



Communication in the Process of ODR: Advantages and Challenges

Sree Krishna Bharawaj H.

National Law School, India University, Bengaluru, India

Email address:

Krishnabharadwaj66@gmail.com

To cite this article:

Sree Krishna Bharawaj H. Communication in the Process of ODR: Advantages and Challenges. *International Journal of Information and Communication Sciences*. Vol. 1, No. 3, 2016, pp. 39-42. doi: 10.11648/j.ijics.20160103.11

Received: September 8, 2016; **Accepted:** November 28, 2016; **Published:** December 29, 2016

Abstract: The traditional courts often do not provide chance for effectively communicating the grievance of a person. Meanwhile Alternative Dispute Resolution (ADR) systems such as arbitration, mediation, negotiation etc. primarily offer an ear to hear the problems. This has contributed to the growth of ADR worldwide. With the penetration of internet and introduction of mobiles, there have rapid changes even in the resolution of conflicts. Online Dispute Resolution is one such area where technology is used to resolve the disputes online without any physical presence. This paper will bring out the importance of communication, and the communication in the process of Online Dispute Resolution (ODR), its advantages and challenges.

Keywords: Online, Dispute, Resolution, Perspective, Technology, Internet, Claims, ADR

1. Background

Good communication ensures individuals know what is expected of them, that the appropriate person receives the correct information and that there is coordination within the organization. Many problems such as bias, distortion and omission are often the result of poor communication. However, these can be reduced and removed, as can secrecy, rumor and innuendo. This can result in the added advantage of conflict reduction. Poor communication leads to ineffective control, poor coordination and inevitably management failure. (ACCA).

2. ODR and Its Components

The American Arbitration Association defines it as, "Online dispute resolution is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties. It primarily involves negotiation, mediation or arbitration, or a combination of all three. In this respect it is often seen as being the online equivalent of alternative dispute resolution. However, ODR can also augment these traditional means of resolving disputes by applying innovative techniques and online technologies to the process." (Association).

Online Dispute Resolution (ODR) uses alternative dispute

resolution processes to resolve a claim or dispute. Online Dispute Resolution can be used for disputes arising from an online, e-commerce transaction, or disputes arising from an issue not involving the Internet, called an "offline" dispute. Dispute Resolution is an alternative to the traditional legal process, which usually involves a court, judge, and possibly a jury to decide the dispute. Online Dispute Resolution can involve the parties in mediation, arbitration, and negotiation. The parties may use the Internet and web-based technology in a variety of ways. Online Dispute Resolution can be done entirely on the Internet, or "online," through email, videoconferencing, or both. The parties can also meet in person, or "offline." Sometimes, combinations of "online" and "off-line" methods are used in Online Dispute Resolution. (Feliksas Petrauskas).

More or less, ODR is conflict resolution outside the courts, in view of data and interchanges innovation and specifically, speed. ODR emerged as an idea, and depends on Alternative Dispute Resolution (ADR) which alludes to extrajudicial question determination procedures, for example, assertion and mediation. Be that as it may, notwithstanding procedures, for example, online mediation and online discretion, ODR has created imaginative online procedures, for example, mock trials (where a "jury" of online volunteers give a decision in view of an arrangement of actualities as a type of group sourcing) or blind-bidding negotiation systems (where every party makes progressive fiscal settlement offers, which

are not unveiled to the next party and prompt a settlement if and when the offers come surprisingly close to each other). UNCITRAL's draft Rules characterize ODR as takes after: online question determination is an instrument for determining conflict through an IT based stage and encouraged using electronic interchanges and other data and correspondences technology. (Hörnle).

Comprehensively, ODR alludes to the utilization of innovation to conflict resolution. Without a doubt, "innovation" can allude to a scope of correspondence sorts, both simple and computerized. On the off chance that we take the "online" angle to allude just to present day data correspondence advancements, ODR is all the more particularly comprehended to include conflict resolution stages and procedures that use the web. It is likewise conceivable to portray different sorts of ODR under the similarly wide mark of "innovation encouraged determination." In any occasion, there is no strict standard for characterizing what is or is not ODR.

Thus ODR is a term which is synonymously used for online ADR. The ODR utilizes technology for the dispute resolution such as web technologies, internet etc. and also utilizes platforms which include text based or video enabled dispute resolution through various modes of ADR such as negotiation, mediation, arbitration etc.

