

# On-line ADR

## Background paper January 2001

The purpose of this paper is to scope and prioritise the issues associated with on-line ADR. It has been prepared for council members by the secretariat of the National Alternative Dispute Resolution Advisory Council (NADRAC), and does not necessarily represent the views of the council. Comments on the paper from those with an interest in on-line ADR are most welcome, and may be sent to:

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## Introduction

- 1 The focus of the paper is on the resolution of disputes on-line, rather than the resolution of on-line disputes. That is, it concerns itself primarily with the use of on-line technology to resolve disputes, rather than the use of ADR for disputes that arise in the on-line environment.
- 2 The information used for this paper was obtained from journal articles, Internet material and interviews with relevant departmental officers. The research was therefore of a limited nature, and no primary research (such as interviews with service providers or users) has been undertaken. The paucity of (especially empirical) data in ADR generally is accentuated when it comes to on-line ADR. This, and the rapid rate of technological change, means that the paper is largely speculative and exploratory, and should not be taken as a considered and definitive report on the issues.
- 3 The paper:
  - 3.1 outlines the type of on-line technologies that may have relevance to ADR service delivery;
  - 3.2 describes the nature of the ‘virtual community’ that arises out of on-line communication, including on-line disputation;
  - 3.3 profiles current on-line ADR service delivery, including types of ADR processes, disputes, providers, users, and extent of and resistance to usage;
  - 3.4 outlines the potential benefits and limitations of on-line ADR; and
  - 3.5 suggests policy challenges, risks and responses.

## Nature of on-line technology

- 4 The term ‘on-line communication’ is a colloquialism that carries little meaning in scientific terms. While the term strictly could include any communication transmitted electronically, including telephone, fax, radio, and television, this paper focuses on transmission and/or exchange of data digitally via publicly available media.
- 5 The primary media for such on-line communications are:
  - 5.1 the Internet – an open network based on public telecommunications infrastructure;

- 5.2 intranets, or privately established networks applying in an organisation; or
  - 5.3 various hybrid networks such as extranets (ie a network of intranet communities), and virtual secure networks, which have features of both the Internet and intranets.
- 6 Such networks may use ‘wire’ based technology, from traditional copper wiring through to fibre optics, or wireless technologies, such as satellite and the mobile telephone networks. Dedicated lines to enable, for example, videoconferencing, can be rented or purchased from telecommunications carriers.
- 7 On line communications may be interactive, or non-interactive.
- 7.1 Interactive communications include text formats such as e-mail, Internet relay chats and discussion groups, as well as on-line video and audio conferencing.
  - 7.2 Non-interactive communications involves the provision of information and images on web-sites, in which the site host provides, but does not receive, information.
  - 7.3 Although the provision and promotion of ADR through the Internet may be a relevant consideration, on-line ADR service delivery predominantly involves interactive communications.
- 8 For the purposes of providing and exchanging data, information needs to be created digitally, that is, in ‘virtual form’. In on-line communications, each party has a virtual identity (eg properties and name), and a virtual place (electronic address). As data may be stored for transmissions at any time, communications also have ‘virtual time’. Parties are not confined to physical space or time, but create their own. The ‘physical party’, if he or she exists at all, may be anywhere in the world.
- 9 In theory, any data that can be converted to digital representation can be transmitted electronically. In practice, electronic communication is limited by telecommunications infrastructure, especially availability and cost of bandwidth. (see table 1 below). For example, ‘hungry’ images, such as visual images, require more bandwidth, and are then slower and more expensive to transmit.
- 9.1 Written text, especially e-mail is the most common form of electronic data on the Internet. It uses little bandwidth and is quick and cheap to transmit.
  - 9.2 Sound (audio) is also commonly transmitted. The telephone is probably the earliest form of electronic communication, and increasingly relies on digital, rather than analogue, technology. It is almost universally available, and can be linked to a range of electronic transactions (eg telephone

banking). Developments in digital mobile phone network infrastructure(eg 3G) significantly increases the potential of this form of communication.

- 9.3 Static visual two-dimensional images, such as graphics, may also be transmitted electronically, but use more bandwidth. Digital audio also requires high bandwidth.
- 9.4 Moving two-dimensional visual images (ie video) may be transmitted by traditional dedicated channels and access points. Live video requires considerable bandwidth, and the cost of transmission is determined largely by the quality and reliability sought. Low cost videoconferencing is already possible, but may result in low definition, lagging and unreliability in transmission. As higher quality and reliability is sought, costs climb exponentially. However, costs may be reduced substantially where services have their own telecommunications infrastructure, or can access existing facilities without charge. Increased volume and competition in telecommunications may result in costs continuing to fall.
- 9.5 Like other data, images and digital audio, can be transmitted in ‘real-time’ (or ‘streamed’) as in videoconferencing, or stored, downloaded and replayed (like e-mails or tapes). The latter form can be transmitted at non-peak times and may be considerably cheaper.
- 9.6 While sound may be transmitted in three-dimensional form (ie stereo or surround sound) video images are essentially two-dimensional.
  - 9.6.1 Three dimensional space can be created through appropriate software and multiple cameras. In virtual reality, a ‘virtual’ three-dimensional space is created in which parties may interact with each other and with their environment. While these virtual realities can also be transmitted across the Internet, their high bandwidth and equipment requirements means that they are mostly used in a local network with specialised facilities (they are currently used in training and in psychotherapy).
  - 9.6.2 While the technology exists for reproducing and transmitting three-dimensional images in real space (ie holograms), the bandwidth requirements would be enormous, and it is likely to remain in the realm of science fiction for some time to come.
- 9.7 It is also feasible to transmit other sensory data. Touch, smell and taste can be represented electronically, transmitted and converted by appropriate receivers. Some virtual reality environments may provide this capability.

- 10 Although not confined to on-line environments, various form of interactive software are available, or being developed. When married to on-line technology, their potential is multiplied.
- 10.1 Artificial intelligence attempts to reproduce (or improve on?) human decision-making and judgement, and could result in cyber judges, cyber arbitrators, cyber mediators <sup>1</sup> or other ADR cyber-practitioners.
  - 10.2 Various conferencing and group decision making tools are available, which may be of value in multi-party disputes.
  - 10.3 Software to prepare for and facilitate negotiation is also available, and has been used for on-line ADR processes. Some providers have also developed automated programs for ‘blind-bidding’ (see paragraph 21.2 below).
  - 10.4 Software is also available for simulations, for gaming and for assessment. These may have uses for both ADR service delivery, and for ADR education, training and supervision.
- 11 To some extent, on-line communication is a part of most ADR service delivery. Parties and providers communicate via digital telephone networks, information may be accessed and down-loaded from the web, parties and providers may communicate via e-mail, forms may be lodged electronically and fees may be paid by the Internet. The use of on-line technology is therefore something of a continuum from methods conducted traditionally (most common) through to those conducted entirely on-line (least common) (see Table 2). As processes become increasingly on-line in nature, then risks and benefits become increasingly unknown, and the policy challenges also increase.
- 12 In the near term, intermediate, mixed or ‘hybrid’ approaches, which combine traditional with on-line processes, may have the most applicability and potential for ADR service provision <sup>2</sup>. However as the social, psychological, technological, infrastructure, and economic barriers to on-line communication decrease, increased use of on-line ADR could be expected.

