

Arbitration

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Online dispute resolution (ODR): what is it, and is it the way forward?

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1. Introduction

Online Dispute Resolution (ODR) refers to the use of Alternative Dispute Resolution (ADR)¹ mechanisms over the internet.² ODR methods can be used to deal with both offline- and online-related disputes. The idea of using ADR mechanisms "online", as opposed to "offline", appears to have arisen in the 1990s.³ During that decade, some of the most noticeable ODR services were provided by: (1) the Virtual Magistrate Project⁴; (2) the Online Ombuds Office (OOO)⁵; and (3) the Online Mediation Project.⁶ These projects were originally developed under the auspices of various institutions, including the American Arbitration Association (AAA) and the National Center for Automated Information Research (NCAIR).

Within a short period of time, dispute resolution professionals⁷ realised that there were possibilities for considerable expansion of this burgeoning field.⁸ In 1997, Professors Ethan Katsh and Janet Rifkin founded the National Center for Technology and Dispute Resolution, which "supports and sustains the development of information technology applications, institutional resources, and theoretical and applied knowledge for better understanding and managing conflict".⁹ Four years later, the first book in the field of ODR was written.¹⁰ Later on, the area of ODR started to be explored by institutions such as the US Federal Trade Commission, the US Department of Commerce, the Hague Conference on Private International Law, the Organization for Economic Cooperation and Development, the Global Business Dialogue, the World Intellectual Property Organization, and the European Union.¹¹ In the European Union, in particular, legislative measures have tended to favour the utilisation of ODR mechanisms.¹² Examples include the Directive on Electronic Commerce art.17 and the Directive on certain aspects of Mediation in Civil and Commercial Matters Recitals 8 and 9. Further, in the area of consumer law,¹³ both a new Proposal for a Regulation on Online Dispute Resolution for Consumer Disputes and a Proposal for a Directive on ***Arbitration 258** Alternative Dispute Resolution are currently being discussed.¹⁴ These proposals are intended to improve the functioning of the retail internal market and enhance redress for consumers.

In principle, ODR mechanisms are expected, among other things, to "facilitate access to justice",¹⁵ and should therefore be able to tackle some of the problems concerning the use of offline dispute resolution mechanisms.¹⁶ It is believed that ODR could "resolve disputes quickly and more efficiently" than the traditional methods¹⁷ but, to our knowledge, no research has been reliably and skilfully conducted to back up this assumption. ADR scholars have put forward various proposals aiming at developing an ODR system,¹⁸ and during the last 10 years an important number of ODR services have been developed.¹⁹

Within the vast array of ODR mechanisms, negotiation, mediation and arbitration appear to be the most commonly practised.[20](#)

As the legal profession has begun to modernise its working practices with the aid of several technological advances in computing and telecommunications,[21](#) one may wonder whether the utilisation of offline mechanisms will eventually be replaced by the employment of the so-called ODR mechanisms. This article provides a concise explanation of the notion of dispute resolution in cyberspace. It reviews some of the recent studies on the use of ODR, especially the use of e-negotiation, e-mediation and e-arbitration, considers the issues concerning the intricacies of settling and resolving disputes in cyberspace and concludes that the idea of banishing offline dispute settlement and dispute resolution methods—in the near future—is extremely unlikely ever to come true. ***Arbitration 259**

2. E-Negotiation

Negotiation is one of the most commonly practised forms of dispute resolution[22](#) and, probably, "one of the most basic forms of interaction".[23](#) It is believed that "people negotiate even when they don't think of themselves as doing so".[24](#) Negotiation, in essence, can be defined as any type of communication between two or more people with the aim of reaching an agreement. For this, negotiation can be seen as an amicable, and perhaps as a highly desirable, way of resolving disputes. With the advent of the internet, this form of interaction, particularly within the dispute resolution arena and the legal profession, has somewhat moved off the court corridors and polished offices of a law firm on to the Web,[25](#) which resulted in the advancement of the idea of electronically based negotiations (e-negotiation).

The first research project in the area of negotiation via the World Wide Web (INSPIRE) came into operation in 1996. This project was "[d]eveloped in the context of a cross-cultural study of decision making and negotiation".[26](#) Extensive experimentation with INSPIRE prompted the design of several other e-negotiation systems (ENSs).[27](#) These systems together with decision support systems (DSSs) have been classified into several categories, including planning systems, assessment systems, intervention systems and process systems.[28](#) Public awareness of both ENSs and DSSs, however, continues to be very low and, therefore, it remains to be seen whether electronically based negotiations that rely on these systems will gain widespread acceptance.

