling. In some cases, the defendant can be swayed by the number of supporters on behalf of the plaintiff. The public opinion may be all that is needed to persuade the defendant to change his mind.
- (2) Some parties might feel uncomfortable to uncover their personal stories in their own communities. Since the parties in the online opinion polls are anonymous, they will not be afraid to post their disputes.
- (3) The parties use plain language. Since the jury is composed of laypersons, there is no need to use a legalistic language.

17 See the webpage of the International Chamber of Commerce concerning expert advice in settling business disputes available on <http://www.iccwbo.org/products-and-services/arbitration-and-adr/expertise/> (last visited Jan. 3, 2017).

- (4) Online opinion polls may facilitate the resolution of disputes in a very short time. The reason is that the jurors can provide their feedback within hours from the posting of the dispute by the claimant.
- (5) Online opinion polls are freely accessible. For example, anyone can register to become a juror in iCourthouse.¹⁸

D: Drawbacks of online opinion polls

The online opinion polls have seven limitations, which we consider as drawbacks. The limitations are described below.

- (1) Because online opinion polls allow anyone to participate in the dispute resolution procedure and do not charge any fee, they are often full of trivial and often silly claims (Marder, 2006, p. 245).
- (2) Because online opinion polls do not verify the identity of the voters, the plaintiff and the defendant do not have any knowledge about who is participating and cannot be sure that the poll is representative (Marder, 2006, p. 246). For instance, a single person can make numerous registrations and may influence the outcome of the decision. This problem can be resolved by allowing the system to verify that each vote is made by a different person. However, it may decrease the attractiveness of the procedure because certain users would prefer not to disclose their identity when participating in online opinion polls.
- (3) A major drawback of some online opinion polls, such as iCourthouse and SideTaker, is that every juror is introduced to the case by viewing the responses of the other jurors. It puts impartiality of such a procedure in doubt (Marder, 2006, p. 247). The reason of the doubt is that showing the responses of the other jurors often lead to informational cybercascade. The concept of informational cybercascade was introduced by Sunstein (2009). According to him, in an informational cybercascade, people cease relying, at a certain point, on their private information or opinions. They decide on the basis of the signals conveyed by others. Consequently, the behaviour of the first few people can, in theory, produce similar behaviour from a large number of followers (Sunstein, 2009, pp. 83-86).
- (4) At least in iCourthouse, it is unclear at what point the vote becomes final, how many votes are necessary for a “win” (Marder, 2006, p. 248). While the parties can agree amongst them what proportion of the verdicts will constitute a decision, iCourthouse neither aggregates the votes nor renders a decision. After a check in iCourthouse, it has been established that one can still become a jury member in a case from 2003.¹⁹

18 iCourthouse’s User Agreement does not require the users of iCourthouse to meet certain requirements in order to use iCourthouse. See iCourthouse’s User Agreement available at http://www.i-courthouse.com/main.taf?area1_id=front&area2_id=useragreement (last visited Jan. 3, 2017).

19 See Case No 2003-10954 in the iCourthouse.

- (5) Because anyone can post a claim on the online opinion polls, online opinion polls may be used by anonymous users for defamation of people. In some cases, the victims of defamation may not be able to remove the defamatory content because the providers of the online opinion polls may not be legally obliged to remove defamatory content. For example, Section 230(c)(1) of the US Communications Decency Act of 1996 provides immunity from liability for providers and users of websites which publish information provided by others.²⁰ Therefore, the providers of the online opinion polls based in the United States are not obliged to investigate and remove any defamatory content.
- (6) Since online opinion polls allow the participation of anonymous users, participants in such procedures may abuse, harass, and bully other participants, without allowing the latter to identify and bring to justice the former. This may have a negative impact on the subjective procedural fairness of online opinion polls as this type of fairness may vary depending on the extent the procedures conform to personal ethical standards (Lind and Tyler, 1988, p. 132).²¹
- (7) The anonymity of the members of the crowd participating in online opinion polls decreases their transparency. This, in turn, can have a negative impact on the objective and subjective procedural fairness of such procedures because transparency affects these two types of fairness.²²

3.2 ONLINE MOCK JURY SYSTEMS

Online mock jury systems are used by lawyers who have actual cases to gain insight into how prospective jurors view those cases.²³ Traditionally, only the lawyers dealing with big cases use offline mock juries or the so-called “focus groups” because the price of such juries is huge. However, with the appearance of the Internet, even lawyers dealing with low monetary value cases can test their case before an online mock jury (Marder, 2006, p. 249).

20 See the Communications Decency Act of 1996 available at <http://transition.fcc.gov/Reports/tcom1996.txt> (last visited Jan. 3, 2017).

21 For more information on the relationship between ethicality of dispute resolution procedures and perceptions of procedural fairness, see Subsection 5.2.6.

22 For more information on the relation between transparency and objective procedural fairness, see 5.1.4. For more information on the relation between transparency and subjective procedural fairness, see 5.2.

23 Online mock jury systems differ from online jury systems because the former are used mainly by lawyers who would like to test actual cases, whereas the latter are used mainly by disputants who attempt to facilitate the resolution of their disputes. More specifically, the members of the crowd participating in online opinion polls facilitate the resolution of disputes in two ways. First, the members of the crowd provide the disputants with suggestions on how to resolve their disputes. Second, the members of the crowd participating in online opinion polls serve as a container for any escalating conflict (cf. Ury, 2000, p. 7). According to Ury, in the absence of such a container, serious conflict between two parties may easily turn into a destructive conflict (Ury, 2000, p. 7).

In the typical online mock jury systems, such as eJury²⁴ and Virtual Jury²⁵, the lawyers submit summarised versions of their cases to online juries. In particular, they submit a factual summary of the case, including claims and possible defences, exhibits, and jury instructions. After the submissions are made by the lawyers, the providers of the online mock juries, taking into account the demographics of the potential jury members, select juries from a special list of jury members. The online mock jury systems generate a vast amount of data which can be used to find strengths and weaknesses in evidence, establish a settlement value, learn “public” attitudes, discover the most effective arguments, and improve jury selection (Starr and McCormick, 2009, pp. 5-6).

