

Kluwer Mediation Blog

“To See Ourselves as Others See Us”: the surprising potential of Online Dispute Resolution

Charlie Irvine (University of Strathclyde) · Saturday, July 12th, 2014

Many of us have been hearing about Online Dispute Resolution (ODR) for years but haven't quite got round to using it. It sounds like a nice idea when face-to-face mediation isn't an option through distance and/or cost. And yet I suspect that for most mediators the 'gold standard' is being in the same room as our clients. We can see people, hear them, feel the emotional temperature; we can also speak, use our eyes, use our hands; even jump to our feet when things get stuck. A small screen, by contrast, seems flat, miniature and limited.

However, if precedent is anything to go by, it would be foolish to bet against the forward march of technology. The first PCs were large, expensive and had tiny memories; early mobile phones look like props in a cult comedy. Moore's law (see [Moore's Law](#)) more or less predicts that computer processing power will double every two years. Thus innovations that start out a little clunky often function beautifully once the technology is fast/small/inexpensive enough. This is one of the reasons for Richard Susskind's inclusion of Online Dispute Resolution in his top ten "disruptive technologies" that will transform legal business (Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future*. Oxford: Oxford University Press, 2013).

I recently had the chance to demo a new online dispute resolution system (www.odro.co.uk). Following a nice line of tradition developed by Guiseppe Leone's Virtual Mediation Lab (www.virtualmediationlab.com) I conducted a one-hour workplace mediation simulation. The parties were played by colleagues in Aberdeen and Yorkshire; the commentator was in London; I live in Glasgow (four parts of the UK separated by nearly 1000km). The dispute centred on a dysfunctional university research project.

So how was the experience? I start with the 'cons' because they're fairly obvious. Getting online is fraught. It only requires one connectivity problem in one of four locations to disrupt the whole mediation for several minutes. Even on this enhanced platform one participant (thankfully the commentator) lost video for the final portion of the demo. I imagine all of this will improve over time.

Another effect, which I also noticed when conducting a real mediation using Skype, was an almost imperceptible delay. This makes it harder to interrupt someone while they are speaking without appearing rude. Perhaps that's not a bad thing. After the Skype mediation I felt that that we all spoke in paragraphs rather than sentences, and wondered if my clients had both been rather pedantic people who quite liked the phenomenon. The technology may suit those who are not

quick to voice their thoughts.

During the demo I noticed that one ‘client’ employed the simple device of holding up his index finger (in a nice, non-threatening way!) whenever he wanted to speak. I also realized that my own repertoire of hand gestures (again that sounds worse in print than in reality) had to be modified to fit the medium: an expansive gesture is lost while two hands in front of the face fill the screen.

More intriguing and counter-intuitive are the ‘pros’. What benefits can online mediation bring? One by-product of this long-distance communication is a reduction in the emotional temperature. Some clients can’t imagine sitting in the same room as a person they have come to regard as the ‘enemy’. When that individual is safely confined to the small screen they don’t represent the same threat. Perhaps the conversation is shallower, but on balance it was easier to maintain a calm, constructive atmosphere.

This leads me to speculate about the potential consequences of ODR for our attention. When I meet someone towards whom I feel great antipathy their simple presence tends to dominate my thoughts and feelings. It’s hard to concentrate on anything else, such as problem-solving or strategic planning. During the demo I sensed that all of us were that little bit less invested in the conversation: perhaps there were distractions at home, like something moving outside the window or a partner bringing coffee; perhaps our thoughts could wander towards other things on our desks or walls, invisible to the camera. From a Gestalt perspective, the screen does not fill the scene. And this semi-detached approach can have benefits as well as drawbacks, particularly if it enhances client agency in choosing to focus their attention in a constructive direction.

Another surprising benefit comes from instant visual feedback. We expect to see our clients; we’re much less used to seeing ourselves. My colleague Aileen Riddle first pointed this out. As a party, she said, it was less tempting to roll your eyes or pull a face when you could watch yourself doing it.

And I think this is one of the radical contributions of ODR. Mediation is a notoriously closed-box affair. The cult of confidentiality means that mediators are rarely observed. Even if someone tells us we looked a little glum, or overly cheerful, that sort of big picture feedback isn’t terribly useful in evaluating the moment-by-moment interactions of real-time mediation. I simply hadn’t thought about how revealing it would be to see myself as well as the two clients, all laid out in glorious 2D. My gaze, expression, gestures and blink rate were all on display (and, at the risk of admitting my vanity, hair and fashion idiosyncrasies). ODR therefore has great potential not only in the practice of mediation but in the teaching and formation of mediators. As my fellow countryman, Robert Burns, so eloquently put it:

*“O wad some Pow’r the giftie gie us
To see oursels as ithers see us!”*

No doubt many questions remain unanswered. Cost, timing, convenience, accessibility, internet connection, the availability of technology and age are all variables to be considered. I have not yet experienced a very high conflict mediation online: what if things go wrong? Who leaves the room? What about security? ODRO has a nice transparent setting which lets all participants know when the mediator is recording the session. But all online technology is vulnerable to being recorded. What’s to stop someone having a family member just off-screen with a video camera? Indeed, with modern mobile phones, what’s to stop a determined individual from recording any mediation? We rely on a degree of trust and goodwill.

Doubtless this debate will rumble on. ODR will have its detractors and it will suit some more than others. However, I suspect that in the long run, just as with mediation itself, the key question will not be whether it is useful but rather when, how, with whom and in what situation it is best employed.

(To see the full mediation demo go to [ODRO](#))


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The graphic features a dark background with white text and a circular icon. The icon depicts a group of stylized human figures, with one figure in the center being magnified by a magnifying glass. The circle is divided into four colored segments: blue, green, red, and white.

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