DEVELOPING AN ONLINE MEDIATION CULTURE: THE FOURTH GENERATION OF ONLINE ADR

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ABSTRACT

Online alternative dispute resolution (online ADR) has the potential to be the primary method of dispute resolution in many cases, at the very least for online disputes.

Inevitably this will have an impact on the practice and culture of mediation.

The time can be foreseen when online communication will attain the ubiquity of the telephone. It is not a question of whether mediators will be confronted with online ADR: it is a question of when and how.

Online ADR will have significant implications for mediation culture as ADR practitioners overcome their initial resistance ("but I can't see them") and learn to adapt their skills. Just as mediators have integrated telephone, schedulers, word processors and other technology into their practice, online ADR will eventually be seen as one available tool.

This paper presents an overview of the current state of online alternative dispute resolution through a comprehensive literature review and analysis of 76 online ADR sites from around the world. The total of more than 500,000 cases successfully resolved online shows that online ADR can and does work.

The paper will then present the research process conducted for the Department of Justice Victoria, Australia as an illustration of the likely future adoption of online ADR. After "hobbyist", "experimental" and "entrepreneurial" phases, online ADR is now moving into a fourth generation "institutional" phase where it is being adopted by governments and other formal institutions. Research reveals overwhelming public interest in online ADR.

Finally, this paper will discuss the implications for mediation practice of the growth of online ADR, including changes to practitioner knowledge, skills and attitudes.

As online ADR is increasingly adopted in formal institutional contexts, ADR practitioners will need to adapt their culture to accept online ADR.

Further information on the research conducted for the Department of Justice Victoria, including full copies of the research reports produced, is available at www.justice.vic.gov.au and www.psych.unimelb.edu.au/icrc.

1.0   BACKGROUND

In 2002, the Department of Justice Victoria commissioned research into introducing online alternative dispute resolution (online ADR) in addition to its other services.

The Government of Victoria, Australia's second most populous state, is committed to bringing the benefits of information technology to all its citizens.

In 1999, the Victorian Government issued *Connecting Victoria*, a blueprint for growing the State's information and communications technology sector. One of the key commitments in this policy was to have all suitable government services available online by 2001. This goal was achieved and Victorians now have access to more than 450 government services online through www.vic.gov.au. In March 2002 the Victorian Government released its eGovernment strategy, *Putting People at the Centre*, to maintain leadership in this area.

To investigate the benefits of online ADR, the Department has asked the International Conflict Resolution Centre at the University of Melbourne (ICRC) to undertake a three part research project including:

- An evaluation of current Australian and international online ADR schemes, including identification of best practice principles (Exploration Report)
- An assessment of likely demand focusing on potential providers and consumers of online ADR (Needs Assessment)
- Recommendations for proceeding or not proceeding with online ADR (Feasibility Report).

The Exploration Report was completed on 7 March, the Needs Assessment was completed on 16 May and the Feasibility Report was completed on 20 June 2003. All are available at www.justice.vic.gov.au and www.psych.unimelb.edu.au/icrc.

This paper draws on the results of all three reports.

Key Terms

ADR refers to processes other than judicial determination in which an impartial person assists those in a dispute to resolve the issues between them. **Online ADR** refers to ADR processes assisted by information technology, particularly the internet.

Online disputes are any disputes that arise through or because of online communication, including disputes between online merchants and consumers, between buyers and sellers at online auction sites and over internet content.
Both online and other disputes (**offline disputes**) can be resolved online.

A full outline of terminology used is included in the glossary in **Appendix 1**.

2.0   THE CURRENT STATE OF ONLINE ADR

2.1   A Brief History of Online ADR

Online ADR has been readily available since 1996. Most of the early experiments were in North America. However, Europe and Asia have now started to develop significant online ADR initiatives, including two Singaporean sites. The first Australian sites were launched in 2002.

Online ADR has now gone through three broad stages of development:

- a "hobbyist" phase where individual enthusiasts started work on online ADR, often without formal backing
- an"experimental" phase where foundations and international bodies funded academics and non-profit organisations to run pilot programs
- an "entrepreneurial" phase where a number of for-profit organisations launched private online ADR sites.

Online ADR is now entering a fourth "institutional" phase where it is piloted and adopted by a range of official bodies.

