

Online Dispute Resolution in 2010: a Cyberspace Odyssey?

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Abstract. This paper presents some results of a research on Online Dispute Resolution (ODR) and mediation online that was undertaken for the White Book on Mediation in Catalonia. The research shows the state of the art of ODR today. It presents the technologies, processes and products currently existing in the global market. A survey of 34 ODR providers is presented with information on service models, communication types, functionalities, ADR services and other off-ADR services such as seals of quality or formation activities. The survey shows that in most ODR services, IT is not fully employed and web 2.0/web 3.0 tools are barely used at all. Consequently, ODR systems do not yet benefit from the opportunities these technologies could provide. Our survey also shows that there are less active ODR services providers today than only a few years ago.

Keywords: Online Dispute Resolution, Mediation, IT, Web 2.0, Web 3.0.

1 Introduction

This paper aims at presenting some of the results of the research undertaken by the Technological Group in ODR and online mediation within the framework of the White Book on Mediation in Catalonia. The research shows, on the one hand, the technologies, processes and products currently existing in the area of the Online Dispute Resolution (ODR) and, on the other, it analyses the uses of technology of mediation services providers in Catalonia as well as their needs. This paper deals only with the former subject.¹

¹ The referred chapter of the White Book is titled Technologies for online mediation, State of the Art, Uses and Proposals .[8]

The research was carried out through 2009 and finished on May 2010. This included an ethnographic and online research with interviews and electronic mail communications with experts on the field. We also took into account former studies and surveys on the topic such as those of Conley Tyler (2003, 2004) and, more recently, the European Centre of Standardization. [3]

1.1 Concept of ODR.

A flexible notion of Online Dispute Resolution (ODR) is adopted according to which ODR is considered as any ADR mechanism in which technology plays a considerable part. The “considerable part” element may be fulfilled when there is something more than a mere electronic application form or an email communication. However, this does not imply that all communications must be done online.

We have excluded from the survey the following: i) Internal complain management systems (ICM) that do not include any ADR mechanism. ii) Domain Name dispute resolution systems. iii) Systems used in the area of negotiation (such as Negoisst or Inspire). iv) IT applied to Court systems (Cybercourts).

We have considered as ODR mechanisms the following: assisted negotiation, automatic negotiation, mediation, arbitration, adjudication, recommendation and initial neutral evaluation, premediation services and other hybrid services such as those of med-arb procedures, dispute avoidance and early resolution or trial preparation. We have also included off-ADR services that in some occasions are provided by ODR providers. Basically, these include the provision of seals of quality, the setting of standards of conduct, some formation activities, the provision of watch lists, the provision of psychometrics profiles of help to mediators, the provision of lists of mediators, etc. It must be noted that these off-ODR services may give a stronger position to the ODR provider in the globalised “market of conflicts.”²

1.2 Table of ODR providers: considerations.

The research outcome shows a table of 34 ODR services providers that may be consulted below. This reflects the panorama in the international market.

The ODR providers are displayed within the rows. The columns identify several characteristics of them, basically being: ownership, country of activity, web site and the domain of application. Moreover, we include mechanisms of ODR, off-ADR services, communication methods (synchronous and asynchronous), negotiation automation and ODR service models. We have classified the scope of application of these services according to the following categories: electronic commerce (B2C, B2B, C2C), Privacy, Intellectual Property and Generic.

The technological functionalities referred to are: i) Automated flow monitoring: It monitors the sequence of the process, the times and the participation of parts. ii) Registry of cases. It makes a transcription in digital format of the case in order to be usable in a later time. iii) Structured forms: The information inherent of the process

² This term is used by K.P. Berger.[2]

(like the claim, offer and counteroffer and final agreement) is represented digitally in a structured way. iv) Automatic messages of the parts. The system generates automatically the communications according to the protocol established in time and sequence. v) Confidential records. Cases are preserved with confidentiality and persistence. vi) Data bases. The information of the cases and its administration are stored in order to be able to retrieve it on line in a systematic way.

As regards negotiation automation processes, we have identified the presence of two types of algorithms. First, the results optimization algorithms mean those algorithms that select the best of among the solutions that are acceptable for each party. Second, according to the offer/counter-offer algorithms, each delivery makes a proposal in a confidential way and if the offers coincide in a determinate threshold, the algorithm chooses the half point as the best solution. If the offers are not compatible new confidential proposals are asked again and the cycle a finite number is repeated.