The notion of e-negotiation is inextricably linked with the concept of computer-mediated communication (CMC).[29](#) It is argued that CMC facilitates the interaction process through the use of computers. The internet, without a doubt, has become one of the main means of communication and information exchange. CMC through email, for example, is increasingly commonplace. In 2011, corporate users sent and received approximately 105 email messages per day, that is, 38,325 emails per year.[30](#) New research would be needed to determine how many of those email messages, if any, involved negotiations of some kind, but in terms of ***Arbitration 260** the effectiveness of e-negotiation—via email—it is believed that it can "lead to misunderstandings, sinister attributions, and ultimately, negotiation impasse".[31](#)

Research shows that email negotiations "1) increased contentiousness, 2) diminished information sharing, 3) diminished process cooperation, 4) diminished trust, [and] 5)

increased effects of negative attribution".³² Likewise, it has been proved that "resolving conflict, or reaching consensus ... is better done face-to-face than electronically".³³ Similarly, it has been demonstrated that "[m]ore face-to-face contact produces more rapport, which in turn leads to more favorable outcomes for both parties".³⁴ In a similar vein, it has been pointed out that "[c]onventions of personal interaction that would apply in a telephone call or a face-to-face [mediation] do not apply in cyberspace".³⁵ Further studies have shown that "information exchanged over electronic media such as e-mail is less likely to be true".³⁶

The great majority of the research in the area of e-negotiation through email³⁷ cast doubt upon the perceived advantages³⁸ of electronically based negotiations over face-to-face negotiations. In email communications, there is a likelihood that the parties will end up misreading each other's messages, and although one can say that further clarifications can be given, and that this means of communication continues to expand and so on,³⁹ no research has been done to support the hypothesis that e-negotiations via email are—or can be—more effective than face-to-face negotiations.

3. E-Mediation

E-mediation can be defined as a system-based—as opposed to a face-to-face-based—mechanism in which an impartial third party called "the mediator" facilitates the negotiation process between two or more people.⁴⁰ Because e-mediation is basically "[e-]negotiation carried out with the assistance of a third party",⁴¹ it can be said that the arguments against the deployment of a system-based negotiation can be applied, ***Arbitration 261** mutatis mutandis, to the area of e-mediation.⁴² This is true for both text-based and video-based systems.⁴³ Despite this, a small minority believes that in those cases in which it would not be appropriate to mediate face to face—e.g. when both parties are emotionally charged, when it would not be cost-effective to bring both parties together, when there is a huge power imbalance between the parties, etc—e-mediation becomes an option.⁴⁴

The first research project aimed at determining the "effectiveness" of e-mediation to resolve online-related disputes, particularly the ones that arose out of eBay transactions,⁴⁵ was conducted towards the end of the 1990s. This project was developed "based on the premise that mediators could adapt at least some skills and tactics used in face-to-face practices to the online mediation process".⁴⁶ Both the mediator and the parties used email as a means of communication. Of 144 cases brought to mediation, only 50 of them, that is, less than 40 per cent were mediated successfully.⁴⁷ Not surprisingly, the project's reliance on text was considered to be one of the drawbacks of email as a primary form of interaction.⁴⁸

The average internet user is possibly well equipped for being involved in online mediation sessions via email, chat room, instant messaging, etc.⁴⁹ These systems have something in common—they allow people to exchange written messages with one another over the internet. Nevertheless, written language does not "always convey the complete meaning of what an individual is trying to communicate".⁵⁰ A detailed examination of the relevant literature reveals that

"the most influential linguistics of the first half of the [twentieth] century ... went out of

their way to emphasize the primacy of spoken as opposed to written language, relegating the latter to a derived secondary status".[51](#)

Such a distinction between written and spoken language may impinge upon both the effectiveness of the levels of communication[52](#) and, more importantly, the outcome of a virtual mediation. ***Arbitration 262**

4. E-Arbitration

E-arbitration may be defined as "an electronic version of offline arbitration".[53](#) It encompasses everything from the "online arbitration agreement" to the "online arbitral award".[54](#) Generally speaking, in light of the principle of party autonomy, the validity of online arbitration is not an issue.[55](#) In the international context, however, a number of concerns have been raised regarding the validity of not only online arbitration agreements[56](#) but also online arbitral awards,[57](#) especially, within the meaning of the New York Convention (NYC).[58](#) It has been posited that the NYC was adopted "at a time when the drafters could not foresee that [both arbitration agreements and arbitral awards] could take other than a physical form".[59](#) Therefore, one can only speculate that the courts will—in due course—agree that online arbitration agreements and online arbitral awards satisfy the formal requirements of the NYC.