Two main forces have been driving the development of online ADR to date:

- the difficulty of utilising traditional dispute resolution methods in low-value cross-border online disputes
- the potential of the online medium to provide more effective ADR techniques for both online and offline disputes.

The first issue has been a particular issue for governments and intergovernmental organisations. Governments concerned about fostering e-commerce are justifiably concerned about consumer protection in the "borderless marketplace" where traditional court-based remedies are not a realistic option. Consumer confidence is seen as a key issue in increasing the level of online commerce.

In addition, the same forces that promoted ADR in recent decades are also driving the development of online ADR. The search for more convenient, cost-effective, efficient and durable ways of resolving disputes will continue for as long as disputes exist.

2.2   Analysis of Online ADR Sites

Seventy six current and past online ADR systems were analysed for research, comprising the most comprehensive review of online ADR sites published to date. Sites were identified through internet searching and an extensive literature review. A list of sites surveyed is included in **Appendix 2**.

Forty three sites from the USA, 20 from Europe, four from Canada, five from Australia and four from the rest of the world were reviewed. Nineteen of the 76 sites are no longer active. Sites that only offer information on ADR were not included in the survey.

Types of Online ADR

Online ADR has adapted traditional ADR processes for use online, including complaint handling, arbitration, mediation, facilitated negotiation and case appraisal. In addition, online-specific techniques have been developed to take advantage of the new technology; these include automated negotiation and negotiation support.

Facilitated negotiation is the simplest form of online ADR in which an online space is provided where parties can negotiate directly. *Online mediation* can be via email or, on more modern systems, through a secure website. *Online arbitration* can be through submission of documents only or via videoconferencing. *Case appraisal* is where a neutral party considers a dispute and provides advice either, as for iCourthouse (www.i-courthouse.com) through a virtual "jury" mock trial or by an expert "advice."

Automated negotiation is an innovative form of online ADR that does not have an exact offline analogue. It includes processes such as "blind bidding" where parties submit confidential settlement offers for a number of rounds. A computer program automatically notifies them of a settlement at the arithmetic mean once the amounts are sufficiently close. Cybersettle (www.cybersettle.com) is an example of this.

Negotiation support systems have also been designed to take advantage of the online medium. They are expert systems that allow manipulation of negotiation variables by one or both parties to help them plan and conduct negotiations. Primary players are SmartSettle (www.smartsettle.com) and SettleTheCase (www.settlethecase.com).

Types of Disputes

The range of disputes covered by online ADR has been broad: from family law to internet domain name disputes; from consumer transactions to insurance disputes. Online and offline consumer disputes have been a major focus of online ADR sites.

It is not surprising that many online ADR sites were established mainly to resolve online disputes. However, a number of online ADR sites have instead focused on offline disputes. Most automated negotiation sites specialise in insurance and commercial claims while some mediation sites have focused only on offline disputes.

Communication Methods

The main communication methods used in online ADR have changed as improved technology has become available. Modern services employ secure web sites with encryption and password protection. Email is not often used.

Sites offer asynchronous communication through threaded discussion (bulletin boards) or real time chat. Instant messaging is now being used. As cost and quality improve, videoconferencing is being used by an increasing number of services.

Out of the 76 sites surveyed, 61 offer their services in only one language (53 in English only). Only six offer services in three languages or more.

Cases Attracted and Outcomes Achieved

Statistics on cases attracted were available for 24 of the sites surveyed.

The two sites that have attracted the most cases are Square Trade (www.squaretrade.com) with 400,000 cases settled from February 2000 to July 2003 and Cybersettle (www.cybersettle.com) with 68,000 cases settled from June 1998 to December 2002. Six other providers have handled more than 1,000 cases.

Eight sites provide data on settlement rates. Rates fall between 50% and 95% and are broadly comparable with settlement rates for ADR generally. There is no evidence to suggest that online settlements are more or less durable than other ADR outcomes.

Privacy, Policies and Procedures

Online ADR is now about as secure as traditional ADR. It is important to note that no communication method can provide for absolute security: documents can be intercepted and parties use a hidden a tape recorder during face-to-face sessions.