Finally, and regarding the degree of technology sophistication, we have established the following models: i) ODR of basic technology: it integrates easily disposable components into the market (electronic mail, voice over IP, etc). ii) Owner of ODR technology: the entity uses computer technology that has been developed from this entity. iii) Licensor of ODR technology: the provider licenses ODR technology to entities employing it for dispute resolution activities and allowing this licensee to adapt it to its interests and brand. iv) SAAS provider (software as a Service): it offers web platform services but the administration of the cases is carried out by another supplier.

1.3 Research results

The short history of ODR in its fifteen years of existence is far from stable. Conley Tyler [4, 5] has distinguished four phases of development: According to the amateurish phase (1990-1996), a series of persons started to work, often without formal support, to develop an online ADR. Then, it followed an experimental phase (1997-1998), characterized by the presence of pilot programs developed for academic institutions or without spirit of profit and funded by foundations and international organizations, like the Hewlett Foundation or United Nations (e.g., the Virtual Magistrate). The entrepreneurial phase (1999-2000) was promoted by initiatives of the private sector that threw themselves to the Internet market with the provision of online mediation services. After the dot com bubble burst, many ODR projects were shut down. The institutional phase was initiated around 2001. Some institutions, including courts of justice became licensees of ODR software and started providing ODR services. In 2004 Conley Tyler ascertained that, of the 115 analyzed services, more than thirty were not operative any more. As of today, only 34 ODR providers are still in operation which makes only a 29, 5% of those previously active.

Several factors of the research we have undertaken may provide some light as to where ODR is today and more important, where is it heading to. Further to the sharp decline in the number of ODR providers, these may include other aspects such as their location in the globalised world, the different type of services offered and the

mechanisms employed, the different IT tools used as well as the lack of interoperability services or the lack of web 2.0, web 3.0 and mobile web tools; even the role of private and public entities in the ODR world.

As it can be seen from the table bellow, the localization of these ODR providers is overall situated in EEUU (17 providers) and Europe (14) with 2 services situated in Asia (ODR India and ODR China, both owned by the generic ODR World) and Oceania (Asset Divider and Family Winner, both being a project from Victoria University and employing negotiation decision support services- NDSS). We have identified one mechanism situated in Argentina, South America even if it is also located in Spain (Mediar Online).³

More than 65% of these have a generic domain of scope whereas only two deal with privacy (Mediateur du Net and Trustee) and one covers intellectual property controversies (WIPO Arbitration and Mediation Centre). 26% of these ODR providers (9 of them) deal with electronic transactions, the majority of which covers B2C disputes. The latter aspect may be due to lack of trust of companies to ODR systems. In fact, some ODR providers informed us that in general companies are not as willing as consumers to enter into these systems and some might even not know of their existence. [8] It could be also noted that consumers may be more benefited from inexpensive mechanisms employed in ODR systems in comparison to litigation. Moreover, platforms like eBay have provided an important growth in the number of C2C conflict resolution systems.

As regards the mechanisms employed, mediation is the mechanism more used with 74% of ODR providers using it. This is followed by arbitration with more than 40%. This may be of importance since former surveys indicated that both mediation and arbitration were used quite similarly in comparative terms. [4] The chapter on consumer mediation of the White Book on Mediation in Catalonia shows that in consumer cases companies prefer to mediate rather than going into arbitration. [1] Therefore, it can be affirmed that ODR providers understand that parties prefer to use consensual, win to win methods that entitle them to retain the ultimate decision of the controversy. Moreover, consensual methods seem to be less expensive than litigation or arbitration. Therefore, it seems that consensual-based services will increase and this seems a trend for the near future.

Only 9 institutions offer assisted negotiation and the other mechanisms are less implemented. It may be noted that some of these entitle users to choose the mechanism they prefer. Moreover, we have come across some mechanisms where a three-step process is employed, e.g, ECODIR where it uses a negotiation phase, and if parties are not able to solve their problem, it delivers to a mediation phase and if neither parties succeed a third independent party issues a recommendation that solves the problem (recommendation phase). The use of hybrid mechanisms is of no significance: The Electronic Courthouse is the only one that offers Med-Arb services.

As regards the communication method, the use of asynchronous mechanisms (such as forums or email communications) is predominant. A 42% of ODR services employ this method exclusively whereas only a 10% of those only employ synchronous communication types (such as videoconference or chats). However, almost a 48% of

³ Please note that since some ODR providers have simultaneous locations we have included both of them in its territorial domain.

cases employ both communication methods. This may combine the benefices of both. Further than this, ODR providers do not employ tools from the web 2.0. There are no cases of Twitter, Wikis, Facebook or Flickr to name some of the best well-known examples of the web 2.0 in those systems. Furthermore, they do not employ tools from the semantic web or web 3.0. Again, we regret a lack of IT interoperability among ODR services. This is true since, further to the concerns expressed by the European Centre of Standardization [3] we have found no examples of interoperability services among the ODR providers analyzed.

