Conference Review: Reflections on ODR 2015 in New York

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Change is in the air for the legal profession. The change is coming from many directions and being introduced by players both inside and outside the field. As the value and sustainability of the traditional means and methods for the profession are being questioned, some lawyers, ADR professionals, corporations and start-up entrepreneurs are receiving attention for the introduction of viable alternatives. At the core of these alternatives is a common thread: an increased access to justice through the use of 'disruptive' technologies that are impacting the delivery of traditional legal services.

In response, task forces, commissions and conferences are being hosted by the legal community to understand and navigate the disruption from within the profession. Moreover, legal academics are publishing on the future of the profession and legal education, while some law schools are changing their pedagogical approaches and establishing think-tank institutes and incubators to cultivate the change. For the most part, the legal profession is still working separately from the 'external forces' that seek to disrupt the profession.

For the legal community at large, these discussions and alternatives are relatively fresh. However, for the online dispute resolution (ODR) community, it is a natural progression stemming from incremental changes that have been a long time coming and have been explored in the past fourteen years at the International ODR Forum. I had the opportunity to partner with the National Center for Technology and Dispute Resolution[1] (NCTDR) in June 2015 to have the Pace Law School Institute of International Commercial Law co-organize and host the latest Forum – ODR 2015. This article memorializes the event.

1 About the International ODR Forum

An ODR community has loosely formed and collaborated over the last couple of decades, largely centred around the NCTDR led by co-Directors Ethan Katsh and Leah Wing. It includes an international cross-section of individuals from academia, the legal community, the dispute resolution field, government, non-governmental organizations and private companies. One of the more formal gatherings of the community is an annual International ODR Forum ('ODR 20xx' or 'Forum'), co-organized by the NCTDR. The first International ODR Forum was held in Geneva in 2002 under the auspices of the UN Economic Commission for Europe (UNECE). It was the idea of Mr. Daewon Choi, an official of the UNECE at

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[1]   <www.odr.info>.

the time. Subsequent Forums were co-organized by the NCTDR and various regional institutions in the cities of Melbourne, Cairo, Liverpool, Hong Kong, Victoria (Canada), Haifa (Israel), Buenos Aires, Chennai, Prague, Montreal and Silicon Valley.

The Forum provides an opportunity for the cross-pollination of ideas over the application of technology to dispute resolution processes. Attendees are members of the ODR community and other interested groups, with a commonly held belief that the status quo is insufficient to meet the dispute resolution needs across public and private industry sectors. From that vantage point, attendees explore the need for ODR, the opportunities to increase access to redress systems, the coalescence between ADR and ODR, the virtues and limitations of ODR, the presentation of ODR pilot programmes and software and the ethics of ODR. At its core, the Forum explores the need for change, challenges in pursuing change and the ethics of change in the dispute resolution field. Conference attendees also consider the possibilities to nurture the future of ODR.

For many years, and many reasons, the Forum has remained somewhat on the fringe of ADR and law. With that said, the recent rumblings and changes in the larger legal profession about access and delivery of legal services – as they relate to dispute resolution – mimic the consideration the ODR Forum has given to possible changes in the field over the last decade (and perhaps the ODR Forum has even influenced some of them!) Watching these two worlds start to coalesce is exciting. Recognizing the value-add the ODR community provides to the profession is also encouraging. It was with this motivation that I embarked on organizing ODR 2015 with the NCTDR.

2   ODR 2015

In planning ODR 2015, inspiration was taken from the ODR 2014 conference that was hosted by the University of Hastings College of Law and Stanford Law School. Both of these schools leveraged their locale – Silicon Valley – to develop the conference programme. Some 2014 programme highlights included an ODR Tech Hackathon, presentations by members of Google, Legal Zoom, Rocket Lawyer, the current American Bar Association President and several others from the 'tech start-up' and 'technology and law' communities.

