ODR

OnlineDispute**Resolution**
Continues to Grow, Offers Opportunities for Businesses and the Public

The past 15 years have seen immense growth in the application of technology in the field of conflict resolution. *Creighton Lawyer Magazine* **asked Noam Ebner, professor of negotiation and conflict resolution in the Werner Institute at the Creighton University School of Law, to provide an overview of Online Dispute Resolution (ODR), its growth and the benefits and challenges it offers.**

Noam Ebner is a leading author in the field of ODR and has conducted hundreds of workshops on negotiation and conflict resolution for a broad range of private sector industries, governmental agencies, NGOs, universities and nonprofits.

What is Online Dispute Resolution?

Online Dispute Resolution (ODR) relates to a very wide spectrum of processes, systems and services. When we talk about ODR, we're really talking about a variety of categories. One involves professionals offering online replications of familiar, "traditional" dispute resolution processes such as mediation or arbitration. Another category involves creating online systems aimed at handling large volumes of cases — at the scale only the internet can produce. The core commonality of ODR processes and systems is that they all involve application of online technology for the purpose of resolving disputes.

What are the differences between Online Dispute Resolution and traditional Alternative Dispute Resolution (ADR)?

Any discussion of differences needs to take into account that some differences are blurring and will continue to do so. For example, traditional dispute resolution now incorporates many online elements as a matter of evolution: mediators communicate with parties via email; arbitrators set sessions using online calendars. The main distinction between an ODR and a traditional dispute resolution context is that in ODR, the primary part of the service or process is actually conducted online. In ODR, a mediation process might be fully carried out via an email exchange or through a messaging system, and an arbitration hearing might be held via Skype.

What special challenges arise with ODR?

Some challenges associated with ODR are dissolving over time — such as parties' or practitioners' general hesitation to conduct significant interactions online. Others are more persistent — for example, enforcement of decisions or agreements. While this is a challenge in any ADR process, and ODR processes generally enjoy the same enforcement mechanisms that ADR processes do (e.g., contractual mechanisms or judicial upholding of arbitration awards), these are always more challenging to implement at a distance. Another challenge relates to security: In the age of WikiLeaks and the Panama Papers, how do I know that information entered into a database of some sort for the purposes of an ODR process will remain private and secure? ODR needs to overcome this challenge, just like all industries do.

How would you describe the growth in ODR over the last 5, 10, 20 years?

Early experiments in ODR began 20 years ago, in 1996. While there were some early successes, the bursting of the dot-com bubble left many ODR initiatives lying by the roadside.

Over the past 10 years, a great many service-providing organizations have formed, all around the world. Governmental and intergovernmental institutions — such as the European Commission, the United Nations and the judiciaries in British Columbia and the U.K. — are developing policy frameworks and specific projects, at varying levels of implementation, for implementing ODR.

Over the past five years, three connected trends are very noticeable:

1. **A significant entry barrier has evaporated.** Not very long ago, someone interested in offering ODR services might have been concerned that developing a platform through which to offer services would require a great deal of tech savvy and/or capital investment. Today, any mediator can put a note on their webpage or even on their print advertisements saying "Online mediation available" and convene a mediation session via free and commonplace software, such as Skype or FaceTime.

2. **A great many ADR practitioners have shifted their views on the topic.** In the past, it was quite common to hear practitioner reactions such as "You can't mediate online!" when discussing ODR; today, many practitioners are eagerly offering to conduct processes online.

3. **Videoconferencing** — formerly relegated to futuristic movie scenes or science fiction, and encountered only in high-powered corporate conferencing rooms — became common beginning in about 2010, and is now accessible, familiar and free.

One other, less noticeable but equally important, trend is that ODR's necessity is being recognized, behind the scenes, by the leaders of a variety of industries in the new economy. eBay was the first to recognize that it needed to incorporate a dispute resolution system into its operations, and that that system clearly needed to function online. Today, eBay's ODR system handles over 60 million disputes every year. All online service providers (such as Yelp or TripAdvisor), online marketplaces (such as Amazon or Alibaba), or traditional service providers that rely heavily on online contact with their customer base for their survival (airlines are a good example) currently recognize the need for incorporating an online dispute resolution component in their operations. They are more likely to call this customer relations, or complaint management, than ODR — but ODR is exactly what it is, in essence.

What are the benefits of ODR?

ODR has two primary sets of benefits: The first set involves benefits to parties and professionals. The second takes a wider view, and includes benefits to the global economy and online environment.

ODR overcomes geography. We no longer need to convene around a table in order to work out our differences. Being able to convene at a distance saves travel and time costs and makes scheduling a lot easier. At the same time, it allows parties to avail themselves of experts who don't live in their area, and mediators or arbitrators to expand their client pool beyond their local region. ODR makes dispute resolution much more accessible for parties and professionals with disabilities, and has environmental benefits as well.

As global online commerce grows, two of its most fundamental attributes will become increasingly salient: low-value transactions and jurisdictional challenges. When a buyer in Australia purchases a $4 DVD from a seller in the U.K. over eBay, or a buyer in Nebraska purchases a $400 iPhone from a vendor in China over Alibaba, and the deal goes sour, traditional legal systems, and traditional dispute resolution schemes, have nothing to offer in terms of redress. Even in the relatively high-value iPhone deal, the investment required of the buyer to hire a lawyer to figure out the conflict of laws and jurisdictional issues, and file suit, is clearly prohibitive; so, too, are the costs involved in getting on a plane to attend a mediation session. In such a caveat emptor environment, many customers will prefer to get in a car and buy locally.

In that sense, a benefit of ODR is that its availability in an online marketplace can engender a sense of trust in the environment — giving that marketplace and the overall economy a boost. Viewing this in a more general perspective, beyond online marketplaces, the availability of ODR can make the online world a more regulated, fair, transparent, protected and safe place, in which redress can be achieved and disputes can be settled.

What do the next five years hold for this field?

If dealing with technology and dispute resolution has taught me anything, it is "never prophesize!" However, based on current trends, here are three things I am fairly sure will emerge over the next five years or so.

Institutionalization: The next few years will see a wave of recognition for ODR, and a move toward its mainstreaming through institutional adoption. This year, British Columbia initiated a court-connected ODR program, and there are moves in this direction in the U.K., Holland, China and other locales as well. Such institutionalization will do for ODR what it did for traditional ADR in the 1980s and 1990s.

Artificial intelligence: Increasingly, we will see the development of technological systems that are able to take a great many variables into account — and deliver decisions. Whereas current ODR implementation of such artificial decision-making platforms frames such outcomes as "advice" to human negotiators, I expect to see services offering "automated arbitrators" of one form or another.

Encroachment into areas of traditional ADR, and traditional lawyering: Clients will come to expect their lawyers or dispute resolution professionals to be able to consider, preside over or represent in ODR processes. A number of authors are predicting that the status quo of delivering legal services will be significantly altered — even disrupted — as a result of technological evolution and socioeconomic developments, far beyond anything that has occurred so far. In some of those projections, ODR plays a significant role. As clients become increasingly self-reliant and knowledgeable, they will take a more active role in handling their legal affairs. In this future, business will not be as usual. But lawyers who can incorporate ODR into their array of resolution and representation services can prepare themselves for future developments and not only weather this storm, but come out of it ahead of the pack.