As regards the service models of ODR, it is noteworthy to state that more than half of them own the technology employed. This may be because it better adapts to the mechanism employed as well as to the needs of the parties. The second more widespread model is ODR of basic technology, since the fact that, as it takes tools that already exist, this reduces costs for the institution. On the other hand, this implies that the institution has to adapt to the current available technology. The number of licensors of ODR technology and SAAS suppliers is similar (6 and 5 institutions respectively). The licensor may design ODR software according to the licensee brand and therefore, institutions such as Her Majesty's Court Service HMCS employ these systems apparently as if it was theirs'.⁴ The latter entitles a third party to use the provider's online facilities on the pay-for-use basis. Yet, it seems that both licensors and SAAS suppliers will continue being minority groups as long as the culture of ODR is not more widespread and more professionals require these services.

⁴ In this case, The Mediation Room is the licensor. See: <http://v2.theclaimroom.com/index.lxp?host=294>.

2 Table of ODR providers

Product	Automated Dispute Resolution System (ADR/Res)	Arbitration Solutions Centre Ltd	Agència Catalana de Consum	All American Dispute Resolutions Online	American Arbitration Association WebFile	Applex Bargaining Solutions	AssetDivide	Better Business Bureau (BBB)
Owner	WebAssured	Miscation et Arbitrage de Paris	ACC (Government of Catalonia)	All American Dispute Resolutions Online Inc.	American Arbitration Association	Fair Outcomes Inc.	Zelevnikov & Bellucci (Victoria University)	Council of Better Business Bureaux
Country	EEUU	France	Catalonia	EEUU	EEUU	EEUU	Australia	EEUU, Canada
Web	www.webassured.co.uk	www.mediationeurope.com	www.consumercat.net	http://shop.mediate.com	http://www.adr.org	http://www.applex.com		http://www.bbb.org
Domain	e-T(B2C)	G	G (B2C)	G	G	G	G	G
ODR Mechanisms								
Assisted Negotiation						X	X	
Automated Negotiation								
Mediation	X		X	X	κ			X
Arbitration					κ			X
Adjudication	X							
Recommendation		X						
Early Neutral Evaluation		X						
Other services								
Provides a list of mediators	X				κ			
Seal of Quality Formation	X			X	κ			X
Others	Watchlist				Dispute avoidance and early resolution			Standards
Functionalities								
Automated flow monitoring	X							X
Registry of cases	X	X						
Structured forms					κ			X
Automated messages to parts	X	X						X
Confidential Registers		X			κ			
Data Bases	X							
Communication Types								
Asynchronous communication	X	X	X	X	κ			X
Synchronous communication			X		κ			
Negotiation Automation								
Optimisation algorithms						X	X	
Offer/Counter-offer algorithms								
Service models of ODR								
Basic ODR Technology			X		κ			X
Owner of ODR Technology	X	X			κ			
Licenser of ODR technology				X				
SAAS provider								

Product	Concilia Online	Confianza Online	Conciliazione On-Line	CyberSettle	eBay	Der Internet Ombudsmann	ECODIR	Electronic Courthouse
Owner	Camera di Commercio di Firenze	Aecem, Autocontrol & Red.es	Camera di Commercio di Ancona	CyberSettle	eBay	Der Internet Ombudsmann	Int. consortium of research entities & private entities	Electronic Courthouse
Country	Italy	Spain	Italy	EEUU	EEUU	Austria	Ireland/Europe	EEUU
Web	http://www.conciliaonline.it	http://www.confianzaonline.es	http://conciliazione.an.camcom.it/index.php	http://www.cybersettle.com	http://resolutioncenter.ebay.es	http://www.ombudsmann.at	http://www.ecodir.org	www.electroniccourthouse.com
Domain	G	G	e-T (B2B, B2C)	G	e-T (C2C)	e-T (B2C, C2C)	e-T (B2C)	G
ODR Mechanisms								
Assisted Negotiation					x		x	
Automatic Negotiation								
Mediation	x	x	x	x		x	x	x
Arbitration		x		x				x
Adjudication		x						
Recommendation								
Early Neutral Evaluation							x	x
Other services								
Provides a list of mediators								x
Seal of Quality		x						
Formation								
Others								Med-Arb
Functionalities								
Automated flow monitoring	x			x	x		x	x
Registry of cases	x			x				x
Structured forms		x	x	x	x		x	x
Automated messages to parts	x			x			x	x
Confidential Registers	x		x	x		x	x	x
Data Bases								
Communication Types								
Asynchronous communication	x	x	x	x	x	x	x	x
Synchronous Communication	x		x	x	x			
Automatizació de negociació								
Optimisation Algorithms								
Offer/Counter- offer algorithms				x				
Service models of ODR								
Basic ODR Technology		x			x			
Owner of ODR Technology	x		x				x	
Licensor of ODR technology								
SAAS provider	x			x				x