At the time of writing, there are no "universally accepted rules ... governing [online arbitration proceedings]".[60](#) Such proceedings are certainly taking place, although no comprehensive statistics on e-arbitration appear to have been published.[61](#) In online arbitration, the parties, the arbitral tribunal, experts and witnesses are expected to make use of electronic devices to take part in the arbitral proceedings. This involves the use of sophisticated software and hardware devices.[62](#) The existing systems, however, have been criticised on the basis that they can only deal with "very restricted classes of disputes, a simplified or basic arbitration process, the start of the process before variations become necessary [and] the process used by a single arbitration provider".[63](#)

Some argue that e-arbitration "*significantly* reduces the transaction costs of dispute resolution" [italics added],[64](#) and this might be true in some cases, but no research has been ***Arbitration 263** done on the costs of e-arbitration as opposed to offline arbitration. In general, it can be said that third-party decision-making is potentially more expensive than joint decision-making.[65](#) Research shows that, in the area of international arbitration, for instance, most of the costs are associated with both arbitral and legal fees,[66](#) and it remains to be seen whether arbitrators and legal representatives would be prepared to make a substantial reduction to their fees when conducting arbitrations online.

In terms of the appropriateness of online arbitration, it has been said that it is "particularly appropriate with respect to simple fact patterns and small claims".[67](#) Hence, online arbitration may appeal to the users of small claims and documents-only arbitration schemes, but definitely not to the users of "international arbitration", where complex issues and large amounts of money are at stake.[68](#) This is probably one of the reasons behind the perceived "virtual arbitration's low attractiveness" within this area.[69](#) It might be that e-arbitration needs to develop further before a full assessment of its efficiency can be undertaken,[70](#) but it is unlikely that "international arbitration", in particular, would ever take place entirely online.[71](#)

5. Conclusion

Despite some optimistic predictions about ODR's potential to coalesce—on a level playing field—with the traditional methods,⁷² it is still too early to predict what the future of ODR might be.⁷³ The virtues of technological advances in the area of dispute resolution have perhaps been overestimated. ODR is just "another" option,⁷⁴ and in some cases it might even be the best option, but it is definitely not a panacea. States' dispute resolution machinery is a complex system⁷⁵ that cannot be replaced with "faster microprocessors and larger memory boards".⁷⁶ Dispute resolution mechanisms, in general, are a means of maintaining social order.⁷⁷ These mechanisms are intended to deal with conflicts and disputes—on the ***Arbitration 264** basis of the rule of law⁷⁸—and it is doubtful that such a function can be fully and effectively performed in cyberspace.

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1. The *initialism* ADR, commonly and mistakenly referred to as an *acronym* for "Alternative Dispute Resolution", was coined by Professor Frank E.A. Sander of Harvard Law School. See Frank Sander, "Varieties of Dispute Processing" (1976) 70 *Federal Rules Decisions: Addresses Delivered at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice* 111–134; Frank Sander, "Alternative Methods of Dispute Resolution: An Overview" (1985) 37(1) *University of Florida Law Review* 1; and *Simon Roberts et al., Dispute Resolution: ADR and the Primary Forms of Decision-Making* (Cambridge: Cambridge University Press, 2005), p.5. ADR, in plain English, refers to the idea of settling and resolving disputes through different means other than litigation. As to the notion of ADR, see *Henry Brown et al., ADR Principles and Practice* (London: Sweet & Maxwell, 1993), p.9; *Karl Mackie et al., The ADR Practice Guide* (London: Butterworths, 2000), pp.8–10; *George Applebey, "Alternative Dispute Resolution and the Civil Justice System"*, in *Karl J. Mackie (ed.), A Handbook of Dispute Resolution: ADR in Action* (London: Routledge, 1991), p.26 and *Albert Fiadjoe, Alternative Dispute Resolution: A Developing World Perspective* (New York: Routledge-Cavendish, 2004), p.2.
2. ODR encompasses a series of online means of communication, including "e-mail, Internet Relay Chat (IRC), instant messaging, Web forum discussions, and similar text-based electronic communications": in Robert Gordon, "The Electronic Personality and Digital Self" (2001) Feb–April *Dispute Resolution Journal* 11. See also Jason Crook, "What is Alternative Dispute Resolution (ADR)?", in Julio César Betancourt (ed.), *What is Alternative Dispute Resolution (ADR)?* (London: Chartered Institute of Arbitrators, 2010), p.25; José Antonio García Alvaro, "Online Dispute Resolution—Unchartered Territory" (2003) 7(2) *Vindobona Journal* 187; *Jerome T. Barret et al., A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement* (San Francisco: Jossey-Bass, 2004), p.261; *Nadja Alexander, "Mobile Mediation: How Technology is Driving the Globalization of ADR"* (2006) 27(2) *Hamline Journal of Public Law & Policy* 248. For a different view, see *Rossa McMahon, "The Online Dispute Resolution Spectrum"* (2005) 71(3) *Arbitration* 218.
3. See, generally, *Colin Rule, Online Dispute Resolution for Business* (San Francisco: Jossey-Bass, 2002). See also *Ethan Katsh, "Bringing Online Dispute Resolution to Virtual Worlds: Creating Processes through Code"* (2004) 49 *New York Law School Law Review* 275.
4. See *E. Casey Lide, "ADR and Cyberspace: The Role of Alternative Dispute Resolution in Online Commerce, Intellectual Property and Defamation"* (1996) 12 *Ohio State Journal on Dispute Resolution* 219. See also *Alejandro E. Almaguer et al., "Shaping New Legal Frontiers: Dispute Resolution for the Internet"* (1998) 13 *Ohio State Journal on Dispute Resolution* 719.