Much early resistance to online ADR probably came from the fact that email is not secure. However email is not the main method used by modern online ADR systems.

Most systems instead allow parties to communicate on a secure web page or platform. The most common mechanism is Secure Sockets Layer (SSL). Confidential areas can only be entered with user passwords. Like any other sites, online ADR sites are also at risk of virus infections, intrusions or disk crashes. Firewalls, backup policies and intrusion detection reduce these risks.

Most online ADR sites have formal policies and procedures, including dispute management protocols, standards of conduct, codes of practice and explicit policies on privacy that tell users what use can be made of their personal information. These are usually modelled on relevant industry standards.

Case Studies of Online ADR

Square Trade (www.squaretrade.com)

Square Trade is a private venture launched in March 2000 that has gone on to be the world's leading online ADR service, settling more than 400,000 disputes. Square Trade's mission is to build trust in online transactions.

Dispute resolution is offered for eBay and other online marketplaces and for real estate disputes with the California Association of Realtors. It involves four processes:

- online complaint filing and notification of the other party
- facilitated negotiation between the disputants
- mediation by a Square Trade mediator
- a case appraisal or "recommendation" by the mediator on request of the parties.

Facilitated negotiation is the main process used, with 85% of cases settling through this mechanism. This is very cost-effective since no human intervention is required. Square Trade has a panel of 250 mediators.

Square Trade has a presence on its partners' sites, meaning that disputes come to it directly from where they occurred. eBay customers have a strong incentive to use Square Trade services since it is the only way they can get negative "feedback" on them removed from the site where it will influence future transactions.

ECODIR (www.ecodir.org)

Electronic Consumer Dispute Resolution (ECODIR) is an initiative of the European Commission and the Irish Department of Enterprise, Trade and Employment launched in October 2001. The site offers its services in English and French.

Its aim is to resolve Internet disputes arising between consumers and merchants. Three basic process are offered: facilitated negotiation, mediation and case appraisal. If a dispute is not settled by negotiation within 18 days, mediation is offered. If not settled within 15 days, the mediator may then issue a recommendation based on principles of honesty and justice.

Dispute Manager (www.disputemanager.com)

Dispute Manager was developed by the Singapore Academy of Law and its subsidiary the Singapore Mediation Centre with the support of the Ministry of Law. It was launched in July 2002. Dispute Manager's aim is to extend the reach of existing ADR services to the convenience of people's offices or homes.

Dispute Manager offers automated negotiation, mediation and case appraisal in English. All communications are through password entry to a secure encrypted site. Dispute Manager worked hard to build a client base prior to launch with over 130 organisations in both the public and private sectors declaring their support for its use.

2.3   Key Learnings

Online ADR has a Number of Advantages over Traditional ADR

Online ADR bridges distances, results in cost savings associated with travel and venues and enables parties to access expertise outside their local area. In some circumstances, such as e-commerce, it may be the only financially feasible settlement option.

Online ADR improves transfer, retrieval and storage of data and enables delayed communication 24 hours per day.

It improves access to justice for some groups by mitigating disadvantages such as geographic isolation, confinement or imprisonment, disability, threat of physical violence, shyness in face-to-face settings and socio-economic status cues. Traditional

ADR mechanisms advantage people who are physically attractive, articulate, well-educated or members of a dominant ethnic, racial or gender group.

Online ADR has Some Disadvantages

Text-based methods reduce communication cues which can lead to misinterpretations, negative interpersonal behaviour and frustration due to delays in response.

Online communication advantages those who are familiar and comfortable with the relevant technology and tools.

Online ADR Should be Viewed as One Among Many Tools

Online ADR is not a substitute for other methods; it is one option available to practitioners. Guidance will be required on the appropriate situations for its use.

Some disputes are not suitable for any type of ADR. Other disputes are eminently suitable for online ADR, such as online disputes and single transaction disputes.

However it is important not to not have too many preconceptions about the type of disputes that can be resolved through online ADR: the key limitations are the needs of the parties and the ADR practitioner. For example, one provider reports that when it was established many of the disputes it received were family disputes. These were initially referred on; however, disputants began to insist that they be resolved online.

