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ONLINE DISPUTE RESOLUTION: JUSTICE ON THE NET

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>> GRAHAM ROSS: Good morning, everybody. Little apology for the late commencement. I think I must have got the best time zone. I was out at 5:00 at the hotel, but it left about 15 minutes late and then we won't know about the traffic here. Apparently there was one a little bit earlier.

We are here now and I welcome to you this session on Online Dispute Resolution. There was one in Hyderabad in 2009, I don't know if anyone attended, so in a sense this is a follow-on.

A lot has happened in this field of Online Dispute Resolution since then and I would like, however, just to set the scene with some background and a few slides for those who may not have been involved in the development and discussions of Online Dispute Resolution over the years.

And at the same time, there's a number of issues that we have started to list out that in fact will arise and I really want this to be a discussion of those issues and welcome the thoughts from you all and any contributions anyone wishes to make about those issues.

In fact, if I could briefly start with this, start the slide show. I'll start with this comment that was made by Professor Richard Suskind, the IT advisor.

(Pause)

Oh, I see. Okay. So I need to -- I'm discussing it, fine, thank you.

So slide two, please. Okay. Professor Suskind has been the IT advisor to the Lord Chief Justice in the UK and at the fifth forum of -- International Forum on Online Dispute Resolution that was held at the University of Liverpool in 2007 he made this comment that he believed ODR has the potential to significantly change the way lawyers operate. That is a view.

Now, there is a website for those who don't know -- next slide, please -- ODR.info run by the National Center for Technology and Dispute Resolution at the University of Massachusetts and this is a must-go-to site for all information on ODR.

Next slide. I have done here a very brief time line to show to people what has been happening over the years. It was in 2002 that professor Ethan Cash of the NCTDR in UMass with discussions with (indiscernible) of the Economic Commission for Europe agreed to form the International Forum on ODR, held in 2002 in Geneva and again in 2003 and it then continued, and I am pleased to say each year since all around the world, most recently this year in Prague and next year, next June, in Montreal.

Again, I urge anyone who is interested in this subject, hopeful by attending today, if you were not already aware of the forums, to by all means see if you can attend them and many of the forums, their websites are still up there, certainly from Liverpool, I know a lot of the presentations and videos, including Richard Suskind's is still up there.

In 2008, the European Committee for Standardization Workshop Agreement was formed. I was a member of that committee on ODR standards and ODR taxonomy available in the European library.

In 2010, UNCITRAL set up a Working Group on ODR which unfortunately is having I think its fifth meeting this very week that we are here in Baku. So many people interested in ODR have had to make a decision which event to attend. I'll be saying something I think about that, their sessions, and also in that year, an EU-funded project called MCOD was set up which is now reported, I've been a member of that team, it was to look at the issue of if ODR then is being provided, how do we assess the quality of their system and user experience?

That's now being reported. In 2011 the European Union proposed a regulation on ODR which is due to go in its final form to the European Parliament in January, the latest news is sometimes towards the end of January next year. That is connected with a new directive on ADR, Alternative Dispute Resolution.

So a lot is happening looking at standards norms and we'll hear more about that today. There is the regulation. I have just heard from the UK government representative dealing with the EU's ADR directive and regulation through this e-mail which I can briefly share, a general round-robin e-mail to say there has been some delay with the directive in the regulation. There's been some amendments being proposed that while it originally was intended to cover cross-border consumer transactions that it perhaps should be extended to domestic transactions.

Also that while in its original form it was to cover disputes that consumers would have on the trader, there's a call for this to also extend to cover disputes a trader might have against the consumer. I'm just showing you a -- sorry, I haven't been asking us to get through, if you could come up again, move on a bit, I didn't -- oh that's the e-mail but if you move on to the next slide, please.

I'm just showing you a website that has driven the view of extending the regulation to claims that traders have on consumers because of the growth, because of the growth on the Internet of consumer reviews, and has produced not just fairly balanced websites that allow positive and negative consumer reviews, which is a good initiative in the development of the Internet and in consumer rights and power, but there are now sites like Rip-off Report which as its name suggests is not really interested in positive reviews on products but quite the reverse, and has caused -- and I know I have detail, I won't go all night but I can talk privately to people if they're interested -- has caused this problem, not just Rip-off Report but other similar websites, has caused problems for traders.

Because a lot of reviews are now being aggregated by sites like Google Seller, for example, will have anyone's reviews, will be taken into account in algorithms for Google Seller ratings and the accumulation can indeed eventually have impact on the amount of business that traders do.

So where these reviews are totally wrong, untrue, defamatory, et cetera, there should be resolution, some solutions for the traders. That's one of the drivers to the view by some, myself included, that the ODR regulation being issued by the European Union should extend to cover claims by traders.

Next slide, please.

That is just showing you the website there available which I mentioned for the forum in Prague and then the one for MCOTT, UNCITRAL and I understand that they have had five meetings, they are very much at the early parts of discussing standards for ODR providers and systems and they haven't yet reached outcomes.

One issue there is about ODR being binding or non-binding and we will hopefully discuss that this morning.

There is a book called "Online Dispute Resolution: Theory and Practice" which people might want to get an update, very extensive, a lot of people that have been speaking on the subject for the last 10 years have contributed to that and there is the publisher's site showing the price but I'm pleased to say if you go to my company, Modria.com, and go to the blog you'll see a link where it's now available for a free download.

The whole of this very thick book and series of articles on ODR is available now currently, not sure for how long, legitimately, I should add for free download for anyone here.

You go to Modria.com, click the blog and you see it listed there.

Again, every year there is an event called cyberweek, online discussion that is have had discussions, adrhub.com, all those discussions on ODR are still available, sorry, if you can go forward again.