**Table 1 On-line continuum**

Traditional	Intermediate/hybrid			Total on-line
No or marginal use of on-line technology	On-line technology to supplement traditional methods	Equally combining on-line and traditional methods	On-line methods supplemented by face to face approaches	Process conducted entirely on-line

## The virtual community and on-line disputation

- 13 On-line communication technology creates an environment in which people and entities relate and make transactions, which in turn creates a virtual community. The use of on-line ADR is not limited to disputes arising out of the virtual community. However, the use of on-line ADR, especially processes conducted entirely on-line, has largely emerged from on-line disputation. Moreover, service delivering ADR on-line are themselves operating within the on-line environment.
- 14 On-line communications gives rise to different types of virtual interactions, relationships and communities.
  - 14.1 One creates a virtual identity, which may be a accurate representation of one's self, an alter ego or entirely fictitious (such as a character out of a mediation role play!) The identity can be imbued with a certain personality and temperament which may or may not reflect that of its owner. There is no way of knowing the 'real' identity of the owner.
  - 14.2 As well as an identity, one creates a virtual location, by way of a URL within a domain. Others may use the same location, by using that address (ie cybersquat).
  - 14.3 Virtual common meeting places, such as chat sites and cyber-cafes are created, in which people create virtual identities and communicate with other virtual identities.
  - 14.4 On-line students and teachers/trainers also establish identities and learning relationships on-line.
  - 14.5 People have had virtual affairs and virtual marriages through communicating via the Internet. They also presumably have virtual separations and divorces.
  - 14.6 Commercial transactions on-line are referred to as 'e-commerce', or more recently as 'm-commerce'. E-commerce generally involves the use of desk top computers communicating via land lines. M-commerce combines mobile phone technology with full internet and computer capability, and wireless transmission. That is, a transaction (including text, audio and video, integrated with software applications) may be made by two parties who may be walking, driving, waiting at an airport or dining at a restaurant.
  - 14.7 On-line cultures develop. Certain protocols, norms and rules of behaviour are created. Language is created to describe relationships and identities, such as 'lurkers'. Emotions may also be communicated in the virtual environment, with symbols used to represent particular feelings.<sup>3</sup> 'Tribal'

style loyalties are also created which may transcend interpersonal relationships and individual interests<sup>4</sup>.

- 14.8 Cyber-crime and cyber fraud occur. Paedophiles may create young virtual identities to make contact with young victims. Accessing confidential information systems (hacking) is endemic. Cyber vandalism (eg viruses) is also commonplace. Motives may be commercial or financial gain, revenge, social protest, gratification, or just fun. Cyber criminals and cyber delinquents, and cyber victims, could be located anywhere in the world, and may be of any age.<sup>5</sup>
- 14.9 A particular on-line community may have rules for entry and exclusion. The community then controls the very existence of its members. An unwanted visitor can be permanently barred. In excluding a member, it may de-create his or her virtual identity. A virtual legal regime is therefore established which transcends national and international boundaries and jurisdictions.<sup>6</sup>
- 14.10 Internet communication may be more polemic and oppositional, as conciliatory or inclusive statements tend to be ignored. This may also reflect a more 'masculine' communication style on the Internet<sup>7</sup>.
- 15 Despite its possible emergent self-organising properties<sup>8</sup> the Internet is inherently anarchical with respect to the external environment. It is not constrained by national boundaries or laws, and is virtually impossible to control by traditional methods. While some countries have attempted to regulate the Internet, the global nature of the Internet means that national controls simply mean that suppliers shift off-shore. Various attempts have been made to improve global governance of the Internet, but these often are caught up in national and regional rivalries.
- 16 The 'virtual community' may be significant but is not yet dominant. E-commerce represents about 2% of total commerce, and while increasing, it may not be accelerating as quickly as its proponents envisaged. Most consumers prefer to shop in the 'real world'. On-line education is growing, but has not taken off in Australia. While e-mail and chat site friendships are common, on-line marriages remain something of a curiosity.
- 17 For most people, the virtual environment is a fleeting contact, like an overnight stay in a foreign country. However, for the few who communicate mainly on-line, the virtual community may be more 'real' than the geographical one. A person suddenly immersed in the virtual community may experience a kind of culture shock, similar to that felt by recent immigrants, as a result of the different norms applying to the medium<sup>9</sup>.

- 18 While many types of disputes are likely to occur in virtual communities, the literature has tended to focus on e-commerce, information security, and intellectual property matters.
- 18.1 Disputes over domain names and cybersquatting have been well documented, and dispute resolution processes are in the process of being developed through the Internet Corporation for Assigned Names and Numbers (ICANN).
- 18.2 Disputes over trademark and copyright infringements on the Internet occur.
- 18.3 Disputes also occur in relation to electronic communications, privacy, infrastructure, circulation of information, communication and exchanges, Electronic Data Interchange (EDI)<sup>10</sup>, and illegal/inappropriate content.
- 18.4 Commercial disputes arising of e-commerce include those between businesses, and between businesses and consumers.<sup>11</sup>

## On-line dispute resolution

- 19 While on-line ADR could feasibly be applied to any dispute, whether on-line or not, most applications of (mainly) on-line ADR have occurred in relation to e-commerce and electronic data. On-line ADR has been particularly advocated for high volume low transaction cost disputes<sup>12</sup>. Conversely, the use of on-line ADR also has been advocated to complement complex multi-party dispute resolution processes, such as in environmental disputes.<sup>13</sup>
- 20 While some envisage new specialised on-line ADR services, it is noted that teleconferencing and video conferencing has been used by ‘traditional’ ADR services, such as family mediation services, for many years. Legal Aid Commissions, such as Legal Aid Queensland<sup>14</sup>, use Internet video conferencing both for interviews and joint processes. Australian courts increasingly are using video links for hearings and for case conferences.

## Processes

- 21 ADR processes offered on-line include the facilitative, advisory and determinative processes described in NADRAC’s definitions paper, plus a few other processes which may or may not be considered ADR in the traditional sense.
- 21.1 Arbitration (binding or non-binding), which may also be presented as ‘private judging’, seems to be the most commonly offered process. On face value, it appears to be amenable to on-line methods as it does not necessitate interaction between the parties, is generally limited to factual

matters, and may not involve ongoing relationships. An arbitration may be conducted entirely in text form (ie e-mail). Despite its theoretical attraction, however, it does not appear to be popular with consumers (see paragraph 28 below).

