

THE NEW FRONTIER

Online ADR becoming a global priority

By Ethan Katsh

The logic is quite simple. As electronic commerce grows, disputes grow. As disputes grow, the need for dispute resolution grows. As the need for dispute

The Internet and ADR

resolution grows, opportunities for using one's ADR skills in cyberspace will grow.

If this logic does not persuade you that ADR has a future in cyberspace, consider the following. On any day at the online auction site eBay (www.ebay.com) there are 4 million items for sale. Over a half million transactions occur each week between buyers and sellers, all of whom are strangers to each other. eBay provides the place and the means for this to occur but eBay itself assumes no responsibility for any problems that might arise between buyer and seller. Is it any surprise that disputes occur in such an environment? Are there opportunities at such websites for persons skilled in ADR?

1999 was a year in which a variety of Internet entrepreneurs decided that there were commercial opportunities in online dispute resolution. It was also a year of increasing activity and experimentation by existing online ADR projects, most of which date back only two to three years. There is great variety among these efforts but they share a common understanding, namely that while cyberspace may be an interesting place, and for some a lucrative

place, it is not likely to be a harmonious place.

Forging a new path

Online ADR refers to the application of dispute resolution skills and resources over a network. Although many traditional ADR systems draw their strength from face to face interactions, online ADR should not seek to replicate those conditions. Instead, it should use the advantages of online technology to forge a new path.

Both national governmental agencies, such as the Federal Trade Commission, and international agencies, such as the European Union and the Hague Conference on Private International Law, have identified online ADR as a priority. These agencies have come to understand that while there is a

ADR is not a single approach to dispute resolution. Even if ADR becomes accepted in the networked environment, debates will continue over which ADR methods and systems are most appropriate, in which kinds of settings and for which kinds of disputes. Additional challenges will be presented by hybrid systems that use network resources to facilitate dispute resolution using more traditional methods.

In looking at the emerging landscape of online ADR providers, there is, as should be expected at this point in time, varying experimentation and a lot of creativity and novelty, but very little uniformity in approach and methods.

Table on page 7 identifies 14 current online ADR efforts and summarizes differences in approach and purpose. Some sites are nonprofit in nature and

Online ADR will not duplicate the face-to-face environment. Rather, it should focus on using the network in ways that maximize the power of technology, power that may even be missing in face-to-face encounters.

growing need for dispute resolution in cyberspace, traditional legal alternatives are not likely to be the dispute resolution method of choice in cyberspace.

When parties are at a distance, when jurisdictional issues are unclear and when speed is a priority, recourse to courts becomes less and less likely or desirable. As a result, it may very well be that, for the online world, what we have known as Alternative Dispute Resolution (ADR) may, over time, become Primary Dispute Resolution (PDR).

others are highly commercial. Some attempt to automate dispute resolution completely and some employ technology as a tool to assist persons trying to use traditional ADR techniques. Some are focused on a particular dispute arena while others are willing to intervene in almost any dispute.

What is perhaps most important to remember is that while some of these projects seem more developed or successful than others, all are really first attempts, something equivalent to

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version 1 of a piece of software. As a result, dispute resolution in an environment which is characterized by rapid change, such as the Net, will likely be characterized by ongoing experimentation and improvement.

The earliest online ADR projects were generally foundation-supported university-related projects. What may still be the most well known project, even though it has been dormant for two years,

Law School).

These non-profit projects have been joined by the ventures listed in the table with .com designations. Except for Internet Neutral, all were created in the last 12-18 months and all were inspired by a realization that connecting people and machines via a network opened up some intriguing conflict intervention applications. For example:

extraordinarily simple set of calculations but it can also be extraordinarily useful, particularly in some disputing arenas, such as insurance company/claimant disputes, where the disagreement is over money and where settlement out of court has always been expected. Since August 1988, according to co-founder James Burchetta, more than 5,000 disputes involving more than \$20 million worth of claims have been settled in this manner by Cybersettle.

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was the Virtual Magistrate project, originally located at Villanova University and since moved to Chicago-Kent Law School. It was set up in 1996 to arbitrate disputes between Internet Service Providers and subscribers. Like my own project, the Online Ombuds Office, it received initial support from the National Center for Automated Information Research. Other early projects included eResolution, originally called Cybertribunal (University of Montreal), and Resolution Forum (South West Texas

Cybersettle, *Clicknsettle* and *SettleOnline* rely on the ability of parties connected by a network to submit electronic settlement offers to a machine, and use software to compare the confidential bids submitted by disputants. If the offers are within a certain range, the machine will end the dispute by splitting the difference. When the offers are far apart, the machine keeps the offers secret and negotiations can continue without anything having been given up by the parties. This process is based on an

I-Courthouse was founded by a trial lawyer who understood that groups of people can work together online even if they are separated by a distance. Trial lawyers are specifically interested in the decisions of groups known as juries, but assembling mock juries can be difficult and expensive. I-courthouse is premised on assembling online juries. For disputes that are filed, the jury can provide the parties with feedback on the merits of the different positions. For lawyers who might be preparing for trial, I-Courthouse can provide low cost opportunities to evaluate one's case before a panel before the trial starts.