Continuing Technological Change Should be Anticipated

Finally, an important lesson from the experience of online ADR to date is not to underestimate the speed at which online technology develops. Sites created as recently as 2000 can now appear out of date while the technology of 1997 is obsolete.

The present state of online ADR technology may be just the beginning. The future may see the imaginative use of images, graphics, shapes and symbols and greater use of video and audio streams and video conferencing.

3.0   FUTURE DIRECTIONS IN ONLINE ADR

3.1   The Fourth Generation of Online ADR

The current state of online ADR thus shows an impressive and growing body of experience and best practice. There are success stories from each of online ADR's "hobbyist", "experimental" and "entrepreneurial" phases. The future is likely to bring increased adoption of online ADR by governments and other formal institutions.

The research process conducted for the Department of Justice Victoria, Australia is an illustration of the likely fourth generation phase of online ADR as it is adopted in "institutional" contexts.

3.2   The Government Rationale for Online ADR

The Government of Victoria, Australia's second most populous state, is committed to bringing the benefits of information technology to all its citizens. Investigation of implementing online ADR was a logical consequence of its previous information technology policies.

In 1999, the Victorian Government issued *Connecting Victoria*, a blueprint for growing the State's information and communications technology sector. This policy outlined ways in which the State Government would help to ensure that all Victorians would benefit from technology.

One of the key commitments in this policy was to have all suitable government services available online by 2001: a goal which was achieved. Victorians now have access to more online services than do citizens from any other jurisdiction in the world with over 450 government services accessible through www.vic.gov.au.

As well as improving its service delivery, the Victorian Government believes its adoption of "leading-edge" technology will have two other effects:

- it will help make government itself more open, efficient and accessible
- it will encourage business and citizens to adopt e-commerce and the internet.

Online government services have been well-received. A Victorian Government survey of online users found that 82% of respondents said electronic service delivery made government services more accessible and 62% thought it improved service quality.

In March 2002 the Victorian Government released its eGovernment strategy, *Putting People at the Centre*, to maintain leadership in this area. It articulated the following vision for Government innovation working for Victorians is:

> "That Victorians are assisted to meet their everyday needs through timely, convenient and relevant support from government, made possible by harnessing the capabilities of information networks and communications technologies as they evolve."

In line with these aims and its *Growing Victoria Together Strategy*, the Victorian Government committed funds to the Department of Justice to investigate online ADR.

It was seen that online ADR could contribute to the priority action area of promoting rights and respecting diversity, including:

- improved access to courts, legal aid, victim support and ADR
- improved awareness of rights and the promotion of equal opportunity
- improved access to services for culturally and linguistically diverse Victorians.

On 30 October 2002, the Department initiated research to investigate the likely demand for online ADR among citizens and government agencies.

3.3 Consultation Undertaken for the Department of Justice Victoria

The Needs Assessment conducted for the Department of Justice in May 2003 may be the first time a government has conducted a detailed study of public demand for online ADR. In order to determine the need for online ADR in Victoria, consultation with both potential agencies and potential users was required.

The ICRC used the following methodology:

- Online survey of visitors to a range of Victorian government sites
- Hard copy survey distributed to users of current Victorian government services
- Five focus groups of potential users
- Stakeholder and expert consultation through distribution of a Discussion Paper
- In-depth consultation with six Victorian government agencies identified as most likely to consider introducing online ADR.
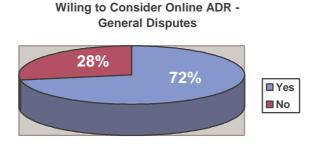
Survey and focus group participants represented a broad cross-section of the community, including people who had never used computers, rural and regional participants, people from a non-English speaking background, people from a range of age groups and a person with hearing impairment.

Victorian government agencies consulted offer a range of dispute resolution services including complaint handling, mediation, investigation and adjudication. The main communication methods currently used are telephone, mail and face-to-face contact, with only one agency currently conducting a large part of its communication online.

3.4 User Demand

Surveys, focus groups and expert consultation revealed overwhelming public interest in online ADR services. Given public unfamiliarity with online ADR, there was an extraordinary level of public interest in and demand for online ADR shown.

More than 70% of respondents reported that they would be willing to consider online ADR both for general disputes and for disputes with an online company. Daily and weekly computer users and people who use banking and auction sites were more likely to consider online ADR. The major factors influencing choice of process were cost, speed and convenience.

