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**METHODS OF RESOLVING DISPUTES IN E-COMMERCE – THE EVOLVING
APPROACHE TO ALTERNATIVE DISPUTE RESOLUTION**

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Abstract

The progress of the Internet has revolutionized the way business is conducted, leading to a dynamic and transformative phenomenon known as electronic commerce or e-commerce. E-commerce refers to the process of buying, selling and exchanging goods, services and information via electronic networks, primarily the Internet. It transcends geographic boundaries, enabling seamless transactions around the world and creating new avenues for economic growth. At the same time, the legal framework governing e-commerce, aptly named e-commerce law, plays an indispensable role in regulating, facilitating and securing these digital transactions. The Electronic Commerce Act aims to establish rules that ensure the fair and secure conduct of e-commerce transactions, fostering trust between parties and mitigating potential legal or other disputes. It is a dynamic field that is constantly evolving to address new challenges brought about by technological advances, new business models and changing consumer behavior. In the field of e-commerce, disputes are an inevitable aspect of digital transactions. Resolving these disputes is critical to maintaining trust, protecting consumer rights, and ensuring the smooth functioning of online commerce. In this paper, the authors discuss the necessity of creating new dispute resolution mechanisms in the field of interaction between e-commerce entities. The goal of the research is to point out the necessity of the evolution of traditional legal mechanisms for dispute resolution, that is, the creation of new innovative solutions that will functionally contribute to the further development of e-commerce. The focus of the paper is to acknowledge the existence of alternative disputes resolution, as more effective way of resolving disputes in e-commerce.

Keywords: digital society, e-commerce, legal protection mechanisms, legal remedies, alternative dispute resolution models.

Introducing remarks

In the rapidly evolving digital age, electronic commerce, commonly known as e-commerce, has emerged as a transformative force reshaping the way businesses and consumers engage in commercial transactions (Stojšić Dabetić, Mirković, 2023, 34-42). E-commerce refers to the process of buying, selling and exchanging goods, services and information via electronic networks, primarily the Internet. It transcends geographic boundaries, enabling seamless transactions around the world and creating new avenues for economic growth. At the same time, the legal framework governing e-commerce, aptly named e-commerce law, plays an indispensable role in regulating, facilitating and securing these digital transactions.

E-commerce, short for electronic commerce, encompasses a wide range of online commercial activities. At its core, it is a digitized counterpart to traditional commerce, where buying and selling extends beyond physical storefronts to include digital marketplaces, websites, mobile apps and other virtual platforms (Menna Barreto 2009,109-123). The essence of e-commerce lies in its use of digital technologies to facilitate transactions, ranging from the purchase of physical goods and digital

products to the use of services and the sharing of information. E-commerce thrives on the speed, affordability and convenience offered by the Internet, allowing consumers to shop from the comfort of their homes and businesses to expand their reach to a global customer base. This dynamic environment has given rise to various e-commerce models, including business-to-consumer (B2C), business-to-business (B2B), consumer-to-consumer (C2C), and more recently, platform-based ecosystems (Mirković, 2023, 17-37).

The general context of contracting in modern society, which relies heavily on the use of digital technology, so much that society is primarily defined as digital, has changed a lot in relation to the traditional postulates of contracting, which are based on a written contract or contract done in writing (Stojšić Dabetić, Mirković, 2021). In the digital age, the process of contract formation through offers, negotiations and pre-contractual agreements has undergone a transformative change. E-commerce, as a virtual marketplace, presents unique legal considerations in this regard. Businesses that engage in online transactions must navigate a complex landscape that includes forming valid contracts, ensuring fair negotiations and obtaining informed pre-contractual consent. This paper addresses the alternative perspective surrounding these aspects, shedding light on the intricacies, challenges and safeguards that underpin the e-commerce contracting process in area of resolving disputes between parties.