Pace Law School and the Institute of International Commercial Law are located in New York. As New York is the epicentre of dispute resolution, the location similarly inspired ODR 2015's content and organization. The New York court system has a robust ADR programme, in which ODR is being piloted. Additionally, dispute resolution service providers, including the American Arbitration Association, JAMS, the International Institute for Conflict Prevention and Resolution (CPR) and International Chamber of Commerce, all have offices prominently located in New York City. The United Nations is located in New York City, and their Commission on International Trade Law is currently working on the creation of legal instruments for ODR of e-commerce disputes.

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Given this regional strength, the conference was designed to maximize the synergies between the ODR and the legal ADR communities in hopes of cultivating cross-pollination between the two. Day one featured presentations and discussions of ODR initiatives in the public sector, and on day two there was an emphasis on ODR in the private sphere. The sponsorship of the conference included a similar make-up from the public and private sector, including the New York State Judicial Institute, American Arbitration Association, JAMS, Perkins Coie, Youstice and ICANN. Recognized supporters of the event included the International Chamber of Commerce, CPR, Modria, ODR LatinoAmerica, Internet Bar Organization, New York State Bar Association Dispute Resolution Section, Mediate.com, Pactanda, Arbitral Women and the Silicon Valley Arbitration and Mediation Center. JAMS hosted an opening reception for conference attendees at its mid-town office, with a keynote presentation during the reception by Esther Dyson, Chairman of EDventure Holdings.

3   Program Synopsis[2]

Richard Susskind's opening keynote presentation enveloped all the themes that transcended through ODR 2015. His presentation drew connections between the need for change, current opportunities for change and predictions of future changes in the legal field – both in the public and in the private sectors. His comments were fuelled by decades of experience writing on the future of the legal profession (with books including *The Future of Law*, *Transforming the Law*, *The End of Lawyers?*, *Tomorrow's Lawyers* and, most recently, *The Future of the Professions*), his work in legal technology for over 30 years as well as his roles as IT advisor for the Lord Chief Justice of England and Wales and President of the Society for Computers and Law.[3] Most recently, Professor Susskind chaired the UK Civil Justice Council's Online Dispute Resolution Advisory Group, which has released a report strongly advocating the introduction of ODR into the court system.[4] He reported on the work of this group and a trend – albeit a relatively gradually developing one – towards broader acknowledgment and acceptance of the incorporation of technology tools into dispute resolution. In sharing his vision of the future, he also stressed the impact of technology on the transformation of the legal profession, more generally.

This keynote presentation was complemented by a keynote interview with Doc Searls[5] (co-author, *The Cluetrain Manifesto;* author of *The Intention Economy: When Customers Take Charge* and Director of Project VRM at Harvard University's

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2   The complete ODR 2015 conference programme and available presentations can be found at <http://law.pace.edu/odr-2015>.
3   Richard Susskind's full biography can be found at <www.susskind.com/>.
4   A full copy of the report Online Dispute Resolution for Law Value Civil Claims (2015) can be found at <www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf>.
5   Doc Searls was interviewed by Leah Wing, co-Director, NCTDR, and faculty, University of Massachusetts, Amherst.

Berkman Center for Internet and Society).[6] Doc Searls introduced attendees to Project VRM (Vendor Relationship Management), which was designed "to equip individuals with tools that make them independent leaders and not just captive followers in their relationships with vendors and other parties on the supply sides of markets".[7] From this vantage point, the ODR community was inspired to consider ODR's potential impact on changing the power dynamic that exists between a vendor and a customer, shifting 'control' back to the customer. Attendees were asked to consider a world in which a customer would not operate from a responsive position vis-à-vis a vendor, but rather, be the initiator of requests for service, with their own terms of service, while remaining in absolute control of his/her information. The ODR community was challenged to contemplate how it could aid or react to such a paradigmatic shift.