I'll get the hang of this.

(Chuckling)

Sorry, I keep clicking here, thinking that the display is coming up, and again, please, that's the book, that's the Modria blog page. That's the cyberweek page, particularly dealing with the European ODR initiative.

I think one of our speakers Colin Rule, will talk more about Modria but a lot of ODR at the present is in the form of online mediation.

If you go forward, please. There is an example seen here of the online mediation platform Modria operates where a mediator can have discussions separately with all parties. But what I want to say is looking -- go forward again, please, forward again, please -- we'll see more about that. Forward, again, I think. That in fact beyond that what a number of people are working on in the future, exciting future of ODR which we at Modria are also involved in developing at the present time, is what we call technology facilitator resolution where you go beyond discussions, asynchronous discussions and deal, for example, with -- this is the excitement of technology -- case profiling so software can become a neutral advisor to empower disputants so they can better self-analyze their dispute and therefore improve and increase the ability of parties in dispute to resolve themselves. You can have automated suggested solutions.

You'll be hearing from Professor Zeleznikow today about game theory, systems he's working on that help parties to focus on their real needs. Some of you may know of blind bidding systems. One of the earliest forms of ODR. Anonymous brainstorming where people can have discussions without being identified which party they are in, which side of the dispute they are in. One could even have a damages database. As you know in the law we try to assess the level of claims in the valuation by precedent and reported decisions but the reported decision that is go through the courts are very far and far between.

You could in fact build up anonymized databases of settlements that don't breach confidentiality or privacy but help create knowledge on what, on the sort of values people find are fair for particular types of dispute.

Let's look at ODR as building a third global justice system, primarily outside of the courts, with all the barriers of cost and delay and involvement and gate-keeping that involves. So there you are.

Brief introduction to people who may be new to the subject.

I'll ask my first panelist to give her presentation and this is Professor Hong Xue and she is from the School of Law at Beijing University.

>> I just want to make clear that we also have four other remote panelists: Colin Rule, John Zeleznikow, Alberto and Ijeoma Ononogbu and they are already on the platform and whenever you want to give them the floor, you can do that.

>> GRAHAM ROSS: I think Hong needs to get going first.

>> HONG XUE: Thank you for organizing this very interesting workshop. This is a great job to stimulate on line dispute resolution and very nice follow up to our Hyderabad Working Group.

I was organizer of that Working Group and gave a presentation in Hyderabad remotely. I guess this is very nice. We use remote participation, all dispute resolution workshop because this is exactly the point for resolving.

Graham gave a briefing what is happening on the Working Group and EU, especially the ODR initiative through the regulations and hopefully will be incorporated to the ADR directive.

I have a little briefing from Asia Pacific and in Asia Pacific there is a United Nations Economic and Social Committee for Asia Pacific. UNSF is now drafting a regional treaty for paperless trade and in this new treaty, it addressed the issue of Online Dispute Resolution, so I guess this is something that is pretty new.

Of course this is a draft treaty and will go through membership, Member States consultation. And UNSCAP set up United Nations' paperless trade network, called UN -- UNEXT and I'm on the UNEXT advisory committee. This committee is researching all kind of paperless trade issues, not only on the electronic transaction of data and documents, but also the personal data protection, consumer protection, and the last but not least Online Dispute Resolution.

So not only in Europe but also in Asia Pacific there is an online dispute resolution mechanism developing very rapidly.

As Graham has just talked about, ODR is much more than use of technology to resolve disputes. It's about building justice on the Internet. So actually I do not want to emphasize to all, okay, it's online, Internet is a great facilitation tool, but what is the focus? Dispute resolution. Probably reword. Dispute resolution for or on the Internet.

What I want to present is from another perspective. We talk about e-commerce, dispute resolution for trade on the Internet. Of course this is important, very, very important part. But we need to look at other parts. There is accountability and governance mechanism building on the Internet.

What role does ODR play in this new building up system? Dispute resolution could be a very important mechanism to establish this kind of global accountability for Internet Governance. On the Internet where there's no country borders, boundary, who is accountable to the people who are using this great platform for all kind of wonderful things, for trade, cooperation.

I can give you a short example. What is happening in ICANN is domain name organisation taking care of the assignment of domain names and numbers. They are establishing dispute resolution system called independent review panel. This is to adjudicate a dispute between the ICANN community and its decisions so it's interesting. ICANN is another treaty organisation. It is non-profit organisation registered in California, subject to California state law, but it is actually managing domain names in the global system.

It's the global coverage through this technical system, either global accountable system but there's no sovereign states law that can reasonably address this issue.

They are building this dispute restitution as kind of online court tribunal to make decisions. I think this is very much interesting development for dispute resolution on the Internet.

I use the second half of my time to talk about what's happening in China right now. China is now drafting a new law called Internet Retail Regulations. The drafting has been going on for one and a half years, almost two years, slightly delayed because of the power transfer going on right now. This will address all aspects of retailing on the Internet so not about the (indiscernible), only to B to C, to consumers, it covers the market access on whether you need to apply for a license to have this Internet retailing services, consumer protection, personal data protection, intellectual property protection is very much comprehensive legal documents.

It's now at the State Council and hopefully could be approved sometime next year. In this very interesting drafting bill, there is one provision that specifically addresses the third-party transactional providers, something like eBay or in China it's called Ali Baba or (speaking in language other than English) and these are very big online transaction platforms providers. Tens of thousands of traders using their platform to sell goods, providing services to consumers.