5. For a more complete explanation of the concept of ombudsman, see Talbot D'Alemberte, "The Ombudsman, a Grievance Man for Citizens" (1966) 28(4) *University of Florida Law Review* 545; George B. McClellan, "The Role of the Ombudsman" (1969) 23 *University of Miami Law Review* 463; Mary Seneviratne, "Ombudsmen 2000" (2000) 9 *Nottingham Law Journal* 13; Ian Harden, "When Europeans Complain: the Work of the European Ombudsman" (2000) 3 *Cambridge Yearbook of European Legal Studies*, pp.199–208.
6. For an overview of these services, see Frank A. Cona, "Application of Online Systems in Alternative Dispute Resolution" (1997) 45 *Buffalo Law Review* 986.
7. For the purposes of this paper, the expressions "dispute resolution" and "dispute settlement" will be used interchangeably, although the authors acknowledge that they have a different meaning. The distinction is important because, terminologically speaking, the notion of "resolution" is related to the idea of joint decision-making, whereas the concept of "settlement" is connected with the idea of third party decision-making. See Tony Marks et al., "Rethinking Public Policy and Alternative Dispute Resolution: Negotiability, Mediability and Arbitrability" (2012) 78(1) *Arbitration* 19, n.6. See also Barbara Hill, "An Analysis of Conflict Resolution Techniques: From Problem-Solving Workshops to Theory" (1982) 26(1) *Journal of Conflict Resolution* 115. John Burton, cited by Gregory Tillett, *Resolving Conflict: A Practical Approach* (South Melbourne: Sydney University Press, 1991), p.9. See also Andrew Pirie, *Alternative Dispute Resolution: Skills, Science, and the Law* (Toronto: Irwin Law, 2000), p.42; John Burton, *Conflict and Communication: The Use of Controlled Communication in International Relations* (New York: Free Press, 1969), p.171.
8. See Ethan Katsh, "Dispute Resolution in Cyberspace" (1996) 28 *Connecticut Law Review* 953. See also M. Scott Donahey, "Current Developments in Online Dispute Resolution" (1999) 16(4) *Journal of International Arbitration* 129.
9. See National Center for Technology and Dispute Resolution (NCTDR), at <http://odr.info/> [Accessed June 12, 2013].
10. Ethan Katsh et al., *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (San Francisco: Jossey-Bass, 2001), pp.1–240.
11. Ethan Katsh, "Online Dispute Resolution: Some Lessons from the E-Commerce Revolution" (2001) 28 *Northern Kentucky University Law Review* 813. Similarly, working groups were set up by several other organisations with a view to studying this area. See Mireze Philippe, "Where is Everyone Going with Online Dispute Resolution (ODR)?" (2002) *International Business Law Journal* 192. See also UNCITRAL (Commission Documents), *Report of the United Nations Commission on International Trade Law (2010) a/65/17; Possible Future Work on Online Dispute Resolution in Cross-border Electronic Commerce Transactions (April 23, 2010) UNGA A/CN.9/706; Possible Future Work on Online Dispute Resolution in Cross-border Electronic Commerce Transactions, Note Supporting the Possible Future Work on Online Dispute Resolution by UNCITRAL, submitted by the Institute of International Commercial Law (May 26, 2010) UNGA A/CN.9/710; Possible Future Work on Electronic Commerce—Proposal of the United States of America on Online Dispute Resolution (June 18, 2009) UNGA A/CN.9/681/Add.2; and UNCITRAL (Working Group III) Report of Working Group III (Online Dispute Resolution), Twenty-fourth Session (November 21, 2011) UNGA A/CN.9/739; Annotated Provisional Agenda (August 22, 2011) A/CN.9/WG.III/WP.108; Online Dispute Resolution for Cross-border Electronic Commerce Transactions: Draft Procedural Rules (September 27, 2011) UNGA A/CN.9/WG.III/WP.109; Online Dispute Resolution for Cross-border Electronic Commerce Transactions: Issues for Consideration in the Conception of a Global ODR Framework (September 28, 2011) UNGA A/CN.9/WG.III/WP.110; Report of Working Group III (Online Dispute Resolution), Twenty-third Session (June 3, 2011) A/CN.9/721; Annotated Provisional Agenda (February 24, 2011) A/CN.9/WG.III/WP.106; Online Dispute Resolution for Cross-border Electronic Commerce Transactions: Draft Procedural Rules (March 17, 2011) A/CN.9/WG.III/WP.107; Report of Working Group III (Online Dispute Resolution), Twenty-second Session (January 17, 2010) A/CN.9/716; Annotated Provisional Agenda (August 26, 2010) A/CN.9/WG.III/WP.104; Online Dispute Resolution for Cross-border Electronic Commerce Transactions (October 13, 2010) A/CN.9/WG.III/WP.105; Online Dispute Resolution for Cross-border Electronic Commerce Transactions (November 18, 2010) A/CN.9/WG.III/WP.105/Corr.1.*
12. Faye Fangfei Wang, *Online Dispute Resolution: Technology, Management and Legal Practice from an*

