

Tailored Tool or Techno-Toy?

What is Online Dispute Resolution (ODR)?

Alternate dispute resolution is a wide spectrum of approaches ranging from negotiation to adjudication. As you move down the list control of parties over the outcome decreases and at the same time control of the impartial person increases. (See box) Online dispute resolution fits across this same spectrum.

ODR options start with **email**, very familiar, perhaps even too familiar, to most people in business. One step further are **online chat services**, such as icq and msn, permitting synchronous communication which can be with more than one party. The next step are groups which post **threaded messages**, such as yahoo groups or listserves. All the discussions are recorded and an individual can choose which topics they wish to receive by email. Next are platforms for synchronous or asynchronous **messaging**. Documents can be posted and messages can be threaded or not. Finally there are services for **blind bidding**. The parties can exchange offers and reach agreement, assisted by the application of algorithms.

Evolution of ODR

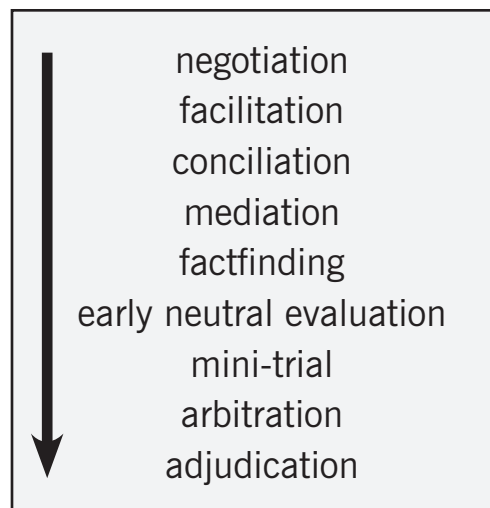
Use of the internet for dispute resolution is new, and compared to the possibilities out there, is restricted to relatively few applications. Interest in ODR has heated up in the last two to three years. The first uses of ODR in Europe and in the United States were in disputes between businesses. Then Square Trade took off in the U.S. with a mixture of business to consumer and consumer to consumer dispute resolution. For example in October 2001, Square Trade was selected by several realtor associations for all buyer-seller real estate disputes, such as move-in dates, physical property, release of deposits, disclosure issues and fees. The realtor associations said it was ideal where both parties are not in the same location, as is often the case when the seller has relocated.

Businesses are starting to use ODR for customer service issues. The field is evolving at a fast pace with such innovations as the use of teleconferencing and the availability of greater bandwidth. For example after 9-11-01 there was a huge upsurge in the use of

teleconferencing when people were less willing to travel for face- to-face meetings.

At the moment the players in ODR are governments and international organizations such as the International Chamber of Commerce, academics, a few large corporations, some established ADR organizations such as the American Bar Association (ABA), and a few smaller start-ups such as Square Trade and eResolution. The arbitration focus seems to be developing more quickly than assisted negotiation or mediation. For example www.icann.org has arbitrated thousands of disputes about domain names.

In the last year, the University of Massachusetts held two ODR conferences called Cyberweek



in which there were online demonstrations, lectures and discussion about the current issues and challenges in the field. Just after the first online conference began in the fall of 2001 it became apparent that the platform selected could not support the level of participation. The conference had to be halted and moved to another internet platform, an unplanned demonstration of one of the challenges: finding dependable and readily available technology.

One of the most useful jobs for ODR is international disputes. The reason for the high level of interest by organizations such as the European Union and the U.S Federal Trade

Dispute Resolution in the Online World

Commission, is ODR's major benefit, a means of achieving cost effective and timely dispute resolution without less focus on the barriers of jurisdiction, applicable law and language of the proceedings.

Tailored Tool

To me one of the most intriguing aspects of ODR is the addition of elements which are not available in face- to- face dispute resolution. An excellent example of this is SmartSettle, a small Canadian company .

SmartSettle's innovation relates to the work of mathematician, John Forbes Nash, Jr. portrayed in the recent movie "A Beautiful Mind". The Nash Equilibrium is a theory he developed in 1949 which showed that competitive behaviour among decision-makers leads to a non-optimal equilibrium. This was a radical idea which challenged classical economic theory of Adam Smith, that free competition leads to the best results, and Darwinian theory, that natural selection leads to improvement of the species.

While studying for his doctorate, Dr Ernest Thiessen, president of SmartSettle, needed a rule for generating an optimal solution related to a tentative agreement between any number of negotiators. Dr. Thiessen came up with a rule called "Maximize the Minimum Gain" using proven algorithms for producing fair optimal solutions. Nash's theory requires that the negotiators be rational and have accurate knowledge of the "tastes and preferences" of the other. SmartSettle brings this to the real world of negotiation by providing a secure neutral site online, rather than expecting negotiators to behave so co-operatively. Find out more at www.smartsettle.com.