Below, we examine (A) eJury as an example of the online mock jury system. Then, for comparison, we will provide brief descriptions of (B) three more online mock jury systems. Subsequently, we discuss (C) the benefits of online mock jury systems, and (D) the drawbacks of online mock jury systems.

A: *eJury*

eJury (www.ejury.com, last visited Jan. 3, 2017) provides attorneys with the opportunity to learn what jurors may think about their cases.²⁶ eJury functions similarly to a traditional mock jury with the exception that the jurors participate via the Internet. Because jurors participate remotely, attorneys can test their cases at a cost, which is lower than the cost of traditional jurors. According to the founder of eJury, some attorneys post their cases to as many as 500 mock jurors (cf. Rutkin, 2015). Attorneys can use the large amount of data to see how the jury verdicts differ according to the jurors’ race, gender, or age (Rutkin, 2015). A screenshot of eJury is given in Figure 6. The information given is self-explanatory. Below, we describe the eJury process.



Figure 6. A screenshot of eJury

24 <http://www.ejury.com/> (last visited Jan. 3, 2017).

25 <http://virtualjury.com/> (last visited Jan. 3, 2017).

26 It should be noted that the jurors participating in eJury should not be confused with traditional jurors. The former provide attorneys who test their cases with feedback which can be used by the attorneys to evaluate the strength and weakness of their cases, whereas the latter determine facts in litigation proceedings.

An eJury process consists of three stages, namely, (1) preparation, (2) notification, and (3) submission of verdicts. These three stages are briefly described below.

Ad (1) Preparation

In the preparation stage, the attorney prepares a case which consists of (a) facts from the perspectives of each party, (b) jury questions which would be used at trial, and (c) personal questions to the jurors.

Ad (2) Notification

In the notification stage, eJury publishes the attorney's case into a secure section on its website where only eJurors in the geographical area of selection can access the case. Subsequently, the eJurors in that area are notified electronically that a new case has been published.

Ad (3) Submission of verdicts

In the submission of verdicts stage, the eJurors review the facts and answer the questions. Thereafter, they submit their verdicts. Once the minimum number of verdicts has been rendered (typically fifty), eJury automatically closes the case. The verdicts are summarised and printed. The final report includes statistics of the damages awarded by the jurors as well as the fifty (or more) verdicts containing the demographic profile of each participating eJuror.

The procedure offered by eJury meets the three elements of our definition of CODR. Concerning the first element (ADR or court proceedings), it has been already pointed out that ADR procedures do not need actually to resolve disputes. ADR procedures may simply provide one of the parties with the opportunity to test its case in front of mock juries (Statsky, 2008, p. 422). This form of ADR procedures is called summary jury trial, also known as mock trial or a minitrial (Statsky, 2008, p. 422). The jury in a summary jury trial "deliberates and renders a non-binding advisory verdict" (Statsky, 2008, p. 422). The parties may use the information collected through a summary jury trial in order to know the Best Alternative to a Negotiated Agreement (BATNA). Knowing the BATNA is an important step for the success of negotiation (Lodder and Zeleznikow, 2010, pp. 41-43). Consequently, being a form of ADR, eJury meets the first element of our definition of CODR.

Pertaining to the second element (using the Internet), it should be noted that the summary jury trial procedure provided by eJury is conducted entirely online. eJury converts the case submitted by the parties into a webpage and makes it accessible only to eJurors in the county of selection.²⁷ Afterwards, the eJurors in that county are then notified by email that a new case has been posted. Therefore, eJury meets the second requirement for qualifying as a CODR procedure.

27 See the webpage entitled "Learn about eJury and eJurors" available at http://www.ejury.com/jurors_learn_about.html (last visited Jan. 3, 2017).

As for the third element (using crowdsourcing), we need to examine whether the summary jury trial procedure provided by eJury falls within the scope of the definition of crowdsourcing provided by Howe (2006). The jurors in the summary jury trial procedures usually come from the regular pool of jurors in the county (Statsky, 2008, p. 422). In most U.S. States, the jury pool is drawn from lists of registered voters (Smith and Cole, 2007, p. 247). The eJury outsources the function once performed by regular juries and outsources it to an undefined (and generally large) network of people in the form of an open call. The network is undefined (and generally large) because any Internet user residing in the county of selection can become a juror in eJury. Because (1) any Internet user complying with certain requirements can participate in the summary jury trial procedure and (2) the call is made publicly available on the website of eJury, the call used by eJury to outsource the function of a regular juror falls within the scope of our definition of “open call”.

Juror Sign Up

We're glad to see you are interested in becoming an "eJuror."

There are **no charges or costs** for signing up to be an eJuror. There is also **no guarantee** that there will be cases for you to complete once you sign up. Cases are assigned based upon availability from attorneys, where you live (your residence), and your demographic details.

Qualifications:

Just like actual jury service in the United States, to qualify as an eJuror, you must:

- be at least 18 years of age;
- be a citizen of the United States;
- be of sound mind and good moral character;
- be able to read and write;
- have never been convicted of a felony; and
- not be under indictment or other legal accusation of misdemeanor theft or felony theft or any felony charge.

In addition, due to the confidential nature of our cases, you must:

- **not** be an actively practicing attorney, paralegal, or legal assistant;
- **not** be employed by or associated with an attorney or law firm;
- **not** be related to a practicing attorney within the first degree of affinity (marriage) or within second degree of consanguinity (blood); and
- **not** be employed as an insurance adjuster, nor associated with the adjusting of liability claims.

We encourage everyone to read our [Learn About page](#) and [Terms & Conditions](#) before signing up.

[I'm Ready to Sign Up Now!](#)

Figure 7. A notice of open call published by eJury

Figure 7 displays the notice of open call published by eJury. The notice informs any potential jurors that: (1) there are no charges or costs for signing up to be an eJuror; (2) there is no guarantee that there will be cases for the jurors; (3) they need to meet certain requirements in order to become jurors; and (4) they need to read two documents (a “Learn About” page and a Terms and Conditions statement) before signing up as jurors. Complying with the three elements of our definition of CODR, eJury qualifies as a CODR procedure.