International Perspective (Oxford: Chandos Publishing, 2008), p.43ff.

13. The area of consumer law has received considerable attention within the ODR literature. See, e.g. Karen Stewart et al., "Online Arbitration of Cross-Border, Business to Consumer Disputes" (2002) 56 *University of Miami Law Review* 1111; Mohamed Wahab, "Globalisation and ODR: Dynamics of Change in E-Commerce Dispute Settlement" (2004) 12 *International Journal of Law and Information Technology* 123.
14. See *Alternative Dispute Resolution and Online Dispute Resolution for EU Consumers: Questions and Answers, Press Release* (November 29, 2010), Memo/11/840.
15. Gabrielle Kaufmann-Köhler et al., *Online Dispute Resolution, Challenges of Contemporary Justice* (The Hague: Kluwer Law International, 2004), p.68. For this to happen, it is necessary to explore, from a multidisciplinary perspective, how the internet can be used to improve access to justice through the deployment of ODR mechanisms. See Catherine Kessedjian et al., "Dispute Resolution On-Line" (1998) 32 *International Lawyer* 990.
16. As to the perceived advantages of ODR mechanisms, see Lan Q. Hang, "Online Dispute Resolution System: The Future of Cyberspace Law" (2001) 41 *Santa Clara Law Review* 854; George H. Friedman, "Alternative Dispute Resolution and Emerging Online Technologies: Challenges and Opportunities" (1997) 19 *Hastings Communications and Entertainment Law Journal* 695, 711; Laura Klaming et al., "I Want the Opposite of What You Want: Reducing Fixed-pie Perceptions in Online Negotiations" (2009) 1 *Journal of Dispute Resolution* 139.
17. Robert Bordone, "Electronic Online Dispute Resolution: A Systems Approach—Potential, Problems and a Proposal" (1998) 3 *Harvard Negotiation Law Review* 191.
18. See, e.g. R. Bordone, "Electronic Online Dispute Resolution: A Systems Approach—Potential, Problems and a Proposal" (1998) 3 *Harvard Negotiation Law Review* 199; Joseph A. Zavaletta, "Using E-Dispute Technology to Facilitate the Resolution of E-Contract Disputes: A Modest Proposal" (2002) 7 *Journal of Technology Law and Policy* 24; Beatrice Baumann, "Electronic Dispute Resolution (EDR) and the Development of Internet Activities" (2002) 52 *Syracuse Law Review* 1232; Arno R. Lodder et al., "Developing an Online Dispute Resolution Environment: Dialogue Tools and Negotiation Support Systems in a Three-Step Model" (2005) 10 *Harvard Negotiation Law Review* 287; George H. Friedman, "Alternative Dispute Resolution and Emerging Online Technologies: Challenges and Opportunities" (1997) 19 *Hastings Communications and Entertainment Law Journal* 695; Michael E. Schneider et al., "Dispute Resolution in International Electronic Commerce" (1997) 14(3) *Journal of International Arbitration* 5.
19. Julia Hörnle, *Cross-border Internet Dispute Resolution* (Cambridge: Cambridge University Press, 2009), p.7 6.
20. Haitham A. Haloush et al., "Internet Characteristics and Online Dispute Resolution" (2008) 13 *Harvard Negotiation Law Journal* 328; Mary Shannon Martin, "Keep it Online: The Hague Convention and the Need for Online Alternative Dispute Resolution in International Business-to-Consumer E-Commerce" (2002) 20 *Boston University International Law Journal* 151. See also Faye Fangfei Wang, *Internet Jurisdiction and Choice of Law: Legal Practices in the EU, US and China* (Cambridge: Cambridge University Press, 2010), p.156ff.
21. George H. Friedman et al., "An Information Superhighway 'on Ramp' for Alternative Dispute Resolution" (1996) 38 *New York State Bar Journal* 38.
22. As to the notion of negotiation, see P.H. Gulliver, *Disputes and Negotiations: A Cross-Cultural Perspective* (New York: Academic Press, 1979), pp.1–293; Howard Raiffa, *The Art and Science of Negotiation* (Cambridge, MA: Belknap Press, 1982), pp.1–373; Roger Fisher et al., *Getting Together: Building Relationships as We Negotiate* (New York: Penguin Books, 1989), pp.1–216; Carrie Menkel-Meadow, "Toward Another View of Legal Negotiation: The Structure of Problem-Solving" (1984) 31 *UCLA Law Rev.*754; Linda Putman et al., *Communication and Negotiation* (Newbury Park, CA: Sage Publications, 1992), pp.1–294; Dean G. Pruitt et al., *Negotiation in Social Conflict* (Buckingham: Open University Press, 1993), pp.1–251; Max H. Bazerman, *Negotiating Rationally* (New York: Free Press, 1993), pp.1–196; Carrie Menkel-Meadow "Lawyer Negotiations: Theories and Realities—What Do We Learn From Mediation?" (1993) 56(3) *Modern Law Review* 361; Robert H. Mnookin et al., *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (Cambridge, MA: Belknap Press, 2000), pp.1–354; Carrie Menkel-Meadow,

