



Office of the
ICANN Ombudsman

On-line Dispute Resolution: Challenges and Opportunities for Lawyers

**2007 Pacific Legal Technology Conference
October 2007**

Frank Fowlie, ICANN Ombudsman

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

- \$40 million budget based on registrations
- Less than 100 staff and a team of consultants
- Head office in Marina del Rey, California
- Office in Brussels and Sydney
- Staff in Canada, Mexico, Italy, Egypt, Bulgaria, Niger, Netherlands, France, Australia
- Staff represent about 20 countries and 29 languages

ICANN's Office of the Ombudsman

- Product of reform movement
- Inaugural Ombudsman appointed Nov 1, 2004
- Executive Ombudsman scheme
 - In organization – outside complaints
 - Investigates
 - Reports
 - Recommends

More about the Ombudsman

- Ombudsman – sole practitioner
- Complaints of unfairness about ICANN
- Complaints and contacts
 - 2004 – 10
 - 2005 – 1682
 - 2006 – 319
 - 2007 – likely in the range of 250 +

Purpose of the Ombudsman ...con't

- ...ICANN is working towards a stable, secure, and universal internet.

Purpose of the Ombudsman cont.

In working towards that goal, the Office of the Ombudsman will assist ICANN by:

- Ensuring members of the community receive fair and equitable treatment
- Helping raise service and administrative standards;
- Improving communication between ICANN and the community; and,
- Issuing reports, and maintaining a website that informs consumers and the ICANN community about issues of interest.

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

Environmental Factors

- Access to Justice



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

Environmental Factors

- Access to Justice
- eCommerce



- 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

Environmental Factors

- Access to Justice
- eCommerce
- OECD – UN

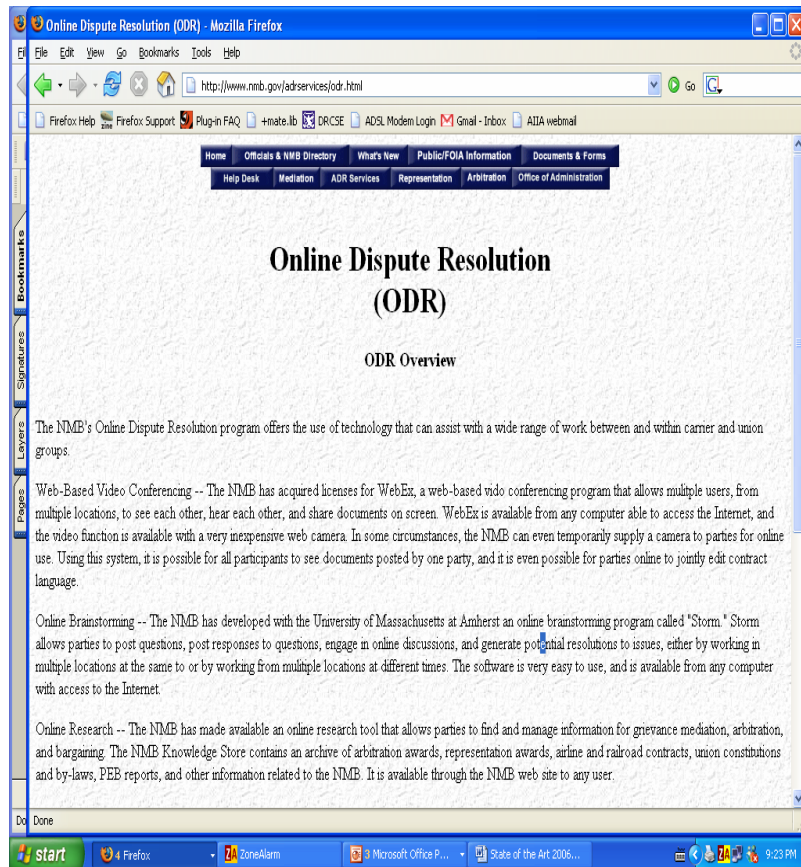
OECD July 2007

- “...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.

Environmental Factors

- Access to Justice
- eCommerce
- OECD – UN
- Improved technology

Improved Technology



National Mediation Board

- Videoconferencing
- Online brainstorming
- Research database

Conflictlab

- Visual elements
- Real time and delayed communication

Environmental Factors

- Access to Justice
- eCommerce
- OECD – UN
- Improved technology
- Private ordering of affairs – extra-national
 - Uniform Domain Name Resolution Policy

Environmental Factors

- Access to Justice
- eCommerce
- OECD – UN
- Improved technology
- Private ordering of affairs – extra-national
- Sector growth of ODR (The opportunity)

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

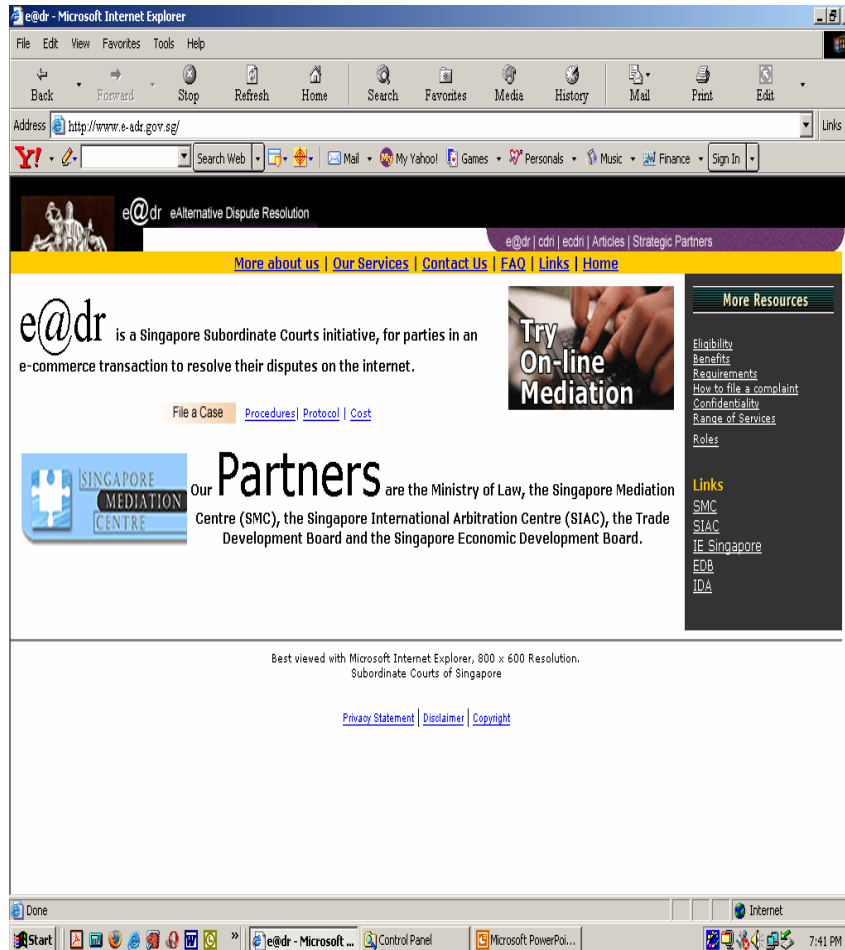
Reasons for Non-Adoption

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

Environmental Factors

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

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 Risk

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

Acknowledgements:

- Melissa Conley Tyler
Senior Fellow, Faculty
of Law, University of
Melbourne
- Colin Rule
Director, Online
Dispute Resolution
eBay/PayPal

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