**Introduction**

In 2011, the world was able to witness the ultimate power of information and communication technologies (‘ICTs’) in a socio-political context. A tidal wave of revolutions in the Middle East was spurred through online communication between netizens and citizens. Less visibly, the ongoing proliferation and advancement of ICTs is having a profound impact in all regions of the globe in diverse socio-legal, economic, cultural, and political continua. As this book documents, ICTs are fundamentally changing institutions in every country, altering our shared world and our particular cultures and institutions.

The spread of ICTs, as a non-linear, asymmetric, and highly differentiated phenomenon, has intensified socio-cultural, political, economic, and legal interaction between diverse societies and systems. The technological revolution brought by the Internet has altered the scale according to which human affairs are being conducted and has fostered a new medium that has impacted well-established legal conceptions, especially with respect to dispute resolution. The acceleration of change, the increasing complexity of relationships and transactions and the lowering of costs of publication and organization are all accompanied by disputes and, in response, there is a growing need for the kinds of creative technology-assisted dispute resolution processes discussed in this book.

John Naisbit was unequivocally right when he stated that ‘instantaneous global communications have given us a window on the world through which can be seen both the wonder of it all and the things that make us wonder about it all’. In cyberspace, there is rapid growth and deployment of new communication technologies, speed and mobility are increasing while costs and barriers to access are decreasing. Communication tools such as texting, electronic mail, message posting, electronic discussion groups, web-based conferencing, and videoconferencing, have made it possible for people to virtually communicate asynchronously and synchronously from almost anywhere.

The utilization of these new means of telecommunication, information processing and data storage have facilitated online interactions and e-commerce and m-commerce transactions that take a mere fraction of a second to be completed. Accordingly, the new virtual and frequently mobile media require the presence of an efficient and adequate system of dispute resolution that addresses a range of possible disputes, and promotes trust and confidence in doing business online.

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The most well-known book on dispute resolution, *Getting to Yes* by Roger Fisher and William Ury, was published in 1981, exactly thirty years ago. It argued that a new approach to dispute resolution was needed because ‘conflict is a growth industry’² and courts were inadequate and inefficient in responding to disputes. During the last three decades, the Alternative Dispute Resolution (‘ADR’) processes of negotiation, mediation, arbitration, have not only grown in use but have became the primary forms of dispute resolution.

The year 1981 was also significant for the world of technology. It was the year that the IBM PC, one of the most important contributors to the growth in the use of computers during the last three decades, was introduced. If ADR contributed to moving dispute resolution out of court, the PC contributed to moving technology into the home, the workplace and, indeed, almost any other place one can think of. This contributed to economic growth and, as described in this book, to conflict again becoming a growth industry and again generating a need for new approaches to dispute resolution.

The idea of this book materialized when it became evident that the ODR has spawned a new culture of dispute resolution with new norms, schemes, and applications. It may be viewed as a parallel universe that co-exists with and also interacts with traditional forms of dispute resolution. This book comes as a timely initiative and a promising project is engaging many authorities of the ODR field look closely at the interplay between law, technology, and dispute resolution. The context for this and timeliness of the book stems from the fact that the UNCITRAL has acknowledged the distinctiveness of the ODR field by establishing a new Working Group dedicated for ODR as a special and independent track of dispute resolution.

This need for a comprehensive sourcebook for ODR cannot be overlooked. It is ten years since the first books about ODR were published and there has been significant activity and accomplishment in the interim. In 2000, for example, the process for settling domain name disputes still relied on the faxing and mailing of paper documents. Ten years later, more than 30,000 domain name disputes have been handled and almost everything about the process is online. Ten years ago, the most notable example of ODR was its use in thousands of eBay buyer-seller transactions where buyers and sellers were unlikely to be able to meet face to face and dollar amounts were often too small to litigate in court. Today, eBay handles over sixty million in a year.

This book is intended to provide an in-depth analysis and overview of not only the past and present but also the future of ODR. It is intended to serve as a guide to scholars and

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practitioners having an interest in the interplay between dispute resolution and ICTs. The book employs international, comparative, empirical, and interdisciplinary approaches to a myriad of legal and technical issues across the ODR spectrum. ODR is a field that lies at the intersection of dispute resolution and technology and our challenge has been to examine the many different areas that are being touched by these elements of modern life.

