

E-Arbitration-T Project: An Alternative Dispute Resolution for SMEs

E-Arbitration-T is a European technology research and development project whose main objective is to establish and commercially exploit the necessary tools so that tribunals and alternative dispute resolution centres (ADR/ODR) can carry out their online activities and processes with maximum security, confidence and automation. Cutting-edge technology will be delivered to arbitration centres to ensure the highest level of security and confidentiality, as well as high performance, user-friendly, cost-effective access to all information and applications on enterprises networks, intranets, and the internet.

E-Arbitration-T will provide a networked dispute resolution forum with the same style and ease of access as exists

between business partners within the e-Commerce community. It will develop and validate the regulatory structure and the dynamic and intelligent infrastructure needed to allow simple and efficient distributed processes in electronic out-of-court dispute settlement systems.

Project Members are Comercio Electronico Global S.C. (Spain) - Scientific Co-ordinator; Tiga Technologies (France) – Project Co-ordinator; Brunel University (United Kingdom); Universita di Catania (Italy); Cuatrecasas Abogados, S.R.L. (Spain); Camera Arbitrale e di Conciliazione di Catania (Italy); and Asociación Española para el Derecho y la Economía Digital - AEDED (Spain).

Online Dispute Resolution Events

UNECE Forum on Online Dispute Resolution (ODR)

The United Nations Economic Commission for Europe (UNECE) organised a very interesting Forum on Online Dispute Resolution (ODR) on 6-7 June 2002 in Geneva. The Forum aimed at exploring key issues on the development of Alternative Dispute Settlement and Internet-based Online Dispute Resolution (ODR) to identify and exploit new challenges and opportunities. The discussion in the Forum not only raised awareness of the current status of development but also provided a vision of the vast potential and upcoming opportunities for developing and transition economies.



Speakers in the Forum were government officials, representatives from major international organisations, ADR Centres and research centres [Mr. Timothy Fenoulhet (European Commission), Mr. Ignacio de Castro (WIPO Arbitration and Mediation Centre), Mr. Renaud Sorieul (UNCITRAL), Mr. Daewon Choi (UNECE Secretariat), Mr. Thomas Schultz (University of Geneva), Ms. Mireze Philippe (International Court of Arbitration ICC), Mr. Vicent Tilman (Eurochambres), Mr Peter Van Roste (eBay Europe), Ms. Anita Ramasasty (University of Washington), Mr. Pravir Chawdhry (European Commission Joint Research Centre), Mr. Ethan Katsh (University of Massachusetts) and many other experts as well as high-level speakers representing key players in the industry, both at global and regional level. Eduardo Paz Lloveras, representing E-Arbitration-T Consortium, spoke about the importance of the SMEs sector for the development of future policies and ventures in the field of alternative dispute resolution mechanisms.

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By Colin Rule

Part B: "What Should Policy Makers and Decision Makers Do To Promote a Greater Use and Deployment of Online Dispute Resolution Systems, Particularly by Small and Medium Sized Enterprises":

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by Thomas Schultz, Geneva University Law School

Online Mediation Can Benefit an International Trademark Dispute

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Pilar Gonzalez-Saavedra, Chicago International Dispute Resolution Association

There are a number of ways online dispute resolution (ODR) tools can enormously enhance any mediation as an alternative dispute resolution mechanism. Since a response is not expected immediately in an online setting, the parties may react less emotionally, and the thoughtfulness of agreement-reaching efforts is enhanced. Online caucusing can be more flexible, allowing the mediator to caucus with the parties separately while the joint discussion takes place.

Moreover, if participants want to view documents, they can be posted to allow parties to view their content. Online mediation costs less than traditional face-to-face mediation and, in an international context, it allows parties from different countries or time zones to resolve disputes more conveniently.

In the international intellectual property context, online mediation can be extremely effective. An example illustrates the premise:

Authentic American Ascots, Inc., is a United State corporation with a portfolio of United States trademark registrations for its AAA neckties, including the mark AAA, and AAA combined with a bald eagle design. Seeking to expand its market overseas in response to the adverse impact of "business causal" domestically, Authentic begins sales of its ties in Germany and Italy. It files applications for Community Trademark

Registrations for the marks AAA and "AAA with eagle design" for a variety of clothing items. A Community Trademark Registration (CTM) protects a mark in all of the countries of the European Union.

Authentic American is soon notified that Anglican Athletic Accoutrements, PLC has opposed its applications based on its own UK registrations for AAA and AAA with a design of a falcon for clothing. Anglican's marks are used only on tennis wear, but the registrations are for a wide variety of other clothing items, including neckwear. These UK registrations could effectively block the CTM registrations, but Authentic American has the option of converting its CTM applications to applications in all of the individual countries of the EU. It would have priority everywhere except the UK.

CTM procedures provide a "cooling off" period in which the parties can attempt to resolve the conflict. The parties' lawyers have corresponded, each stating the equities of her client's position, but despite the fact that one party uses its marks only on neckties and the other uses its marks only on tennis apparel, there is a stalemate. While confusion between the two marks could be avoided, neither party wants to provide the other with full disclosure of the extent and nature of use of its marks without first seeing the other side's evidence. Both sides are firmly committed to the continued use of their marks, and both want the protection that registration provides.