B: Three more examples of online mock jury systems

Below, we briefly discuss three additional examples of online mock jury systems, namely, (B1) JuryTest, (B2) OnlineVerdict, and (B3) TrialJuries.

B1: JuryTest (www.jurytest.net)

Jurytest.net allows an attorney to record a case summary or argument on a toll-free telephone line, 1.888.JURYTEST. Then, a geographically selected group of “jurors” listens to the recording and reviews the exhibits attached to the case. Attorneys can read the feedback of the jurors on a secure section of the JuryTest website.²⁸ The feedback can help attorneys to choose the correct trial strategies. For example, a large insurance firm used the services of JuryTest in order to find out whether, according to JuryTest jurors, flood damage caused by the Hurricane Katrina will fall within the scope of insurance policies covering wind-only damage.²⁹ Since the jurors answered positively, the insurance firm decided not to base its defence on the difference between flood and wind damage.³⁰

The procedure offered by JuryTest falls within the scope of our definition of CODR. Below, we provide reasons to support this statement.

Concerning the first element (ADR or court proceedings), JuryTest provides a summary jury trial procedure similar to eJury. Therefore, JuryTest meets the first element of our definition of CODR.

As for the second element (using the Internet), it should be noted that, while the lawyers of the parties may submit the summons to the jurors by calling on a toll-free telephone, the jurors may review the summons and provide their opinion through the Internet only.³¹ Therefore, the summary jury trial procedure meets the second element of the definition of CODR.

In relation to the third element (using crowdsourcing), eJury outsources the function once performed by regular juries and outsources it to an undefined (and generally large) network of people in the form of an open call. The network is undefined (and generally large) because any Internet user complying with certain requirements can become a juror in JuryTest.³² Because (1) any internet user complying with certain requirements can participate in the summary jury trial procedure and (2) the call is made publicly available on the website of eJury, the call used by eJury to outsource the function of a regular juror falls within the scope of our definition of “open call”. Figure 8 displays the notice of open call published by JuryTest.

The notice of open call published by JuryTest informs the jurors of the three steps related to their participation in JuryTest. The first step is the reviewing of cases published by lawyers. The second step is the provision of feedback on each case. The third step is receiving a payment for their contribution to JuryTest.

28 See <https://www.jurytest.net/index.cfm?action=aboutus> (last visited Jan. 3, 2017).

29 See <https://www.jurytest.net/index.cfm?action=stories> (last visited Jan. 3, 2017).

30 See <https://www.jurytest.net/index.cfm?action=stories> (last visited Jan. 3, 2017).

31 See <http://www.jurytest.net/index.cfm?action=howjur> (last visited Jan. 3, 2017).

32 In order to register as jurors at JuryTest, the jurors must attest to the fact that they are not lawyers or insurance company representatives. Further, they must agree that they are participating as consultants to the lawyers who will utilise the services offered by JuryTest and will not disclose the names of any parties on cases that they review. See <http://www.juryTest.net/index.cfm?action=signupjur> (last visited Jan. 3, 2017).

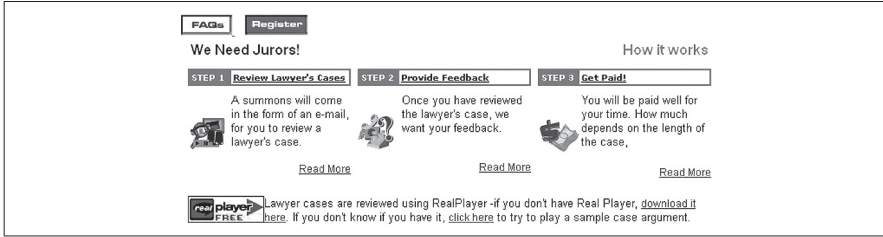


Figure 8. A notice of open call published by JuryTest

B2: OnlineVerdict (<http://www.onlineverdict.com>)

OnlineVerdict allows attorneys to post a case summary on the website through a password-protected account. The case summaries relate to civil, criminal, and patent disputes (cf. Rutkin, 2015). A case summary includes up to 5 double-spaced pages for each side and two graphic images or exhibits for each side. The attorney posting the case can choose to receive feedback from 25 to 50 jurors. All jurors are pre-screened to ensure that they do not have any conflicts with the parties. The feedback provided to the attorneys testing their cases include (1) statistically compiled results of all juror responses to questions on the verdict and the case as well as (2) detailed demographic information about each juror including age, gender, ethnicity, education, marital status, occupation, household income, and political party affiliation.³³ An excerpt of a verdict published by OnlineVerdict is given in Figure 9.

The excerpt shows three questions and the answers of the jurors to those questions. The first question is "Do you find that the Defendant, Dairy Products, Inc., was negligent in hiring Defendant, Gary Clausen, as a driver?" 76% of the jurors voted "yes" to this question, whereas the remaining 24% voted "no". The second question is "Was the negligence of Defendant, Dairy Products, Inc., a substantial factor in bringing about Plaintiff's harm?" Similarly to the first question, 76% of the jurors voted "yes" and 24% voted "no". The third question is "State the amount of damages, if any, sustained by Plaintiff as a result of the occurrence, for the following damages: Pain and suffering by Joseph Smith, Lost earning capacity of Joseph Smith, Loss of consortium for Marie Smith".

The mean damages voted by jurors for the "Pain and suffering by Joseph Smith" amount to USD 32,200, whereas the median damages for the pain and suffering by the same person amount to USD 25,000. The mean damages voted for the loss of earning capacity of Joseph Smith amount to USD 608,000. The median damages for the loss of earning capacity by the same person amount to USD 500,000. The mean damages for the loss of consortium for Marie Smith amount to USD 33,000. The median damages for the same loss of consortium amount to USD 10,000.