So the focus of this draft bill is to regulate these third-party platforms. They believe this is really the (indiscernible) of Internet retailing. One requirement for third-party transactional platform is to set up Online Dispute Resolution mechanism. But of course this is very much an open clause. They can set up whatever they deem is appropriate. It could be a self-deciding process as consumer file a complaint, they might respond online. It could be adjudicated by third-party or mediated by third-party so it could be using the third-party service to resolve the dispute. It could easily be in the form of negotiation, mediation or arbitration. It could either be enforced internally such as all traders submit to guarantee to the platform, so just to (indiscernible), they have the guaranteed money stored there. Kind of a consumerized breach, then the team can actually deduct from the guaranteed money.

It can also be enforced through court order. So decision has been made but not enforced internally. You need to apply for the court and the court may order to enforce the decision. So it is very much an open system.

Finally Graham just mentioned the assessment submitted by consumers. I guess this is very much interesting. It is not -- it is happening in China right now, like, I guess world's largest B to C platform, and all the consumers can submit their assessment online to traders. Traders' credit will very much be determined by these rewills. This is very much about the market and future of these traders. It is important for them and some people just submit bad rewill in bad faith even though they receive good services they don't like the trader and just behave bad.

In that case, currently this resolution cannot address because the dispute resolution is presented in the draft of bill. Only to address the consumer's complaint, not the trader's complaint. So the trader's complaint I guess should be subject to another dispute resolution process, hopefully set up by the platform.

So this is what I want to brief. I'm happy to respond if there are any questions.

Graham, thank you.

>> GRAHAM ROSS: Thank you, Hong. Any questions from the -- can I perhaps, I know you have to get off very quickly. But just ask you about whether if there is to be any inclusion in the debate on the regulations in China of consumer abuse. Interesting you mention on the payment they receive. It's just quite an exciting opportunity. As to the question of the incidents not just of consumers want to go give a bad comment but worst examples of companies getting people to comment against a competitor adversely, or a false positive review.

>> HONG ZUE: Thank you very much. This is a big issue. This also happened in China. I guess for those people submitted as a proxy of certain companies, they are not real consumers. This is fraudulent comments and I guess for that part it is subject to the legal proceeding. It could be this is damage to the company's reputation rights but it would take a long time, I think.

>> GRAHAM ROSS: Thank you, Hong, I know you have to get off and this will now be a totally online presentation. Quite a few people lined up here.

I want to now bring in Colin Rule, our first presenter. Colin had a few -- had intended to be here but unfortunately circumstances prevented that. Colin, is the connection -- Colin has worked in the dispute resolution field for more than 20 years as a mediator, trainer and consultant. For over ten years he set up and ran and was the head of Online Dispute Resolution at eBay and Paypal and more recently is running a spinoff from eBay and Paypal called Modria.

And in California, Colin is really someone who more than anyone has been out there and in fact been doing it and been looking at just the theory of ODR and what is possible but actually what is happening and coming across all the problems and issues that arise.

Colin, can I introduce you and perhaps you'd like to give your presentation and then we can have a discussion on issues that you find?

>> COLIN RULE: Can you hear me clearly?

>> GRAHAM ROSS: Yes, we can.

>> COLIN RULE: Delighted to be with you all virtually, but dismayed I'm not there with you in person. I would have very much liked to have been in Baku and shake your hands and be in the room but actually it's perfectly appropriate as part of IGF and Online Dispute Resolution to be participating remotely. I see my slides are up here.

Graham, how long do you want me to take for this presentation?

>> GRAHAM ROSS: No more than ten minutes.

>> COLIN RULE: Okay, sounds good.

>> Colin, we lost your video.

>> COLIN RULE: I should be back now. You don't need to see my pretty face. You can probably get an idea what I look like but here I am, I'm back.

Let's just dive ahead. I have a few slides and eager to get to the Q-and-A and I think Graham and Hong did excellent jobs. Online Dispute Resolution writ large is information and communications to help people resolve issues. I think Graham went through a lot of this. ODR.info and the new book, Theory and Practice, I will point out that ADR cyberweek, global conference in Online Dispute Resolution just ended on November 2 and you can access at adrhub.com. But Online Dispute Resolution is evolving rapidly and is very global. I'm sure John and Alberto will elaborate on that point as well.

So in Online Dispute Resolution there are a variety of techniques we use. Everything from what Graham described as technology facilitated resolution, software-only mechanisms, up to manual processes like mediation and arbitration. I won't show you examples of all these things but you can see on this slide and Graham had this slide as well Modria stands for Modular Online Dispute Resolution.

We've built software that can handle all those different types of Online Dispute Resolution from problem diagnosis to direct automated negotiation to mediation and then arbitration. Each modules can click together like Legos to build appropriate resolution flows for each dispute.

And you can see that each module acts like a filter. The Internet is generating tens if not hundreds of millions of disputes a day. Not possible for us to resolve all these manually with human response. So what we did at eBay and trying to do currently in building these global ODR systems, you can see there's a large volume of incoming cases. If we can use TFR like problem diagnosis and negotiation to resolve the majority then we can reduce the remaining volume down to a trickle. That is manageable with human support. So let me talk for a minute about eBay and Paypal. As I think Graham mentioned we resolved more than 60 million disputes a year at eBay and 16 different languages, 90% of those cases are resolved entirely in software so only 6 million of those have to be touched by a person. Majority of those cases are resolved am my cably, which means most disputes are generated by misunderstandings, not bad guys. We have 250 million registered users at eBay if you counted them up as citizens we'd be the fifth largest country in the world but if you look at Skype or Facebook, they're almost up at a billion users.