Online mediation could allow the resolution of this dispute to proceed expeditiously and help avoid litigation by:

- Establishing a framework for simultaneous disclosures about the nature and extent of the parties' use of the mark, including lists of goods on which the marks have been used, the dates of first use of the marks, and the channels of distribution;

- Facilitating a "protective order" type agreement to shield from further disclosure information about the extent of sales and advertising expenditures that may be relevant to the resolution of the conflict;

- Exchanging packaging and advertising samples in digital format for review and comparison;

- Exchanging proposals for co-existence and consent agreements

In this example, there is a very real chance that using ODR tools, the parties could quickly work out an agreement without resorting to formal procedures.

Until technology meets all needs to fulfil inherent process values of mediation, the ODR industry may consider not only pure online mediation systems but also procedures that combine face-to-face meetings with online tools. A face-to-face meeting early in the proceeding could further a sense of interdependence among the participants throughout the problem-solving process, and one at the end could help to preserve an ongoing relationship or terminate it in a more amicable way. In the above example, the mediator could initially meet with two parties from the US and the UK in Chicago, subsequently move the discussion into an online setting for exchange of proposals and agreement-drafting and finally, reconvene face-to-face in London to complete a final settlement.

On the other hand, the parties might wish to conduct the entire mediation online so that the agreement could be reached quickly, a critical concern in most trademark disputes.

** Davis, Mannix & McGrath is a Chicago law firm with substantial experience in litigation and counselling in diverse business areas. It counsels and represents a wide array of business entities and individuals in connection with intellectual property rights, including trademarks, copyrights and trade secrets. (www.dmmlaw.com)*

** The Chicago Dispute Resolution Association (CIDRA) is a forum devoted to the resolution of private international business disputes, including intellectual property disputes. CIDRA is committed to the use of technology, including online dispute resolution tools, to resolve disputes. (www.cidra.org).*

ODR and the Privacy Sector

By Colin Rule

There are many different sectors that will come to benefit from online dispute resolution (ODR) over the next few years. In my book, *Using Online Dispute Resolution in Your Business* (to be published by Jossey-Bass in 2002), I detail a good number of these sectors: B2C and B2B e-

commerce, Insurance, Workplace, Government (local and national), Transboundary (like domain names), and Class Action litigation, to name only a few. One of the most promising areas for the integration of ODR is privacy. Privacy violations, like the Internet, do not respect national boundaries and are very difficult to deal with through traditional legal channels. Companies can expose themselves to liability in dozens of jurisdictions around the world by collecting information on their website. Legislation like HIPAA and Gramm-Leach-Bliley in the United States attach civil and criminal penalties to privacy violations. The US/EU Safe Harbor protocol requires that companies have a dispute resolution mechanism in place to handle privacy complaints. The Privacy Commissioners from Australia and Singapore attended an ICC conference on ODR in The Hague in December 2000 because they acknowledged the utility of ODR in resolving privacy complaints. ODR may be the only effective option for dealing with privacy violations over the long term.

Colin Rule is the Co-Chair of the Online Section of the Association for Conflict Resolution. He co-founded Online Resolution (an ODR provider) in 1999 and served as its CEO and President. Colin is the author of Using Online Dispute Resolution in Your Business, due for publication by Jossey-Bass in 2002. He holds a Master's degree from Harvard University's Kennedy School of Government in conflict resolution and technology. authentication would remove the last impediment to confidence in the system and create a near ideal basis for ODR in the B2B arena.

The Architecture of ODR Systems as Their Best Promoter

Thomas Schultz, Geneva University Law School

As ODR is globally online ADR, one often expects it to meet the requirements developed for ADR. These requirements may however act as serious obstacles to ODR, particularly in online binding arbitration. Issues such as the form of awards rendered online in light of the New York Convention, the arbitrability of consumer disputes, or the extent of online due process certainly delay the development of ODR. Such issues shape the confidence of users in the system and affect the recognition of its legal effects by the legal systems.

Most of these legal obstacles are unlikely to be removed in the near future. Therefore, emphasis should be placed in the short term on the technical aspects of ODR. The goal would be an architectural model that induces confidence and allows autonomy of the systems.

Confidence would for instance be promoted by an architecture based on simplicity, so that the parties are able to monitor the process, adaptability, so that the process can be tailored to the needs of a party or of a case, and interoperability, so that it can easily co-operate with merchant sites.

Autonomy of the systems would for instance be furthered by self-executing mechanisms, where the ODR provider is itself able to enforce the decision. Examples are the mechanism of the UDRP, to a certain extent trustmarks managed by an ODR provider, or escrow accounts and judgement funds.

These issues have been addressed extensively in the first report of the E-Com research project of the Geneva University, available from <http://www.online-adr.org>. Errors and omissions remain the sole responsibility of the author.

Questionnaire About Cases and Case Loads for Arbitrators, Arbitral Institutions or Lawyers Representing Parties in Arbitral Proceedings

In <http://www.e-global.es/arbitration/documents.htm> you will find a document including a set of questions to arbitrators, arbitral institutions or lawyers representing parties in arbitral proceedings. It is intended as a basis for a structured interview but may also be completed as a questionnaire or edited as a template to record and interview.

The questions are intended to be answered from a personal perspective rather than reflecting an institutional or organisational position. Not all respondents will have relevant experience enabling them to answer every point and sections should be skipped where relevant.

Please answer questions or provide information in the form you find most natural to express your response. Responses should be returned by post to Dr Tony Elliman at DISC, Brunel University, Kingston Lane, UXBRIDGE, UB8 3PH, UK or by email to Tony.Elliman@brunel.ac.uk

World of Arbitration Discussion List [©]

The World of Arbitration Discussion List has been set up with the aim of disseminating the arbitral spirit and to discuss with ODR/ADR professionals about all aspects of the online dispute resolution technologies.

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