United States Ombudsman Association Conference 2009

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Distance Dispute Resolution

Or

Online Dispute Resolution for Ombudsman Offices
Office of the ICANN Ombudsman
What we will cover

- What is ODR?
- Who thinks ODR is a good idea?
- Where is ODR being used now?
- What are the benefits of ODR to Ombudsman practices?
- Are there barriers to ODR?
About ICANN

- Internet Corporation for Assigned Names and Numbers
- Co-ordinates the Domain Name System DNS
- .com, .net, .org etc (Generic Top Level domains)
- .biz, .travel, .aero etc (sponsored tld)
- .ca, .uk, .tv etc (country code tld)
More ICANN Info

- $54 million budget based on registrations
- around 100 staff and a team of consultants
- Head office in Marina del Rey, California
- Office in Brussels, Washington and Sydney
- Staff in Canada, Mexico, Italy, Egypt, Bulgaria, Niger, Netherlands, France, Australia
- Staff represent about 20 countries and 29 languages
- On the verge of “opening the top level”
What is ODR?

• Dispute resolution processes:
  – facilitative processes such as conciliation, mediation, and facilitated negotiation
  – advisory processes such as case appraisal, mock trial, and neutral evaluation
  – determinative process such as arbitration and adjudication

• Assisted by technology, especially the internet

• Can be used for online or offline disputes
Two Basic forms of ODR

- Technology Based
- Blind Bidding systems
- Over some form of tangible
- Quantum $ 
- Benefits
- Apology

- Technology assisted
- Uses technology to assist a person based activity
- Most reasonable for Ombudsman work
- Case management system
- E-communication
- Trend reporting
ODR is Coming of Age

- ODR is not conjecture: as of March 2006
  - 149 ODR sites/services
  - More than 3 million disputes handled

- However ODR remains in its infancy:
  - Consumers have a low awareness of ODR
  - Lack of a clear business model
  - No standards have yet emerged
  - No trade association has formed
ODR Roles

- Mediator
- Conflict Manager
- Conflict Resolver
- Ombudsman
SmartSettle
- Private Canadian company (BC)
- Provides negotiation support
- Parties identify their preferences and trade-off for optimum results
Family Disputes

Family Winner
- Achieve best agreement

Split Up
- Assess strategies

Up to Parents
- Negotiate separation

Family Wizard
- Discuss co-parenting
Health Disputes

MeDispute

- Patient complaints and comments online
- Provides complaints handling, arbitration
- Being tested in UK hospitals 2006
• 2 Billion transactions in 2007
• Average of $75 per transaction
• 1% of transactions – dispute
• 1% of disputes – litigation
• less than one transaction in a million results in litigation
Improved Technology

National Mediation Board

- Videoconferencing
- Online brainstorming
- Research database
- Visual elements
- Real time and delayed communication
Courts and Justice

**e@dr**

- Launched in 2000
- Part of Singapore’s Small Claims Tribunal
- Provides mediation and arbitration by Court Mediators and Judge Mediators
- English language
Environmental Factors

- Access to Justice
- eCommerce
- OECD – UN
- Improved technology – reduced costs
- Private ordering of affairs – extra-national
- Sector growth of ODR (The opportunity)
- Paper
- Legal systems
OECD July 2007

• “…enable consumers to …conduct the procedure without the need for legal representation or assistance as far as possible”

• Encouraging the greater use of technology to facilitate the management of consumer disputes, in particular cross-border disputes.
Reasons for Non-Adoption

1. ODR doesn’t work or perception it doesn’t work
2. Disputants don’t want ODR
3. Providers don’t want ODR
4. Problems with marketing/awareness
5. Problems with enforcement
Concerns

- Approaches to conflict
- Language
- Literacy
- Cultural gaps
Challenges

• Modifying practice to use ODR as a tool:
  – Varying types of Ombudsman operations
    • Classical or Governmental
    • Executive
    • Organizational
Challenges

• Geography
  – Country
  – Many countries - Global
  – Province or state
  – City
  – Organization
    • Same location
    • Multiple locations
Challenges

- Communication
  - Language
    - Idioms, dialects, local terms
  - Literacy
    - In writing
    - Computer
Challenges

• Connectivity
• Time Zone
• Activities
  – Work
  – Family responsibility
Challenges

- Asynchronous
- Synchronous
Challenges

• Social – cultural contexts
Challenges

• Data security
  – Record keeping for varying types of Ombudsman practice
Solutions

• Use of native language translators
• Well designed case management systems
  – Self help information
• Secure servers
• Be a reflective practitioner
  – Understand that you are not an expert in all cultures, value your own culture
  – Allow correspondents to become comfortable
Suggestions

• Understand your own dispute style and identity, allow others to express theirs
• Understand others, practice active “listening” techniques in your correspondence
• Let people trust you
• Assist low literacy levels
• Focus on core issues and process
The Risk

- Not engaging the technology
- Not recognizing the changes in the environment
- Being left behind.
Did we?

- Define ODR
- See where ODR is being used and who sees a future in it
- Talk about the benefits of ODR
- Talk about the risks and strategies
Thank you

• Questions?

• Links:
  • www.icannombudsman.org
  • www.odr.info
  • www.internetbar.org
  • www.smartsettle.com
  • www.themediationroom.com
  • www.bileta.ac.uk/02papers/hoyle.html
The Values of this Office are:
- Respect for Diversity;
- Excellence in Ombudsmanship;
- Professionalism;
- Confidentiality;
- Impartiality;
- and Independence.