Wiling to Consider Online ADR - General Disputes

28%
72%
Yes
No

Focus groups revealed that dissatisfaction with existing methods of dispute resolution was a factor in motivating participants to consider online options.

> "I would ring Consumer Affairs first but it can be very difficult sometimes because you have to wait on them for very long time."
>
> "You can try to ring the Real Estate Institute and spend the next week on the phone trying to get through."

A number of participants were fairly fatalistic about disputes and might currently end up seeking no redress because of dissatisfaction with existing methods. This suggests that online ADR may have a role in promoting access to justice.

Both focus groups and surveys revealed a smaller but significant group of people that are uncomfortable with online communication and are unlikely to use online ADR in any circumstance. Given this, online ADR should be considered as an addition rather than as a substitute for any current dispute resolution service.

3.5   Agency Demand

Consultation also revealed considerable interest in online ADR from government institutions. Five of the agencies consulted saw a fit between their current strategies and some form of online ADR.

Government agencies consulted identified a number of important advantages to online ADR, including the ability to bridge distance, to improve transfer and storage of data, to improve access to justice for some groups and offer a number of efficiency benefits. Some concerns were also identified, including reduced communication cues, user impatience, privacy and security issues and accessibility and equity issues.

The majority of government agencies saw the benefits of online ADR and were interested in introducing some online ADR techniques as an additional service. Online ADR was not viewed as a substitute for existing services or as suitable for every case.

One of the major drivers was the belief that online ADR was inevitable given changing community expectations of service delivery.

> "It just seems that it's inevitable. We've got to keep up with the times and communicate with people the way they want to contact us. In 10 years, it may be the only way people communicate with us."
>
> "When telephones came in they were a pain in the back for a lot of people. But the expectation now is that all government agencies will have a telephone service. The expectations will continue."
>
> "There's consumer expectations. As you move on there's an expectation that an agency uses technology to the full."

3.6   User and Agency Needs

Both agencies and potential users raised issues and concerns that would need to be taken into account in design and implementation of any online ADR system.

Surveys and focus groups revealed key user needs in an online ADR system, including information requirements, preferred functions, design and promotion issues. These results were found to be consistent with international research on user needs.

Agencies consulted identified a number of implications of introducing online ADR into their operations, including training, staffing, procedural and infrastructure issues.

User feedback and agency consultation thus suggest the following minimum requirements for any online ADR system:

User Needs

- Provides a simple, easily understandable process.
- Is presented through a user-friendly and accessible site with a clear and well-designed front page.
- Offers relevant information, advice, dispute resolution services and referral as needed. Dispute resolution can be provided in delayed time.
- Provides detailed information on process, cost, speed and privacy protection. This should be clear, short and simple. Service guarantees, endorsements, case studies and simulations would increase users' willingness to try the site.
- Uses technology that can be widely accessed.
- Offers offline as well as online help if needed. This should be immediate.
- Enables users to move between online and offline processes.
- Has authentication processes for parties and documents.
- Has a schedule for the process, including prompts and time limits.

Agency Needs

- Agencies would like online ADR to be initially introduced as a pilot. It should be simple and easy to use. Usability testing should be included.
- Significant training will be required for the people handling disputes. Training should be interactive and long-term and may be provided online. Funds should be allocated to ensure that this takes place.
- Public education must accompany any system. Again, funds should be allocated. Liaison with stakeholders such as the legal profession would be needed.
- Users must be given guidance on how to use the process, including case scenarios.
- Users must be able to move between online and offline processes at any point.
- Online ADR must be agency branded and integrated with agency operations.
- The system must be reliable. Security will need to be assured. Archiving facilities must be provided and integrated with agency record keeping.

- The system must allow for interactive communication with disputants to unpack issues involved. It must allow for attachments, including photos and faxes. It should be easy to create and save a suite of standard responses for repetitive issues. The system should have prompts and time limits to guard against delays.
- Rules are needed to screen out prank users and guard against harassment. The system must help identify urgent and emergency complaints.
- Users should be given instructions on exhausting their own remedies and on suitable behaviour in the online forum.