This book is divided into two main parts. The first part is dedicated to scrutinizing ODR, its applications, its interconnection with established legal and extra-legal doctrines and principles, as well as its past, present, and future. The second part shall map and track ODR and its applications on regional and continental levels, where six chapters are dedicated to mapping ODR in Europe, North America, Asia, Africa, Australia, and South America. Whilst acknowledging the rapid advancement in ICTs and the dynamic nature of dispute resolution schemes and principles, this book promises its readers rewarding and durable, as well as timely content.

As explained in the first chapter of this book, ODR was initially thought of as a means of redress for disputes that arose online, disputes often between parties in different countries and in which courts and face to face ADR were not feasible. Successes in those disputes led to the use of ODR in traditional offline disputes, sometimes to assist a mediator or arbitrator and sometimes to replace the third party altogether. Today, as ‘the digital world merges with the physical world’, ODR is moving forward on two tracks. It is building upon and being integrated into familiar dispute resolution processes. It is also generating novel approaches to responding to and preventing conflict, approaches that could not have been developed in a face to face world.

ODR is a multifaceted phenomenon and is worthy of the kind of broad treatment provided by this book. Whilst acknowledging ODR as a dispute resolution, and possibly dispute prevention, field, it seems abundantly clear throughout the book that the term ‘ODR’ is not subject to universal agreement over its meaning and scope. ODR is described by some as technology-assisted dispute resolution, by others as technology-facilitated dispute resolution, and by still others as technology based-dispute resolution schemes. The metaphor most commonly used to explain ODR, one that perhaps encompasses all of these characterizations of the use of technology in dispute resolution, is the ‘Fourth Party’, a phrase meant to indicate that ODR makes technology a presence, sometimes minor and sometimes major, in dispute resolution processes.

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In the first part of the book, every chapter focuses on one element in the dispute resolution/technology relationship, but every chapter also does more by linking to one or more dispute resolution and/or technology oriented themes and challenges.

Chapter 1 provides a temporal overview and journey into the ODR world, its origins and evolution in an attempt to discern the future trajectory of ODR, which is perceived as the only approach to dispute resolution and prevention that can play a role not only in a highly complex future but one in which change is occurring at a rapid pace.

Chapter 2 offers a theoretical analysis of the ODR field and discusses the potential for the development of an ODR conflict resolution theory, which, as perceived, will eventually challenge the fundamental traditional definitions of interaction in many ways. The authors predict that a general cluster of theories will develop around what they refer to as the ’virtual interaction theory’.

Chapter 3 addresses a disconnect between dispute systems design (‘DSD’) and ODR. The authors show that the need to integrate technology into the ADR field has been understood only in a narrow area and in a limited fashion. It is argued that the reach of new technologies is far more pervasive and holds a promise for transforming in a very deep sense some of the ADR field’s most deep-rooted assumptions in the area of DSD, which employs and embeds technology in the system created in a manner that would lead ODR down a path that will generate new options, new challenges, new roles and new expectations. It is argued that the use of technology tends to lead both to the emergence of more complex processes and also to technological resources to manage these more complex processes.

Chapter 4 focuses on the applications of automated human intelligence in the ODR field, where the authors explore how online dispute resolution systems can offer intelligent negotiation support. The authors also discuss how such intelligent support can be useful in understanding international conflicts and how it is vital that in legal domains, such support focus upon justice rather than merely meeting the interests of the disputants. Throughout the chapter, the authors offer a detailed overview of their model for intelligent online dispute resolution services.

Chapter 5 discusses the interplay between ODR and mobile phones. The author submits that in terms of pure business where the models of ODR have changed, it is not the PC but the mobile that is most prevalent as this is what the profit line demands. Moreover, the author emphasizes the role of mobile phones in conflict transformation and in peoples’ struggle for democracy in an ever-changing world. The author further advocates strongly that existing ODR providers more rapidly move to mobile platforms.
Chapter 6 addresses the need, prospects, and challenges for the development of a global cross-border ODR redress system, and proposes that the pertinent questions for this decade and beyond concern the scope of such a system, the legal instruments needed to support the system, the logistics and technological building blocks of the system, and identification of the appropriate players that will alter traditional notions of redress to obtain ‘rough justice’. The author further submits that the creation of a global ODR system requires an inevitable reconfiguration of basic ADR conceptions to best serve the interests of all stakeholders.