- 21.2 Many of the on-line commercial ADR services examined provide various forms of facilitated bargaining/negotiation to resolve low value disputes over monetary settlement. Blind bidding is one of these methods. It appears that in blind bidding, parties make a series of demands and offers, the computer calculates the overlap, averages the amount and recommends a settlement figure.
- 21.3 Credit card charge back <sup>15</sup> (in which the credit card issuer in effect conciliates and adjudicates a dispute between a merchant and consumer), escrow and insurance arrangements have also been suggested as on-line ADR processes.
- 21.4 On-line ‘mediation’ generally takes the form of shuttle mediation by e-mail in which statement, position, options, offers are relayed to and fro, with annotations made by the mediator. Apart from traditional video and tele-conferencing, there is little information about on-line conjoint mediation.
- 21.5 Dispute counselling for individual parties, which may include information and preparation for ADR processes, is not well documented, but is likely to be quite common.
- 21.6 The use of dispute system design to build conflict resolution processes into the on-line environment itself has also been suggested.<sup>16</sup>

## **Providers**

- 22 There are many types of on-line ADR providers. As mentioned above ‘traditional’ providers may augment their services with on-line capacity. Providers which specialise in on-line ADR tend to have a commercial orientation. Many have links with universities and professional bodies. Community based services are rare, although the ‘community networking movement’, as an on-line community development and empowerment group, has an interest in community dispute resolution and conflict management.

## **Facilities**

- 23 Service providers may provide their own facilities or use their own. As outlined earlier, low bandwidth communication may take place from any home of business computer with a modem connected to the Internet. Because of the lack of bandwidth currently in Australia, higher quality transmission, especially high

- quality videoconferencing, requires more specialised facilities. ADR service providers may then lease, hire or borrow such facilities. There are many videoconferencing venues in Australia, which include courts and tribunals, government agencies, community facilities, private ventures, universities and other institutions.
- 24 An example of a dedicated facility in the Australia's 'virtual courtroom'. In November 2000, Auscript Pty Ltd (which provides court reporting services) and Counsel's Chambers Limited launched a private 'Hosted Electronic Arbitration Room' in Sydney. The room, which has on-line capacity and in-house facilities for electronic evidence management, and is hired to clients.
- 25 The capital cost of high quality videoconferencing facilities is estimated to be in the order of \$100,000, although suitable facilities can be provided at far lower cost.<sup>17</sup>

### ***Users of on-line ADR services***

- 26 Very limited data is available in relation to the users of on-line ADR services. Some very tentative conclusions may be drawn from the use of on-line technology generally. The so-called 'digital divide' is of relevance.
- 26.1 While Internet usage is growing rapidly across all sectors, it is increasing most rapidly amongst more advantaged groups, especially industrial nations, urban, middle class, able bodied, well-educated, literate and computer literate.<sup>18</sup>
- 26.2 On-line users tend to be younger, and to have grown up with computers.
- 26.3 There is evidence that the on-line medium is preferred by males, and that the medium is more suited to masculine style communication styles.<sup>19</sup>
- 26.4 Many who use on-line services may be unique users, that is people who would otherwise not access any service.
- 26.5 There may be other personal attributes applying to on-line users of services.
- 26.5.1 They may have a preference for electronic over face to face communication, and feel more socially competent 'on-line' than face to face.
- 26.5.2 They may be part of the 'consumer age' – discriminating and selective – shopping around for the best deal, without brand loyalty<sup>20</sup>.

26.5.3 They may have a preference for pragmatism and speed of resolution, and less likely to resort to litigation<sup>21</sup>.

26.5.4 They may not be used to paying for services<sup>22</sup>.

26.5.5 They may have a commitment to the global 'virtual community'<sup>23</sup>.

## **Extent of usage**

- 27 In Australia, on-line ADR appears to take the form predominantly of tele and video-conferencing, and the use of e-mail (and occasionally Internet video) to supplement face to face and telephone intake functions. Video-conferencing is normally conducted through dedicated facilities, such as those in educational institutions or courts. No examples have been found in Australia or overseas of ADR video-conferencing with parties at home or at work, via the Internet. ADR over the Internet may be more of a North America phenomenon with little happening in Australia<sup>24</sup>, due in part to the slow uptake of broadband infrastructure.
- 28 Even North American evidence suggests that the uptake of most forms of on-line ADR is low.
- 28.1 One of the most publicised virtual arbitration services received little work, and subsequently closed<sup>25</sup>.
- 28.2 One on-line ADR provider noted that parties have never opted for an e-mail mediation, and others have abandoned on-line mediations in mid-stream, resorting to telephone in preference<sup>26</sup>.
- 28.3 The *e-Bay* pilot conducted by the *Centre for Information Technology and Dispute Resolution* resulted in 144 e-mail mediation attempts, with a resolution rate of approximately 50%.<sup>27</sup>
- 28.4 Conversely, a provider offering a blind-bidding service claims to have handled 5000 disputes by in the past 12 years<sup>28</sup>, which reinforces the applicability of automated ADR processes for high volume disputes.
- 29 Much of the literature indicates that the early optimistic promises of cyber ADR have not been met. Proponents now argue that on-line ADR may not come into its own until video cameras and microphones are built into computers (or mobile phones) with conferencing and threaded conversation software, and as modems and media provide necessary speed and bandwidth.<sup>29 30</sup>

## **Possible reasons for resistance**

- 30 Despite the theoretical advantages of on-line technology, the evidence suggests that most consumers prefer services and products delivered face to face. Indeed

- this preference may well be greater for consumer groups for which on-line service delivery is most advocated. For example, non-metropolitan consumers may be less likely than urban consumers to prefer the Internet as a source of information.
- 31 While proponents of on-line ADR point to short term technical problems in the acceptance of on-line ADR, social, cultural and psychological barriers may be more important than technical ones. Lack of Internet literacy on the part of parties<sup>31</sup> and practitioners may be major impediments to the uptake of on-line ADR.
- 32 Low acceptance of on-line ADR by consumers may represent the combination of low familiarity with ADR combined with low familiarity with on-line communication.
- 32.1 On-line ADR may be taken up by parties who are comfortable interacting in the virtual environment, and where forms of ADR offer a quick, cheap and pragmatic solution to minor disputes.
- 32.2 On-line techniques also may be accepted by parties who are already familiar with and supportive of ADR (or required to use it through mandatory referral), and who can be encouraged to use on-line communication to overcome the problems of meeting face to face.
- 32.3 However, on-line ADR is unlikely to be accepted by the majority of consumers who are unfamiliar with, and possibly wary of, both ADR and virtual communication.
- 33 Referrers, especially lawyers, may also mistrust on-line ADR. Any concerns lawyers may have about the legal status of the ADR process, and the about the identity and qualifications of ADR practitioners, would be magnified in relation to on-line ADR. One journal article strongly counsels against the use on on-line ADR services<sup>32</sup>.
- 34 On-line technology also may be resisted by ADR practitioners. The on-line culture and communication style (see paragraph 14.10) may be anathema to facilitative and transformative ADR practitioners, such as community mediators. There are also inherent limitations to the effectiveness of on-line communication, especially in relation to traditional facilitative processes.
- 35 Nevertheless reports from practitioners using video conferencing indicate a preference for video conferencing over tele-conferencing. Parties apparently have an initial period of embarrassment, then settle in to the medium quiet comfortably. It seems that both parties and practitioner need to be eased into new technology, and are unlikely to enter it 'cold'.