So very quickly we're getting to very high numbers. EBay I think has been out front on online dispute resolution because its role is unique, first global marketplaces, I know Hong mentioned Ali Baba and now there are marketplaces all around the world but these don't buy or sell anything, they never see the item in question. EBay saw its role as referee and they would separate the buyer and seller when there was a problem but now what they try to do is act as it is convener and bring the buyer and seller together to work the problem out themselves.

You can see on slide 10, Paypal Resolution Center, both eBay and Paypal provide resolutions centers for every single user on the site. They can come to the resolution center, report a problem, click that orange button or they can respond to a problem that was filed by someone else involving them.

So this makes it very easy for problems to get resolved very quickly so people can get back to doing business. I won't dwell too much on this but we did very extensive studies of eBay and Paypal activity and we found that users that use these dispute resolution processes were far more loyal and more likely to use eBay and Paypal moving forward versus people who did not file a dispute.

What you can see there is the blue line shows the reactivation rate for users who filed the dispute, 114%, and the red line there is for users that did not file a dispute. Reactivation rate is 108%. You can see especially when dispute is resolved amicably reactivation is much higher. This is important to accelerate global e-commerce. I won't spend too much time talking about Modria platform. You can explore it yourself. Free demos are available on the arbitration flows and the mediation flows and our technology facilitated resolution flows but Modria is not the only platform in the world. There are other great systems like Jurapax.com.

Alberto and John both have platforms they have built as well. I urge you to check it out if you'd like to learn more. We have integrated payments, integrated caucusing, video conferencing, we use WebEx, same technology for this meeting, so it's all very streamlined and very secure. I think Graham also mentioned the Working Group and the EU regulation, Hong mentioned China which was worked on and I would like to mention in British Columbia and Canada they recently passed regulation that calls for integration of Online Dispute Resolution in the court system to handle low-dollar value civil cases. I won't go into this design either but this is the design we put together for the Working Group. It allows everyone to cooperate and enter their cases into a database which allows for cross-border or cross language dispus resolution. This all resides in the cloud.

The long and short of what I would like to say is Online Dispute Resolution is a key piece of infrastructure for the Internet. Much like in face-to-face society. We have to guarantee justice and you see every society around the world has create the courts and justice to ensure fairest lutions can be delivered. We need this online. The old way of the way justice systems will work won't use online. You have to use it online because it crosses borders and jurisdictions. There is no A in ODR, not an alternative. ADR stands for alternative dispution resolution but it's not a alternative. ODR is the only way to solve these growing global disputes and the interesting thing is alternative started very local in the grassroots level and then it merged and handled disputes that were cross-border or were not in the same geographic area.

Online works in the opposite direction. It actually starts out global. That is why it's so appropriate to be talking about this during the OGF because we are dealing with cross-border, high-volume, low-value cases. That's the focus. We are moving also from online-only cases to offline cases and we see a lot like insurance issue and divorces are also being dealt with online. The long and short of it is the final bullet here. ODR is an essential component of global Internet Governance. We have 10 years of experience in eBay and Paypal and ICANN so we know how to do ODR well.

I strongly urge all Delegates to learn more about ODR and make sure it's a key component of our Internet infrastructure moving forward. This is my contact information and there is a place where you can get a demo of the Modria platform. With that I turn it back to Graham.

>> GRAHAM ROSS: Thank you very much. Just before I open it to the group for questions, if I can just ask you one question. One of the drivers to all this is that while technology has suddenly enabled cross-border trade to rocket and to have no barriers, the legal systems, they are there to resolve disputes are still very much jurisdictionally based and have all those barriers. No matter how much we try to harmonize laws, it will never, ever -- we never are going to have a global law in our lifetime. Therefore, and apart from the legal systems, in any event, the barriers of cost and delay.

There is this need for that. I'm wondering to what extent you feel therefore that ODR generally will therefore show benefits in that. The EU say that one of the drivers for their regulation is that the single market hasn't worked as yet. Single market meaning people are not buying from other EU countries as they are or should do or what the encouragement is. They still buy largely from traders in their own country. That raises issues of trust in who they are buying from.

>> COLIN RULE: Absolutely.

>> GRAHAM ROSS: They are trying to help and encourage that trust and provide knowledge and trust that there will be a simple, cheap resolution system.

Do you feel that beyond the EU generally that is one of the great deliverables of the whole area of ODR and --

>> COLIN RULE: Yeah, you put your finger on a key issue for a lot of Internet commerce sites like eBay and Paypal. They want to create frictionless cross-border commerce but if you look at the percentage of e-commerce that's cross-border it has been stuck at about 15 to 20% for the last seven or 8 years. The question is why aren't we seeing more cross-border transactions? A big part is lack of redress. People fear buying things outside of their country because they only know if they buy from a seller in their jurisdiction they'll have redress. You see a lot of cross-border transactions in low-dollar items or low-value items but not really in high-value items yet because there isn't a robust form of redress. We feel strongly particularly for developing economies, it's hard for sellers in Africa or southeast Asia to get direct access to consumers in Europe and the United States because of these dynamics.

Online Dispute Resolution is a key means of reducing that friction and accelerating cross-border commerce for higher-dollar valley tells because consumers can trust if there's a problem it will get resolved. That's why governments are investing so heavily in this. EU is estimating cross-border consumer problems accounts for more than 25 billion Euros of loss in the EU alone. We're talking about billions and billions of dollars in Euros and harm to consumers around the world. Hundreds of millions of bad buyer experiences.

This is one of the reasons you see consumer protection authorities, institutions are all investing time and energy into ODR. They know we have to solve this problem if we are going to enable the growth of global e-commerce.