Chapter 7 focuses on the business side of ODR by addressing the relationship between ODR and e-commerce. The author discusses and analyzes the prospects and challenges to integrating ODR in e-commerce. The author provides a succinct overview of the diverse ODR schemes as well as regulatory instruments available for e-commerce transactions and disputes. Moreover, the author sheds light on some of the technical and legal issues in the context of ODR and e-commerce.

Chapter 8 is dedicated to addressing the prospects and scope of settling consumer disputes through ODR schemes. The author analyzes ODR financing issues, procedural standards, and mechanisms for settlement, whether consensual or adjudicative. The chapter concludes by providing an overview of future trends in consumer ODR.

Chapter 9 deals with the interplay between ODR and Online Reputation Systems. The authors provide a detailed comparative analysis of online reputation systems, from legal and technical perspectives, with references to leading precedents and insightful case studies to denote the symbiotic relationship between ODR and online reputation systems. The authors submit that the next wave of sophistication and maturity in online reputation systems will usher in user demands for fairness, justice, and transparency, which necessitate the use of efficient ODR schemes.

Chapter 10 focuses on an essential concern of ODR systems, the role of culture in ODR. The author addresses the interplay between ODR and culture with special emphasis on the basic demands of ODR systems and the proper and efficient use of ODR as a communication channel. In principle, the successful proliferation of ODR services worldwide is conditional upon due consideration of cultural differences. The author submits that the creation of ODR channels offers the possibility for parties from a wide variety of cultures to flex into the norms created by the use of an online system.

Chapter 11 scrutinizes the role of interpersonal trust in ODR, especially in negotiation and mediation. The author also discusses the challenges to trust in ODR processes. The
author submits that trust, for a variety of reasons ranging from technological to psychological, is extremely challenging to develop and maintain online. Nevertheless, online negotiators and mediators may overcome diverse challenges by resorting to, and developing, new methods for trust building online.

Chapter 12 discusses yet another difficult area of ODR, ODR and eGovernment. The authors submit that in order for ODR to make sense in the context of e-government, it is necessary to expand the notion of what ODR is to include functions that help manage conflict that is not resolvable, help facilitate communication in a wide variety of contexts, and help develop and sustain trust in governmental entities and activities. Moreover, the authors acknowledge that ODR has a very solid place in delivering services and resolving disputes within government agencies, disputes between government agencies and citizens, and disputes among private sector organizations seeking government resolution assistance. They further recognize that the very existence of ODR is likely to enhance government transparency, access by citizens to government policy debates, delivery of government services, and redress of citizen grievances, is going to transform the traditional roles and responsibilities of government agencies.

Chapter 13 addresses an intricate issue, the interplay between ODR and traditional theories of justice. The authors attempt to demystify the notion of justice by analyzing diverse forms of justice such as distributive, procedural, retributive, and restorative. The authors further engage in an analysis of the diverse requisites for just and fair ODR schemes, especially that ODR has positively contributed to the creation and shaping of an online justice system. The authors conclude with an examination of the compatibility of ODR schemes with distributive and transformative models of justice.

Chapter 14 analyzes the relationship between ODR, courts, and the judicial system. The authors provide a practical assessment of diverse initiatives of court annexed ODR schemes in the USA, Australia, the UK, and Singapore. The authors conclude with an overview of the future of state sponsored and court annexed ODR schemes.

Chapter 15 provides a theoretical and practical overview of the interplay between ODR and Ombudsmanship. The author provides insightful analysis regarding the role of an ombudsman as distinguished from other conflict resolvers and managers. The author further addresses the role of ODR in the context of ombudsman programs prior to concluding with some guidelines on the use of ODR technology by ombudsman practitioners.

Chapter 16 is dedicated to the theory and practice of e-Negotiations, and the authors provide an in-depth analysis of the essentials of an eNegotiation System components, the
advantages of eNegotiation, and the prospects and challenges of eNegotiation. The authors further provide an overview of their successful and patented eNegotiation system (Smart-settle) prior to concluding with an illustrative example pertaining to water disputes and a final assessment of the future of eNegotiations in the context of ODR.

