

Online Dispute Resolution

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INTRODUCTION

Every community—whether physical or virtual—will inevitably experience conflict. New ways of interacting through information and communication technology has led to new conflicts, such as domain name or e-commerce disputes. At the same time, governments need to deal with the entire range of disputes in society, whether crimes, neighborhood disputes, ethnic conflict, or disputes with its own employees. A key role for government and for e-governance is providing mechanisms to help resolve these disputes.

The emerging area of online dispute resolution (ODR) potentially offers a useful set of tools and techniques for resolving disputes. Capable of being used for both online and off-line disputes, ODR has already proved that it can provide effective resolution for at least some disputes: more than 1.5 million cases had been successfully resolved online to July 2004 (Conley Tyler, 2005).

Governments and e-governance institutions around the world are adopting or considering the applicability of ODR as a tool for digital government.

BACKGROUND

ODR refers to dispute resolution processes conducted with the assistance of information technology, particularly the Internet.

ODR has been available since 1996 and has rapidly passed through three broad stages of development:

- A “hobbyist” phase where individual enthusiasts started work on ODR, often without formal backing
- An “experimental” phase where foundations and international bodies funded academics and non-profit organizations to run pilot programs
- An “entrepreneurial” phase where a number of for-profit organizations launched private ODR sites (Katsh & Rifkin, 2001, pp. 47-72).

ODR is now entering a fourth “institutional” phase where it is piloted and adopted by a range of official bodies including courts and government dispute resolution agencies (Conley Tyler, 2003).

Two main forces have been driving the development of ODR to date (Conley Tyler & Bretherton, 2003). First, the difficulty of utilizing traditional dispute resolution methods in low-value cross-border disputes has led to interest in low-cost, cross-jurisdictional dispute resolution methods. This has been a particular concern for governments and intergovernmental organizations interested in fostering e-commerce (Federal Trade Commission, 2000; OECD, 1999; Trans Atlantic Consumer Dialogue, 2000). Without effective remedies in the “borderless marketplace,” where traditional court-based remedies are not a realistic option, consumers and business may decide not to transact (Consumers International, 2001). Consumer confidence is seen as a key issue in increasing the level of online commerce.

At the same time, the forces that promoted alternative dispute resolution (ADR) as an alternative to court adjudication in recent decades are also driving the development of ODR. Some ADR enthusiasts have been motivated to investigate the potential of the online medium to provide more effective techniques for dispute resolution—in some cases, from simple curiosity (Raines, 2006). The search for more convenient, cost-effective, efficient, and durable ways of resolving disputes will continue for as long as disputes exist (Brannigan, 2004).

CURRENT STATE OF ODR

Types of ODR

ODR has adapted traditional dispute resolution processes for use online, including facilitated negotiation, mediation, arbitration, and case appraisal. Courts now provide some of their functions online in some jurisdictions. *Facilitated negotiation* is the simplest form of ODR in which an online space is provided where parties can negotiate directly. This can include *collaborative peace-building tools* that facilitate multiparty discussions (Balvin, 2005; Hattotuwa, 2005). *Online mediation* involves a trained neutral who facilitates the negotiation process either via a secure Web site or e-mail (Raines, 2006). In *online arbitration* or *adjudication*, a skilled neutral (either a private arbitrator or a judge) will adjudicate on one or more issues, receiving evidence either via

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electronic documents or videoconferencing. *Case appraisal* is where a neutral party considers a dispute and provides nonbinding advice. This can include, as for iCourthouse (www.i-courthouse.com), through a virtual “jury” mock trial.

In addition, a number of new ODR techniques have been developed to take advantage of new information and communications technology. These do not have precise analogs in the “real world.” *Automated negotiation* allows communication between disputants without a human intermediary. It includes processes such as “blind bidding” where parties submit confidential settlement offers during a number of rounds. A computer program automatically notifies them of a settlement at the arithmetic mean once the offer amounts are sufficiently close (see Cybersettle, www.cybersettle.com, for an example). *Negotiation support systems* have also been designed to take advantage of the online medium (Belluci & Zeleznikow, 2005; Kersten, 2005; Lodder & Thiessen, 2003). They are expert systems that allow manipulation of negotiation variables by one or both parties to help them plan and conduct negotiations.

Communication Methods

The communication tools used in ODR have changed as online technology has developed (Kaufmann-Kohler & Schultz, 2004). Early ODR sites tended to rely mainly on e-mail meaning that communication was delayed, text based, and insecure. By contrast, most services launched since 2001 use a secure Web site encrypted by Secure Socket Layers (SSL) technology where parties are given a password to access a Web site area dedicated to their dispute.

Sites can either allow asynchronous communication through threaded discussion (bulletin boards) or real-time chat facilities. Instant messaging is being used by some sites, as is “secure e-mail” via an encryption program. Caucusing (the ability for one party to meet among themselves or with the neutral without the other party) is a basic feature in newer systems. Some sites offer facilities such as case tracking and document editing.

A number of providers integrate ODR methods with traditional tools such as phone, fax, teleconference, and face-to-face meetings. Videoconferencing is offered by a number of sites (Conley Tyler, 2005). The majority of sites provide a single-language service; however, there is an increasing number of bilingual and multilingual services.

Types of Disputes

The range of disputes resolved by ODR has been broad: from family law to Internet domain name disputes; from

small claims to insurance disputes. Online and off-line consumer disputes have been a major focus of ODR sites.

It is not surprising that many ODR sites were established mainly to resolve online disputes; however, a number of sites have focused mainly or exclusively on off-line disputes (Conley Tyler, 2005).

The areas of dispute handled fall into five broad categories:

1. **Consumer Disputes:** For example, ECODIR (www.ecodir.org), the European Union’s prototype online consumer dispute resolution site or Square Trade (www.squaretrade.com), a U.S. service that offers facilitated negotiation and mediation of mainly online disputes, including eBay auction disputes.
2. **Internet Disputes** (especially domain names): For example, the Asian Domain Name Dispute Resolution Centre (www.adndrc.org), based in Hong Kong, which arbitrates Internet domain name disputes.
3. **Commercial, Family, Workplace, and Neighborhood Disputes:** This includes providers such as The Claim Room (www.theclaimroom.com), a UK company that provides mediation for mainly commercial litigation disputes and SmartSettle (www.smartsettle.com), a Canadian company that helps people prepare for negotiation by analyzing their preferences and the options on the negotiation table. Others deal with quintessentially “real world” disputes within workplaces and families: the Federal Mediation and Conciliation Service (www.fmcs.gov) is a U.S. government service that brings laptops to the workplace to conciliate labor/management disputes while Family Mediation Canada (www.fmc.ca) provides Web-broadcast teleconferencing and joint document collaboration for parties in family disputes.
4. **Complex Litigation:** A number of courts now provide online facilities including the Federal Court of Australia’s eCourt (www.fedcourt.gov.au) which enables electronic filing and document management and offers a “virtual courtroom,” particularly for Native Title hearings in remote areas. Singapore’s e@dr (www.e-adr.gov.sg) is another example.
5. **Peace and Conflict:** Info-Share (www.info-share.org) provides tools for bringing the parties in the Sri Lankan peace process together electronically while the Cultures of Peace News Network (www.cpnw.org) is a global network of sites created by United Nations Educational, Scientific, and Cultural Organization (UNESCO) to enable people to share information on promoting peace.

What is striking is the number and variety of situations where people are choosing to resolve their disputes online.

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