Phenomenology of conducting business in e-commerce - a necessity for dispute resolution alternatives mechanisms

E-commerce transactions are centered on the exchange of physical or digital goods and services between buyers and sellers. Transactions may include online payments, shipping and delivery. E-commerce transactions are a fundamental aspect of the modern commercial landscape, offering a seamless and convenient way for individuals and businesses to exchange goods and services. The digitization of these transactions has revolutionized the way commerce works, allowing buyers and sellers to connect across geographic boundaries.

E-commerce transactions encompass a wide range of interactions, each tailored to different types of goods, services and transaction models. The following are some common forms of e-commerce transactions:

1. Business-to-Consumer (B2C). This is perhaps the most well-known form of e-commerce, where businesses sell products or services directly to individual consumers. Retail stores, marketplaces and online service providers fall into this category;

2. Consumer-to-Consumer (C2C). In C2C transactions, individuals sell goods or services directly to other individuals through online platforms. Online auction websites and classified ads are typical examples of C2C e-commerce;

3. Business-to-Business (B2B). B2B e-commerce involves transactions between businesses. This category includes supply chain interactions, wholesale trade, and procurement processes conducted electronically;

4. Direct-to-Consumer (DTC). DTC transactions involve manufacturers or brands selling their products directly to consumers, bypassing traditional retail intermediaries. This model allows brands to establish a direct relationship with their customers (Stojšić Dabetić, Mirković, 2022, 77-87).

In the context of using computers and other forms of digital technology for concluding contracts via e-commerce, the contracting parties, in accordance with the principle of freedom of contract and consensualism, can agree that in mutual business communication the relevant will is expressed in an appropriate, technical way or in a certain technical or electronic format (Dukić Mijatović, Mirković, 2022, 59-63)

In the domain of e-commerce transactions, consent serves as a fundamental principle for establishing mutual understanding and agreement between the parties involved. The concept of consent finds its footing in contractual arrangements, forming the legal basis that underpins the integrity of the interaction between consumers and businesses. When talking about the use of digital technology in contracting, passive and active mechanisms of contract creation can be distinguished, depending on what the contracting parties use for communication or for the purpose of concluding a contract without the need for personal presence. The distinction is based on the degree of involvement of the human factor in contracting (Gisler et. al, 2000, 15-18).

In the dynamic landscape of e-commerce, contractual agreements stand as beacons of assurance, outlining the terms, conditions and mutual obligations of the parties. An act of consent is inherently built into these agreements, as the parties expressly or implicitly acknowledge their understanding and willingness to abide by the stipulated terms. E-commerce platforms often use mechanisms through which parties provide implicit consent. By clicking "I accept," "I agree," or a similar term during the checkout process, consumers are effectively entering into a contractual agreement with the business. This acceptance signifies not only agreement to the terms, but also recognition of the implications of the terms for data use, privacy and transaction integrity. In addition to wider acceptance of the conditions, express consent may be requested for certain activities. For example, consumers may provide express consent to receive promotional emails or share their information with third-party partners. These consents, when explicitly given, are integrated into the wider contractual framework. Treaties not only establish the parameters of consent, but also provide mechanisms for enforcement. When one party violates the terms it has agreed to, the other party may seek remedies through legal or other channels. This reinforces the importance of consent within the contractual context, highlighting its key role in maintaining the balance of e-commerce transactions. Consumer protection regulations often intersect with contractual agreements to ensure that consents are transparent, fair and informed. Regulatory frameworks can mandate that contracts be written in plain language, providing consumers with the clarity necessary to make informed decisions. Therefore, e-commerce by itself transform the way businesses are done, and legally defined. In that regard a new type of contract, smart contracts have been introduced in e-commerce, specifically in specific markets. Smart contracts have found their application in the practice of banks for granting loans and automatic payments, insurance companies for processing claims, courier services for payment after delivery (Mirković, Stojšić Dabetić, 2019, 58-62). Because of the nature of e-commerce, the "*speed of transaction*", the distance between entities and the usage digital technology, arising question of regulations for future disputes is more then ever a question that transforms traditional legal remedies and concepts. A necessity for quick solutions in this matter is the one that can determine how much and how often the subject are going to be engaged in this type of business. One can argue that the future of e-commerce is not on the ledger of technological advancement, but more on the aspect of security associated by the level of trust and protection in conducting business and the speed of which disputes are resolved.