The conference additionally featured presentations on public and private ODR initiatives, including

–   Implementation of new ODR projects and policies/reports for the judiciary in Latin America (most specifically, Brazil), New York (US), Texas (US), Montreal (Canada) and the United Kingdom[8];
–   Regulatory initiatives and ODR projects around the world, specifically addressing the European Union ODR regulation, the United Nation's working group on ODR in its Commission on International Trade Law and ODR projects in Nigeria and China[9];
–   The American Arbitration Association's ODR solution for copyright information[10]; and
–   ODR initiatives specifically designed for e-commerce, as well as a panel on the intersection between ODR and trustmarks.[11]

In addition to presentations on specific ODR pilots and developments, the Forum also included presentations on topics that could be considered the building blocks of ODR systems, supporting existing and future developments in the field. For example, there was a presentation on research completed assessing the value of an online apology in e-commerce, a possible component of an e-commerce ODR system.[12] Keynote speaker Noah Hanft (CPR) gave a presentation on the potential of ODR for private resolution (of commercial disputes), and a full panel also explored the practical considerations involved in applying ODR in cross-border

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6   Doc Searls' full biography is at <www.searls.com/>.
7   *See* <http://blogs.law.harvard.edu/vrm/projects/>. A full description of Project VMR can be found at <http://blogs.law.harvard.edu/vrm/>.
8   Speakers included Valentin Callipel, Bettina 'Betsy' Plevan, Graham Ross, Jeff Aresty, Alberto Elisavetsky and Dan Weitz.
9   Speakers included Michael Dennis, Pablo Cortes, Stefaan Voet, Yoshihisa Hayakawa, Ije Ononogbu, Anyu Lee and Michael Fang.
10   Presented by Diana Didia, SVP/CIO, American Arbitration Association, Powerpoint available at <http://law.pace.edu/odr-2015-agenda>.
11   Speakers included Colin Rule, Leah Wing, Mary Wong, Zbynek Loebl, Lou DelDuca, George Friedman, Eichro Mandai, Wan Shafiuddin Zainuddin, Casey Callaway and Miki Oguma.
12   L. Wing, 'Power of Online Apology in eCommerce', PowerPoint available at <http://law.pace.edu/odr-2015-agenda>.

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B2B disputes.[13] The Forum also paid considerable attention to ODR system design considerations,[14] the opportunities and challenges inherent in an online mediation platform[15] and the ethical considerations for ODR systems (as specifically compared with ADR).[16] Presentations were given on teaching ODR online and offline,[17] and an award was presented to the winner of the International Competition in Online Dispute Resolution.[18] Overall, it was a robust programme that challenged the status quo from all angles, and sought to constructively add to the conversation about access to justice, as well as the creation and transformation of dispute resolution systems around the world.

In concluding the event, the last panel of the Forum reflected on the presentations of the two-day event and made summary observations and suggestions for the future.[19] In particular, Dr. Mohamed Abdel Wahab proposed that in light of the transformation occurring within the legal profession, and the consistent and gradual incorporation of ODR into the mainstream, the ODR community consider organizing itself into a professional association (ODRA), to more 'formally' organize and promote ODR professionals and initiatives year-round, beyond the Forum.

4   Thanks and Next Year

It was a great pleasure to work on the organization of ODR 2015 with Ethan Katsh, the co-Director of the NCTDR. His knowledge, insight, know-how and calm resolve of the unexpected were invaluable during the organization of the event. I learned a lot. Thank you.

Next year – 2016 – is shaping into a very productive year for the ODR community, with two planned ODR Forums. On 23 and 24 May 2016 the first ODR 2016 Forum will be hosted by Hiil and will take place in the Hague, Netherlands. The second ODR 2016 Forum will be hosted by the University of International Business and Economics, in Beijing, China, on 19 and 20 September 2016. I look forward to both events.

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13   Speakers included Benjamin Davis, Mireze Philippe, Sherman Kahn, Paul Cohen and Petra Butler.
14   Speakers included Janet Martinez, Jin Ho Verdonschot and Chittu Nagarajan.
15   Speakers included Deborah Masucci, James C. Melamed, Mark Smalls and Jackie Nolan-Haley.
16   Speakers included Nancy Welsh, Dan Rainey, Amy Schmitz and Angie Raymond.
17   Speakers included David Larson, Noam Ebner and Jill Gross.
18   Award presented by Katrina Nobles.
19   Speakers included Orna Rabinovich-Einy and Mohamed Abdel Wahab.