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Citation

ALEXANDER, Nadja. From ADR to ODR: Can technology shape the future of mediation practice?. (2012).
Available at: https://ink.library.smu.edu.sg/sol_research/3343

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From ADR to ODR: Can technology shape the future of mediation practice?

Nadia Alexander (Editor) (Singapore International Dispute Resolution Academy)/February 11, 2012

Imagine an e-mediator who can reframe parties' feelings and overall mood based on their speech patterns as they talk into an ODR program. Imagine recreating the real-life intensity of emotional and social connections through an avatar in an online mediation setting. Imagine anonymous brainstorming, secret meetings in e-rooms and having access to a web-based intelligent agent to advise parties on walkaway alternatives and interest-based trade-offs. No, this is not a science-fiction film—it is ODR technology, the mediation world biggest kept secret.

ODR usage is on the rise as Sabine Walsh shows in her [February](#) posting. Here I want to highlight the amazing possibilities that ODR offers beyond email and telephony.

Commercially available ODR services harness a range of technologies. These include:

- E-mail
- Web forums
- Instant messaging
- Chat rooms
- Video conferencing
- Mobile and smart phone technology
- Artificial legal intelligence
- Blogs
- VoIP (voice over Internet protocol)
- Avatars
- Social networking sites
- Wikis
- Web maps.

As technologies are changing the way in which people communicate and interact with one another, they will invariably change the way conflicts are resolved and mediations are conducted.

The technologies are applied in various ways to negotiation and mediation processes. Here are couple of examples.

Facilitated negotiation involves the provision secure websites such as virtual collaborative workspaces or e-rooms the parties to exchange messages, share documents and engage in synchronous or asynchronous negotiations. This is a basic ODR service offered by a number of providers such as the Mediation Room. Here facilitation is offered by the technology itself and the process rules established e-room provider, rather than a human mediator.

However human mediators can also use this type of software to conduct online mediation processes. Online applications specifically set up for mediators to use are referred to as integrated mediation platforms and are offered by providers such as the [Mediation Room](#) and [Juripax](#).

Another example can be found in automated negotiation such as blind bidding procedures that offer positional negotiation and a formula for calculating settlements without human third-party intervention; these are available in the United States for insurance claims arising from car accidents and personal injury claims.

Yet another ODR technology takes the form of negotiation support systems, which allow the manipulation of negotiation variables for participants so they can consider a range of options and alternatives, and can provide an overview of negotiation stages (in mediation) and expert advice on strategies and outcomes. Mediators are able to use this type of technology to assist parties in their negotiations. Family winner and IMODRE are two examples of this development in Australia. Both are used primarily in relation to property settlement mediation in family disputes.

Whereas mediators are referred to as the 'third party', in the world of online mediation, technology is referred to as the 'fourth party'. The concept of the fourth party suggests that technology changes the communication and power dynamics of the mediation process, opening up new and imaginative ways for mediators to intervene, and parties and lawyers to engage, in the process. It also introduces new risks for users relating to issues around security of the online platform, authenticity of online participants and what to do with a written record of a text-based ODR process.

The future of online mediation will depend largely on the ability of mediators and potential users to access and accept the fourth party and specific ODR platforms. While there is still some scepticism about the ability of technology to facilitate solutions, build relationships and maintain trust in the process, it seems that an increasing number of mediators and users of mediation are open to the idea of ODR.