# Potential and limitations of on-line ADR

## Communication

- 36 There a number of advantages claimed for the use on-line communication in ADR.
- 36.1 On-line communication operates globally, and is not constrained by physical distance and geography (but is confined by the availability of carriers and media). Practitioners and parties can be from anywhere in the world.
  - 36.2 In the case of e-mail and other strings of communications, it has the advantages of written communication, such as not being confined by time zones or agreed conference times, and allowing time for consideration and response. However, it is far quicker and more convenient than conventional forms of written communication. As a result the speed of exchange can be determined largely by the parties, and multiple exchanges, which would take months through an exchange of letters, can be compressed in time.
  - 36.3 On-line communication allows for large amounts of text based information to be transmitted, searched and modified.
  - 36.4 Digital data, whether text sound or video, can readily be stored and retrieved.
  - 36.5 External resources may be readily accessed.
  - 36.6 Useful software (eg voice recognition, conferencing/negotiation software, search tools, etc.) may be integrated into the medium.
- 37 While on-line communication appears to have advantages for text based communication, a large amount of data that underpins interpersonal communication is lost. The degree of loss depends on the form of on-line communication. Exponents of body language claim that only 5% of the meaning in communication is the words used, and that factors such as voice tone and body language carry far more meaning. E-mail communication eliminates:
- 37.1 the use of non-verbal cues by the practitioner to assess the situation – readiness, distress, truthfulness, etc;
  - 37.2 the use of non-verbal cues by the parties to assess each other; and
  - 37.3 the use of non-verbal means to manage and manipulate the interaction (for ill or good).

- 38 In 'high bandwidth' communication, such as videoconferencing, fewer elements of the communication are lost.
- 38.1 Reports from ADR practitioners using videoconferencing indicates that they prefer video conferencing to tele-conferencing, as it is a lot easier on the mediator.<sup>33</sup>
- 38.2 However, low cost, low bandwidth (<128kps) videoconferencing may introduce lagging and blurring, and require parties to sit still. Sign language is not possible at this bandwidth.
- 38.3 Higher quality and higher cost facilities reduce these problems, but there is still some delay, especially if the message has to travel across the world. The communication lag may be somewhat unsettling for those not used to the medium.
- 38.4 Even where picture quality is high and reliable, interaction is still in two-dimensions. (Criminal lawyers have noted the unreliability of video evidence due to the problems of interpreting two dimensional images).
- 38.5 In video conferencing eye 'contact' is via a fixed camera, and many of the cues gained from eye contact are lost (eg social gaze – looking at lower face vs business gaze – looking at the upper face, aggression – direct glare, avoidance – eyes averted).
- 39 Video conferencing also fails to convey other sensory data such as touch and smell, which also plays a major role in communication (for example assessing trust, nervousness, confidence and dominance through shaking hands, 'smelling the fear' of a witness<sup>34</sup>, etc.).
- 40 The need for direct face to face and holistic interaction is advocated by many ADR practitioners as essential in building understanding, 'transformation' and relationship<sup>35</sup>. A problem reported in the *e-Bay* pilot was that buyers and sellers (who had only communicated on-line) had no relational context as they did not 'know' each other, and it was difficult to build trust. Initial face to face contact or video link would have helped.<sup>36</sup> 'Rituals'<sup>37</sup> may also be important in dispute resolution, especially at the opening and concluding stages. For example, on-line ADR may need to replace handshaking and the celebratory champagne after a successful outcomes, with virtual closing rituals. Physically attending a location may also provide a sense of occasion and importance not provided in an on-line environment<sup>38</sup>.
- 41 However, the loss of interpersonal element has also been cited as having benefits.  
<sup>39 40</sup>

- 41.1 Interpersonal dynamics (eg manner of speech, irritants, physical intimidation, etc) may be minimised, enabling parties to focus on substance of the dispute, rather than on their personal reactions.
  - 41.2 There may be a reduction in emotional content, and increased distance. Parties may feel freer to air their concerns as they are insulated from the emotional impact of their statements on the other party.
  - 41.3 A more formal exchange may assist in structuring communication. Many traditional ADR practitioners use techniques to make communication more objective (eg “*rate your feelings on a scale of one to 10*”). These devices are eminently suitable for on-line communication, and may make a virtue out of necessity.
  - 41.4 The electronic nature of the communication means that withdrawal or adjournment is a matter of hitting a button. One does not need to stand and physically leave in the face of objections or obstruction by the other party. An ADR practitioner can also control interruptions or terminate a session ruthlessly and effectively!
  - 41.5 The threat and the risk of physical violence are also reduced through on-line communication.
- 42 The paradox is that, even though on-line ADR is most commonly advocated for simple, high volume commercial disputes between relative strangers, it may be suited to intimates whose interpersonal dynamics interfere with substantive negotiation. Conversely commercial parties with no interpersonal history may benefit from face to face contact in order to establish the trust necessary to resolve the dispute.

### **Stages of the process**

- 43 On-line technology may be used at different stages of service delivery. While specialised on-line providers may use mainly on-line methods, many ADR services do, or would be able to, deliver aspects of their services on-line.<sup>41</sup> The greatest potential for on-line technology would appear to surround intake functions.
- 43.1 **Initial contact** – many service advertise their services on the Internet, and parties may access information, or request more information via e-mail. A number of referring agencies (for example, Queensland Legal Aid), provide on-line video interviews.
  - 43.2 **Initiation** of the ADR process may also be undertaken by e-mail, with contact made with the other party(ies) also made by e-mail where available. Fees can also be paid over Internet. Follow up communications

(eg satisfaction questionnaires) may also be provided electronically. Such on-line communication is not uncommon, and provides speedy and convenient written communication where all parties are connected.

