From Practice to Profession: The ODR Community's Next Vital Step

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Abstract

If ODR practitioners and service providers visibly and enthusiastically support the need for the set of transparent high practice and approval standards for ODR that are now under preparation by the ODR Task Force of the International Mediation Institute, and become certified, disputants will much more easily recognize the additional knowledge and skills needed to use technology to resolve disputes, ODR will be recognized as a professional field, they will be more open to using ODR, and the field will grow throughout the world in changing times.

Keywords: global applicability, knowledge, professionalism, Qualifying Assessment Programs (QAPs), skills.

1 Background

In 2016, two prominent academics in international e-negotiating, ODR and artificial decision-making intelligence, Professor Noam Ebner[1] and Professor John Zeleznikow,[2] wrote a paper[3] entitled *No Sheriff in Town: Governance for the ODR Field*. Its conclusion hit a particularly important nail on its head:

> The field of online dispute resolution is at an important developmental point, on the cusp of being recognized, adopted, and institutionalized by a number of national and international systems. It is seeing a resurgence of service proliferation and practitioner activity in the private sector. At this point in time, we suggest that ODR as a field of professional endeavor is mature enough and motivated enough to engage in an internal discussion of governance and that the basic building blocks for such an effort already exist. Online dispute resolvers and the entities with which they are associated would benefit from wider, deeper, and more deliberate participation in a conversation about

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[3] N. Ebner & J. Zeleznikow, 'No Sheriff in Town: Governance for the ODR Field', *Negotiation Journal*, Vol. 32, No. 4, 2016, available at SSRN: <https://ssrn.com/abstract=2845639> or <http://dx.doi.org/10.2139/ssrn.2845639>.

whether to begin the internal governance process and about how to then create effective and appropriate institutions and norms.

In the previous issue of the *IJODR*,[4] Leah Wing[5] articulated the need for a clear set of ethical principles to guide the development ODR.

Many service providers and educators have worked tirelessly to develop ODR, urged on by governments and legislators. As a result, ODR has achieved a sufficient state of maturity that it can credibly be said to stand at an exciting tipping point in the quest for widespread global recognition and acceptance. This tipping point involves ODR being able to successfully metamorphose from a valuable expert practice that is leveraging the fast-changing international technology scene into a credible global independent profession. ODR needs to achieve this transition online, with characteristic innovation, speed and efficiency that are now recognized as hallmarks of online dispute resolution. If the ODR community can gain professional status recognition for ODR on a worldwide scale, it will be poised to capture the universal acceptance of users needed for long-term growth and sustainability.

Easy to envisage, perhaps, but how to achieve it? To answer that question, we need to consider briefly a number of issues:

2 e-Mediation and e-Arbitration

Mediation that makes maximum appropriate use of information and communications technology, or ICT, to augment or replace traditional elements of face-to-face negotiated dispute resolution processes is not just part of what we have come to understand as ODR, but is the main element of ODR, e-Arbitration being the other leg of ODR. The facilitated and adjudicative branches of ODR can complement each other when managed well, and when the distinction and implications are properly understood by users (which, currently, is not always the case). Just as traditional ADR processes are moving rapidly towards embracing hybrids like Med-Arb and Arb-Med-Arb, so the same can happen in ODR.

Practitioners and service providers play a key role not only in applying their ODR knowledge and skills correctly in the right circumstances, but also in ensuring that users of their services know what they are buying and can have the confidence to invest their trust in the different ODR processes that are available.

3 e-Mediation Education

The number of academic and practitioner-led online courses, webinars, workshops and seminars on ODR is rapidly increasing around the world, particularly in North America, Europe and Asia. Many mediation training courses now include

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4   *IJODR* Vol. 3, No. 1, 2016.
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segments ODR and e-negotiating. These many educational offerings differ greatly in depth, breadth and content, but in an uncoordinated way they are slowly helping to advance the appreciation and capabilities of both the supply and demand sides. The keyword there is 'slowly'.

Following the European Union's Regulation 524/2013/EU on ADR for consumer disputes,[6] the EU launched a multi-language ODR platform[7] aimed at helping consumers and traders experiencing online disputes to identify currently almost 300 EU-approved ADR providers that offer ADR services. The parties need to agree on the choice of ADR body, but they are free to choose providers offering ODR. Anyone selling products or services online must now include a URL to the EU ODR platform.

The mounting number of these and other educational initiatives is changing the dispute resolution landscape. Disputants are increasingly using ODR to resolve their conflicts either partly or wholly, and provider organizations and individual dispute resolvers need to be well-prepared to meet the growing demand. But the pace of development is slower than the pace of technology change.

Things would speed up considerably in there was a global, voluntary, professional governance structure aimed specifically at ODR that could harness the latent power of the field's educators and practitioners, and provide aspirational outcome to learning and achievement, such as a certification or accreditation, that would enable practitioners to establish and promote their position as experts in online dispute resolution.