33 See <http://onlineverdict.com/attorneyshowitworks.php> (last visited Jan. 3, 2017).

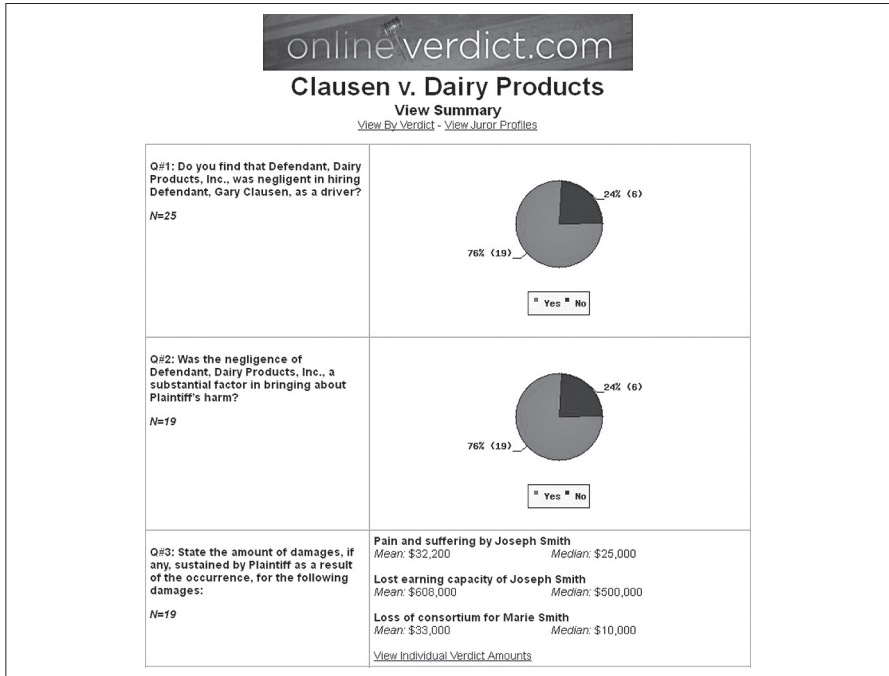


Figure 9. An excerpt of a verdict published by OnlineVerdict.com

The procedure provided by OnlineVerdict falls within the scope of our definition of CODR. Below, we give reasons to support this statement.

With regard to the first element (ADR or court proceedings), OnlineVerdict provides a summary jury trial procedure similar to eJury. Therefore, JuryTest meets the first element of our definition of CODR.

In connection with the second element (using the Internet), it should be noted that lawyers willing to test their cases may submit the summons only by using the website of OnlineVerdict.³⁴ The jurors can also review the summons only by accessing the website of OnlineVerdict.³⁵ Therefore, the summary jury trial procedure offered by OnlineVerdict meets the second element of our definition of CODR.

Pertaining to the third element (using crowdsourcing), OnlineVerdict outsources the function once performed by regular juries and outsources it to an undefined (and generally large) network of people in the form of an open call. The network is undefined (and generally large) because any Internet user complying with the Terms of Use and the Privacy Policy of Online

34 See a webpage entitled "How it works" published on <https://www.onlineverdict.com/attorneys/attorney-how-it-works/> (last visited Jan. 3, 2017).

35 See a webpage entitled "How it works" published on <https://www.onlineverdict.com/attorneys/attorney-how-it-works/> (last visited Jan. 3, 2017).

Verdict can become a juror in OnlineVerdict.³⁶ Because (1) any Internet user complying with certain requirements can participate in the summary jury trial procedure and (2) the call is made publicly available on the website of OnlineVerdict, the call used by OnlineVerdict to outsource the function of a regular juror falls within the scope of our definition of “open call”.

B3: TrialJuries (<http://trialjuries.com>)

TrialJuries is an entirely web-based “mock jury” system. TrialJuries allows attorneys to log onto the website and submit a case. The submission can be in the form of a text, audio, or video file.³⁷ After the submission, the case is sent to a panel of jurors for review. The jurors are selected through an open call. There are three requirements for being a TrialJuries juror, namely, (1) the jurors should be at least 18 years of age, (2) the jurors should be United States citizens, and (3) the jurors should not have been convicted of a felony. The jurors review the case and render a verdict. The verdict is sent to the attorneys by email. A screenshot of TrialJuries is given in Figure 10. The screenshot indicates the three steps of operation of TrialJuries, namely, (1) presenting the case to the jury, (2) asking questions to the jurors, and (3) receiving the results of the jury vote.

The procedure provided by TrialJuries falls within the scope of our definition of CODR. Concerning the first element (ADR or court proceedings), TrialJuries provides a summary jury trial procedure similar to eJury and OnlineVerdict. Therefore, JuryTest meets the first element of our definition of CODR.

As for the second element (using the Internet), it should be noted that the procedure provided by TrialJuries is entirely web-based.³⁸ Therefore, the procedure meets the second element of the definition of CODR.

In relation to the third element (using crowdsourcing), TrialJuries outsources the function once performed by regular juries and outsources it to an undefined (and generally large) network of people in the form of an open call. The network is undefined (and generally large) because any Internet user meeting the aforementioned requirements can become a juror in TrialJuries.³⁹ Since (1) any Internet user complying with the requirements can participate in the summary jury trial procedure and (2) the call is made publicly available on the website of TrialJuries, the call used by TrialJuries to

36 The Terms of Use of OnlineVerdict is available on <https://www.onlineverdict.com/terms-conditions/>. The Privacy Policy of OnlineVerdict is available at <https://www.onlineverdict.com/privacy-policy> (last visited Jan. 3, 2017).

37 See a webpage entitled “Our Pricing Options” published on <https://www.tlextranet.com/trialjuries/thecost.html> (last visited Apr. 4, 2016).

38 See a webpage “How it works” available at <http://trialjuries.com/trialjuries/howit-works.html> (last visited Jan. 3, 2017).

39 The Terms of Use of OnlineVerdict is available on <https://www.onlineverdict.com/terms-conditions/> (last visited Jan. 3, 2017). The Privacy Policy of OnlineVerdict is available on <https://www.onlineverdict.com/privacy-policy/> (last visited Jan. 3, 2017).

outsource the function of a regular juror falls within the scope of our definition of “open call”.

