

# Course Syllabus

## Online Dispute Resolution

### Northern Virginia Mediation Service

#### July 16 – August 10, 2012

#### General Course Description

The term "online dispute resolution" (ODR) is the product of an observation made in the mid-1990's about the nature of "new" disputes being created through the use of ICT - Information and Communication Technology. The observation was direct and powerful - by using ICT, particularly in the e-commerce realm, we were creating a cyber-environment (the Internet) and cyber-transactions that were different from the transactions we were used to in the "real" world, and we were creating conflict that is different in nature than the conflict we create in the physical world. The classic example is eBay. A buyer in Scotland and a seller in Iowa may have a conflict over an online transaction and find it physically impossible to engage in mediation or other types of dispute resolution in the traditional, face-to-face sense. Additionally, there may be no clear legal authority to help them settle the dispute. For individuals in this position, some online dispute resolution system is the only game in town. Only recently, in July, 2010, did the United Nations, through UNCITRAL (the United Nations Commission on International Trade Law), put together a working group and begin to think seriously about how to overcome some of the national/legal borders that



**"Welcome to the future of ADR."**

I've said it before, and I will continue to say it: As the leader in the field, the American Arbitration Association (AAA) is committed to delivering fast and effective alternative dispute resolution (ADR) services. This commitment is made possible largely because of what stands behind me—our sizeable investment in the future of ADR. It is a future built on technologically enhanced ADR service delivery. AAA's technology infrastructure enables us to provide online ADR solutions like never before. Solutions such as online case filing and administration for both arbitration and mediation. Online elections and voting services. And web-based training and education. The future of ADR is indeed now. To find out more about the AAA's online ADR services, visit us at [www.adr.org](http://www.adr.org).

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have served as barriers to business-to-business (B2B) and business-to-consumer (B2C) disputes in need of a dispute resolution forum. The UNCITRAL project is still underway – as are ODR initiatives in the European Union, Latin America, and in a number of individual countries around the world.

Over the years there has grown a divide between the technology used to assist dispute resolution in an e-commerce context, and the integration of technology into what I call "retail" ADR practice. In this class we will talk about e-commerce, but we will spend most of our time talking about and experimenting with the integration of technology into more traditional practices. There certainly are still disputes created and resolved online - true ODR in the mid-1990's sense - but ICT has progressed so far and has become integral to human communication in so many ways, it is now possible to argue that the application of technology to dispute resolution is simply the direction in which ADR, as a field, has evolved in the early 21st

Century. That is certainly the impression one would get from this ad from the American Arbitration Association - their President is standing in front of a bank of web servers. Even that will become obsolete soon as we move to cloud servers. Perhaps another indication of the growing acceptance of ODR is that I recently saw an article in an ABA publication,

written by a retired judge, extolling the virtues of web video as a way to handle mediation of discovery disputes. That would not have been imaginable a couple of years ago.

Even if one takes the position that all ADR is now influenced by the use of technology, there are many questions about how and when to apply ODR technology to disputes. Do the rules of offline ADR apply to the use of ODR technology? How does technology change the "at the table" equation? Can dispute resolution efforts be effective when parties are not face-to-face? How can offline neutrals best translate their skills to the online environment? What role, if any, can ODR technology play in peacebuilding or transformative mediation? We will discuss all of these questions as part of the dialogue in this course.

A complicating factor in any discussion of ODR technology is the fact that not all applications of technology to dispute resolution have to be online. In this course we will discuss some applications that are very effective and useful when applied offline. For example, I now almost never use flip charts or legal pads to take notes in mediation brainstorming sessions – I use mind maps or text programs projected for the entire group to see, and which I can convert to text files for the parties to discuss or edit as agreements.

Another complicating factor related to the growth of ODR and the application of technology to dispute resolution is a growing body of "digital natives" using technology as an integral part of their everyday lives. These "digital natives" pose interesting problems for "digital immigrants" who have not, and probably will not, integrate technology into their lives in as complete a manner. ICT, from e-mail, to FaceBook, to Twitter, has changed the nature of social interactions, and of basic communication. If one takes as an article of faith, as I do, that dispute resolution is at its base a communication driven activity, it is reasonable to assume that the changes ICT has brought to communication generally will reverberate through the practice of dispute resolution. It is also reasonable to argue that two of the things ICT does best – facilitate communication and handle information – have a place in dispute resolution.

## **Course Content**

Course content will consist of online and offline material. Readings, links, and Power Point lectures with audio will be posted online, and there will be two discussions, based on fundamental questions related to ODR. Weekly during the course, class members meet with the instructor synchronously in online phone or web video conferences.

## **Basic Schedule**

**(A Schedule is also found on the class worksite.)**

### **Week 1:** (July 16-22) Introduction and Background

#### Class Meeting

- Early in Week 1 the class will hold a synchronous meeting via phone conference or web video conference. Time and venue to be announced.

#### Reading

- Ethan Katsh, "ODR: A Look at History – A Few Thoughts About the Present and Some Speculation About the Future." (Posted in the class workspace.)
- Daniel Rainey, "Technology as a Catalyst and a Barrier." (Posted in the class workspace.)

#### Media

- Begin working through the power point presentations, in order, as quickly as reasonably possible.

### **Week 2:** (July 23-29) Culture, Barriers, and Opportunities

#### Class Meeting

- Early in Week 2 the class will hold a synchronous meeting via phone conference or web video conference. Time and venue to be announced.

#### Reading

- Daniel Rainey, "ODR and Culture." (Posted in the class workspace.)
- Jaime Tan, et al., "Negotiating Online." (Posted in the class workspace.)

#### Media

- Discussion Forum: Question 1 (Barriers) – respond to the triggering question and react to comments and posts from the rest of the class.

### **Week 3:** (July 3- August 5) ODR and Your Practice

#### Class Meeting

- Early in Week 3 the class will hold a synchronous meeting via phone conference or web video conference. Time and venue to be announced.

#### Reading

- ODR Resources – refer to the resources list posted on the class workspace.
- Agreements to Mediate, Opening Statements, etc. – refer to the documents posted on the class workspace.

#### Media

- 20 points – Discussion Forum: Question 2 (Integration of Technology) – respond to the triggering question and react to comments and posts from the rest of the class.

**Week 4:** (August 6-12) Experience: ODR Practicum Cases

Class Meeting

- Late in Week 4 the class will hold a synchronous meeting via phone conference or web video conference. Time and venue to be announced.

Media

- 2 Practicum Cases for online mediation.
- Course Evaluation Survey