>> GRAHAM ROSS: There are some questions for Colin. Particularly like to know from the group any concerns people might have about issues like trust, privacy, confidentiality, and standards and regulation of providers, who you are dealing with, where the data is being held. Does anybody have any questions? Concerns that may come to light about this? The issues about binding and non-binding which I understand is troubling UNCITRAL at the present time, what would you like to set out as rules in that respect? Should this be totally non-binding for all parties or should traders be required to accept if a consumer wants to use ODR?

>> COLIN RULE: I think my personal opinion is that for different types of disputes there should be different levels of binding and non-binding redress available. There are many disputes where it's not appropriate to bring in a judge and render a decision, fundamentally it's a relationship dispute between two parties so it should be up to them to figure out how to solve it. Then there are some disputes where it's fine to have private redress where you don't need to deliver a decision that's enforceable in a court of law. But UNCITRAL has been very hamstrung by this notion of should Online Dispute Resolution be able to deliver binding outcomes enforceable in a court of law? Much like private is under the New York convention. Lot of controversy now in the United States because we do have legal predispute binding consumer arbitration and a lot of groups aren't happy with that.

In Canada and Latin America and in Europe, predispute binding consumer arbitration is illegal. As we deal with different issues of jurisdiction it's inevitable we'll have controversy but the beauty of ODR is we can let 1,000 flowers bloom, build systems that are in line with the cultural expectation of each region and those can interoperate. My opinion is the majority of these systems should be non-binding and/or private enforcement only but there may be some circumstances under which a binding arbitration process is okay for these.

>> GRAHAM ROSS: Thank you very much. We have a question there. Where is the microphone?

>> Can you hear me?

>> COLIN RULE: Yes.

>> I'm talking to Ijeoma Ononogbu. Can you please speak up?

>> GRAHAM ROSS: No, no, this is a question from the gentleman to your right.

>> I'm sorry. There is also questions for Ijeoma Ononogbu as well.

>> GRAHAM ROSS: We'll ask the gentleman and Ijeoma Ononogbu will be a presenter as well.

>> Thank you very much. My name is Eric from the European Economic and Social Committee, specialized on the IT security and cloud computing. ODR is a very new subject for me today. I just discovered that there's such a lot of work being done. Really fascinating.

I have two questions. Something which is not clear and please my apology for my lack of understanding but which kind of authority is there for enforceable when it's it's referred when mediation or negotiation is not the solution? This is my first question.

Second one is I specialize in cloud computing where we are talking online, not e-commerce but online contracts between the provider and the consumer or users. Is ODR an alternative or solution to fix the big issue which is what is going to be the jurisdiction in case of a conflict between the users and the providers?

What is going to be the law? We are talking about a global world as well but for e-commerce, but for contracts. So those are my two questions.

>> COLIN RULE: I heard the first question. I didn't really hear the second question that clearly. I know it had something to do with jurisdiction, so Graham, maybe you could repeat the second question.

>> GRAHAM ROSS: Ask the question again.

>> Again, what you have been describing about ODR is mostly on e-commerce. I'm working on cloud computing with like for e-commerce we have actors, users on one side, providers on the other side. Data centers. And they are global. You can have a cloud provider in India and being in France or in America. Of course there are contracts in between so we are talking about those or private in between them. There are potential disputes between users and providers. Is ODR in your opinion a possible solution for this kind of conflicts that is a big issue in cloud computing?

>> COLIN RULE: Absolutely. Now I got it. Thank you very much.

So the first question, you know, interesting question about enforcement. How do we make these outcomes matter? There are some circumstances under which as I mentioned we can deliver online arbitration awards that abide by the strictures of the New York Convention which allow for cross-border enforcement of awards provided that those awards meet certain procedural requirements. We have built the system that can do that.

I think there are circumstances where ODR can deliver legally-binding decisions that can be enforced in any court around the world, essentially a signatory for the New York Convention.

But what we did at eBay and Paypal and what ICANN has done and many of the most effective mechanisms have done is they don't rely on enforceability. They have private schemes so any user at eBay when they register they agree to the terms and conditions.

EBay lays out if you have a dispute over an item that is purchased or payment or a feedback or intellectual property that will be resolved by the eBay Online Dispute Resolution system and eBay will enforce that outcome. That's appealable in a court of law and eBay's decision is not a court decision, not enforceable as an arbitration award. But what we find in 99.99 is that private adjudication is adequate because you are talking a low-dollar transaction. That's true in payment mechanisms. Too, credit card chargebacks. They are not delivering a legally enforceable outcome. That legal standard may be a bridge too far to many consumer transactions, high-volume.

Now, cloud computing. This is a very interesting issue because you do have servers all over the world interacting and providing data seamlessly to each other and disputes can arise, particularly if there's a data breach or there's a performance issue or one server is supposed to perform one function and does not and other servers encounter problems as a result.

I think what would happen in those agreements ideally is that all of those contracts would specify an online resolution service provider that would be up to speed, understand issues around cloud and wouldn't matter where the server was. So long as that process was specified in the contract and all parties agree any dispute would be resolved by that forum. That forum could be legally enforceable or not.

But if you were to create a ODR mechanism that had its own rules spat from whatever legal jurisdiction servers reside in, I know at Modria we host on Amazon servers so Amazon is spread all over the world. I don't know what server is serving a particular page to an individual user. We are spread across multiple servers. Again, that is the reason why mechanisms like Online Dispute Resolution are a much better fit with the newly net worked world.

ODR works the way the world works. You specify in the contract the resolution mechanism and the rules that govern that and all those rules are global. I would like to see the expansion of online mechanisms that can target not only e-commerce but also kinds of commercial disputes that arise in cloud and then I think over time that entire industry in cloud computing would start to specify those redress mechanisms in their contract because it's the only efficient way to deal with those.