- 43.3 **Assessment** - where written questionnaires or checklists are used for the purposes of assessing a matter for suitability, these could be provide on the web-site, downloaded, filled in and e-mailed. On-line video assessment is also feasible, but no examples are available. The effectiveness of on-line assessment will only be as good as the device used; purely written forms are unlikely to be valid, authentic or reliable tools in complex matters, such as family violence.<sup>42</sup> Given that NADRAC has found effective assessment processes and suitability criteria to be uncommon in any event, on-line assessment may be rare or non-existent.
  - 43.4 **Information exchange** - e-mail provides a quick and convenient means for parties and ADR practitioners to exchange large amounts of data that may be required to prepare for the ADR process (ie electronic data interchange or EDI).
  - 43.5 **Lodgement** - formal legal documentation can also be lodged electronically. Indeed, electronic lodgement of forms is commonplace in courts and tribunals, and may be used by ADR providers to provide any required advice, memos or reports.
- 44 The use of on-line technology for the ADR session is more complex. Videoconferencing enables the ADR process to be conducted in a similar way to a face to face conference, depending on the cost and availability of appropriate facilities. The use of other than real time on-line communications, such as e-mail, seems most applicable to determinative processes and to shuttle mediation, where 'strings' of communication are undertaken, but may also have application to other facilitative processes, depending on procedure and the stage of the ADR process.
- 44.1 'Opening statements' or opening 'bids' may be provided by e-mail, or may be provided as recorded video images (in the same way as witness statements).
  - 44.2 Issue identification or agenda setting may take place with the ADR practitioner formulating a list of issues on-line.
  - 44.3 Limited exploration or discussion may be conducted by e-mail.
  - 44.4 Options can be generated on-line.
  - 44.5 Private sessions or caucusing can take place by the practitioner simply altering the address box of the e-mail

- 44.6 Negotiation may also take place on-line, although this possibly may take the form of traditional bargaining comprising demands, offers, counter offers (or blind-bidding, mentioned above).
- 44.7 Agreements may be formulated and documented on-line. Indeed, e-mail provides a quick and convenient way progressively refining ‘draft agreement’ to produce a single text document. The normal word-processing tools (eg track changes, annotations, comments, etc) are all available on the electronic agreement.
- 45 Experts in on-line ADR state the importance of “*matching the representation to the task*”<sup>43</sup>. ADR practitioners would need to examine the process they are providing, break this down into tasks, and determine the appropriateness of different media for each task. An effective process therefore may involve, say, preliminary contact by phone, data exchange and opening statement by e-mail, discussion by video conference (or face to face if practical), negotiation by teleconference, and agreement by e-mail.

### ***Suitability criteria***

- 46 Limited data is available on the types of disputes that are suitable to different forms of on-line ADR.
- 47 Guidelines from Legal Aid Queensland (LAQ) indicate the use of videoconferencing when distance is an issue and LAQ video-conferencing facilities are available, or where a conference chairperson and/or legal representation are not available in the local area. The guidelines also advise consultation with victims of domestic violence because of the possibility of visual intimidation by the perpetrator in a videoconference setting.
- 48 The Joint OECD/HCOPI/ICC conference on business to consumer disputes (December 2000) suggested.
- 48.1 automated systems (eg blind-bidding) are mainly tailored to disputes that are purely monetary, high value (although this was disputed) and where there is a willingness to compromise;
- 48.2 as value increases, the importance of procedural safeguards grows in relation to efficiency;
- 48.3 flexibility in relation to different types of ADR is important;
- 48.4 there are significant limitations to automated systems but also significant potential;
- 48.5 current systems are embryonic but there is scope for their application in privacy protection; it is a case of ‘think big and start small’.

## ***Other applications***

- 49 The previous paragraphs explore the use of on-line technology in relation to direct service delivery. The technology may have greater relevance and potential application for other areas <sup>44</sup> such as:
- 49.1 Information and promotion of service;
  - 49.2 Training and education;
  - 49.3 Resources and networking for practitioners;
  - 49.4 Assessment and accreditation; and
  - 49.5 Mentoring, including 'live' supervision.
- 50 The major advantage of providing these indirect services on-line is the availability of worldwide resources. An ADR service in regional Australia theoretically could engage a mentor from overseas, and an on-line ADR training course may be delivered to, or accessed from, anywhere in the world.
- 51 On-line parent child communication, such as through videoconferencing, has been used to overcome the problem of contact with a geographically distant parent. Live video contact may become an increasingly used form of contact in same way as telephone call, letters, cassette tapes and e-mail have been in the past. Videoconferencing also has potential as a re-introduction or supervision tool, where there are anxieties about immediate face to face contact.

## **Policy Challenges**

- 52 The issues raised by on-line and virtual communication are not insurmountable and are not unique to the virtual environment. However, complexity, rapid change and the lack of understanding of technology among most policy makers results in a kind of cultural and policy lag, in which legal and policy frameworks fail to keep pace with developments.

## ***Access and fairness***

- 53 As mentioned earlier, on-line communication has the potential to enhance access to previously disadvantaged groups.
- 53.1 Geographically isolated parties may access services remotely.
  - 53.2 Parties with mobility problems are able to access services from their home or other convenient location.

- 53.3 Parties in confinement, for example, in prisons, hospitals, nursing homes or other institutions would also be able in theory to access on-line ADR services. For example, Legal Aid Queensland has conducted family mediation by video conference<sup>45</sup>, with one party in prison.
  - 53.4 Children would be able to access on-line ADR services through their school or home computers without their parent's knowledge or agreement.
  - 53.5 Parties with sight or hearing impairment may be able to use appropriate software (eg voice recognition software) to access information and communicate with others using their preferred modes.
  - 53.6 Those lacking confidence or competence in face to face communication may find it easier to communicate on-line. This may include people with various forms of psychological and psychiatric difficulties. Some children and adolescents, already confident with computers also may find on-line communication less daunting than a face to face interview. Victims of abuse may also find the on-line medium less threatening.
  - 53.7 On-line communication also has the potential to overcome language barriers, through enabling 'live' access to translation and interpreting facilities, through translating and interpreting software, and through the provision of preferred language options in non-interactive media.
- 54 In enabling access by parties who previously did not access their services, service providers may need to re-evaluate their assessment and intake processes, the nature of their interventions, and the risks of service delivery. At present the requirement to physically attend a service acts as a de facto screening mechanism. Parties who are able to use on-line processes to access previously unavailable ADR services (for example, those confined to institutions) may have special motivations and needs, or create risks not yet considered by providers.
- 55 While on-line communication theoretically promotes access, the 'digital divide' is likely to prevent this happening in reality. Lack of computer literacy, and lack of access to appropriate hardware, software and telecommunication infrastructure, are key barriers. Those on low incomes, those with low literacy, older people therefore may find it harder to access on-line services. Those in rural and remote areas frequently do not have the reliable high bandwidth telecommunications channels required for effective on-line use of services, and may also be more likely than their urban counterparts to experience the social barriers mentioned above.
- 56 A number of strategies are suggested to address these issues.
- 56.1 Capacity-building, such as through the community networking, may be required to increase competence and confidence in the medium.