To me this is the most exciting aspect of ODR. After completing training in the use of SmartSettle's program, I see many possibilities for applications of that technology. The other types of ODR applications are valuable as methods of communication not requiring face-to-face meetings, but that is all they are. The added value of helping the parties optimize their solutions brings immense additional value for the users of ODR.

Munn-thly Memo

Q. My father is now 83 and his health is failing. He needs some help with housekeeping, and personal care. Even to stay in the house where he has lived for the last 50 years, changes will have to be made because he cannot continue to go upstairs to the bedroom and bathroom. The last 5 years he has lived there on his own. He is mentally alert but doesn't know what to do with the inconsistent advice from family. Decisions about his care, what to do with the house and with his modest savings have been a huge controversy in the family. My brother and sister and I cannot agree what to do even between ourselves, let alone considering the advice we're getting from our aunts, uncles and cousins. My father feels very stressed by the fighting and by the fact that while it's going on, no decision is being made and he still needs help. He says he really doesn't care what is decided. He wants us to get it worked out so that we, his children, are all in agreement and he gets the help he needs. What are your suggestions for resolving this situation?

A. This is a challenging situation being faced by many families. Although it may seem just too difficult, working out a decision between the family members is worth the effort in the long run. When you resolve the situation and stop the family fighting, you'll be better able to support each other and your father emotionally through this difficult time.

My suggestion is to get help. It is good that the group has already made an effort to work this out. Now it is time to hire a professional mediator who is willing to make your schedule a priority in order to minimize further delays. If you can not decide on a mediator as a group, another way is to agree that an impartial person such as a trusted family friend or a professional such as a lawyer decides on the mediator.

Then with help from the mediator as needed, your father and your siblings need to consider such preliminary questions as who will attend the mediation (for example, will spouses of the siblings attend?), who will be consulted before a final decision is made, where will the mediation sessions be held (for example, should you meet at the family home or in a neutral location?), how will out-of-town family members be included, and who will pay for the mediation. It is important to clarify this kind of detail as much as possible at the beginning so as to try to avoid misunderstandings later.

For more information about mediator selection please see Common Ground May 1999 at www.munnrcs.com

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Techno-Toy

One commentator asked "can ODR be called a technology in search of something to do?" While the benefits are just now being discovered as the ODR field evolves there is a danger that people will jump into the use of ODR just because it is there, even when it is not the best dispute resolution method for their situation. When I facilitate meetings or provide conflict resolution training in companies I am often given examples of email helping to make a small conflict into a major in-house war. It is a simple example which reminds me of two fundamentals: choose the appropriate technology for the dispute and ensure that people have the necessary training to effectively use the technology.

Using ODR

First: even ODR professionals will tell you that face-to-face dispute resolution is preferable in most situations. If face-to-face is not possible, then think about using online technology. Similar to the current findings with online education, the most effective and efficient combination for many disputes is face-to-face meetings with online information exchanged as part of the preparation and follow-up. Early ODR projects involved arbitration for

disputes which arose from online transactions where there was never a face-to-face meeting between the participants. Those projects found that others wanted to have the availability of that online technology even when it was a transaction which involved face-to-face meetings.

When using an impartial person as online mediator or facilitator just as in face-to-face meetings, the mediator needs to create a collaborative environment, guide the participants through the steps of the process and help the participants with the specific challenges they are facing in finding resolution.

You can choose to use ODR as another communication tool, to be selected from the toolbox when it fits the job to be done, for example when face-to-face meetings are not possible or in combination with face-to-face meetings. In addition, as with the SmartSettle example, you can use a neutral site which helps you to achieve more of what you want without compromising fairness and efficiency. Either way there are a lot more dispute resolution options out there when we consider what is available to us using ODR.

Mark Your Calendar

Upcoming Training Events
Presented by Kathryn Munn

Mediation Training

Full 40 hour program

Fanshawe College

Part 1 - January 30 & 31, 2003

Part 2 - February 27 & 28, 2003

Part 3 - March 27 & 28, 2003

Call 519-245-3900 ext. 120 for more information and registration.



I am pleased to fill requests for presentations about mediation and negotiation at meetings of professional and business groups. Call or e-mail to make the arrangements.

Electronic Common Ground

If you prefer to be on our e-mailing list please send us an e-mail.

Kathryn Munn, LL.B., C.R.C., C.Med. is a mediator, arbitrator and lawyer. Through her firm Munn Conflict Resolution Services she works exclusively in alternate dispute resolution from a base in London, Ontario, Canada. She is a Roster Mediator, Ontario Mandatory Mediation Program - Toronto / Ottawa, a mediator under contract for the Farm Debt Mediation Service of Canada and for government departments.

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