It's an excellent question and I'd love to talk further with you about it. My e-mail is on the screen. Thank you for asking the question.

>> GRAHAM ROSS: Thank you very much, Colin. Basically there is all that flexibility. One looks at the particular type of disputes you're talking about and also the various needs and whatever.

Can we move on? Any more questions for Colin before we -- thank you very much, Colin, for coming on and giving an excellent presentation. Thank you.

Stick around if you want to come into any discussion. I'll bring in a change here and showing the breadth of ODR.

Professor John Zeleznikow -- is John online? Professor Zeleznikow is an internationally recognized expert with over 30 years research experience on negotiation decision support and machine learning in the law. He's a professor in the University of Victoria in Australia. And he has been doing a lot of work with relationship. Australia, I know, on ODR technology within various disputes in family. John?

>> JOHN ZELEZNIKOW: Yes, I am here.

>> GRAHAM ROSS: We can't see your face.

>> JOHN ZELEZNIKOW: I can see myself. I'm not too sure what's wrong.

>> GRAHAM ROSS: You're looking in the mirror, then. There's a button.

>> JOHN ZELEZNIKOW: I'm stopping my video and now turning it back on.

>> GRAHAM ROSS: We can see the first slide.

>> JOHN ZELEZNIKOW: Right. Okay.

>> GRAHAM ROSS: Carry on, we can see the slides anyway.

>> JOHN ZELEZNIKOW: I was going to say good morning to the conference in Baku. My mother spent four years there from 1940 to 1944 and it would have been interesting to come see the differences but unfortunately it was a bit too difficult.

A very good morning to Alberto where I gather it's just before 3:00 and good evening to Colin where he's on actually late afternoon on a beautiful summer day. That's one of the real benefits of online dispute resolution, online governance, in their ability to discuss things.

I'm particularly interested in developing systems that have people mediate, negotiate better and as Graham said, most of my research has come in the area of family law simply because that's where we received the interesting data. So much so, for example that my wife has now become a family mediator.

But one of the things we found and which I will talk about in detail in working in the area of family law is that you have to worry not only about (indiscernible) which has been the prime focus of negotiation, support systems, but also about fairness. I should also say and I haven't talked about family law in the overheads but in Australia, particularly with relationship to Australia, Queensland and in British Columbia, there have been incredibly good systems for supporting online family dispute resolution which I think will have a lot of application to areas other than family disputes.

Now, if you go back to negotiation theory and you look at URIDEL, they say disputants can choice to focus on several different approaches. Interests, rights, or power. The major thing we have looked at is interest. Where the parties try to learn each other's underlying needs, desires and concerns and find ways of reconciling them in the construction of an agreement.

Interests are what we have a programme for and most negotiation theorists look at because they provide the opportunity for learning about the parties' common concerns, priorities and preferences which are necessary for the construction of mutually beneficial agreement that creates their use for all parties, whereas if you focus on rights and talking about binding and non-binding agreements then you're looking more at law.

When you focus on rights, you try to determine how to resolve a dispute by applying some standard of fairness contract law. Rights focus leads to a distributive agreement where one party is likely to win and the other lose or a compromise that does not realize potential integrative gains.

I have written that rights-focused in fact leads to a lose/lose situation. Both parties lose, particularly given the costs of conducting such a conflict.

Focusing on -- it means parties try to coerce each other into making concessions each would not otherwise commit. That focus also leads to distributive agreement and can result in a desire for revenge or creation of future disputes. The real problem with the rights-based approach is that in fact negotiations don't endure. Dan Druckman has done a lot of research on that and spent a lot of effort in negotiation that eventually gets broken, and that's the real risk with a rights-based approach.

So let's focus on interest-based negotiation. We have actually done lots of research on building an interest-based negotiation system called Family Winner which you'll notice is listed there. It has some similarity to other systems, earlier systems, Steve Graham's and Allen Taylor's adjusted winner algorithm and Ernie (indiscernible) Smart System. And they focus upon the interest of the disputants rather than objective legal measures of fairness.

Now, the algorithms are fair in the sense each desire is equally met. You are looking at trying to meet the interests equally. It can be argued that they do not meet problems of justice. We've found it is generalizable to other areas when we constructed systems for our interested partner relationship in Queensland.

It was formerly just a counseling organisation but now it's an organisation involved in mediating family disputes. We built them a system, they rather liked it but they said your system only looks about the interests of the parents, not about the idea of justice or fairness.

In Australia, the notion of fairness to families meets paramount interests of the children. When I use the term "fairness" I actually notice -- I had a conflict with people like Steve Brandt because his argument is a fair system is one that meets everybody's interests equally whereas I would argue that a fair system is one that is legally just. Meeting each party's interests equally may not be a good idea when one party is particularly unreasonable or where you have a dispute about children where the two parents are only interested in their own benefit rather than the children.

In saying that, I ought to say we have very different standards in Australia than in the United States. In Australia, the only thing we worry about are the paramount interests of the child whereas in the United States biological parents do have certain inherent rights which they don't have in Australia.

>> GRAHAM ROSS: John, can I just cut in here. I don't want to sound too rude. We are -- because we got off to a late start running a bit late and time is tight, particularly we're interested to look, for you to talk and explain about the system. You mentioned Family Winner. Gamesmanship in achieving the aims that you have been talking about.

>> JOHN ZELEZNIKOW: Yes. Okay. I'll quickly get on to that. I have talked about fairness in Australian family law and just to say about interest and justice before I get on to the example, one must learn from the evaluation of family law, the compromises might conflict with law and justice. How do you do that? How do you make sure -- this is the problem if you had some binding resolution -- how do you make sure that the advice suggested is in fact fair?

