

Integrating Online Dispute Resolution into the Courts

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Program Description: Online Dispute Resolution (ODR) is here, and increasingly, courts and legal service providers are recognizing its potential in expanding access to justice for parties involved in low dollar value civil cases. This session will introduce a variety of ODR tools and show them in action, as well as addressing some of the potential ethical dilemmas technology can introduce. Growing out of more than two decades of real-world experience, the presenters will discuss these challenges and share ideas regarding best practices and important procedural safeguards.

Presented by Sheila Purcell, Susan Yates and Colin Rule, integrating online dispute resolution (“ODR”) into the courts served to be a very interesting and informative panel. To a packed room, the panelists explained ODR as “the use of information and communications technology to help parties prevent, manage, and resolve their disputes.” With origins in e-commerce dispute resolution, ODR has expanded dramatically to address a variety of matters, including online divorce. The panelists advanced ODR as one solution to combat growing caseloads and ignorance of the court process as well as meet the ever-increasing technological expectations of the citizenry. Specifically, Colin introduced Modria (“modular online dispute resolution platform”) as a Lego block software tool that enables its users to tailor-make an online dispute resolution process. Sheila emphasized establishing a culture of change and effective change management as chief to successful integration. And, Susan advanced that the future is ODR but involves making small changes in an iterative process. The audience was very active, centering its feedback on themes of access to justice, metrics of evaluation, stakeholder involvement, ethics, and education of participants.

Issue:

- Courts facing a lot of pressures (high case load);
- Citizens’ expectations are changing – social media, online business interaction – new issue: pro-se litigants – process isn’t designed for them and they’re seeking guidance

- Technology is coming in and changing the legal field

What if:

Built a new system (w/out conception of courts) – how could we achieve fast and fair decisions

Solution:

ODR is the use of information and communications technology to help parties prevent, manage, and resolve their disputes. More than just a platform where everything exists online – ODR are the tools that make the job easier.

History:

ODR originally developed to meet the needs of eCommerce companies like eBay and Paypal – small amounts, parties in different countries (jurisdiction headache), no lawyer would take case. They developed the software ~ ODR – public disputes (real estate assessments); insurance, product liability, consumer disputes, e-commerce. The cases still exist framework of courts

Focus today: Online divorce / landlord & tenant / small claims / custody / parenting plans / debt collection / construction / repairs / condo / homeowners association / etc.

Modria = software tool “modular online dispute resolution platform”

- Lego’s to build dispute resolution process ~ Technology is the 4th party to a dispute (claimant / respondent / neutral are other three) (i.e. AI/algorithms)

Modria: 4 steps (diagnosis, negotiation, mediation, evaluation)

Diagnosis

- set expectations around timing and process
- compile case
- deliver an automated resolution

Negotiation

- communication
- documentation
- settlement offers made/rejected
- agreement terms drafted

Mediation

- conversations
- pick mediators
- library of relevant solution
- closure

Evaluation

- notification of timelines
- drafting and filing
- billing and account management

Dispute prevention

- ODR could help deal with an issue / grievance before it becomes a dispute

Crowd Q: Relationship between technology and human dispute resolution ~ where do you need human help? Do you have live chat, with human, what is the expectation of that role? Ethically? Appropriately?

A: OnStar analogy: push button to ask for assistance. Computers could mediate human-to-human communication. Technology can be a force for benevolent manipulation

- It is generally accepted that tone of message determines outcome of resolution ~ computers can check for tone or specific words
- Another method is who speaks first. If a complaint is known but Respondent has chance to speak first and explain situation, might resolve the issue before it turns into a dispute.

Crowd Q: Access: non-court role; people use technology; in my court role, concern is access – access for people with disabilities (improves); access based on language (how does that work); access to Internet (high speed - rural areas) ~ also, sophistication with technology

A: Look at online technology; traditionally only rich people have technology (pre-mobile phones/fast Internet); Challenge ~ Points about access ~ designed with simplicity / platform is available in multiple languages, cheaper than having translators

Crowd comment: Manuals are for losers ~ technology should be simple; concern is access for people court affects (question of education)

Crowd Q: What is a case? There are certain formalities with a court. What if technology solves only certain aspects? What is the metric of measurement? how does that translate for funders?

Panelist: ODR is a tool to be integrated into the courts. Focus is on change management. Are your courts ready for this? Who will be the visionary? What do you see the obstacles? To bring ODR in, you need to create culture of change, troubleshoot expected problems, and work with stakeholders.

Crowd comment: Frequent user of Skype mediation (small claims) – concerning funding, identify the person(s) that want to change and work with them to get grants ~ roll into permanent funding.

Crowd Comment: From rural area - Almost all clients in mediation don't have cellphones (or minutes). They have no public transportation, no cabs, and the distance too far to walk.

Crowd Comment: Problem is that IT people don't talk to users/access.

Crowd Comment: Evaluation (naming, blaming and claiming). Focus could be on the dispute is before they get to system. What information is collected (top ten data fields that the Section recommended)? Where ODR is headed, could it assist with places that data can't be collected and change what we know? Will it change the types of cases we're looking at?

Panelist: Think about where the technology is going (change from dictation to keyboard to touchpad). The tipping point (Malcolm Gladwell 12%) is coming. Once the case is filed into the court, then the ODR process can begin during the interim ~ i.e. mediation and settlement. That's where efficiency gains are to be had

Panelist: Important to include Stakeholders in the process and find a way forward. Mediating a way forward: identifying not only the metrics of measurement but also embracing and managing change.

Panelist: The future involves iterative processes of small changes.

Crowd comment: For mediation, there is magic of people face to face. People in room act better than online

Panelist: Sometimes technology can help. Co-parent software that checks for tone and asks parent to reframe if flagged ("Our family wizard") or restrict use of certain words ("bozo filter").

Crowd Q: Concern about the ethics of the ODR process

Panelist: Ethical standards for 4th party will need to be developed. This is a systems design challenge, i.e., how to keep data in-house and consistent with values. The court owns the data. Problems happen when this is outsourced to third parties.