Different agencies preferred different online ADR methods, including facilitated negotiation, online mediation, online complaint handling and, in the longer term, potentially online adjudication. Most agencies preferred asynchronous tools such as bulletin boards, with only one agency preferring real time "chat" technology.

3.7   Likely Adoption of Online ADR

Following this Needs Assessment, a Feasibility Report was produced to provide options for introducing online ADR in Victoria to form the basis for Government planning.

Based on clear public and agency demand and availability of suitable technology, the Report recommended an investment in a suite of online ADR tools to add to the existing dispute resolution functions of agencies across government.

The need to provide infrastructure and build confidence in online ADR particularly suggested that it would be appropriate for government to play a leadership role at the present stage of development. Government can play an important change management role in assisting people to adapt technically, psychologically and emotionally to new technology through information, training and ongoing support.

The Department of Justice is currently considering the Report and indications are good for adoption of online ADR into government dispute resolution agencies in Victoria.

The research process undertaken by the Department of Justice could form a model for other governments that wish to investigate the suitability of online ADR. If so, it is likely that there will be increasing adoption of online ADR into formal "institutional" dispute resolution processes. This has implications for ADR practice.

4.0   IMPLICATIONS FOR ADR PRACTICE

As online ADR is adopted as part of formal dispute resolution processes, there are number of implications for ADR practitioners.

Online ADR will require ADR practitioners to make some changes to their

- Knowledge
- Skills
- Attitudes.

However most of the changes needed will be incremental rather than revolutionary. The most helpful way of viewing online ADR is as simply another modality to resolve disputes.

4.1   Practitioner Knowledge

To provide online ADR services, ADR practitioners must possess a minimum level of knowledge and familiarity with the computer system and online ADR software being used. They need to be comfortable with navigating the program interface, whether it is text or video-based.

For most practitioners, this will require a small investment of time to add to their existing knowledge of computer systems. For some, it may require a more substantial investment of time to develop initial computer and keyboard skills.

The technological competence of being able to handle the software and platform used are a prerequisite for successful managing online ADR:

> "ODR practitioners must learn some very specific skills before they can handle difficult dispute resolution procedures online. If a neutral doesn't know how to manage the platform she is using to work with the parties, or if she can't effectively multitask between multiple caucus spaces and the joint discussion, or if she doesn't get online and respond to the parties enough, it doesn't matter how well she can engage in face-to-face active listening" (Rule 2002:242).

4.2   Practitioner Skills

Online ADR has grown directly out of the history of offline ADR and many of the skills used can be easily translated to the new technology:

> "The lessons learnt in ADR over the years about the importance of impartiality, how to effectively move parties towards resolution, about the importance of listening and transparency, and the challenges of managing power imbalances all are central to effective ODR practice" (Rule 2002:13).

Some skills are relatively easily translated - for example practitioners can reframe by cutting and pasting sentences to reflect and give priority to certain issues.

However, in addition to adapting their skills, online practitioners also need to develop new skills. Specific things that practitioners need to learn include:

- maintaining communication with parties where communication is delayed and may extend over time
- creating online "rituals" and "ceremonial moments"
- controlling information flow through quick and active intervention - this is particularly important since online communication methods tend to encourage increased expression of emotion
- "active reading" between the lines.

4.3   Practitioner Attitudes

Attitudinal change may be the biggest challenge for ADR practitioners in accepting online ADR. In some cases, this may involve a significant reorientation of views.

Online technology may initially be resisted by ADR practitioners who dislike the online culture and communication style. Perhaps because dispute resolution is such a "people" activity, practitioners may need much persuading that online ADR is suitable for them.

In many cases, this should just be a matter of experiencing online ADR and becoming convinced of its benefits.

Most practitioners use technology all the time where its worth has been proved, such as telephones, electronic diaries or word processors. The key is to help practitioners experience the potential of new online technologies in order to become "believers" and include these tools in their practice.

"But I Can't See Them"

Most of the disadvantages of online ADR come from its reduced communication cues. Many online communication tools are text-based and do not offer visual and para-linguistic cues. While greater use of videoconferencing will add further depth to online ADR, invariably there will be some loss of cues from face-to-face methods.