- 56.2 On-line ADR may need to be delivered via community facilities that have effective infrastructure (eg libraries). There are already 500 access points of videoconferencing in Australia.
- 56.3 On-line services also may be delivered in conjunction with existing ‘face to face’ services on the ground. On-line services can then augment and complement local services. Interpersonal support, along with effective infrastructure, may assist in overcoming disadvantages, such as lack of computer literacy and confidence.
- 56.4 The social environment in which the on-line access point is located may also be made more friendly to particular users. For example, a keyboard and screen may be used by several people, creating a group environment for those who otherwise would find the on-line medium socially isolating.
- 56.5 On-line service providers should use media of that uses media of an appropriate and accessible bandwidth, with readily accessible software, and low requirements for computer capacity. Guidelines for disability access to on-line services may represent good practice generally.
- 57 A parallel issue to access is that of fairness, that is, how the on-line ADR process affects the equity of outcomes for parties actually using the service. Very little is known about the power dynamics inherent in on-line communication. While on-line communication may neutralise some aspects of power (see paragraph 37) it may also give rise to other forms of power imbalance.
- 57.1 As outlined at paragraph 14.10, the style of on-line communication may be more suited to some groups. For example, men and women may use media different, men for factual exchange, women for relationship maintenance and social communication<sup>46</sup>. Some forms of ADR (eg e-mail based), may be more suited to short, factually based communications, and so suit men more than women. The cost of on-line communication may lead to time pressures that work against some groups.
- 57.2 Those with greater computer literacy and keyboard skills are clearly better able to use the medium to their advantage.
- 57.3 Those relatively unfamiliar with the technology may be more easily manipulated into agreement by the other party, or by the ADR practitioner. Some of the specific on-line processes (eg blind-bidding) appear to apply ‘gaming’ type rules which more experienced parties could use to advantage.
- 57.4 Those with newer and faster hardware or software could feasibly overwhelm another more ‘primitive’ party. For example, party A could send large amounts of graphics and text information, which causes B’s

computer to crash. A gains considerable time and psychological advantage as B re-boots their computer, and slowly downloads A's files.

- 57.5 These imbalances could be reduced by working through community facilities and support networks, as suggested at paragraph 56.
- 57.6 In the case of Business to Consumer on-line dispute resolution, the asymmetrical nature of disputes leads to different responsibilities and obligations and different information needs for consumers and suppliers. This issue was raised at the joint OECD/HCOPI/ICC conference in December 2000.
- 58 Power dynamics and bad faith bargaining apply across all ADR. However, new practice issues emerge in respect of on-line ADR. For example, ground rules may need to be agreed at the outset on, for example, the bandwidth and software to be used, and the nature of data to be transmitted.
- 59 Where one person is on-line with the ADR practitioner, and the other is face to face, there may be uneven impacts, although the direction of the impact is uncertain. In relation to court evidence it is suggested "*that a person on television may be received very sympathetically--more sympathetically than if they were actually in the courtroom*"<sup>47</sup>, which may indicate that an ADR practitioner in fact could become biased toward the videoed party. Certainly a videoed party is in a better position to mask their feelings, and may therefore be in a stronger position.
- 60 ADR practitioners also need to consider the physical placement of both parties, where one party is local and can attend the practitioner's office, and the other party is geographically distant and is contacted 'on-line' (eg tele-conferencing or video-conferencing). There may be different means for managing this imbalance.
- 60.1 The local party may be placed in a separate location, with a separate line, and engaged on-line in the same way as the distant party. This approach prevents a perception of bias and neutralises any potential advantage to the local party. However, it doubles the cost of the facilities.
- 60.2 An alternative is to engage a 'neutrally located' practitioner, who is equidistant or suitably removed from both parties. Costs would be similar to that above.
- 60.3 ADR practitioners may be placed at both ends of the exchange, using a form of virtual co-mediation. This would rely on a large network of skilled practitioners, with common training and protocols. Practitioner costs would be doubled, and there is the danger of each practitioner being seen as (or even becoming) more of an advocate for 'their' party.

- 60.4 The practitioner may choose to have the local party in their office, and introduce procedures that build and maintain trust, and that minimise the risks of disadvantage or bias.

## ***Security, confidentiality and privacy***

- 61 The nature of data communicated on-line carries specific risks.
- 61.1 Digital data can be manipulated, and records can be altered if wished.
- 61.2 Digital data may be stored automatically, and without the knowledge of the user. An example of the risks associated with this is in accessing confidential service via the web. A victim of domestic violence may access a service from the home computer, believing this to be safe. Her partner may decide later to check the Internet history and discover the contact, and may even attempt to access a record of the conversation. Such on-line service providers may need to consider introducing protocols to ensure all computer records, including histories, are deleted.
- 62 The speed and the global nature of the Internet magnifies the risks, and the consequences of those risks.
- 62.1 In physical space, the loss of confidentiality and privacy is generally confined. However, a breached confidential communication over the Internet may be provided to anyone in the world.
- 62.2 Internet fraud may have global ramifications, with potentially huge numbers of victims, but involving small amounts of money, and consequently little attention. ADR processes, like any others, may be subject to fraudulent activity.
- 62.3 Like anyone else, parties and practitioners are also at risk of on-line sabotage (such as viruses), extortion and other computer crime.
- 63 Information is far less protected over the Internet than in intranets, dedicated networks or virtual secure gateways. Methods, such as encryption and appropriately configured firewalls, also reduce the risks. However, IT security remains a new field, and computer hackers have been known to overcome even the most sophisticated systems. It is unclear what the motivations may be to hack into an ADR site, so the risks are largely unknown.