Prepare your Case

TrialJuries is an affordable and intuitive way to test-drive your case in front of real people from your venue. See how they respond to your facts and theories so you can:

- Better prepare for trial
- Identify the ideal jury composition
- Evaluate your case for settlement

- 1 PRESENT THE CASE**
Present both sides of your case to the jury. You can submit a written statement of the case, or make an audio or video presentation. Include exhibits and “instruct the jury” just as you would at trial.
- 2 ASK YOUR QUESTIONS**
Prepare questions for the jury to answer. Ask “Verdict Questions” like the ones you plan to submit at trial and “Feedback Questions” to get juror’s impressions and reactions to your case.
- 3 SEE THE RESULTS**
Our detailed reports break down each juror’s answers to your questions and let you analyze these responses across a broad range of demographic information about each juror.

Figure 10. A screenshot of TrialJuries

C: Benefits of online mock jury systems

Below, we describe four benefits that online mock juries provide to the lawyers who use them.

The online mock juries offer four benefits for the attorneys who will use them to test their cases (see Marder, 2006, pp. 249-251). In particular, the online mock juries are quick, inexpensive, convenient, and provide important feedback to lawyers.

- (1) **Quick.** Because online mock jury systems do not require jurors to travel to offline premises, such systems can collect feedback from jurors quicker than offline mock juries. For example, according to OnlineVerdict, feedback from 25 to 50 jurors can be gathered within a few days, compared to several weeks for an offline mock jury.⁴⁰
- (2) **Inexpensive.** According to OnlineVerdict, traditional face-to-face offline mock juries cost between USD 20,000 and USD 50,000. The costs include recruiting of jurors, participant pay, facility rental, audio-visual support, and catering. Because the providers of online mock jury systems do not have to pay for the facilities rental, catering, and transport, they can offer their services at a lower price compared to the price of the offline mock jurors. For example, attorneys willing to use the services of OnlineVerdict have to pay USD 2000 for receiving a feedback from 25 jurors.⁴¹
- (3) **Convenient.** The online mock juries provide lawyers with the convenience to post their cases from their own computer at a time convenient to them. In comparison, lawyers using offline mock juries should attend physical premises in which the mock cases will be presented.

40 See <http://onlineverdict.com/attorneys.php> (last visited Jan. 3, 2017).

41 <http://onlineverdict.com/attorneys.php> (last visited Jan. 3, 2017).

- (4) Provide important feedback to lawyers.⁴² The feedback can be used to determine the case value, develop the case themes, find the facts to emphasize, and learn the “public” attitudes.

D: Drawbacks of online mock jury systems

The online mock juries have three drawbacks, which affect lawyers who would like to present their cases, namely, (1) lack of deliberations, (2) lack of face-to-face communication, and (3) deciding cases on the basis of the feedback provided by only one of the parties.

D1: Online mock juries lack deliberations (cf. Marder, 2006, pp. 254-256). In comparison to the offline mock juries, online mock juries do not require jurors to deliberate the cases presented to them. The jury deliberations are the most informative part of the offline mock trial. By observing deliberations, an attorney familiar with the case can learn which issues or questions need to be thoroughly addressed. Later, the attorney can make sure that those questions are answered in the case presentation for the real trial. In addition to raising questions, jurors may show images, metaphors, analogies, and themes that help the attorneys to prepare for the real trial (cf. King, 2008, p. 52).

A common belief is that jury deliberation is a reliable way of establishing the truth in a contentious matter (cf. Kapardis, 2010, p. 180). The reason is that the deliberation encourages the correction of mistaken conclusions, because it provides a juror with the opportunity to take into account different opinions that may be more plausible than the opinion of the juror before participating in the deliberations. However, a study conducted by Schkade, Sunstein, and Kahneman (1999) found that deliberating juries did not produce less erratic and more predictable judgements than decisions taken by individuals without deliberation. In contrast, Schkade, Sunstein, and Kahneman (1999) found that a key effect of deliberation is a polarisation of individual judgements. Group polarisation is the tendency for individual’s opinions to become more extreme (in whatever direction they originally favoured) after discussion than before (see also Moscovici and Zavalonni, 1969; Lindzey, Gilbert, Fiske, 2003, p. 439). The reason for the group polarisation is that, during deliberation, the members of the group often follow the opinions of other members of the group.

Consequently, we may conclude that both the lack of jury deliberations and the presence of jury deliberations have negative sides. The lack of jury deliberations does not allow the jurors to see the mistakes in their conclu-

42 It should be noted that online mock juries provide more feedback to lawyers than traditional juries. This is because usually they take into account the opinions of more jurors. For instance, at eJury each case is submitted to a minimum of 50 people. See http://www.ejury.com/jurors_learn_about.html#how (last visited Jan. 3, 2017). The number of traditional mock jurors is occasionally the same as the court jurors. The number of jurors varies in every country but is rarely more than 12 persons. See <http://en.wikipedia.org/wiki/Jury#Composition> (last visited Jan. 3, 2017).

sions. The presence of jury deliberations may lead to judgements that are not based on rational assessments of the facts, but on the basis of the opinion of others. The designers of CODR platforms are advised to create their platforms in such a way so as to ensure that people are exposed to reasonable alternatives and not to the echoes of their own opinions.

D2: Since there is not a mock trial taking place in a room emulating a court room, the attorney cannot present his case in the same manner in which he will be able to present it in an offline mock court (cf. Marder, 2006, p. 258).⁴³ Moreover, the real juries evaluate the presentations of attorneys and witnesses not only on the basis of the verbal communication, but also on the basis of non-verbal communication, such as appearance, general demeanour, voice pitch, response style (cf. Posey and Wrightsman, 2005, p. 40). Missing the element of non-verbal communication is a severe drawback. However this drawback can be overcome by using the modern technology for online video transfer. In this regard, it should be noted that the technologies for face recognition carefully develop at a fast pace (Li and Jain, 2011; Postma, 2014). The face recognition technologies may allow attorneys to analyse the non-verbal communication of participants in mock jury proceedings. Facial expressions play an important role in non-verbal communication. People use facial gestures to convey their moods and express their feelings (King and Li, 1999, p. 399).