Product	eMediation.NI Roelvrnk Advocatenkantoor The Netherlands http://www.emediation.nl	Family Winner Zeleznikow & Bellucci (Victoria University) Australia	Global Mediation Initiatives Ms Lynn Cole EEUU http://mediationinitiatives.com	Juripax The Netherlands www.juripax.com	Mediation Arbitration Resolution Services (MARS) MARS EEUU http://www.resolvemijspuete.com	Mediar Online Physical persons & institutions collaboration Spain- Argentina http://www.mediaronline.com	Mediateur du net Le Forum des droits sur l'Internet France http://www.foruminternet.org/particuliers/mediation
ODR Mechanisms	G	G	G	G	e-T (B2C)	G	
Assisted Negotiation		x			x		
Automatic Negotiation							
Mediation	x		x	x	x		x
Arbitration					x		
Adjudication							
Recommendation							
Early Neutral Evaluation							
Other services							
Provides a list of mediators						x	x
Seal of Quality					x		
Formation			x			x	
Others				Premediation			Psychometric profiling
Functionalities							
Automated flow monitoring				x	x	x	x
Registry of cases				x	x	x	
Structured forms				x	x	x	
Automated messages to parts				x	x	x	
Confidential Registers				x		x	
Data Bases							
Communication Types							
Asynchronous communication				x	x	x	x
Synchronous Communication	x		x	x	x	x	
Negotiation Automatisation							
Optimisation Algorithms		x					
Offer/Counter- offer algorithms				x			
Service models of ODR							
Basic ODR Technology			x				
Owner of ODR Technology	x						x
Licensor of ODR technology		x					
SAAS provider				x			x

Product	Mediation Room	National Arbitration Forum	National Arbitration and Mediation	Net Neutrals	ODRWorld/India/China	PayPal	Risolve Online	Settle Today
Owner	Mediation Room United Kingdom	National Arbitration Forum EEUU	National Arbitration and Mediation EEUU	DeMars & Ass. EEUU	ODRWorld China	PayPal EEUU	Camera Arbitrale di Milano Italy	Settle Today EEUU
Country	www.themediationroom.com	www.adrforum.com	www.namadr.com	www.netneutrals.com	http://www.odrworld.com	https://www.paypal.com/es/cgi-bin/webscr?cmd=_loginout_signup	http://www.risolveonline.com	http://www.settletoday.com
Web								
Domain	G	G	G	G	G	e-T (B2B, B2C, C2C)	e-T (B2B, B2C, C2C)	G
ODR Mechanisms								
Assisted Negotiation				X		X		
Automatic Negotiation								
Mediation	X	X	X	X	X		X	
Arbitration		X	X	X	X	X		X
Adjudication				X				
Recommendation								
Early Neutral Evaluation		X						
Other services								
Provides a list of mediators	X	X	X	X	X		X	X (arbitrators)
Seal of Quality								
Formation	X	X		X				
Others			Trial preparation					IT testing; Damages analysis; IP archives
Functionalities								
Automated flow monitoring	X	X	X	X	X	X	X	X
Registry of cases	X		X	X				X
Structured forms			X	X	X	X	X	X
Automated messages to parts	X	X	X	X	X			X
Confidential Registers	X	X	X	X	X		X	X
Data Bases								
Communication Types								
Asynchronous communication	X	X	X	X	X	X	X	X
Synchronous Communication	X	X	X	X	X			
Negotiation Automatisation								
Optimisation Algorithms								
Offer/Counter- offer algorithms								
Service models of ODR								
Basic ODR Technology		X						
Owner of ODR Technology			X	X	X	X	X	X
Licensor of ODR technology								
SAAS provider					X			