Resolving disputes in e-commerce - the necessity of securing the usage of alternative methods

The dynamic progress of e-commerce brought a massive level of necessity to subjects of e-commerce to find new and alternative ways of resolving disputes in favor of doing business. Traditional ways of resolving disputes by legal methods and institutes are in need to be reevaluated to be in favor of e-commerce. Also, the binderies of "*traditional legal institutes*" means that there is a necessity of finding new, alternative ways of resolving disputes in every faze of e-commerce business. In the field of e-commerce, disputes are an inevitable aspect of digital transactions. Resolving these disputes is critical to maintaining trust, protecting consumer rights, and ensuring the smooth functioning of online commerce. From contractual disagreements to issues related to product quality or data privacy, e-commerce entities must use a variety of dispute resolution methods to resolve conflicts. This research takes on alternative perspective on e-commerce dispute resolution, shedding light on the mechanisms, frameworks and regulatory considerations that guide dispute resolution in the digital age. The concept of this part of paper is to address and explain different methods of resolving disputes that can be identified in different fazes of conducting business in the field of e-commerce. Because of the nature of e-commerce, there are different types of issues that can be identified in every phase of business as potential problems that can lead to disputes and therefore in a need for resolution.

Negotiations and communication as the first mechanism of resolving disputes

The first step in dispute resolution involves direct negotiations between the parties involved. E-commerce businesses and consumers can engage in open communication to address issues, clarify misunderstandings, and reach mutually acceptable solutions. Negotiation is a flexible and informal method that can often lead to quick solutions without involving third parties.

Negotiations and communication play a pivotal role as the initial and often the first line of defense in resolving disputes within the realm of e-commerce. In the dynamic and digital landscape of online transactions, where misunderstandings, logistical issues, or other disputes may arise, the ability to engage in effective negotiations and clear communication is crucial. This mechanism offers flexibility, fosters understanding, and has the potential to preserve relationships between parties involved in e-commerce transactions. First and foremost is a necessity of open channels of communication. Establishing open and prompt lines of communication is essential. Parties should feel encouraged to communicate concerns, questions, or issues as they arise. In that regard, e-commerce platforms and businesses should provide clear contact information, ensuring that customers and clients can reach out easily. This system need to integrate adequate level of personal information of every participant in this process. On the other hand, there's a necessity for data collection regarding each participant to be minimized and secured for privacy protection. This method of resolving disputes is the one that traditionally is in use for every type of business, going from traditional commerce business to new ones in area of digital economy including e-commerce as part of it (Dukić Mijatović, Mirković, 2022, 59-63). Therefore, first method or mechanism for resolving disputes is the one that is not formal, rather that is the one that is used often as first method. Positive aspects are that they are very unformal, easy and cost effective. A negative aspect is a necessity for more in-depth information about all participants involved in particular business transactions in a domain of e-commerce. Every possible conflict must be addressed by this method as the researchers have found that majority of initial problems in conducting business in area of e-commerce are resolved in the first unformal manner.

Real-time communication platforms – new approach in resolving disputes in e-commerce

E-commerce is based on the usage of different types of digital products, mainly in area of communication. Progress that world have seen in Industry revolution 3.0 and 4.0, Internet and AI, have transformed many aspects of social interaction, consequently also in conducting business. Therefore, a new ways of doing business that has emerged in area of e-commerce brought a new possibility's of, not only doing business, but also establishing new ways of resolving potential conflicts between interest parties. As we can acknowledge, not only that that e-commerce had impacted and transformed the ways of businesses interactions are conduct, the majority of changes have also impacted the way that disputes, conflicts and misunderstanding in every day businesses activity's are dealt with.