3. The Requirement for Online Dispute Resolution (ODR)

In the borderless online commercial center, parties situated in various parts of the world make contracts with each other at the snap of a mouse. In this virtual environment, where exercises occur amongst outsiders, the potential for misconception, mix-up and extortion is expanded. In any case, solution for these conflicts emerging out of e-business is badly designed, tedious and costly inferable from the low estimation of the exchanges and the physical separation between the parties. Furthermore, courts may do not have the assets and the ability to stay aware of the development in cross-outskirt question emerging out of an always rising e-trade. The determination of conflict is upgraded when helped by Information and Communications Technology (ICT), on the grounds that when separation correspondences are used there is no compelling reason to travel, which thus lessens expenses and expands access to equity. Online Dispute Resolution (ODR) essentially includes Alternative Dispute Resolution (ADR) forms, to a great extent helped by the pace and accommodation of ICT and the web, which are famously suited to the requirements of e-trade. ODR makes the open door for the determination of lesser-esteem and cross-outskirt conflict which couldn't just be determined something else. Likewise, ODR in the B2C setting has the part of expanding buyer trust, vital in the advancement of practical e-trade; if that is not gave, shoppers will absolutely like to shop at the neighborhood store.

There are a few misguided judgments about ODR, for example, the possibility that ODR is legitimate for little

cases, or that ODR only depends on mechanized innovation, or that ODR can just manage online conflict. In actuality, ODR has demonstrated effective in determining logged off and substantial worth question, and it by and large joins impartial outsiders. (UNCITRAL).

Today, ADR is mostly utilized as a part of connection to work question, family conflict and business question, incorporating those with cross-fringe components. ADR is, be that as it may, generally untested with B2C question. Additionally, there is no unmistakable confirmation that ADR components correspond to a sentiment buyer security, any more than proof showing that ADR adds to customer fulfillment in conflict resolution. In any case, when ADR is supplemented with separation correspondences it is irrefutable that it builds access to equity for some e-trade players. ODR administrations, for example, PayPal online intervention are every now and again the main procedures accessible for tending to e-business question.

So as to accomplish profitable lawful assurance for online customers, it is important to create conflict resolution components that react to the requirements of the parties, as question emerging online have distinctive necessities to those emerging disconnected from the net. The nearer our legitimate framework is to meet this objective, the more it will help shoppers' trust in e-trade. (Cortes).

At the end, communication is what facilitated between the parties through ODR. The primary function of ODR is to bring the parties together for an amicable settlement. Every mode of ODR requires effective communication. For example, mediation requires effective communication as a skill and also the main role of a mediator is to facilitate the parties to talk to each other and come to an understanding. Every settlement under ODR is possible only if there is effective communication.

4. Challenges for Effective Communication in ODR

The first challenge is the usage of language in the ODR platform. Currently most existing ODR services use only the English language, which can be another difficulty in expressing accurate information and avoiding miscommunications. This can be a barrier not just for those parties who do not speak the language but also for those parties who use it as a second or third language. But English language has expanded to almost the whole globe. Removing this language as a barrier for effective communication is a real challenge. For example, a country like India where there are more than 2000 languages spoken, it will be almost impossible to find a common ground language. The cultural differences varies between society to society and individual to individual. Establishing a language as a medium of communication is a task for maker of ODR platform.

The second barrier is the communication barriers which exist between the neutral third party and the parties to the dispute. ODR can offer certain advantages compared with offline ADR. Lets take online mediation for example. Online

mediation is by and large considered as an expansive idea, which incorporates everything from mechanized visually impaired offering systems and e-mediators to online mediation stages with a human facilitator and case administration programs. In online mediation the part of the middle person continues as before yet the determination of systems contrasts. ODR stages are intended to encourage transaction among their clients by empowering the disclosure of positive regular focuses that may bring about understandings. Truth be told, the adaptability managed by the mediation technique makes it especially fitting for being led essentially on the web. In this way, online mediation is any conflict resolution prepare that is coordinated by a nonpartisan outsider (by and large a human middle person), which does not force the type of determination but rather helps the parties in determining their question by conveying generally through the web. (Cortés, Online Dispute Resolution for Consumers in the European Union, 2011). Online mediation is regularly brought out through composed trades, which do not have the principle components of disconnected from the net mediation, i.e. the eye to eye correspondences. Be that as it may, as disconnected from the net mediation, the proficiency of online mediation depends to a vast degree on the aptitude of the middle person and the parties' will to determine their conflict. What's more, an imperative segment is included online mediation, the ODR programming or fourth party, which may help with conveying a smooth mediation or, if severely outlined, may ruin the mediation procedure.