Product	Smart Settle	Truste	Mediation Center (Electronic Case Facility - ECAF)
Owner	Ultimate Standards Everywhere, Inc	World Intellectual Property Organization	
Country	EEUU	EEUU	International Organization
Web	http://www.smartsettle.com	http://www.truste.com	http://www.wipo.int/aml/en/ecaf
Domain	G	Priv	IP
ODR Mechanisms			
Assisted Negotiation			
Automatic Negotiation	x		
Mediation		x	x
Arbitration	x	x	x
Adjudication			Expert determination
Recommendation			
Early Neutral Evaluation			
Other services			
Provides a list of mediators	x	x	x
Seal of Quality		x	
Formation	x		
Others			
Functionalities			
Automated flow monitoring	x	x	x
Registry of cases			x
Structured forms	x		x
Automated messages to parts	x		x
Confidential Registers			x
Data Bases			
Communication Types			
Asynchronous communication	x		x
Synchronous Communication	x		
Negotiation Automatisation			
Optimisation algorithms	x		
Other/Counter-offer algorithms	x		
Service models of ODR			
Basic ODR Technology			
Owner of ODR Technology	x	x	x
Licensor of ODR technology			
SAAS provider			

G (Generic domain)
e-T (electronic transactions: B2C, B2B, C2C)
Priv (privacy)
IP (Intellectual

5 Conclusions

The world of ODR is a changing and uncertain world. According to the survey undertaken within the framework of the White Book in Mediation in Catalonia, the technological chapter of this has showed that today there are less than 30% of those ODR service providers existing only five or six years ago. The survey has been coherent with the ODR concept employed and therefore it has excluded systems which fall outside this and which have been taken into account in former surveys (e.g., internal complaint systems).

The fall of the number of bodies providing ODR services may also be understood as for other factors, external to the scope of study. After ODR pilot projects burst

around the turn of the millennium, the private sector has been unable to meet new entrepreneurial gains from ODR. It seems clear that many initiatives collapsed because of financial problems. Only a few pilot projects developed into private, for profit organizations and again, only a few of them remained into the market of conflicts. In 2010, financing ODR bodies remains one of the key issues in ODR, particularly for its neutrality and impartiality requirements. [6] On the other hand, it remains unclear as to what role public entities have to play in the ODR arena. To name only an example in the B2C sector, in Spain, consumer controversies are kept away from private initiatives as long as they do not use consensual mechanisms such as mediation.

What it may be intuited is that ODR initiatives should gain strength in order to position themselves in the globalised market of conflicts. Perhaps, this could be accomplished with the provision of ODR mechanisms used in conjunction with other off-ODR systems. Again, this is particularly important in the consumer domain where ODR services may be an item to add to seals of quality, codes of conduct, formation activities, or publicizing activities. In a way, it recalls some of the notions promoted within the e-commerce Directive as regards self-regulation entities. From our survey, it can be noted that those entities providing these kind of off-ODR services enjoy a certain stable position in their territorial market of reference. This is the case with Confianza Online in Spain but also with Better Business Bureau in the EEUU and Canada providing seals of quality to B2C activities or Trustee, also in the EEUU, providing a seal of quality regarding privacy activities.

B2C disputes seem to be some of the most employed controversies in ODR systems as we have seen in our research. It may be noted that consumers take the most of these systems since they are far better off with inexpensive services as compared with businesses. Yet, it seems that companies are not fully devoted to ODR and they may even be opposite to such systems. Bodies are mostly located in the United States as well as in Europe whereas other continents lay far behind. Furthermore, mediation is the service most commonly used (70%) followed by arbitration (40%).

According to our survey, the use of IT in ODR systems is not fully exploited. Basically, most of the bodies employ owned IT software although some of them use what we have referred to as basic ODR technology. The communication type preferably used is asynchronous such as emails, or forums. Videoconference and other synchronous communication types are less used. However, almost 50% of these systems rely on both communication types. Well known examples of entities using both types of communicate encompass The Mediation Room, National Arbitration Forum, National Arbitration and Mediation or Smartsettle.

However, ODR platforms do not take into account the different tools that the web 2.0 enables. ODR providers do not base their services in cutting-edge technology and it appears that ODR entrepreneurs may not see the need for losing time and resources to adapt platforms to the standards of web 2.0. [9] It has been pointed out that ODR would be one of the biggest beneficiaries of web 2.0 technologies. [9] However, according to our research we have found no examples of social web or web 2.0 tools. Twitter, Wikis, Facebook, Flickr or You tube are well known examples of this and are not used as with ODR systems. The results of the research indicate that ODR practice is far from using web 3.0 tools. For example, ODR platforms rely particularly on

concerns. However, web 3.0 relies on a preference for the treatment of real-time data and is concerned with systems interoperability. [7] Even though the limited use of this, we should be far from hopeless. For one thing, some of the characteristics of consumer mediation, [1] such as the standard claims typology and a low value of the disputes suggest the consumer domain to be a convenient arena for ODR.

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