

E-VERSION FOR ALTERNATIVE DISPUTE RESOLUTIONS

Submitted by

Dr. Walaa Arakeeb

**L.L.M, S.J.D(PhD), Southern Methodist University, USA
The Faculty of Law-Tanta University, EGYPT**

E-VERSION FOR ALTERNATIVE DISPUTE RESOLUTIONS

CHAPTER I

INTRODUCTION

The electronic marketplace, which has opened the door to international business –to- consumer transactions (B2C) and to international business-to-business (B2B) on an unprecedented scale, has created enormous benefits and efficiencies. For consumers, it offers 24-hour access to sellers around the globe; for businesses, it offers access to a worldwide market. This online marketplace also has created challenges; among them, how best to resolve disputes involving cross-border consumer transactions. Where off-line transactions can lead to problems and disputes, the same is true for online transactions. In other words: e-commerce transactions will sometimes result in e-disputes.

To ensure that all parties concerned will feel they can safely participate in e-commerce transactions it is imperative that e-disputes are resolved adequately, Consumers must be confident that they will have access to redress for problems arising in the online marketplace. In many instances, consumers face unique difficulties in resolving problems arising

from online transaction such as language, culture and other differences, say for example an American seller and an Arabic buyer. Inconvenience and expenses that may result from the distance between the parties, and problems with litigation, including difficulties in establishing jurisdiction, determining the applicable law, and enforcing judgments. In addition to facing similar burdens, businesses must determine where they could be subject to jurisdiction and which laws might apply to them. This could significantly increase the cost of doing business online, therefore alternatives to litigation are needed if participants in this new marketplace are to have confidence that they will have access to redress when transactions go awry. It has been recognized that Alternative Dispute Resolution (ADR) will be a helpful means of solving the growing number of e-disputes. ADR will in many cases be far more efficient than regular dispute resolution methods, which will often involve lengthy and expensive legal procedures. This issue has been addressed both internationally and nationally.

In 1999 the OECD has published "Guidelines for Consumer Protection in the Context of Electronic Commerce". These guidelines encourage businesses, consumer representatives and governments to work together to provide consumers with meaningful access to fair

and timely alternative dispute resolution and redress, without undue cost or burden. Special attention is given to cross-border transactions, and also emphasis is placed on the innovative use of information technologies in implementing ADR systems.

The EU has addressed this issue in the European 'Directive on electronic commerce' (98/0325 (COD)). The first part of article 17 of the directive states: 'Member States shall ensure that, in the event of disagreement between an Information society service provider and the recipient of the

service, their legislation does not hamper the use of out-of-court schemes, available under national law, for dispute settlement, *'including appropriate electronic means'*. In March of 2000 an EU Workshop on out-of-court dispute settlement systems for e-commerce was held in Brussels. This resulted in a report that also addresses

online variants of dispute settlement in an e-commerce environment. The US Department of Commerce organized a Public Workshop on Alternative Dispute Resolution for Consumer Transactions in the Borderless Online Marketplace in June of 2000. The US Secretary of Commerce Mr. Daley has already stated in a speech in February 2000 that ADR should be used to solve e-disputes. To explore ADR for online consumer transactions, the Federal Trade Commission ("FTC") and Department of Commerce ("DOC") hosted a public workshop on June 6-7, 2000. Over 120 representatives from academia, consumer groups, industry, and government filed 47 comments², and attended the workshop. Participants³ examined existing and developing ADR programs, incentives and disincentives to use ADR, how to make ADR fair and effective.

In my paper I will start with describing ADR in general and the major forms of ADR, as we currently know them as a legal phenomenon which has an ability to settle disputes. I will then go on to describe the forms of online dispute resolution (ODR) as they exist mainly in the US and Canada. After that I will focus on online mediation. Online mediation is the most developed and most studied form of ODR. I will study and describe the key issues related to online mediation. In the final part of my thesis I will try to answer under what conditions online mediation can provide a solution for cross-border e-disputes in the EGYPT and make recommendations for making online mediation possible in my country.

In general, there was broad support among scholars for the development of ADR programs to resolve online global disputes in consumer transactions. The reality recognized ADR's many benefits. For example, while courts are inherently rooted in a particular location and based on notions of territorial jurisdiction, ADR programs can facilitate resolution of disputes for parties who do not live in the same jurisdiction and do not live close to the same courthouse. An online ADR program could resolve disputes between a Texan consumer and an Egyptian business, just as it can resolve disputes between parties located next door to each other. ADR programs also can be simpler, quicker and less expensive than courts and it could reach our goals that we are looking for in our paper trying to find a global solution to address a global transaction.