4   e-Mediating Demands New Knowledge and Skills

Additional knowledge and skills are needed when resolving disputes using ICT techniques. Building consensus, reframing, mentoring parties, caucusing, reality testing, confidentiality and so on – all have to be considered differently according to the communication medium and tools being used. Those who habitually mediate face-to-face need new knowledge about alternative ICT options, new experience in knowing when and how to use them effectively. They need to become familiar and comfortable with new service delivery patterns and opportunities. New communication media change traditional dispute resolution processes in more ways than many traditional mediators realize. Building the parties' trust, for example, is a different proposition online.

Some traditional mediators are unaccustomed to using even basic ODR tools such as video conferencing and deal rooms, and many do not have the full toolkit and knowledge needed to be effective ODR practitioners. Not only do they need to know how the tools work, their functions and limitations, but they need to

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6   *See* 'Regulation (EU) No 524/2013 of the European Parliament and of the council of 21 May 2013', available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>.
7   *See* 'Online Dispute Resolution – European Commission Official Website', available at: <https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.home.chooseLanguage>.

know how to adapt their style and approach. In addition, they often need to reassure parties who find e-communicating somewhat daunting, even dangerous (in terms of confidentiality protection, for example). It's a different and changed world, but not everyone is sufficiently comfortable operating across all available media. Users need a simple, convincing, credible way to trust the competency of e-mediators when choosing or agreeing to use partial or total ODR to resolve their disputes.

5   Competency Criteria for e-Mediators – IMI initiatives

With that exact aim, in 2014 the Independent Standards Commission[8] of the International Mediation Institute[9] convened an ODR Task Force[10] comprising educators and practitioners in the ODR field. The Task Force held its first meeting in June 2014 during the 13th International Conference on Online Dispute Resolution in San Francisco and formed seven sub-groups to help focus on different aspects of the terms of reference.

The Task Force terms of reference[11] are quite concise:

a   Examine the need and extent to which ODR practice should be self-regulated through an independent international credentialing scheme and how such self-regulation can be most effectively implemented, including competency, standards and compliance;

b   Having regard to the growing use of ODR in cross-border dispute resolution and existing and planned government regulation in this field, identify the infrastructure needed to develop ODR standards on both national and international levels; assess the relevance of inter-operability, data import/export/migration and language translation; and

c   Propose other measures or initiatives to support the development of quality ODR.

There is a clear, practical objective. The preparation of substantive competency criteria for e-mediators will enable ODR trainers and educators to apply for their courses to become Qualifying Assessment Programs (QAPs). This will enable them to assess trainees' competency in ODR against the stated criteria and provide successfully-assessed candidates with a formal e-mediation certification. The ODR Task Force is also preparing a Code of ODR Professional Conduct. Such a formalized self-regulated scheme will create a cadre of transparently qualified e-mediators around the world meeting a common minimum high standard for ODR competency. It will have the effect of professionalizing e-mediation on a global scale.

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8   *See* 'IMI Independent Standards Commission', available at: <https://imimediation.org/imi-independent-standards-commission>.

9   *See* 'IMI – Homepage', available at: <https://imimediation.org>.

10   *See* 'IMI Online Dispute Resolution Task Force', available at: <https://imimediation.org/online-dispute-resolution-taskforce>.

11   *See* 'IMI Online Dispute Resolution Task Force – Terms of Reference for an ISC ODR Task Force', available at: <https://imimediation.org/online-dispute-resolution-taskforce#termsofreference>.

Similar QAP systems have been operated successfully by IMI for conventional face-to-face mediation, inter-cultural mediation and for mediation advocates and advisers for a number of years. There are currently over 40 QAPs based in 25 countries across North America, Europe, Asia, the Sub-Continent, Latin America and Africa and around 500 IMI Certified Mediators operating in 77 jurisdictions.

The IMI ODR Task Force will publish its final draft Competency Criteria for e-Mediators in the coming months. This will include the core competency knowledge and practical skills elements required to become qualified by QAPs for e-Mediator Certification.

The final draft will be open for stakeholder comments for several months during the summer of 2017. After reviewing comments and finalizing the draft, IMI will launch the e-Mediator Certification scheme throughout the world.

6   The Future Is What *We* Make of It

ODR needs to break through into a recognized and credible independent, self-regulated professional service in order for it to gain the respect and trust of its user base, which is huge, diverse and global. Every educator and serious player in the market will soon have a golden opportunity to play their part in forging the development of ODR. IMI will encourage the ODR community to review the final draft of the Competency Criteria for e-Mediators and submit their comments and suggestions to the IMI ODR Task Force, via email at: ODRTF@IMImediation.org.