- "Teaching About Gender and Negotiation: Sex, Truths and Videotape" (2000) 16(4) *Negotiation Journal* 357; Roger Fisher et al., *Getting to Yes: Negotiating Agreement Without Giving in* (London: Penguin Books, 2011), pp.1–194.
23. Bruce Patton, "Negotiation", in Michael Moffit et al. (eds), *The Handbook of Dispute Resolution* (San Francisco: Jossey-Bass, 2005), p.279.
 24. Fisher et al., *Getting Together: Building Relationships as We Negotiate* (1989), p.xxvii.
 25. Cf. Kathleen Valley, "Conversation: The Electronic Negotiator" (2000) Jan–Feb. *Harvard Business Review* 16.
 26. See Gregory Kersten et al., "WWW-based Negotiation Support: Design, Implementation, and Use" (1999) 25 *Decision Support Systems* 135. It is important to mention that research on e-negotiation has been carried out based upon three different approaches, namely normative, prescriptive and descriptive. See Mareike Schoop, "The Worlds of Negotiation" *Proceedings of the 9th International Working Conference on the Language-Action Perspective on Communication Modeling* (2004), pp.179–196.
 27. See, e.g. Jin Baek Kim et al., "E-negotiation System Development: Using Negotiation Protocols to Manage Software Components" (2007) 16(4) *Group Decision and Negotiation* 321. See also Ernest M. Thiessen, "Beyond Win-Win in Cyberspace" (2000) 15(3) *Ohio State Journal on Dispute Resolution* 643, and Christopher A. Hobson, "E-Negotiations Creating a Framework for Online Commercial Negotiations" (1999) *July Negotiation Journal* 201.
 28. Gregory Kersten, "E-negotiation Systems: Interaction of People and Technologies to Resolve Conflicts" *UNESCAP Third Annual Forum on Online Dispute Resolution* (2004), pp.2–3.
 29. See Russell Spears et al., "Panacea or Panopticon?: The Hidden Power in Computer-Mediated Communication" (1994) 21(4) *Communication Research* 427. See also Rachel Croson, "Look at me When You Say That: An Electronic Negotiation Simulation" (1999) 30(1) *Simulation & Gaming* 24.
 30. See Sara Radicati, "Email Statistics Report, 2011–2015" (2011), available at <http://www.radicati.com/wp/wp-content/uploads/2011/05/Email-Statistics-Report-2011-2015-Executive-Summary.pdf> [Accessed June 12, 2013].
 31. Janice Nadler, "Rapport in Legal Negotiation: How Small Talk can Facilitate E-mail Dealmaking" (2004) 9 *Harvard Negotiation Law Review* 223. See also Don A. More et al., "Long and Short Routes to Success in Electronically Mediated Negotiations: Group Affiliations and Good Vibrations" (1999) 77(1) *Organizational Behavior and Human Decision Processes* 23; Elaine Landry, "Scrolling Around the New Organization: the Potential for Conflict in the On-line Environment" (2000) *April Negotiation Journal* 133; and Jacqueline Nolan-Haley, *Alternative Dispute Resolution* (St Paul, MN: Thomson-West, 2008), p.10.
 32. Noam Ebner et al, "You've Got Agreement: Negoti@ting via Email" (2009–2012) 31(2) *Journal of Public Law & Policy* 434.
 33. Gerardine DeSanctis et al., "Introduction to the Special Issue: Communication Processes for Virtual Organizations" (1999) 10(6) *Organization Science* 697.
 34. Leigh Thompson, "Negotiating via Information Technology: Theory and Application" (2002) 58(1) *Journal of Social Issues* 111; Aimee L. Drolet et al., "Rapport in Conflict Resolution: Accounting for How Face-to-Face Contact Fosters Mutual Cooperation in Mixed-Motive Conflicts" (2000) 36 *Journal of Experimental Social Psychology* 26. See also Michael Morris, "Schmooze or Lose: Social Friction and Lubrication in E-Mail Negotiations" 6(1) *Groups Dynamics: Theory, Research, and Practice* 93.
 35. Joel Eisen, "Are We Ready for Mediation in Cyberspace?" (1998) *Brigham Young University Law Review* 1311.
 36. Kathleen L. McGinn et al., "How to Negotiate Successfully Online" (2004) 3 *Negotiation* 8.
 37. Jill M. Purdy et al., "The Impact of Communication Media on Negotiation Outcomes" (2000) 11(2) *The Journal of Conflict Management* 162; Janice Nadler et al., "Negotiation, Information Technology, and the