There are different models of conducting businesses activities in a area of e-commerce, and therefore are a different types of communication platforms. Their role are primarily to be a platforms that connect sellers and buyers. But the necessity is that this platform need to be able to deal with potential misalignment of interest of business subjects in particular transactions. On that regard real time communication platforms are now transforming in the way they can be in use of resolving various types of problems that may arise. This platform are now one on new approach in area of this research. Many e-commerce websites as “platforms” incorporate live chat features, allowing customers to communicate with support representatives in real-time. This immediate access to assistance can prevent issues from escalating in more problematic disputes (Dukić Mijatović M., Uzelac O., Mirković P., 2022, 1225-1239). Every subject in this types of transactions have in their best interest for particular business to be resolved successfully. That brings us to the role of web site platforms, and their role in this particular case. Primary role of this platforms is to provide customer support hotlines and to be a bridge in communication between seller and buyer. E-commerce platforms must have transparent policies regarding product descriptions, shipping, returns, and other relevant information. Clear communication of policies helps manage expectations and give valid information of relevant to every aspect of business transaction, including also a communication between relevant parties. Providing a customer support hotline enhances direct communication, enabling customers to speak with a representative and resolve issues efficiently. In that regard, legal responsibility of platforms are to comply with regulation in regard to personal privacy and information. Also, a person behind this process associated to platform in some form of employment, is in special legal connection with representatives of platforms and have various types of obligations

in a domain of conducting his role and protection data and privacy of each subject. Positive aspects of this type of resolving disputes is that in more cases problems are solved in direct communication with all interested parties at beginning of possible dispute. Essential, there's role are to mediate between subjects and resolve disputes in its initial phase. Many problems are associated with miscommunication between subjects in e-commerce, and this way of addressing this issue is proving to be effective, specially in correlation with little cost and time effectiveness. The limiting factor of this model of is that a more difficult problems between parties is going to be more challenging, and therefore not suitable for resolving disputes.

The role of e-mail communication in resolving disputes

Ensuring that business ententes are aware of, and understand, the terms of service can prevent disputes is one of key aspects of resolving disputes. In that regard, clear language and accessible documentation contribute to transparency of each individual business transaction via e-commerce. Toolset that are eligible for resolving disputes are closely associated with various communication channels. The benefits of digital technology in a domain of digital economy is the variety digital tools that can have significant role, not only in initiating business but also in resolving potential conflicts, problems or disputes (Dukić Mijatović, Mirković, 2022, 53-70). E-mail communication is the first kind of digital communications technology that have had a significant impact on the rise of digital economy and therefor e-commerce as its main “*product*”. One of characteristics of e-mail, is in its technical element and that is that e-mail serves have a written record of communication between users, in this case a business entities. There is a digital written proof of every communication that's have been established and digitally processed between businesses entities. Therefore, e-mail as it self is not only a way to communicate to other subject, but also a possible tool for dissolving disputes, specially when occurs in some domain of business. When a possible dispute arise, communication via e-mail can be very useful digital tool to address the issues that arise in some aspect of business transaction. Structured and detailed emails can be used to articulate concerns, propose solutions, and engage in a documented negotiation process. Positive aspects of this mechanism of resolving disputes are direct communication between interested parties, that is not linked to other entities such as is with communication platforms. Also, a technical aspect of email communication is a history of every e-mail sent or received, which can be useful in any possible miscommunication that can be easily traced because of the stored history information. A negative aspect, or better said a limitation, is remote distance between entities that can only communicate with one and other via text message trough e-mail. Therefore this method of resolving any disputes in e-commerce is limited by the technical aspect of one, in this particular case a communication via email has its own limitations.