Reduced communication cues create an atmosphere of heightened ambiguity. This increased ambiguity leads to increased attributional error - where one party misconstrues the other and may assume that they have sinister motives.

However a lack of visual cues in online ADR can be an advantage in some situations where it enables parties to focus more on substantive issues, avoiding negative emotion from visual or audio contact. Reduced cues are particularly useful in situations of competitive bargaining.

The effect of diminished cues depends to a great extent whether participants have a pre-existing relationship or spend time building rapport. Differences between email and face-to-face communications lessens as rapport is established.

Asychronous online communication potentially gives parties greater room to reflect, allowing them to explain their views carefully and concentrate on the substantive issues in dispute. Evidence shows that typing and the resulting time lag causes people to pay more attention to the substantive content of messages and lessens the emotional stress of conflict resolution. Approximately two thirds of email users take about the same care composing email as they do with memos and letters.

5.0   CONCLUSIONS

The Internet is an extraordinary achievement and the challenge is to use it to expand thinking and enrich ADR practice. ADR practitioners need to learn that online ADR can powerfully complement existing techniques.

We are at a moment in human history when communication methods are changing dramatically. This will inevitably have an impact on the resolution of disputes.

Rates of private internet access continue to grow worldwide. The time can be foreseen when online communication will attain the ubiquity of the telephone. It is not a question of "whether" online ADR: it is a question of when and how.

One significant barrier to the adoption of online ADR is potential resistance within the ADR profession. A better understanding of the potential of online ADR may assist to convince practitioners of the potential of new online technologies.

As the number of online ADR sites launched continues to grow and as online ADR is increasingly adopted in formal institutional contexts, ADR practitioners will need to adapt their knowledge, skills, attitudes and culture to include online ADR.

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A full bibliography of research is available in the Project Exploration Report at www.justice.vic.gov.au and www.psych.unimelb.edu.au/icrc.

APPENDIX 1:
GLOSSARY OF TERMS

Online ADR is the term used in this paper for ADR processes conducted with the assistance of information technology, particularly the internet. In many countries the most common term is "ODR" for "online dispute resolution" (which potentially includes online court-based processes). Other terms used are "eADR", "iADR", "virtual ADR", "cyber mediation" and "cyber arbitration." Simply providing information about ADR on a website is not online ADR.

ADR refers to processes other than judicial determination in which an impartial person assists those in a dispute to resolve the issues between them (NADRAC 1997). Processes can be divided into determinative, advisory and facilitative types.

The main determinative process is **Arbitration**: a process in which the parties to a dispute present arguments and evidence to a neutral third party who makes a determination (NADRAC 1997). The arbitration judgment is binding on parties.

Advisory ADR processes include expert appraisal, case appraisal, case presentation, mock trial and neutral evaluation. In each process, an ADR practitioner considers and appraises the dispute and provides advice as to the facts, law and possible outcomes (NADRAC 2002d). **Case Appraisal** in this paper refers to all of these processes.

Facilitative processes include **Conciliation, Mediation** and **Facilitated Negotiation**: in each case the parties to a dispute, with the assistance of a neutral third party, identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement (NADRAC 1997). **Complaint Handling** is a facilitative process where a party can make a complaint to a third party who will communicate a demand for redress to the respondent, usually for consumer disputes.

Online is a colloquial term that refers to communication through an electronic medium, especially the internet. The **Internet** is a global network of computers that carries exchanges data and communication messages. Online communication includes:

- **Email** - a virtually instantaneous transfer of text messages
- **Instant Messaging** - a variant on email that can be used asynchronously and also allows synchronous online chat
- **Online Chat** - a synchronous, text-based exchange of information
- **Threaded Discussion** (also known as bulletin boards) - an asynchronous, textual exchange of information organised into specific topics
- **Video/Audio Streams** - asynchronous transfer of recorded messages
- **Videoconferencing** - synchronous transfer of video information.

Online Disputes are any disputes that arise through or because of online communication methods. For example, a dispute between a consumer and a website that sells products online, or between a buyer and a seller over an internet auction.
Offline Disputes are any disputes that arise in the "real world" outside of cyberspace. These include family disputes, neighbourhood disputes and employment disputes.