- Problem of the Faceless Other*" in Leigh Thompson (ed.), *Negotiation Theory and Research* (London: Psychology Press, 2006), pp.154–155; Charles Craver, "Conducting Electronic Negotiations" (2007) *June The Negotiator Magazine*, available at <http://www.negotiormagazine.com/> [Accessed June 12, 2013].
38. See, e.g. Amira Galin et al., "E-negotiation versus Face-to-Face Negotiation: What has Changed—if Anything?" (2007) 23 *Computers in Human Behavior* 789; Lynn A. Epstein, "Cyber E-mail Negotiation vs. Traditional Negotiation: Will Cyber Technology Supplant Traditional Means of Settling Litigation?" (2001) 36 *Tulsa Law Journal* 840.
 39. David R. Johnson, "Screening the Future for Virtual ADR" (1996) *April Dispute Resolution Journal* 118.
 40. Cf. *Gabrielle Kaufmann-Köhler et al., Online Dispute Resolution: Challenges for Contemporary Justice (The Hague: Kluwer Law International, 2004), p.22.* See also Sarah Rudolph Cole et al., "Online Mediation: Where We Have Been, Where We Are Now, and Where We Should Be" (2006) 38 *University of Toledo Law Review* 193. For an overview of the concepts of negotiation and mediation in the online environment, see Joseph Goodman, "The Advantages and Disadvantages of Online Dispute Resolution: An Assessment of Cyber-Mediation Web Sites" (2006) 9(11) *Journal of Internet Law* 10.
 41. *Stephen B. Goldberg et al., Dispute Resolution: Negotiation, Mediation and Other Processes (New York: Wolters Kluwer, 2007), p.107.*
 42. Janice Nadler, "Electronically-Mediated Dispute Resolution and E-Commerce" (2001) *October Negotiation Journal* 333.
 43. Llewellyn J. Gibbons et al., "Cyber-Mediation: Computer-Mediated Communications Medium Massaging the Message" (2002) 32 *New Mexico Law Review* 33.
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 46. Ethan Katsh et al., "E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of 'eBay Law'" (2000) 15(3) *Ohio State Journal on Dispute Resolution* 713. See also Richard Birke et al., "U.S. Mediation in 2001: The Path that Brought America to Uniform Laws and Mediation in Cyberspace" (2002) 50 *Mediation in Cyberspace* 208.
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 50. Joseph B. Stulberg, "Mediation, Democracy, and Cyberspace" (2000) 15(3) *Ohio State Journal on Dispute Resolution* 641. See also Richard Victorio, "Internet Dispute Resolution (iDR): Bringing ADR into the 21st Century" (2001) 1 *Pepperdine Dispute Resolution Law Journal* 293.
 51. Wallace Chafe et al., "The Relation Between Written and Spoken Language" (1987) 16 *Annual Review of Anthropology* 383.
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175. For a different view, see *Farzaneh Badiei, "Online Arbitration Definition and Its Distinctive Features" (2010) Proceedings of the 6th International Workshop on Online Dispute Resolution, pp.87–93.*
- [54.](#) See, generally, Hong-lin Yu et al., "Can Online Arbitration Exist within the Traditional Arbitration Framework?" (2003) 20(5) *Journal of International Arbitration* 455.
- [55.](#) Cf. Richard Hill, "On-Line Dispute Arbitration: Issues and Solutions" (1999) 15(2) *Arbitration International* 199. See also Thomas Schultz, "Online Arbitration: Binding or Non-Binding?" (2002) *ADR Online Monthly* 5; and Julia Hörnle, "Online Dispute Resolution", in John Tackaberry et al. (eds), *Bernstein's Handbook of Arbitration Law & Practice (London: Sweet & Maxwell, 2003), pp.787–805.* Legal scholars have raised several other concerns about: distrust of the operability and privacy of internet systems, fear about the "unseen" nature and neutrality of online arbitration providers, technological and presentation imbalances, elimination of face-to-face communications and the lack of voice; see Amy J. Schmitz, "'Drive-thru' Arbitration in the Digital Age: Empowering Consumers through Binding ODR" (2010) 62 *Baylor Law Review* 214.
- [56.](#) Alejandro López Ortiz, "Arbitration and IT" (2005) 21(3) *Arbitration International* 353.
- [57.](#) Paul D. Carrington, "Virtual Arbitration" (2000) 15 *Ohio State Journal on Dispute Resolution* 673.
- [58.](#) M.H.M. Schellekens, "Online Arbitration and E-Commerce" (2002) 9 *Electronic Communication Law Review* 113.
- [59.](#) *United Nations Conference on Trade and Development, Dispute Settlement: International Commercial Arbitration, Electronic Arbitration (2003) UNCTAD/EDM/Misc.232/Add.20, pp.3–55.*
- [60.](#) *Julian Lew et al., Comparative International Commercial Arbitration (The Hague: Kluwer Law International, 2003), p.48.* As to the regulatory framework for ODR, in general, see Rafal Morek, "The Regulatory Framework for Online Dispute Resolution: A Critical View" (2006) 38 *University of Toledo Law Review* 163–192. See also Tiffany J. Lanier, "Where on Earth Does Cyber-Arbitration Occur? International Review of Arbitral Awards Rendered Online" (2000) 7 *ILSA Journal of International and Comparative Law* 3. However, because of the widespread acceptance of arbitration, particularly within the commercial arena, it is believed that a useful first step would be the establishment of an international regulatory framework for resolving disputes through e-arbitration. Cf. Henry H. Perritt, "Dispute Resolution in Cyberspace: Demand for New Forms of ADR" (2000) 15 *Ohio State Journal on Dispute Resolution* 677.
- [61.](#) Thomas Schultz, "Online Arbitration: Binding or Non-Binding?" (2002) *ADR Online Monthly* 2.
- [62.](#) See, e.g. Dusty Bates Farned, "A New Automated Class of Online Dispute Resolution: Changing the Meaning of Computer-Mediated Communication" (2011) 2 *Faulkner Law Review* 335.
- [63.](#) Tony Elliman et al., "Online Support for Arbitration: Designing Software for a Flexible Business Process" (2005) 4(4) *International Journal of Information Technology and Management* 447.
- [64.](#) Roger P. Alford, "The Virtual World and the Arbitration World" (2001) 18(4) *Journal of International Arbitration* 456. See also Julia Hörnle, "Online Dispute Resolution—The Emperor's New Clothes? Benefits and Pitfalls of Online Dispute Resolution and its Application to Commercial Arbitration" (2003) *International Review of Law, Computers and Technology* 28.
- [65.](#) Cf. Sara Kiesler, *Culture of the Internet (Mahwah: Lawrence Erlbaum Associates, 1997), p.235.*
- [66.](#) *Chartered Institute of Arbitrators, Costs of International Arbitration Survey (London: Chartered Institute of Arbitrators, 2011), p.2.* See also Michael O'Reilly, "Conference Review: Costs in International Arbitration, London September 27–28, 2011" (2012) 78(1) *Arbitration* 59.
- [67.](#) Daniel Girsberger et al., "Cyber-Arbitration" (2002) 3 *European Business Organisation Law Review* 626.
- [68.](#) See Roger P. Alford, "The Virtual World and the Arbitration World" (2001) 18(4) *Journal of International Arbitration* 449. See also Justin Michaelson "The A-Z of ADR—Pt I" (2003) *Jan. New Law Journal* 182.
- [69.](#) Sami Kallel, "Online Arbitration" (2008) 25(3) *Journal of International Arbitration* 350.