## ***Standards***

- 64 Most on-line ADR services employ existing ADR standards, such as codes of conduct. It is unclear whether special standards are required for on-line ADR, or whether existing standards can simply be contextualised to the on-line

- environment. Clearly on-line practitioners need to be confident and competent in their use of the technology, and may need to be coached as they first use it. However, this has no more inherent difficulty than conducting a tele-conference or using the e-mail.
- 65 Specific ethical issues arise in relation to on-line ADR.
- 65.1 As parties may access an ADR service anywhere in the world, the neutrality of the forum may be an issue.<sup>48</sup> The choice of forum may lead to advantages for a party and/or a national interest. In the global environment national courts may not be considered wholly independent. ADR bodies similarly may be ‘tainted’.
- 65.2 Conflicts of interest may also apply to practitioner and to services. In the physical environment, a party may be reluctant to use a service which rents property from an entity associated with the other party. The virtual environment uses the products of major corporations, including hardware and software suppliers, and telecommunication carriers. Conflicts of interest in this environment are subtle but pervasive, and problems may occur when a dispute involves computer and telecommunications companies.<sup>49</sup>
- 66 The on-line environment may lead to ambiguous expectations, which those setting standards may find difficult to meet.
- 66.1 An example is service standards with respect to e-mail. E-mail may be considered to be like a telephone call, requiring an immediate response in colloquial language, not necessarily vetted and approved by the agency. Alternatively, e-mail may be considered to be like a letter, requiring a carefully worded, formal and considered reply, checked and cleared by appropriate persons. Some agencies demand that e-mail be considered like a telephone message, with a response provided within 24 hours (whereas the acceptable turnaround time for letters is much longer). As e-mail is a formal legal record, there are risks in this policy for service providers. In the case of Internet videoconferencing, which is also fully recordable and retrievable, such risks may be magnified even further.
- 66.2 In the case of ADR rules (for example the *Family Law Regulations*) certain material must be provided to parties **in writing**, and other intake processes must take place. Where the intake is conducted on-line, there may be doubts about compliance.
- 67 The global nature of the Internet means that standards must be considered in an international, not national context. Consumer laws, professional rules and government regulation would be unlikely to apply to the on-line ADR provider, who could operate from anywhere. There have been severe criticisms of some on-

line ADR providers (see paragraph 33), and it is certainly possible for an unscrupulous operator to advertise their services to the world, without any controls or penalties.

- 68 In recognition of this the joint OECD/HCOPI/ICC conference in December identified a need to develop some form of accreditation of providers of ADR so that consumers, in the international context, could have confidence in such providers.
- 69 The lack of acceptance of on-line ADR may be associated with the absence of standards. Paradoxically, this lack of acceptance may provide a strong incentive for international self-regulation in order for providers to build the credibility of the process. NADRAC may wish to consider consulting with overseas ADR bodies (eg SPIDR) on this matter.

### **Legal environment**

- 70 The legal environment for on-line ADR has been described as system of *multiple and overlapping sovereignties*<sup>50 51</sup>.
- 70.1 It may be difficult to determine the site of the ADR process, the sovereignty therefore that applies, and, in turn, legal implications for the conduct of the process, the status of communication and the enforceability of outcomes. In the case of arbitration, the question arises as to what is the 'seat' (or place) of the arbitration, or indeed whether such a place exists in any event (as the arbitrator is 'nowhere')<sup>52</sup>.
- 70.2 As well as statutes, contract law, and virtual contracts<sup>53</sup> are important features. Large businesses may have arbitral and other ADR clauses for business to business disputes, but low value business to business disputes, and business to consumer disputes may not be covered by arbitral clauses or by statute<sup>54</sup>.
- 70.3 As outlined in paragraph 14, the virtual community to some extent has its own 'quasi' or 'virtual sovereignty'. In the e-Bay pilot, it was suggested that the virtual auction site could create its own statutory environment, by recognising buyers and sellers, and excluding (in effect de-creating) those who do not follow its rules for dispute resolution.<sup>55</sup> ICANN similarly applies dispute resolution rules internationally through a process of self regulation.
- 71 Writers have suggested public law frameworks and hybrid legal systems for dispute resolution, comprising national statutes, international treaties and self regulation<sup>56</sup>, contract law, and virtual law<sup>57</sup>.

- 72 In the Australian context, it is noted that the *Telecommunications Interception Act* (s 6(1)) provides that where a communication is listened to or recorded over a telecommunications system, it must be with the knowledge of the person making the communication. An on-line ADR system in Australia would have to comply with this provision.

## **Cost effectiveness**

- 73 One of the attractions of on-line ADR may be cost effectiveness. In international ADR, on-line methods may be the most cost-effective methods. However as the cost and time of physical travel decrease, so do the cost advantages of on-line methods.
- 74 Some of the claims of cost effectiveness and cost savings through on-line ADR may not be justified.
- 74.1 Some on-line methods, such as high quality video conferencing may be more expensive than physical travel.
- 74.2 On-line ADR may create new markets, rather than replace existing services.
- 74.3 On-line methods may lead to a doubling up of resources where information and records need to be provided in BOTH electronic and traditional forms.
- 74.4 New methods require a period of adjustment, and initial increased inefficiency may be expected while people adjust to change (the ‘J-curve’). Information technology and telecommunications change is rapid and continuous, not episodic, and there is little time for adjustment. As a result, on-line parties and practitioners may be in a constant state of uncertainty and learning.
- 74.5 Considerable training, marketing consumer education and capacity building may be required for on-line ADR to be accepted.
- 74.6 The low uptake of on-line ADR may prevent sufficient economies of scale.

## **The way forward?**

- 75 On-line ADR represents an interplay of technical, human, legal, economic and policy factors.

- 75.1 At present technical barriers mean that affordable on-line technology restricts communication and human interaction in ADR, although this may have benefits in some cases.
- 75.2 Emergent technology over the next few years will reduce these restrictions considerably by providing full interactivity using high quality media integrating visual, audio and text formats, along with ‘facilitative software’ at low cost.
- 75.3 Although technology currently exists, it will probably be many years before three-dimensional representation (holography, virtual reality), plus other senses would be available. Once available it may be very difficult to differentiate virtual interaction from face to face interaction.
- 75.4 There is likely to be a considerable lag before new technologies are generally accepted. Some acceptance or ‘normalisation’ will be required before most parties and practitioners would opt for on-line ADR over other approaches, except by necessity.
- 76 Forms of on-line methods will play an increasing part in all ADR, and ADR providers and practitioners need to match the method to the task. ADR conducted entirely on-line is likely to remain rare, except in the international context and in within the ‘virtual community’ itself. However video conferencing is likely to become increasingly common.
- 77 The challenges of on-line ADR require policy makers to think globally and act locally. This would suggest that NADRAC:
- 77.1 makes contact with similar bodies overseas;
- 77.2 seeks information from local ADR practitioners and agencies using on-line technology in order to identify what works, what doesn’t work, who is using the services, what risks are apparent, and how those risks may be addressed;
- 77.3 reviews its recommendations and positions on ADR definitions, on criteria, on diversity, on standards, on court ADR and on PDR in Family Law are equally relevant to the on-line as to the physical environment.

