Online Dispute Resolution

Standards of Practice

These Standards of Practice are recommended by the Advisory Committee of the National Centre for Technology and Dispute. The Standards are based on the current literature and research in the field of Online Dispute Resolution and are offered as guidelines for practice across the spectrum of ODR.

The Advisory Committee recognizes that other bodies have addressed the issue of standards for ODR practice, including: The US Federal Trade Commission, The Canadian Working Group on Electronic Commerce and Consumers, The Australian National Alternative Dispute Resolution Advisory Council, The Alliance for Global Business, The Global Business Dialogue on Electronic Commerce, The Transatlantic Consumer Dialogue, Consumers International, The European Consumers' Organisation, The International Chamber of Commerce, and The American Bar Association. These Standards of Practice attempt to consider all of the collected wisdom of these bodies, in addition to the considerable experience and perspective brought to the practice of ODR by the Fellows of the National Center for Technology and Dispute Resolution.

The Committee recognizes that Online Dispute Resolution is a wide field, anchored in technology assisted third party intervention efforts, whether aimed at resolution, peace-building, or conflict management. In all of these venues and efforts, technology enhances and transforms the capacity to handle dispute and conflict functions which require the involvement of a third party to consider matters; or in those venues where technology based Online Dispute Resolution serves as the "fourth party."

The Committee Members recognize and honour that Online Dispute Resolution may be used on the entire spectrum of dispute resolution; from problem diagnosis, to promoting bilateral communication between parties, to arbitration and court-like or court processes. The Committee Members also recognize that Online Dispute Resolution may be applied in a wide range of disputes; from interpersonal disputes including consumer to consumer issues or marital separation; to interstate conflict.

The Committee Members recognize and honour that each Online Dispute Resolution scheme will be unique in its application of technology, and dependant on the community it serves. The Committee Members also recognize the importance of national and international law in the performance of Online Dispute Resolution schemes. Thus, these recommended Standards of Practice must be considered as principles, and not necessarily as individual operational frameworks.

Proposed Principles

Accessibility

Online Dispute Resolution systems must be accessible to system users: ODR systems should be accessible in that they are easy to find and access, but accessible also in the sense that they address geographical and language barriers. Insofar as it is possible, ODR systems should strive to become media neutral in order to encourage the widest access.

The Online Dispute Resolution technology developed must reflect an ease of use to all system users. ODR platforms should make help content and tutorials readily available to users, and strive to keep user interfaces as simple and intuitive as possible.

The use of technology in Online Dispute Resolution must increase parties' access to justice. Hence, technology should neither be imposed upon those who do not have the means to interact through technology, nor discouraged for those who could profit from use of ODR. Online Dispute Resolution providers must take into consideration all types of individuals and their needs. Users without Internet access or with a limited knowledge of technology should not be discriminated against by being forced into using an unfamiliar electronic means. But neither should the law constrain those dispute resolution providers and parties in conflict who feel confident in using Online Dispute Resolution systems and could then benefit from their use.

Affordability

Online Dispute Resolution Systems may be an alternative to court or person-to-person based dispute resolution, creating cost savings by their very nature. Disputes when resolved online should be dealt with in a reasonable time period, which reflects the needs of the disputes at hand. In any event, disputes must be resolved as expeditious as possible. Further, Online Dispute Resolution schemes must provide an economical alternative to formal dispute resolution processes, and provide access to justice where formal channels are not available, at an economic level that does not disenfranchise potential users in developing areas or in conflict/post conflict zones.

Transparency

ODR schemes must make clear the process used in pursuit of dispute resolution or management. Further, ODR schemes must be transparent in terms of the identities and affiliations of the ODR providers, the identities and affiliations of the interveners and managers of the ODR systems, and the security efforts undertaken by the ODR provider to safeguard user data and identity.

The place where the ODR process occurs is where the ODR platform is. ODR service providers must disclose the physical location and contact details.

Parties must always retain their right to be represented or assisted by a third party at all stages of the procedure. However, whenever parties are legally represented they may be asked to disclose their representation.

Fairness

ODR systems and providers must create a fair redress environment, unbiased toward any individual participant in the process. Software algorithms must similarly be designed to offer no systemic benefit to one party over another.

Innovation and relevance

Online Dispute Resolution schemes must remain at the cutting edge of service delivery and technological innovation.

Online Dispute Resolution schemes must meet the requirements of community, institution, and legal frameworks they serve.

Online Dispute Resolution schemes should be funded, whenever this is appropriate and possible, by public entities with the aim of enhancing trust and peace in society.

Third parties

Dispute resolution professionals shall have sufficient skills and training to fulfill their function, but they will not need to be licensed legal practitioners. However, ODR, when appropriate, must take measures to ensure legal experts are available for consultation when specialized knowledge on the interpretation and application of laws and regulations is required in the process of providing ODR services.

Information about the credentials and experience of third parties shall be made available for the parties.

Third parties shall be independent, without any type of personal or professional relationship with any of the parties.

ODR service providers shall incorporate procedures for saving harmless providers and third parties who may be unbiased in a dispute or have any other causes which may harm the fair use of ODR.

The third party, whenever this is feasible, shall not be linked to successful case settlement or to a recommendation or decision in favour of any particular party. When dealing with repeat players ODR service providers shall provide with a mechanism to grant grater level of transparency and impartiality.

General

Online Dispute Resolution schemes must promote respectful online communication.

Online Dispute Resolution schemes should encourage parties, whenever appropriate, to resolve their disputes using consensual processes, particularly when the restoration of the social links amongst disputants is of paramount importance, such as in family disputes. Consensual processes however should not be imposed against the will of the parties.

Online Dispute Resolution schemes must provide for confidentiality and data security as required by national, regional and international law. Yet, transparency should be upheld in certain processes, particularly when parties have unequal bargaining power, in order to install confidence in the Online Dispute Resolution Schemes.

Online Dispute Resolution schemes are encouraged educate users and the community by providing generic information to users and stakeholders about trends and statistics.

Recommended by Advisory Committee of the National Centre for Technology and Dispute, July 2009

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