D3: Online mock juries are designed in such a way as to allow one of the parties in a dispute to test its case. Thus, online mock juries do not allow the other party to: (1) present evidence and law; and (2) affect the outcome of the dispute resolution process. This may have a negative impact on the compliance of online mock juries with elements of both subjective and objective procedural fairness.⁴⁴

3.3 ARBITRATION TRIBUNALS RENDERING SELF-ENFORCEABLE DECISIONS

In this section, we discuss CODR procedures functioning as arbitration tribunals that deliver self-enforceable decisions. In the context of CODR, the term “self-enforceable decision” means that the decision is enforced by the

43 It should be noted that this problem can be solved to some extent by using virtual worlds.

44 For example, online mock juries may not comply with the element of subjective procedural fairness called process control. It relates to disputants’ control over the development and selection of information that will constitute the basis for making a decision (see Thibaut and Walker, 1975). Also, online mock juries may not comply with fair hearing, an element of both subjective and objective procedural fairness. Fair hearing refers to the opportunity of each party to present evidence and law (Hörnle, 2009, p. 13). For more information on process control, see Subsection 5.2.1. For more information on fair hearing, see Subsection 5.1.5 and Section 5.2.

organisation providing the procedure, not by the coercive power of a state.⁴⁵ Below, we discuss (A) the eBay's Community Review Forum (ECRF), which is a typical example of a CODR procedure functioning as arbitration tribunal that used to render self-enforceable decisions but has now been discontinued. Afterwards, we examine Marktplaats Gebruikersjury, a CODR procedure, which is continuation of the ECRF. Finally, (C) the benefits and (D) the drawbacks of CODR procedures functioning as arbitration tribunals rendering self-enforceable decisions are given.

A: eBay's Community Review Forum

In 2008, eBay launched the ECRF, a website offering a CODR procedure of which the decisions were enforced by a private authority (eBay). ECRF transformed in reality the futuristic idea that a dispute can be effectively resolved at no cost by a large group of people located in many different countries in less than twenty two days after submitting the claim (cf. Van den Herik and Dimov, 2011a, p. 247). Below, we give a brief description of the ECRF and its operation. Many details will be discussed later. The current description also serves as an introduction to the concept of CODR and the operation of the ECRF.

The ECRF allowed any seller to appeal non-positive feedback given by a buyer which the seller believed to be unfair or unjustified. The appealed feedback consists of a rating of the transaction along with a short comment by the buyer. For example, a buyer may leave a negative feedback if (1) the seller does not ship the item or (2) the item does not match the description. Then, the seller was given an opportunity to file a claim against the feedback. If a seller's claim against the feedback was successful, eBay was obliged to remove the disputed feedback otherwise the feedback would become publicly visible at the website of eBay. The claims by the sellers were judged by 21 randomly selected members of the eBay's Community. The 21 jurors were selected from a large group of candidates who had expressed their willingness to participate in the ECRF through an open call procedure. We take an example of a candidate juror from eBay India.

A seller using eBay India was allowed to participate in the open call if he met cumulatively the following conditions: (1) the user should be registered on eBay India for six months; (2) the seller should have 20 feedback scores as a seller with an overall rating of 97% positive feedback; (3) the seller should have completed at least one transaction on eBay as a buyer and one as a seller. A buyer was allowed to participate in the open call if he met cumulatively the following conditions: (1) the buyer should be registered on eBay India for six months; (2) the buyer should have 10 feedback scores

45 Arbitration tribunals rendering self-enforceable decisions have a particular importance in the field of CODR because they are the only CODR procedures rendering decisions that can be imposed on a disputant, without his consent. The solutions proposed by all other CODR procedures can become binding on a disputant only if the disputant agrees to be bound by them.

with overall rating of 97%; and (3) the buyer should have completed at least 10 buyer transactions. These conditions were set in order to ensure that only trustworthy and experienced eBay users served as jurors.

The information to be sent to the jury by the claimant included: dates of bidding, buying and paying; dates of receiving an item; a proof of paid and received items; information about the condition of the item that was sent; and other information intended for supporting the case. The claimant was asked to write a statement of up to 5000 characters, and to include up to 3 photos to support his statement.

After the seller had submitted a claim to appeal the feedback, the buyer was emailed so that he knew what he should do next. Ten days were given to the buyer from the time when the appeal was written and received by the jury to write his statement in response. If he chose not to justify his feedback within 10 days, the case would automatically progress to the jury voting stage where the jury would vote based on the claimant's feedback and photos. However, if the buyer chose to justify his feedback, he needed to review the statement and the photos that the seller had put together as his appeal. The buyer could write a statement of up to 5,000 characters explaining why he believed his feedback was justified and why the seller's appeal was not justified as such. He could also upload up to three additional photos to support his case.

After the buyer submitted his written statement and up to three additional photos, the seller had two days to review the buyer's statement and to write a brief final response.

Subsequently, the case was put active and was served to the randomly allocated 21 jury members to vote upon. In order to be informed about the status of the case, the claimant and the respondent were emailed. They could also log into the ECRF at any time to see the status of the case.

As regards the jury, anonymity of jurors was maintained and any attempt to trace and contact a juror led to being barred from using the ECRF. Also, the jury was never pre-selected. When a jury member logged into the ECRF, he was randomly allocated to a case. Jury members would not be allocated to a case for at least one of the following two reasons: (1) if they had had a transaction with either the buyer or the seller; (2) if they had once voted on a case in which the buyer or the seller was/were already involved. At least 11 out of the 21 jury members must agree that the feedback should be removed in order for it to be removed. If the first 11 people opined that the feedback should be removed, the case was closed at that point and the feedback was removed. If the first 11 people voted not to remove the feedback, the case was also closed and the feedback was not removed.

The final decision of the jury was enforced by an eBay Customer Service Representative, who, if appropriate, removed the feedback. A screenshot of eBay's Community Court (an early version of the ECRF) is given in Figure 11.

The screenshot of the eBay's Community Court demonstrates the four steps of operation of the eBay's Community Court, namely, (1) starting the appeal of feedback posted in eBay, (2) collecting the view of the person who

posted the appealed feedback, (3) jury voting, and (4) rendering the final decision.

The procedure offered by the ECRF is a form of CODR because it falls within the scope of our definition of CODR.