Well, in Australia we wanted to construct a system where family dispute resolution, practitioners could bias a system towards the parent who might have the primary care of the children so you take in justice as well.

Now, one of the things we did, and you can now see three slides, initial system we bought Family Winner asked people to input their interests and to give some sort of value to how important each of the interests were. Initially we asked for percentages but a newer version has linguistic variables that then get converted into percentages, those scores in normalized to 100 and the goal is to give each parent an equal number. Normally each parent gets about 75% of what they want. If you are really interested in the system, CNN's "Money" programme had a version of the system running and in effect on this dispute which would take some time to explain but you can see in more detail.

As you can see, this was a real dispute in New York where party A and B, husband and wife, were asked to put in what were the issues in dispute and the value of those issues.

We had previously how much each was worth and here the parties had different values if they don't sum to 100 it gives an allocation summary where certain items are award today party A and certain to party B with the idea of getting equality. What we did was we can in fact bias it and if you want to look at the paper you can say if let's say the wife won't be able to work because one of the children has some health issues that will require her to be at home all of the time. Then in fact we can in fact say to the system, that's one of the concepts of justice, the family dispute resolution practitioner says the wife is to get 60% of the property.

What the system can also do which previous systems don't do -- and you'll see here is that there is a payout to the husband of 170,000 because the wife is getting the apartment which is the most valuable item. This often happens that one of the people, one of the parties and the children live in the apartment, the apartment is most valuable, so there's going to be a cash payout. So the system does that as well.

By allowing for entering you don't get a 50/50 split and by allowing for cash payouts we're enhancing the functionality of the decision support system to help the dispute resolution practitioner mediate the dispute. So in this case both parties want the apartment above all else. As a consequence both gave the rest of the items relatively low values.

On the whole, both parties received items they valued considerably except the apartment. The only item was a profit-sharing plan given to party B because party A was getting the house.

So the original system Family Winner promoted win/win rather than adversarial, win/lose solutions, and conducted so the parties could be fair, our partner wanted the need to comply with prevailing ethical and legal principles, prevention of further conflict and the promotion of collaborative problem-solving between the parties. That's why we built this newer system I have just talked about, Asset Divider, and we have a new methodology to better represent the needs of the family mediation sector.

The problem is when you move away from merely interest to needs, then each system will be different depending upon the domain.

>> GRAHAM ROSS: John, can I interject again? I'm not quite sure how many more slides there are, I did have a -- I want to bring Alberto in. I want to ask a question and open it up if anyone has one to put to you. As we know, in family disputes people argue as much for the spouse to not get what he or she wants, using this gamesmanship they have to really focus on their own needs, how do you feel that in use that in time -- they become more skilled at playing the game where the strategies may arise, and how one avoids that and keeps it a fair and balanced thing.

>> JOHN ZELEZNIKOW: Well, two things. First of all, if you are looking from the point of view, each party has got to indicate their interest. And their interest again to be met equally to the other parties. If in fact they wrongly indicate their interest, then in fact they won't get what they want. They may hurt the other party. If that's their goal they may achieve that.

There is one concern and this would be a real concern if we were talking about dispute resolution process enforced on someone but if you do have first of all if you have the process voluntary and if you require the certification of a dispute resolution practitioner that will process has been fair, then I think to some degree agree you have come. This is sort of the issue and I think it's fascinating and important, binding versus non-binding agreements.

I think non-binding ones where you get some advice and then it's up to the parties to decide whether they like it don't need anywhere near the same sense of strict evaluation and enforcement a binding agreement would. At the moment we've been looking at non-binding.

>> GRAHAM ROSS: Thank you very much, John. Thank you very much for your contributions. Anybody have any questions for John?

Thank you very much for contributing, John, and we now would like to move to Alberto. If he's still awake, Alberto. In Buenos Aires. Alberto Elizavetsky is with the Resolution Center at the Universidad in Buenos Aires at the University of Argentina. Certified public accountant and integration technology consultant and eLearning specialist. And he has I know an interest in involvement and both in teaching and in developing on systems and solutions in ODR.

We can see you, Alberto. Good morning to you.

(Silence)

>> GRAHAM ROSS: We can't hear you, though.

>> ALBERTO ELISAVETSKY: Now?

>> GRAHAM ROSS: Now we can.

>> ALBERTO ELISAVETSKY: Thank you, Graham. Let me make a small correction. Now is 3:30 AM.

(Laughter)

>> GRAHAM ROSS: You might as well stay up. Get the coffee on.

>> ALBERTO ELISAVETSKY: Okay. You will buy me a coffee next time in England, okay?

>> GRAHAM ROSS: My pleasure.

>> ALBERTO ELISAVETSKY: Thank you very much for giving us the opportunity to participate. I know that you are very short of time, my presentation will be no more than 10 minutes.

Hello to everybody there in Baku. My presentation --

>> GRAHAM ROSS: I think I can just cut in there. A bit unfair but I think I'm looking for a guide as to how long we do have here because we are actually running, there is a break we can take on but we may only have about 15 minutes I think at most. We do have two other speakers. Thank you.

>> ALBERTO ELISAVETSKY: With ten minutes.

>> GRAHAM ROSS: If you can do it in five, thank you. Go on.

>> ALBERTO ELISAVETSKY: No, I need six.

>> GRAHAM ROSS: Five and a half is a deal.

>> ALBERT ELISAVETSKY: This is a much more academic approach related to emerging countries basically because we are running the biggest ODR network in the world. It's a non-profit social network and 2,700 members. We will -- it's like a Facebook but only regarding ODR. 2700 Spanish speakers from Latin America and Spain working different kind of issues related to Online Dispute Resolution.

