

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

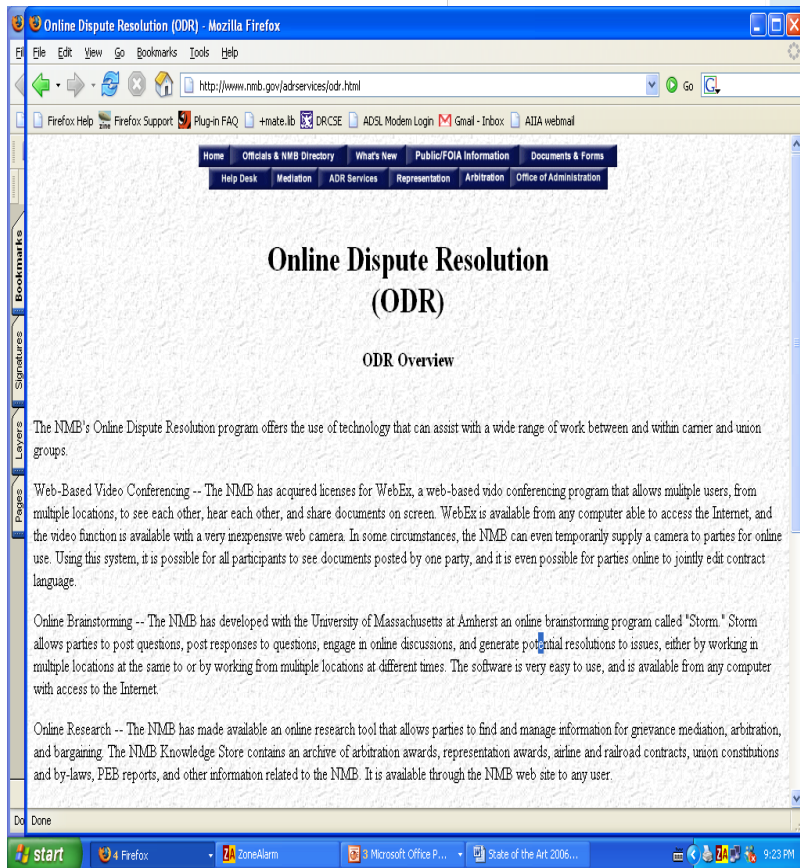
Improved Technology

National Mediation Board

- Videoconferencing
- Online brainstorming
- Research database

Conflictlab

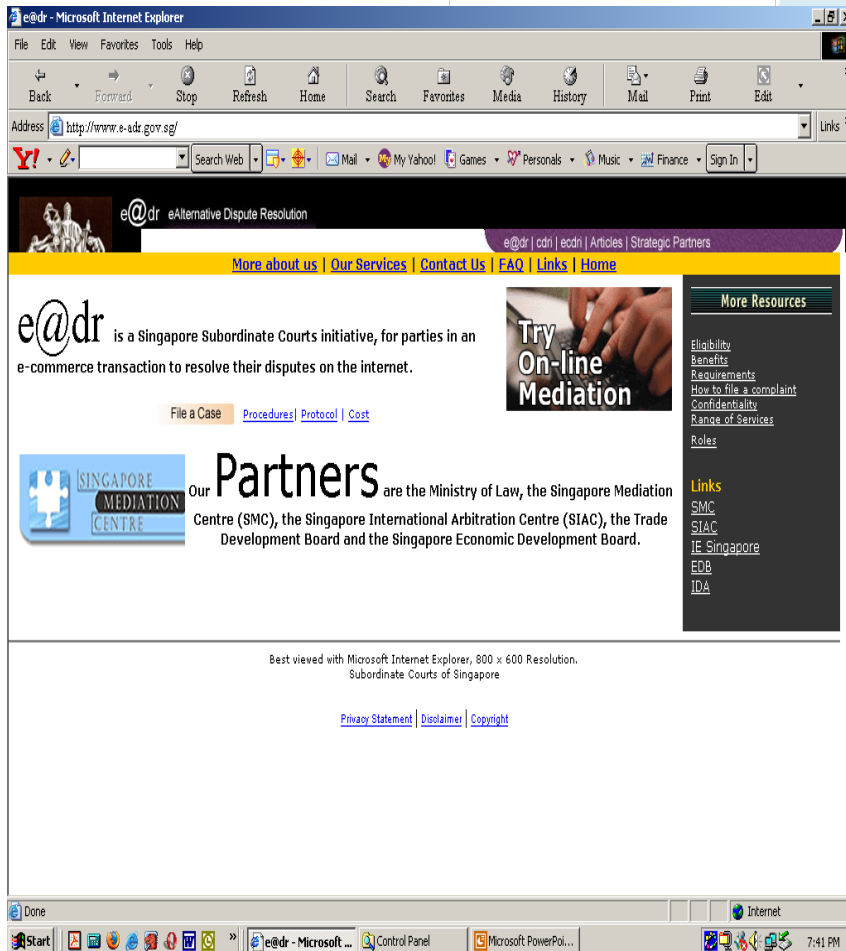
- Visual elements
- Real time and delayed communication



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



The screenshot shows the e@dr website in a Microsoft Internet Explorer browser window. The address bar displays <http://www.e-dr.gov.sg/>. The website header includes navigation links: [More about us](#), [Our Services](#), [Contact Us](#), [FAQ](#), [Links](#), and [Home](#). The main content area features the e@dr logo and the text: "e@dr is a Singapore Subordinate Courts initiative, for parties in an e-commerce transaction to resolve their disputes on the internet." Below this, there are buttons for "File a Case", "Procedures", "Protocol", and "Cost". A "Try On-line Mediation" banner is also visible. The "Partners" section lists: "Our Partners are the Ministry of Law, the Singapore Mediation Centre (SMC), the Singapore International Arbitration Centre (SIAC), the Trade Development Board and the Singapore Economic Development Board." A "More Resources" sidebar lists: [Eligibility](#), [Benefits](#), [Requirements](#), [How to file a complaint](#), [Confidentiality](#), [Range of Services](#), and [Roles](#). A "Links" sidebar lists: [SMC](#), [SIAC](#), [IE Singapore](#), [EDB](#), and [IDA](#). The footer contains: "Best viewed with Microsoft Internet Explorer, 800 x 600 Resolution. Subordinate Courts of Singapore." and links for [Privacy Statement](#), [Disclaims](#), and [Copyright](#). The taskbar at the bottom shows the Start button, several application icons, and the system tray with the time 7:41 PM.

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.*