Figure 11. A screenshot of the eBay's Community Court (an early version of the ECRF)

As regards to the first element (ADR or court proceedings), the ECRF provides a non-binding arbitration procedure. The non-binding arbitration is one of the most widely known forms of ADR (Paulsson, 1999, p. 108). The non-binding arbitration is more used in ODR than the legally binding arbitration (Harkiolakis and Halkias, 2016, p. 170). One of the reasons for the success of the non-binding arbitration is that such arbitration is not an object of “the stringent procedural requirements that prevail in binding arbitration” (Kaufmann-Kohler and Schultz, 2004, p. 33). Nevertheless, the non-binding arbitration may be more formal and lengthy than the early neutral evaluation (Murray, 2011, p. 158).

In order to find out whether the ECRF provides a non-binding arbitration procedure, we will examine whether the procedure offered by the ECRF falls within the scope of a definition of binding arbitration. If we find out that the only difference between the procedure offered by the ECRF and the binding arbitration procedures is the lack of a legally binding decision, then the procedure provided by the ECRF should be regarded as a non-binding arbitration.

The binding arbitration can be defined as a process in which one or both of the parties involved have agreed by contract to submit unresolved issues to a neutral third party of which the decision shall be final and binding on all parties involved (cf. Carrell and Heavrin, 2008, p. 180). In order to use the website of eBay, the disputants using the ECRF had to accept the User Agreement of eBay which allowed for the resolution of disputes through the ECRF. The procedure provided by the ECRF is initiated by one of the parties involved in a transaction concerning goods sold through eBay. The dispute was resolved through a group of neutral third parties. As it has been mentioned before, eBay imposed certain procedural safeguards in order to

ensure the impartiality of the parties. The decision rendered by eBay was final because the disputants were not able to appeal it before any institution. Hence, the only difference between the procedure offered by the ECRF and the binding arbitration is that the former does not result in legally binding decision. Being a form of non-binding arbitration, the ECRF qualifies as a form of ADR and, therefore, complies with the first element of our definition of CODR (ADR or court proceedings).

Pertaining to the second element (using the Internet), it should be noted that the procedure provided by the ECRF is conducted entirely online. Therefore, the procedure complies with the second element of our definition of CODR.

In relation to the third element (using crowdsourcing), the disputants in traditional arbitration appoint an arbitrator by concluding a contract known as Arbitrator's contract (Onyema, 2010, p. 86). The ECRF outsources the function once performed by appointed arbitrators and outsources it to an undefined (and generally large) network of people in the form of an open call. The network is undefined (and generally large) because any Internet user complying with the aforementioned requirements was able to become a juror in the ECRF. The call used by the ECRF to outsource the function of an arbitrator falls within the scope of our definition of "open call" because (1) any Internet user complying with the aforementioned requirements was able to participate in the ECRF and (2) the call was made publicly available on the website of the ECRF.

B: Marktplaats Gebruikersjury

Marktplaats.nl is an online action website providing a venue for buyers and sellers of products to meet and make transactions. It is owned by eBay (cf. Neysen, 2009, p. 17). Marktplaats Gebruikersjury is a CODR platform developed by eBay.⁴⁶ Colin Rule, the person who led the development of the ECRF, has contributed significantly to the creation of Marktplaats Gebruikersjury.⁴⁷

Marktplaats Gebruikersjury allows sellers of products on Marktplaats.nl to appeal negative feedback posted by buyers.⁴⁸ A seller may submit a complaint. It will be submitted to 11 jurors who will resolve the complaint. The jury is composed from randomly selected users who have expressed their interest to participate as jurors in Marktplaats Gebruikersjury.⁴⁹ If the complaint is accepted by the jury, Marktplaats' staff will report the disputed feedback from marktplaats.nl.

46 See <https://gebruikersjury-marktplaats.modria.com/mp/jsp/ccHome.jsp> (last visited Jan. 3, 2017).

47 See the official profile of Colin Rule at the website of the Consensus Building Institute. Available at <http://www.cbuilding.org/about/bio/colin-rule> (last visited Jan. 3, 2017).

48 The Dutch word *gebruikersjury* can be translated in English as the jury of the users.

49 See *Algemene Voorwaarden Marktplaats Gebruikersjury* (Terms and Conditions of Marktplaats Gebruikersjury). Available at <https://gebruikersjury-marktplaats.modria.com/mp/jsp/TermsAndConditions.jsp> (last visited Jan. 3, 2017).

The procedure offered by Marktplaats Gebruikersjury is a form of CODR because it falls within the scope of our definition of CODR.

Marktplaats Gebruikersjury meets the first element (ADR or court proceedings) because it is an online non-legally binding arbitration procedure organised by a private company (i.e., eBay). As dicussed in Subsection 2.2.1, online arbitration is form of ADR.

Marktplaats Gebruikersjury meets the second element (using the Internet) because the procedure provided by it is conducted entirely online.

Marktplaats Gebruikersjury meets the third element (using crowdsourcing) because Marktplaats Gebruikersjury outsources the function once performed by appointed aribrations and outsources it to an undefined (and generally) large network of people in the form of an open call. The network is undefined (and generally large) because any Internet user complying with the terms and conditions of Marktplaats Gebruikersjury is able to become a juror in Marktplaats Gebruikersjury.⁵⁰ The call used by Marktplaats Gebruikersjury to outsource the function of an arbitrator falls within the scope of our definition of "open call" because (1) any Internet user complying with the terms and conditions of Marktplaats Gebruikersjury is able to participate in Marktplaats Gebruikersjury and (2) the call is made publicly available on the website of the Marktplaats Gebruikersjury.⁵¹

Figure 12 displays a screenshot from Marktplaats.nl. We reproduce the Dutch version of the website which consists of four stages: (1) submitting a complaint; (2) hearing of both sides; (3) the voting procedure; and (4) announcing the binding verdict. In Figure 12, each stage is described by a Dutch phrase.