The third challenge is the use of language for communication with the parties by the neutral third party. ODR with text based mediation, negotiation and arbitration makes it easy for the mediator to communicate with the parties as the parties can take time and assess what the mediator/arbitrator/negotiator is trying to convey which the offline mode usually lacks. The consultation with experts is also facilitated by ODR for effective communication.

5. Effective Communication in Process of Mediation

Let's take a look at the advantages of ODR and role of communication in the process of mediation by assessing the advantages and disadvantages:

6. Advantages and Impediments in Utilizing Online Mediation

Online mediation improves a portion of the advantages and troubles of conventional mediation. Similarly as with conventional mediation, online mediation permits the middle person to adjust the procedure so as to address the specific needs of the disputants. The advantages of online mediation incorporate the accompanying:

- Online mediation is less immoderate, especially when contrasted with the expense of determining a case in a logged off setting. The advantage of sparing voyaging

costs opens the utilization of online mediation for e-business and low esteem conflict, which just don't have an option choice. As needs be, online mediation has the potential for expanding access to equity for some disputants. Web correspondence expands the quantity of middle people accessible for every conflict following inside the web there are no topographical cutoff points. What's more, it regards the secrecy of the parties, which is a piece of the way of life of the web. (Bygrave)

- Mediation procedures are adaptable and easy to understand. People are urged to determine question themselves without response to attorneys. Adaptability is expanded when utilizing innovation, on the grounds that there is an incomprehensible exhibit of specialized techniques. Besides, nonconcurrent interchanges permit parties to take an interest in mediation at more helpful times. Additionally, parties can take a shot at their best correspondence, maintaining a strategic distance from the prompt, and regularly most noticeably awful, reactions that can occur in vis-à-vis mediation.
- Online mediation is time proficient: mediation more often than not happens promptly after the conflict emerges, while prosecution may occur months or even years after the occasion, when the circumstances of the parties may have changed. On the off chance that online offices are utilized, whether in complete substitution of up close and personal parties or preliminary to such parties, mediation can initiate quickly. This can be exceptionally invaluable if harm is proceeding or if an answer is desperately required. Truly, conflict are much of the time settled upon the arrival of mediation or presently.
- In online mediation there is less impression of inclination. A mediator from the International Chamber of Commerce (ICC) expressed that amid mediations he doesn't take notes for three reasons: to begin with, to demonstrate that he is tuning in; besides, to give the feeling that he is not giving careful consideration to one of the parties; and, thirdly, so that the parties would see the mediation as confidential. There is no requirement for doing this in an internet setting. In addition, when managing cross-fringe question just a consensual procedure may offer the parties a genuinely impartial discussion, free of any proposal of predisposition by neighborhood laws.
- It is a willful procedure, which takes into account extra and more formal conflict resolution instruments. In the event that mediation comes up short, every party will at present have increased some huge ability in how to manage the conflict, on the grounds that ordinarily the quantities of issues to be challenged are limited down. Besides, after mediation parties have a more precise comprehension of the certainties and proof, turning out to be better prepared to participate in an antagonistic procedure.
- When parties control the determination of the conflict, they are for the most part all the more ready to consent

to the concurred result than with a basic choice gave by an adjudicative body. Truth be told, mediation assertions are deliberately authorized in the dominant part of cases, while judgments are definitely not.

- Mediation encourages settlements without harming connections. It looks for win-win arrangements, where all disputants are fulfilled by the result. There is a more extensive scope of settlement choices, i.e. not simply financial pay, though an ill-disposed system is for the most part limited to arrangements altered by the important law. Mediation does not have these confinements, concentrating more on the practical parts of business life, the fast and ease arrangements that are most alluring to both of the parties. Since arbiters don't concentrate on lawful qualifications however on genial arrangements, they take to a greater degree a "business" approach instead of a "legitimate" methodology.