APPENDIX 2
ONLINE ADR SITES ASSESSED BY REGION

Australia (5)

ADRonline	www.adronline.com.au
Complain.com.au	www.complain.com.au
NotGoodEnough.com.au	www.notgoodenough.com.au
Retail Tenancy Unit Online Mediation	www.retailtenancy.nsw.gov.au
The Hearing Room	www.auscript.com.au

Canada (4)

CyberTribunal	www.cybertribunal.org
eResolution	www.eresolution.ca
Nova Forum	www.novaforum.com
Resolution Canada	www.resolutioncanada.ca

Europe (20)

Arbitraje y Mediación (ARyME)	www.aryme.com
Camera Arbitrale di Milano	www.camera-arbitrale.com
Chartered Institute of Arbitrators	www.arbitrators.org
Consumers Association of Iceland	www.ns.is
Cybercourt	www.cybercourt.org
Electronic Consumer Dispute Resolution (ECODIR)	www.ecodir.org
e-Mediator	www.consensusmediation.co.uk
e-Settle.co.uk	www.e-settle.co.uk
European Advertising Standards Alliance	www.easa-alliance.org
FSM	www.fsm.de
Internet Ombudsman	www.internetombudsmann.at
Internet Ombudsman	www.internetombudsmannen.se
Intersettle	www.intersettle.co.uk
IRIS Médiation	www.iris.sgdg.org/mediation
Online Confidence	www.onlineconfidence.org
The Claim Room	www.theclaimroom.com
Web Trader	whichwebtrader.which.net/webtrader/
WeCanSettle	www.wecansettle.com
Word&Bond	www.wordandbond.com
World Intellectual Property Organisation (WIPO)	www.wipo.int

United State of America (43)

1-2-3 Settle	www.123Settle.com
AllSettle	www.allsettle.com
American Arbitration Association Web File	www.adr.org
Bankers Repository Corporation	www.thebrc.com
Better Business Bureau Online	www.bbbonline.org
CPR Institute for Dispute Resolution	www.cpradr.org
ClaimChoice	www.claimchoice.com
Claim Resolver	www.claimresolver.com
clickNsettle	www.clicknsettle.com

Cyberlaws.net	www.cyberarbitration.com
Cybersettle	www.cybersettle.com
eNeutral	www.eneutral.com
Global Arbitration Mediation Association (GAMA)	www.gama.com
iCourthouse	www.i-courthouse.com
iLevel	www.ilevel.com
IntelliCOURT	www.intellicourt.com
InternetNeutral	www.internetneutral.com
JAMS	www.jamsadr.com
Mediate-net	www.mediate-net.org
Mediation America	www.mediationamerica.com
Mediation Arbitration Resolution Services (MARS)	www.resolvemydispute.com
Michigan Cybercourt	www.michigancybercourt.net
National Arbitration Forum	www.arbitration-forum.com
New Court City	www.newcourtcity.com
Online Ombuds Office	www.ombuds.org
Online Public Disputes	www.publicdisputes.org
Online Resolution	www.onlineresolution.com
Private Judge	www.privatejudge.com
Resolution Forum Inc	www.resolutionforum.org
Resolve It Now	www.resolveitnow.com
SettleOnline	www.settleonline.com
SettlementNOW	www.settlementnow.com
Settlement Online	www.settlementonline.com
SettleSmart	www.settlesmart.com
SettleTheCase	www.settlethecase.com
SmartSettle	www.smartsettle.com
Square Trade	www.squaretrade.com
The Virtual Magistrate	www.vmag.org
TRUSTe	www.truste.com
USSettle.com	www.ussettle.com
WebAssured	www.webassured.com
WEBdispute	www.webdispute.com
WebMediate	www.webmediate.com

Other (4)

Asian Domain Name Dispute Resolution Centre	www.adndrc.org
Cibertribunal Peruano	www.cibertribunalperuano.org
Dispute Manager	www.disputemanager.com
e@dr	www.e-adr.org.sg

The following sites reported to offer online ADR were no longer operating in February 2003 and there was insufficient description of their services to include them:

- BeachFire
- EZResolve from LaborMate
- MyClaim.com
- OnlineDisputes, Inc.
- Rent-a-Court.com
- Self-settle.com
- Settlex
- Web Dispute Resolutions