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73. Francis Gurry, "Dispute Resolution on the Internet", in *Papers of the International Federation of Commercial Arbitration Institutions: 5th Biennial Dispute Resolution Conference (New York: AAA, 1999), p.60.*
74. Andrea M. Braeutigam, "Fusses That Fit Online: Online Mediation in Non-Commercial Contexts" (2006) 5 *Appalachian Journal of Law* 301.
75. This system facilitates, among other things, access to justice, and it can certainly be "improved" by means of technology. See, e.g., Pablo Cortés, *Online Dispute Resolution for Consumers in the European Union (London: Routledge, 2011), p.95f.*
76. See Michael Wheeler, "Computers and Negotiation: Backing into the Future" (1995) April *Negotiation Journal* 169 and Ethan Katsh, "Ten Years of Online Dispute Resolution (ODR)" (2006) 38 *University of Toledo Law Review* 19.
77. Cf. Jean Sternlight, "ADR is Here: Preliminary Reflections on Where it Fits in a System of Justice" (2003) 3 *Nevada Law Journal* 289.
78. Thomas Schultz, "The Roles of Dispute Settlement and ODR", in Arnold Ingen-Housz (ed.), *ADR in Business: Practice and Issues Across Countries and Cultures, Vol.2 (The Hague: Kluwer Law International, 2011), p.140.*