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<sup>1</sup> Boulle L (1999) “Options for cyber-med” *The ADR Bulletin* 1(10) April

<sup>2</sup> Advocated by Kessedjian C & Cahn S (1998) “Dispute Resolution On-line” in *International Lawyer* 32(4) Winter 1998 p977-990

<sup>3</sup> Boulle L (1999) op cit

<sup>4</sup> MacDuff I (1994) “Flames on the Wire: mediating from an electronic cottage” *Negotiation Journal* 5, quoted in Tidwell A (1996) “Handling Disputes in Cyperspace” *Australian Dispute Resolution Journal* August 7(3) p246. MacDuff, commenting on a mediation commented that the parties did not have a

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commitment to an ongoing relationship, but to the “*virtual community that emerges in the public communications that take place over the international electronic mail network*”

<sup>5</sup> see <http://www.aic.gov.au/research/scp.html>

<sup>6</sup> Katsh E, Rifkin J & Gaitenby A (2000) “E-Commerce, E-Disputes and E-Dispute Resolution: In the Shadow of the e-Bay Law” *Ohio State Journal of Dispute Resolution* Spring

<sup>7</sup> *ibid*

<sup>8</sup> Brin D *Harnessing Conflict and Competitiveness for Society’s Benefit* Presentation at Cyberweek 2000 [www.disputes.net](http://www.disputes.net)

<sup>9</sup> Hardy S (1998) “On-line Mediation: Internet Dispute Resolution” *Australian Dispute Resolution*

<sup>10</sup> MacDuff (1994) *op cit*

<sup>11</sup> Notes provided by Ford P following OECD conference (December 2000) “Building Trust in the On-line Environment

<sup>12</sup> *ibid*

<sup>13</sup> Perritt H *Dispute Resolution in Cyberspace* Presentation at Cyberweek 2000 [www.disputes.net](http://www.disputes.net)

<sup>14</sup> personal communication, Chris D’Aquino – January 2001

<sup>15</sup> Perritt H *Dispute Resolution in Cyberspace* Presentation at Cyberweek 2000 [www.disputes.net](http://www.disputes.net)

Note the OECD conference 2000 regarded this process as “not a substitute for ADR” Ford P – *op cit*

<sup>16</sup> Perritt H *Dispute Resolution in Cyberspace* Presentation at Cyberweek 2000 [www.disputes.net](http://www.disputes.net)

Katsh E, Rifkin J & Gaitenby A (2000) “E-Commerce, E-Disputes and E-Dispute Resolution: In the Shadow of the e-Bay Law” *Ohio State Journal of Dispute Resolution* Spring

Brin D (2000) *Disputation arenas* Presentation at Cyberweek 2000 [www.disputes.net](http://www.disputes.net)

<sup>17</sup> Personal communication – J Rush – January 2001

<sup>18</sup> For example, the Ernst and Young study on on-line retailing in Australia showed the average on-line shopper to be “*tertiary educated male, 41 years old and married....and looking for bargains*” *The Australian*, 18/1/01

<sup>19</sup> King (2000) *op cit*

<sup>20</sup> for example see papers from Community Networking conference, Ballarat, October 1999

Hugh McKay also has written extensively on this topic

<sup>21</sup> Beal (2000) *op cit*

<sup>22</sup> *ibid*

<sup>23</sup> OECD conference (December 2000) “Building Trust in the On-line Environment” Ford P *op cit*

<sup>24</sup> King D (2000) “Internet Mediation – a summary” *Australian Dispute Resolution Journal* 11(3) August p180-186

Tidwell A (1996) “Handling Disputes in Cyberspace” *Australian Dispute Resolution Journal* 7(3) August p245-248

<sup>25</sup> Perritt H *Dispute Resolution in Cyberspace* Presentation at Cyberweek 2000 [www.disputes.net](http://www.disputes.net)

<sup>26</sup> Benyekhelf K, Trudel P & Gautrais V (2000) *Some reflections on conflicts management in Cyberspace* Presentation at Cyberweek 2000 [www.disputes.net](http://www.disputes.net)

<sup>27</sup> Katsh E, Rifkin J & Gaitenby A (2000) “E-Commerce, E-Disputes and E-Dispute Resolution: In the Shadow of the e-Bay Law” *Ohio State Journal of Dispute Resolution* Spring

<sup>28</sup> *ibid*

<sup>29</sup> *ibid*

<sup>30</sup> Beal B (2000) *On-line Mediation- has its time come?* Presentation at Cyberweek 2000 [www.disputes.net](http://www.disputes.net)

<sup>31</sup> King D (2000) “Internet Mediation – a summary” *Australian Dispute Resolution Journal* 11(3) August p180-186

<sup>32</sup> Wilson K (2000) “dotcom settlements” *Plaintiff* (40) August p33-34

<sup>33</sup> personal communication – Chris D’Aquino, January 2001

<sup>34</sup> <http://www.parliament.vic.gov.au/lawreform/tech/10.html#Heading10>

<sup>35</sup> See for example Folger and Bush

<sup>36</sup> Katsh et al (2000) *op cit*

<sup>37</sup> See for example John Braithwaite’s work on re-integrative shaming rituals

<sup>38</sup> <http://www.parliament.vic.gov.au/lawreform/tech/10.html#Heading10>

<sup>39</sup> Hardy S (1998) *op cit*

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- <sup>40</sup> King (2000) op cit
- <sup>41</sup> See King D (2000) "Internet Mediation – a summary" *Australian Dispute Resolution Journal* 11(3) August p180-186
- <sup>42</sup> See NADRAC (1997) *Primary Dispute Resolution in Family Law*
- <sup>43</sup> Katsh et al (2000) op cit
- <sup>44</sup> Clarke E (1996) "Alternative Dispute Resolution and the World Wide Web: Sources, Opportunities and Issues" *Commercial Dispute Resolution Journal* Vol 2 no 2 April p 186-199
- <sup>45</sup> personal communication Chris D'Aquino January 2001
- <sup>46</sup> Eva Cox conducted some research for Telstra on this issue (source – J Harrison – National Women's Justice Centre
- <sup>47</sup> <http://www.parliament.vic.gov.au/lawreform/tech/10.html#Heading10>
- <sup>48</sup> OECD conference – December 2000 *Building Trust in the On-line Environment*
- <sup>49</sup> Beal L (2000) op cit
- <sup>50</sup> Aoki K (1998) "Considering Multiple and overlapping Sovereignties: Liberalism, Libertarianism, National Sovereignty, 'Global' Intellectual Property and the Internet" *Indiana Journal of Global Legal Studies* vol 5 p 443
- <sup>51</sup> Sturzaker (1999) "Dispute Resolution in the new millennium – international arbitration" *The ADR Bulletin* 2(6) November
- <sup>52</sup> Benyekhlef et al (2000) op cit
- <sup>53</sup> Beard D (2000) "International Virtual Contract" *Australian Business Law Review* volume 28 p206-213
- <sup>54</sup> Heiskanen V (1999) "Dispute Resolution in International Commerce" *Journal of International Arbitration* 16(3) September p 29-43
- <sup>55</sup> Katsh et al (2000) op cit
- <sup>56</sup> Perritt (2000) op cit
- <sup>57</sup> Katsh et all (2000) op cit