Just to make a long story short we start working in this in the year 2006 with our programme. ODR, then we move to our social network in 2008 and we started with the Spanish chapter of the cyberweek in the year 2007. We just finished last one and we have around 450 participants from all of Latin America and we create in our work, network, sorry, the Italian chapter. For the first year it was a cyberweek in Italian and they have roughly 50 participants. Last year we have our first regional forum regarding ODR innovation and conflict resolution and tomorrow we will have the second one.

But I would like to share with you what the situation is in emerging countries. In emerging countries, we face different kind of problems. We have to attend, work with social and poverty, hungry, digital gap, our situation is completely different than compare with mature markets like the U.S. or Europe or maybe Asia Pacific. That is why you will see what we are doing now in order to introduce ODR in the region and in order to give expertise to our mediators or negotiator. We create a new project named (Speaking Spanish) and in Spanish it means mediation simulation. That's the project that we launch this week.

As you mentioned before, we have in 2010 in Buenos Aires, you can see negotiation and TANGO, and those were the sponsors ODR and ICANN help us in order to have our first onsite Congress and as I told you before, we are running the cyberweek and for the last two years we create our own online distance Spanish Congress, we call it EADR. In Spanish "MARC" means rough. Which is alternative dispute resolution. Okay. Because in order to introduce the concept of ADR in Latin America, we have to give the possibility all experts, all conflict operators in Alternative Dispute Resolution should understand that technology could be a tool instead of being a different field.

>> GRAHAM ROSS: Could I ask you there -- I think we have run out of time. We want to get to -- we still have two more speakers to come in. If I could ask you, Alberto, you mentioned very -- very important differences in what are the conflicts and the issues in emerging countries that apply. Do you see different formats, then, that are required for ODR? Very, very briefly. In one minute. If you look on the practical side of it.

>> ALBERTO ELISAVETSKY: I have three pictures and I leave you. First here we start talking ODR and social conflict. You can see here in 2011. That was where you can see Picasso, okay. And next year will be hungry and poverty, that's the way we are merging peck nol gi with the social conflict and the problem we have in the region. Okay?

If I give you here figures, you have in the world 34% penetration of Internet users. In Latin America we have 42% but the gap is very, very big and people who have access to Internet don't care about huge or big software platforms. That's why we move to a social conflict observatory where we are working in intrafamiliar conflict observation with the technology. We have volunteers from different, 20 volunteers from different Latin American countries. We create the academy and we have our first group of 75 students and we launched the project which is supported by 40 universities to other regions.

>> GRAHAM ROSS: Thank you very much.

>> ALBERTO ELISAVETSKY: In Spain --

>> GRAHAM ROSS: Thank you very much.

>> ALBERTO ELISAVETSKY: -- the last thing before you throw me out --

>> GRAHAM ROSS: Well --

>> ALBERTO ELISAVETSKY: -- the platform we are using -- and before the people get bored there, we are using our platform which allows us to do realtime mediations, okay?

>> GRAHAM ROSS: Alberto, I have to cut you off there. Many apologies for the short time for you. We have gone up to two coffees and a beer now but we'll give people the details. Clearly a lot is happening in South America and we appreciate you coming on at this late hour and explaining everything. Alberto, thank you very much.

>> ALBERTO ELISAVETSKY: Bye-bye.

>> GRAHAM ROSS: If we have a few more minutes, is Irene here? Are you there, Irene?

(Silence)

>> GRAHAM ROSS: Hello, Irene? Are we not getting through?

>> IRENE SIGISMONDI: Hello? Hello?

>> GRAHAM ROSS: Hello?

>> IRENE SIGISMONDI: Is there everything fine?

>> GRAHAM ROSS: We can hear you.

>> IRENE SIGISMONDI: Fantastic. Good morning, everybody.

>> GRAHAM ROSS: If I can just say we've really run right out of time. I'm going to briefly introduce you and you are not going to have time for a full presentation, Irene, but if you can address any issues we've been discussing. I don't know if you've been listening in.

Irene Sigismondi is an attorney-at-law and contract professor at the University of Rome and has been involved in ODR developments and the conferences.

Irene, is there anything on the issues that we have been discussing that you wish to address? We have been mentioning binding and non-binding ODR. How do you see that in Italy?

>> IRENE SIGISMONDI: We have a reasoned decision by the constitutional court which voided our legislation on a mandatory mediation that was introduced in 2010 but the point is for -- from a legal point of view, that it is not the decision by the constitutional court which is grounded on bases related on the tool itself, mediation as a solution of disputes tool. But it is based on the fact that mandatory mediation was sort of an (indiscernible) by the government because this tool was introduced by a mental decree and not a regular statute by the Parliament.

Can you see the point? It is a subtle difference. Therefore, if the Parliament states again and says it should be mandatory, then it will be without any problem. But the point is our regulation was ultra vires according to the principles and criteria set by the delegation in the Parliament.

>> GRAHAM ROSS: Can I ask you to clarify to the audience here you are talking about this development to impose mandatory mediations in certain cases in Italy. There's been I think last week, last couple weeks, a decision of the constitutional court making it reverse that and saying it was unconstitutional. The impact obviously was for mandatory mediation, more, online, has an obvious role to help deliver greater increases in mediation. That is certainly something that's going to be happening in the UK.

Do you think without going into the legalities of the decision and whether it will be reversed again or whatever, but do you see this as being a negative impact on the development of ODR in Italy or not?

(Captioning services concluded for this session since session ran over 15 minutes over the allotted time.)

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