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Mediators As Facilitators Of Future Online Dispute Resolution

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Online mediators are increasingly in demand in the first online state courts. However, with the inevitable emergence of artificial intelligence-aided online courts, what will the future role of these mediators be?

What is the difference between online dispute resolution ("ODR") and state online courts? The short answer is none. Only a few years ago ODR was considered to be the same as "ADR on the Internet" and therefore a different animal from state courts. Such a view that is based on procedures being different for state courts and ODR (meaning e-ADR) has become obsolete in the past 2-3 years. The first successful online civil courts have been implementing the same range of ODR processes as the best private ODR platforms. These are:

- Direct negotiation;
- Assisted negotiation;
- Elevation to a judge rendering a decision; and
- Monitoring and encouraging speedy enforcement of resolutions.

As examples of such best current practices, look at the websites of the Civil Resolution Tribunal (CRT) in Canada or Singapore state online civil courts or e.g. the UK Traffic Penalty Tribunal. Their look and feel is the same or even better than that of the best private ODR platforms. Other emerging online courts apply a similar range of services.

All of the successful state online courts try to build end-to-end online processes, i.e. eventually all civil court processes for a growing number of disputes will be performed only online, with limited opt-out rights in justified situations. The reason is obvious – only end-to-end online court processes enable the realization of substantially positive changes for the parties and also they are cheaper than the more traditional paper-based courts.

In addition, the first few online courts (e.g. in Singapore) have implemented the necessary digital architecture for developing data-driven processes. This in principle means artificial intelligence. Other online courts will follow in the near future.

Mediators play very significant roles during these new developments:

- Mediators function as so called facilitators; the difference between mediation and facilitation is not yet clearly defined. In my understanding facilitation is more narrow process than mediation; online facilitators help both parties to communicate directly online as efficiently as possible in

order to reach consensus. Online facilitators are usually recruited from mediators (e.g. in Utah and other online civil courts). There may soon be the first training courses and certification programmes for online court facilitators;

- Some online courts refer to separate online mediation services on their online platforms as part of the assistance to the parties to resolve their dissatisfactions outside courts; e.g. online courts in UK enable the parties to use so called blind bidding [1] techniques to resolve their disputes under the supervision of an online mediator; and

- Mediators begin to be involved in designing online courts; as an example presented during the recent ODR Forum conference in Williamsburg, US, the fact that absolute majority of disputes of certain type (in this example 80% of motor accident cases in Singapore) have been settled during court proceedings led to designing assisted negotiation module to be used by the parties of such disputes before the start of court proceedings. In this way, the Singapore court saves time and money. The best designers of such modules are online mediators with specific know-how and expertize from dealing with the specific types of cases.

This still leaves us with the question what will happen in the near future, say in the next 5-10 years? AI is going to bring significant changes to ODR and online courts, both in terms of technology and processes, including online mediation.

I predict that the growing availability of online courts and AI-aided negotiation processes will lead to the separation of negotiation and court processes into two separate ODR sectors. Increasingly more parties will elevate their issues to courts or to private ODR providers and at the same time find resolution of their issues without direct involvement of human judges and court administration. AI will be used as a robomediator. Separation of negotiation and elevation to third party ODR will provide increased opportunities for cooperation between public and private ODR platforms. Private ODR providers will be better equipped than state online courts to operate multiple variable negotiation tools for specific types of dissatisfactions and situations.

Nevertheless even at the time of robomediators fuelled by AI and data, mediators will continue to be significant players:

- There will be a growing demand for online facilitators; facilitators will assist the parties to use the available AI tools smoothly and efficiently in order to come to a mutual agreement; and
- Online mediators will be demanded as designers of AI tools for AI assisted negotiation; their expertize in mediating dissatisfactions in many specific sectors or situations will be necessary to develop successful AI tools.

Importantly, despite wide application of ODR there will always be types of disputes where face-to-face human interaction will probably remain preferred choice of people (e.g. family disputes).

It is clear that the future ODR will use AI-based ODR technology. Control over such new technology of the future will depend on who controls judicial data, including mediation data, rather than who produced the software. Will mediators belong to the key future stakeholders?

It is a paradox that in order to exercise bigger control over the data they help to generate, online mediators will need to share their data widely among themselves and with other private and public stakeholders. Otherwise the robomediators will be controlled by few largest players only who now control almost all relevant data. Therefore, mediators should engage in developing/supporting open AI-based ODR schemes, specifications and standards which will lead to new open ODR

technology.

What will such an AI-based open ODR environment look like? I think it will be composed of the following principal layers:

- Access layer, enabling access of people to their preferred dispute resolution mechanism; this access layer will also include protocols for sharing the data;
- Integration layer, enabling wide sharing of ODR know-how; and
- AI layer, which will actively interact with and influence both access and integration layers.

It seems certain that the future of justice will bring along interesting new developments. I tried to predict future opportunities and challenges of online justice in my new book *Designing Online Courts (The Future of Justice Is Open to All)*.

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