Online dispute resolution (ODR) platforms

Many e-commerce platforms have their own internal mediation processes. When disputes arise between buyers and sellers on these platforms, the platform's mediation services can help facilitate communication and reach a mutually beneficial solution. Online Dispute Resolution (ODR) platforms are digital platforms designed to facilitate the resolution of disputes that arise in online transactions, that is commonly identified in e-commerce. These platforms leverage technology to provide a virtual space where parties involved in a dispute can engage in negotiations, present evidence, and ultimately reach a resolution without the need for traditional legal proceedings. The basic principle is based on the legal aspect of arbitration as an alternative method for legal disputes (Mirković, Lampe, Džudović, 2009). These platforms provide a virtual forum where parties can present their cases, exchange evidence and engage in discussions to reach a resolution. As we can conclude, this mechanism of resolving legal or other disputes is much in common with the arbitration's system known as alternative method that doesn't include state courts. The main difference is that ODR platforms often use technology to facilitate efficient and cost-effective dispute resolution, placing the whole process in virtual domain. One can say that the ODR platforms play a crucial role in the e-commerce landscape. Nonetheless, the progress of e-commerce have had a big effect on establishing this type or method of resolving disputes.

Main components of ODR platforms include following. Firstly, ODR platforms offer virtual mediation and arbitration services. Mediation involves a neutral third party facilitating negotiations

between the disputing parties (Počuča, Mirković, 2009, 109-116). The main difference in association with arbitration on the other hand, entails a third-party arbitrator making a binding decision after considering the evidence presented. Therefore the ruling of arbitrator is final in legal terms and it is the one that is given by the third-party person-arbitrator. Mediation only facilitate the process, bringing two parties in position to mutually come to the agreement. Secondly, one of the primary advantages of ODR platforms are its accessibility. Parties can engage in the resolution process from anywhere with an internet connection, eliminating the need for physical presence in a courtroom or mediation office. On the other spectrum, arbitration is done primarily in physical presence of each subject, what can be a difficult task to comply, especially in cross-border business transactions. The convenience factor is particularly important in cross-border disputes where participants may be located in different countries and time zones. One of components of ODR platforms is that many of e-commerce platforms integrate ODR mechanisms directly into their systems. This integration streamlines the dispute resolution process, making it easier for users to access ODR services when needed, which is convenient for every party involved. The integration often includes features such as a dedicated dispute resolution portal, automated notifications, and seamless data transfer. Finally, ODR platforms provide tools for managing documents related to the dispute. Parties can submit evidence, documents, and relevant information electronically, creating a centralized repository for the resolution process. This digital evidence submission streamlines the dispute resolution timeline and ensures that all relevant informations are easily accessible. Also worth mentioning is that ODR platforms are often a cost-effective alternative to traditional litigation. The virtual nature of the process reduces the need for physical facilities and can significantly lower the overall costs associated with dispute resolution.

Concluding remarks

The legal perspective of e-commerce dispute resolution encompasses a range of methods that meet the unique challenges of the digital environment. The method chosen depends on the nature of the dispute, the parties involved and the applicable legal framework. As e-commerce continues to evolve, effective dispute resolution mechanisms remain vital to maintaining consumer trust, encouraging responsible business practices and fostering a thriving digital marketplace. Establishing clear lines of communication, utilizing various platforms, and embracing transparency can lead to effective negotiations and, ideally, prevent disputes from escalating to more formal mechanisms. This approach not only addresses immediate concerns but also contributes to the long-term success and reputation of e-commerce businesses. Dispute resolution methods in e-commerce must uphold the principles of fairness, transparency and impartiality. Parties should have equal access to the process and the opportunity to present their case. If other methods do not bring a satisfactory solution, the parties can resort to litigation - take the dispute to court. Litigation involves formal legal proceedings and can be time-consuming and expensive. However, it can provide a final and enforceable decision when disputes cannot be resolved by other means. There is a clear correlation between the progress of e-commerce and the "innovation" of different types or methods of resolving disputes. One can argue that the future of e-commerce is directly in correlation with the effectiveness of resolving disputes in timely manner. Therefore, it is crucial that all methods addressed in this paper of resolving disputes are presented to the subjects of e-commerce.

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