7. The Confinements of Online Mediation Incorporate the Accompanying

- Online mediation may be successful just with a constrained scope of conflict. The viability of online mediation might be obliged by restricted measures of time and monetary assets. For exchanges including merchandise of little esteem, even online mediation may be too exorbitant.
- Online mediation is frequently directed through content instead of orally. This presents another test: the parties' absence of non-verbal communication and physical cooperation, which makes obstructions for an open discourse. This test may all things considered be moderated to a specific degree with the utilization of ICT apparatuses that recreate up close and personal cooperation, for example, videoconferencing.
- Voluntariness can be preference additionally a detriment. Among the fundamental reasons why online mediation is not utilized is the absence of assent of no less than one party. Online B2C conflict regularly include one-off exchanges, which obstructs the enthusiasm for achieving a neighborly understanding.
- There can be some mechanical issues, which are increased when disputants originate from nations with various levels of innovative skills. However, it has been seen by online mediators that 'correspondence obstructions postured by mechanical issues, lack of education, or poor written work aptitudes were outlandish hindrances in just a generally little minority of cases'. In any case, when these issues show up they can't be overlooked and should be managed genuinely, notwithstanding wiping out the online mediation at whatever point regarded proper by the middle person.
- When adjudicative strategies treat comparative cases alike they then furnish with a high level of lawful sureness which will eventually avert future question.

This element is not present in mediation.

- When mediation is utilized there is not a choice from an able body setting out the parties' rights. Be that as it may, the suspicion that there is one single reasonable consequence of each conflict, which just an adjudicative body can convey is not generally right.

8. Conclusion

Communication is the prime factor contributing towards the amicable settlement between the parties. It is the most required skill by the negotiator, mediator and arbitrator. The main challenge for constructing an ODR platform is to meet the requirements of an effective communication. Effective communication leads to amicable settlement which in turn leads to restoration of relationships.

References

- [1] ACCA. (n.d.). *UNDERSTANDING THE IMPORTANCE OF COMMUNICATION*. Retrieved June 12, 2016, from <http://www.accaglobal.com/in/en/student/exam-support-resources/fundamentals-exams-study-resources/fl/technical-articles/understanding-importance.html>.
- [2] Association, A. A. (n.d.). *What is Online Dispute Resolution? A Guide for Consumers*. Retrieved June 12, 2016, from http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/consumerodr.authcheckdam.pdf.
- [3] Bygrave, L. A. (n.d.). *ONLINE DISPUTE RESOLUTION – WHAT IT MEANS FOR CONSUMERS*. Retrieved from http://folk.uio.no/lee/oldpage/articles/Bygrave_ODR.pdf.
- [4] Cortés, P. (2011). *Online Dispute Resolution for Consumers in the European Union*. Oxon: Routledge.
- [5] Cortés, P. (n.d.). *Online Dispute Resolution for Consumers*. Retrieved from <http://www.mediate.com/pdf/cortes.pdf>.
- [6] Cortes, P. (n.d.). *Online Dispute Resolution for Consumers in the European Union*. Retrieved June 16, 2016, from www.oapen.org/download?type=document&docid=391038 www.oapen.org/download?type=document&docid=391038.
- [7] Definition Task Force on Electronic Commerce and Alternative Dispute Resolution Task Force Draft March, 2. e. (n.d.).
- [8] Feliksas Petrauskas, E. K. (n.d.). *ONLINE DISPUTE RESOLUTION IN CONSUMER DISPUTES*. Retrieved June 14, 2016, from https://www.mruni.eu/upload/iblock/f96/8_Petrauskas_Kybartienht-1.pdf.
- [9] Hörnle, J. (n.d.). *Encouraging Online Dispute Resolution in the EU and Beyond-Keeping Costs Low or*. Retrieved from <http://www.e-lawyerassistance.com/ArticlesPDF/EncouragingOnlineDisputeResolutionintheEUen.pdf>.
- [10] UNCITRAL. (n.d.). *Draft on Online Dispute Resolution*. Retrieved July 15, 2016, from http://www.uncitral.org/pdf/english/workinggroups/wg_3/crp3-e.pdf.