Chapter 17 is dedicated to yet another crucial ODR scheme that is often perceived as the most successful ODR scheme, e-Mediation. The author provides a detailed overview and assessment of e-mediation’s organizational structures, models, advantages and disadvantages, challenges, prerequisites, substantive and process issues, and choice of technology. In the context of the above analysis, the author provides practical examples and information.

Chapter 18 is equally devoted to e-Arbitration as a prominent ODR scheme. The author provides a detailed overview and analysis of the prospects and challenges of e-arbitration in relation to e-arbitration agreements, e-proceedings, and e-awards. Following such analysis, the author sheds light on the recent work of the UNCITRAL’s ODR group in this context as well as some successful e-arbitration initiatives prior to concluding with a brief overview of the future of e-arbitration.

The second part of this book is dedicated to mapping and tracking ODR in diverse regions and continents. On such account, chapter 19 provides a detailed overview of diverse ODR initiatives across North America. That authors offer an analysis of ODR projects in the private sector, in the public and governmental sectors, and in relation to professional organizations. The authors’ review of the diverse ODR projects extends to both the USA and Canada.

Chapter 20 focuses on ODR in Europe by addressing institutional, public, and private initiatives. The authors also provided an overview of the current European landscape as well as the diverse ODR schemes employed throughout the European continent.

Chapter 21 discusses existing ODR schemes and initiatives in Australia. The authors discuss ODR projects in the government sector, the courts, and in the family sector. The authors equally shed light on the required regulatory framework including references to e-commerce, arbitration, and consumer protection laws. Prior to concluding, the authors also address the Australian Guidelines for Electronic Commerce.

Chapter 22 deals with ODR schemes and initiatives in Asia, and more specifically in China, Japan, and India, where the authors discuss the diverse ODR initiatives existing in such three major economies. The authors equally address the ODR outlook in the three States,
and the chapter includes a succinct report on the Tenth International ODR Forum held in Chennai, India on 7-9 February 2011.

Chapter 23 is concerned with mapping ODR in Latin America, where the author provides a detailed overview of the diverse regulatory initiatives in support of e-commerce and ODR, and sheds light on some promising ODR initiatives in Latin America including Mexico. The author finally concludes by referring to the ODRLatinoamerica social networking initiative for conflict resolution professionals, and by stating that the readiness of the region for the adoption of Global ODR initiatives is conditional upon the promotion of local and regional ODR services that cater for different needs.

Chapter 24 focuses on Africa as a rich and promising continent that is capable of embracing successful ODR initiatives provided that an adequate regulatory and infrastructure framework exists. The author analyzes Africa’s ICT and ODR readiness, and provides an overview of the legal and regulatory matrix of ODR related instruments that are needed to boost e-commerce, e-trust, and ultimately ODR. The author concludes by shedding light on two existing ODR related initiatives in South Africa, which appears to be the leading ODR country in Africa. The author also submits that north Africa, especially Egypt, Tunisia, and Morocco rank amongst the leading African States that are capable of fostering and nurturing successful ODR initiatives.

In light of all the above mentioned, this book does offer interdisciplinary analysis of intricate, contemporary, and pervasive issues which remain in a state of flux. It is acknowledged that the ODR field is constantly evolving, and this book does represent a significant and valuable account of legal, technical, and practical scholarship on innovative topics that will continue to remain at the heart of the ODR knowledge base.

By and large, ODR is considered a global phenomenon that requires due consideration of cultural practices, global and local norms, technical and technological standards, and regulatory initiatives. This will certainly pave the way for the development and progression of ODR schemes, applications, and initiatives on local, regional, and global levels.

Finally, the editors hope that readers, whether scholars, students, or practitioners, enjoy and appreciate the availability of a treatise that combines a wealth of theoretical and practical approaches to a multifaceted phenomenon such as ODR. The chapters in the book represent a discussion of the key issues driving the development of ODR, and a lens through which readers may observe and understand the issues facing dispute resolution practitioners as we all struggle with how to integrate ODR and ICTs into ‘mainline’ dispute resolution theory and practice.