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Advances in Online Dispute Resolution**

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## **From eBay to Eternity: Advances in Online Dispute Resolution**

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## **Introduction**

Innovations in the use and application of technology are increasingly making Alternative Dispute Resolution (ADR) services and trainings available to ever wider audiences. For some disputants, online dispute resolution (ODR) makes sense due to the challenges posed by geographic distances, time and scheduling concerns, or the other obstacles posed by face-to-face meetings. Some ADR practitioners and programs are integrating ODR into their traditional practices by moving some part of the dispute resolution process online. This paper will give a broad overview of the ways in which technology is changing ADR practices and making ADR services available to previously underserved disputants. There have been more than 115 ODR sites and services launched worldwide (Conley Tyler 2005) with services now available in all regions of the world. ODR has been used to resolve disputes in arenas as varied as family law, the workplace, e-commerce, insurance and even community and political conflict. Starting from the premise that “online communication is, and will increasingly become, a normal and natural part of the way disputes are resolved” David Syme argues that the human inclination for adaptation will result in the increased use of these technologies for problem solving, including the resolution of disputes (2006). Syme notes that the acceptance of online technologies varies by generation, with younger disputants being more likely to accept and use ODR as a routine part of dispute resolution service delivery.

We define ODR as dispute resolution processes conducted with the assistance of communications and information technology, particularly the internet. Similar terms are “online ADR”, “eADR”, “iADR”, “virtual ADR”, “cyber mediation” and “cyber arbitration.” Simply providing information about ADR on a website is not ODR: some dispute process must be attempted. A range of communication methods can be used, including:

- Email - a virtually instantaneous transfer of mainly text messages
- Instant Messaging - a variant on email that allows synchronous online chat
- Online Chat - a synchronous, text-based exchange of information
- Threaded Discussion (also known as bulletin boards) - an asynchronous, textual exchange of information organized into specific topics
- Video/Audio Streams - asynchronous transfer of recorded messages
- Videoconferencing - synchronous transfer of video information.

ODR takes many forms and deals with many types of disputes. Examples include the “Justice on Wheels” program in the State of Santo Spirito, Brazil, in which a judge travels to the scenes of car accidents to analyze witness statements and assessor’s reports using an artificial intelligence program. The result has been a huge decrease in the time necessary to resolve accident related disputes (Conley Tyler and Summers Raines, 2006).

Likewise, in Australia, judges are conducting hearings via webstream to resolve land claims disputes with distant aboriginals, resolving disputes in a more timely fashion and saving scarce resources for the court system due to reduced travel costs (Tamberlin 2005).

Here in the United States, San Francisco based Squaretrade.com has provided mediation services online to more than 1 million commercial disputes between buyers and sellers on eBay. Squaretrade.com allows parties to use self-guided settlement software to try to resolve their dispute at no cost. This works to resolve the dispute in about 80% of all cases. When this fails to be sufficient, the disputants can elect to pay a fee to bring in an online mediator. These are trained and experienced mediators who apply their skills through the medium of the internet, using shuttle diplomacy via secure emails to resolve the dispute (Abernathy 2003; Raines 2006). Squaretrade.com offers mediation services in multiple languages, at no extra cost, to disputants who are

typically separated by national boundaries. For most of these cases, distance and jurisdictional difficulties make resolution through the courts or through offline ADR cost prohibitive and unlikely.

ODR technologies are being used to help parties address and resolve conflict that would otherwise be impossible to address. Info-Share is making it possible for the disputing parties in Sri Lanka to negotiate and dialogue when face-to-face meetings would pose insurmountable security risks (Hattotuwa 2005). Mobile phones are being used as a medium for ODR in areas where personal computers are few and far between (Conley Tyler 2005a). Local radio programs are disseminating Conflict Resolution Education (CRE) modules and building tolerance through cross-cultural education in high conflict areas. Hattotuwa (2005) reminds us that disputants in developing countries do not have access to the land-lines and the steady electricity necessary for ODR which depends primarily on personal computers (PCs). Instead, innovations in ODR are occurring with non-PC technologies, such as cell phones, radios, Blackberries, and other wireless technologies. In fact, it is likely that lessons learned from these countries may be transferred to the economically more developed countries in the future, rather than flowing in the other direction.

Some, like the Federal Mediation and Conciliation Service (United States), overcome access to technology problems by bringing laptops, projectors and software to the workplace to help mediate labor-management disputes (Conley Tyler and Bretherton 2003). Other ODR systems use online communication for case management while still employing face-to-face mediation, such as the Retail Tenancies Unit of New South Wales, Australia (Conley Tyler and Bretherton 2003).

In the United States, family law attorneys and mediators are mediating some cases online, particularly those in which one parent has moved out of state and/or when there are concerns about past incidences of violence between the parties. The

division of personal property, discussions of asset and debt division, and some parenting decisions can be made through secure email or teleconferencing.

Additionally, the 'convenience factor' can add up to significant time and cost savings, as mediators, attorneys and parties need not travel to attend mediation session, parties need not coordinate their schedules (if asynchronous messages are used).

Additionally, participants can take the time needed to formulate calm, constructive questions and answers in the online format in these oft-heated sessions (Raines 2005).

Governmental and non-governmental organizations are increasingly using teleconferencing and online for a to hold "virtual conferences" and to hold facilitated dialogs and to promote collaboration. The transference of these processes to an online format allows widespread participants and interest groups to take part in important decision making and information sharing processes. Additionally, since these processes are occurring online, it often makes them more accessible and transparent for groups that might otherwise be left out of the loop (Brooks 2006).

In addition to these applications, there is research underway to investigate the utility of ODR in dispute prevention and community building initiatives (see Conley Tyler and Martyres 2005; and Balvin 2005).

Just like offline processes, online dispute resolution programs have varying settlement rates depending on the program design, type of cases handled, and the skills/training of the roster of neutrals. While more work needs to be done to evaluate ODR programs, it appears that settlement rates are similar to those found in many offline ADR processes handling similar cases (Conley Tyler and Bretherton 2003: 2). Client satisfaction levels can be high: for example, 80% of the customers surveyed by SquareTrade.com said they would use the service again (Conley Tyler and Bretherton 2003: 24). During its initial efforts, ClickNSettle.com offered both automated online settlement tools as well as e-arbitration using live arbitrators. About half of all clients

chose to use the online settlement tools, with about 45% resolving their cases with no additional assistance needed (Ibid). Similar to offline processes, one key to high satisfaction levels is to ensure that the case is appropriate for ODR, and that the mediation process and the technology have been adequately understood by all parties.

Just as there is no limit to how and where conflict can arise, there is no limit to the human capacity to solve problems in innovative ways. Computers, the internet, cell phones, teleconferences, radio, and other mediums for communication will increasingly be used to improve the process of dispute resolution and to make these processes more accessible to all. Chronicling and evaluating these efforts will be an ongoing task that will make possible the dissemination of these advances and enable increased access to ADR practitioners and services.

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