SquareTrade was founded by three former McKinsey and Co. consultants and Harvard Business School graduates. For them, the lure of the Net is that expertise

Guide to Online ADR Providers				
Website	URL	Level of automation	Mediation/ Arbitration	Online or offline disputes
ClicknSettle	clicknsettle.com	High	Other	Offline
CyberSettle	cybersettle.com	High	Other	Offline
Disputes.org	disputes.org	Low	Arbitration	Online
eResolution	eresolution.org	Medium	Both	Online
I-courthouse	i-courthouse.com	Medium	Other	Online
Internet Neutral	internetneutral.com	Low	Mediation	Online
National Arbitration Forum	arbforum.com/domains	Medium	Mediation	Online
Online Mediators	onlinemediators.com	Low	Mediation	Online
Online Ombuds Office	ombuds.org	Low	Mediation	Online
Resolution Forum	resolutionforum.org	Medium	Both	Both
SettleOnline	www.settleonline.com	High	Other	Offline
SquareTrade	squaretrade.com	High	Both	Online
Transecure	transecure.com	Medium	Both	Online
World Intellectual Property Organization	www.wipo.int	Medium	Arbitration	Both
VirtualMediator	www.keylaw.com	High	Other	Offline

can be aggregated, applied and enhanced by new network software, even when the third party and the disputants are in different places. SquareTrade does not call its dispute resolution specialists mediators or arbitrators because, as its CEO Steve Abernethy explains, "with new technologies, we may see new approaches, new styles, new models, and new roles."

OnlineMediators.com is a new venture started by the founders of the highly used Mediation Information and Resource Center (www.mediate.com) and WebMediate.com is a soon to be launched firm begun by several Harvard Law School students.

What is noteworthy about the past year is that online processes are actually being employed to resolve sizable

name.

In the past, Network Solutions Inc. had sole authority to resolve all domain name disputes that did not go to court. Under a procedure recently established by ICANN (<http://www.icann.org>), a variety of organizations will be accredited to arbitrate domain name disputes. Cases will be filed and resolved online, with no face to face encounters. Disputes.org, WIPO, and the National Arbitration Forum are the first three dispute resolution providers accredited by ICANN, but there will undoubtedly be more.

Making the fit

The principal criticism aimed at online ADR involves the lack of face to face encounters. There is a richness in face to face meetings because interaction can occur quickly and spontaneously and

focus on using the network in ways that maximize the power of technology, power that may even be missing in face to face encounters. Software that can help parties reach win-win solutions, such as OneAccord (www.oneaccordinc.com) and software that can guide decision making may be developed independently of the online ADR firms that will apply such programs.

The efforts discussed here are interesting and impressive but are only a small beginning in applying the force of cyberspace to building trust, repairing relationships and allowing transactions to occur with a minimum of risk. Will these and programs that might emerge during 2000 provide employment opportunities for mediators and arbitrators? And what kinds of skills should mediators and arbitrators try to develop that would be useful in online ADR?

There are probably more questions than answers at the beginning of the new millennium, but it is clear that cyberspace is growing and that, increasingly, cyberspace is where disputes are. While there may be differences of opinion about the kinds of techniques that need to be employed in cyberspace, there is little doubt that there is and will be a need for those who understand the process of dispute resolution and who are comfortable with the machines that have become a large part of our lives.

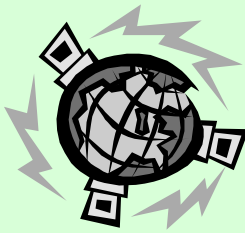
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numbers of disputes. The Virtual Magistrate had difficulty obtaining cases, but when the right approach is matched with the right venue accessible online ADR resources will be used.

Cybersettle and Clicknsettle have resolved many cases involving insurance companies and claimants. In the spring of 1999, the Online Ombuds Office mediated almost 200 disputes arising out of eBay auctions. The success of this pilot project is leading eBay to establish a more longterm dispute resolution project.

Three of the entities in the table, Disputes.org, National Arbitration Forum and WIPO, are competitors in a recently established online ADR process to arbitrate domain name disputes. Domain names are the words or phrases that come before the .com or .net suffix, such as mediate.com or cybersettle.com. There have been many disputes during the past four years involving domain names, because someone may register a domain name and only discover later that another company holds the trademark for that

often on a non-verbal level. While some ventures in the future may rely on videoconferencing, online ADR should not expect or strive to duplicate the face to face environment. Rather, it should



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on the 'Net**

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