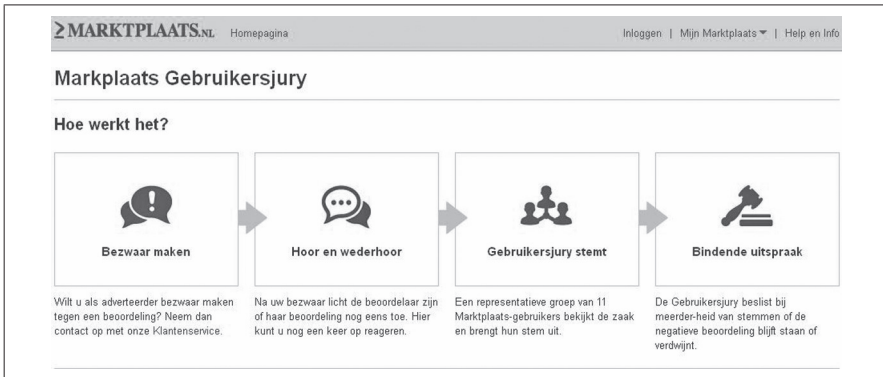


Figure 12. A screenshot of Marktplaats Gebruikersjury

50 Algemene Voorwaarden Marktplaats Gebruikersjury (Terms and Conditions of Marktplaats Gebruikersjury) are available at <https://gebruikersjury-marktplaats.modria.com/mp/jsp/TermsAndConditions.jsp> (last visited Jan. 3, 2017).

51 The webpage containing information about the open call for jury members is available at <https://gebruikersjury-marktplaats.modria.com/mp/jsp/login.jsp?ut=3> (last visited Jan. 3, 2017).

C: Benefits of CODR procedures functioning as arbitration tribunals rendering self-enforceable decisions

The CODR procedures functioning as arbitration tribunals rendering self-enforceable decisions offer two benefits to the disputants: (1) quick and (2) free.

- (1) Quick. For example, the maximum time of the ECRF procedure is not more than 22 days.⁵² In comparison, UDRP disputes are resolved through ODR in as little as 60 days of filing (see Partridge, 2012).
- (2) Free. The ECRF and Marktplaats Gebruikersjury allowed the disputants to resolve their disputes without paying any fee. In comparison, filing an UDRP complaint costs a minimum of EUR 500.⁵³

D: The drawback of CODR procedures functioning as arbitration tribunals rendering self-enforceable decisions

The CODR procedures functioning as arbitration tribunals rendering self-enforceable decisions have at least two drawbacks, namely, (1) lack of decision control and (2) possible procedural delays.

- (1) Lack of decision control. The term decision control refers to the extent to which the parties are free to reject or accept a decision rendered by a third party (cf. Wemmers, 1996, p. 69). Since the ECRF and Marktplaats Gebruikersjury decisions are directly enforced by an authorised officer, who, if appropriate, removes the disputed feedback, the disputants do not have any decision control. The lack of decision control is found to have a negative impact on subjective procedural fairness.⁵⁴

52 See Community Court's FAQs, <http://www.ebaycourt.com/cc/FAQ.jsf>. The archived webpage is available at <https://web.archive.org/web/20111213132628/http://www.ebaycourt.com/cc/FAQ.jsf> (last visited Jan. 3, 2017).

53 The fee for filling an UDRP complaint at the Czech Arbitration Court, one of ICANN's accredited UDRP providers, is 500 EUR for complaints involving no more than 5 domain names. However, if (1) the respondent replies or (2) the arbitrator finds that the case is complex the complainant should pay an additional fee of 500 EUR. See Annex A: Fee Schedule of CAC's UDRP Supplemental Rules of the Czech Arbitration Court available on https://udrp.adr.eu/arbitration_platform/udrp_supplemental_rules.php#9 (last visited Jan. 3, 2017). The other ICANN's accredited providers charge the following fees for resolving UDRP procedures. The fee for filling a complaint involving up to 5 domain names at the Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) is USD 1500. See <http://www.wipo.int/amc/en/domains/fees/index.html> (last visited Jan. 3, 2017). The fee for filling a complaint involving up to 5 domain names at the Asian Domain Name Dispute Resolution Center is USD 1300 for complaints involving up to 2 domain names. The fee for filling a complaint involving up to two domain names at the National Arbitration Forum is USD 1300. See <http://domains.adrforum.com/main.aspx?itemID=631&hideBar=False&navID=237&news=26> (last visited Jan. 3, 2017). The aforementioned fees are for resolution of UDRP disputes by a single panelist.

54 For more information about the relationship between decision control and subjective procedural fairness, see Subsection 5.2.2.

- (2) Possible procedural delays. The ECRF and Marktplaats Gebruikersjury cannot resolve disputes if there were not sufficient jurors. In case there were not sufficient jurors, the case would simply remain pending until the required number of jurors join the case. This may have a negative impact on the objective fairness of the ECRF and Marktplaats Gebruikersjury as procedural delays are regarded as unfair by laws and courts.⁵⁵ However, it should be noted that the ECRF received more than sufficient jury applications to support the case volume (cf. Rule and Nagarajan, 2010, p. 4). One solution to this “imaginative” problem is to provide remuneration to the jurors in case that no jurors would like to participate without remuneration. The remuneration can be gradually increased until the CODR platform finds a sufficient number of jurors. However, the remuneration may also incentivise the jurors to focus on the number of decisions rendered by them, and not on the quality of the decisions.

3.4 CHAPTER SUMMARY

By examining the past and present CODR procedures, we found that the first types of CODR procedures function as either online opinion polls or online mock juries. These kinds of CODR procedures do not provide the parties with an actual resolution of their cases. Instead, the online opinion polls provide the parties with recommendations on how to resolve their cases. The online mock juries allow attorneys to use the verdicts rendered by the online mock juries as an ADR tool, in which parties that are not inclined to negotiate may see how the merits of their respective cases stand.

The ECRF was created with the aim to be the first CODR procedure that provides temporary relief to the parties. The relief is only temporary because the enforced decision is not legally binding and may be challenged before a law court. In January 2013, the ECRF was closed down. However, we still may conclude that it was a groundbreaking experiment that convincingly shows that the idea of solving a dispute effectively and at no cost by a large group of people located in many different countries in less than 22 days after submitting the claim has become reality.

⁵⁵ For more information on the relation between procedural delays and objective procedural fairness, see Subsection 5.1.7.