Dr. Walea Arakeeb

CHAPTER II

AN OVERVIEW OF DISPUTE RESOLUTION MECHANISM

In international commercial contracts, the potential for difficulty in communication increases dramatically and can lead to disputes. Culture is frequently the culprit. Parties to a contract use their background to interpret the other parties' statements and actions. When differences in culture are not considered in the business relationship, disputes will likely result. Alternatives to litigation are perfect for these types of disputes. They provide enough flexibility to recognize and work with cultural differences. Therefore, the first step in drafting a dispute resolution provision is choosing which mechanism to use.

2.1 NEGOTIATION

Negotiation is the most commonly used resolution technique employed in commercial settings. It is non-binding and relatively unstructured; moreover, its success can be

dependent on the cultural perspectives of the parties involved. It is the least expensive dispute resolution alternative and the most helpful at maintaining the continuing business relationship, ⁽¹⁾ however, when negotiation is not contractually mandated as a dispute resolution mechanism, a party may perceive a tactical advantage by utilizing a more expensive and adversarial dispute resolution mechanism. The negotiations subsequently engaged in are likely to be half-hearted and unproductive. A properly drafted provision enabling contractually mandated negotiation can help avoid these problems.

The clause should provide for good-faith negotiations within a specified length of time, usually 30 or 60 days, in the event of dispute. It should also provide for a binding dispute resolution mechanism in the event that negotiations fail to solve the dispute. A sample negotiation clause follows. In the event of any controversy or claim arising out of or related to this contract, or the breach thereof, the parties shall use their best efforts to settle the controversy or claim. To this effect, they shall consult and negotiate with each other in good faith, and recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to the parties. If they do not reach such a solution within a period of 60 days, then, upon notice by either party to the other, all controversies and claims shall be settled by arbitration administered by the American Arbitration Association under its International Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. ⁽²⁾

⁽¹⁾ See Dana H. Freyer, Practical Considerations in Drafting Dispute Resolution Provisions in International Commercial Contracts: A U.S. Perspective, N97AICB ABALGLED B-75, B-76 (1997).

⁽²⁾ DRAFTING DISPUTE RESOLUTION CLAUSES -A PRACTICAL GUIDE, 605 PLI/Lit 23, 32, 34 (Submitted by American Arbitration Association 1999) [hereinafter AAA, A Practical Guide].

The provision can also designate that a "multi-step" or "multi-tier" negotiation arrangement be used. ⁽³⁾This is arranged by starting negotiations at a specified level of management. If negotiations fail, a higher level of management will then take over and attempt to reach a settlement. Parties may continue adding levels or specify a cut-off level, at which time the binding dispute resolution provided in the clause would be used. ⁽⁴⁾ The primary disadvantage to contractually mandated negotiation is that the use of binding dispute resolution mechanisms is delayed.

2.2 MEDIATION

Mediation, often called conciliation outside the United States⁽⁵⁾, is perhaps the oldest form of structured dispute resolution. ⁽⁶⁾It is informal, cost efficient, confidential, voluntary, non-binding, and "gives the parties control over the outcome of the process." ⁽⁷⁾ Mediation is a structured negotiation process conducted by an impartial mediator selected by the parties. The mediator assists the parties in settling the dispute by guiding them through each stage of the process. "The mediator has no independent authority and does not render a decision;" however, the mediator may help the parties in identifying the issues in controversy.

Dr. Walea Arakeeb

⁽³⁾See Freyer, supra note 1 at B-77.

⁽⁴⁾ The reasoning for employing this type of arrangement is that a lower-level manager would be more productive in achieving a resolution to save the embarrassment of his or her conflict ending up on the desk of his or her superior. See Id. at B-78.

⁽⁵⁾ Article 2 working group II (arbitration and conciliation) Thirty-fifth session. Vienna, 19-30 November 2001. see www.uncitral.org

⁽⁶⁾ See Andrew Sagartz, Note & Comment, Resolution of International Commercial Disputes: Surmounting Barriers of Culture Without Going to Court, 13 Ohio St. J. on Disp. Resol. 675 (1998).

⁽⁷⁾ See Harold I. Abramson, Time to Try Mediation of International Commercial Disputes, 4 ILSA J. Int'l & Comp. L. 323, 325 (1998).

Mediation works well for parties that do not want to submit to a jurisdiction, whether it is the jurisdiction of another state or an arbitral tribunal. ⁽⁸⁾This makes the mechanism well suited to international commercial contract disputes. Mediation also works well when parties are having trouble communicating directly; a continuing relationship requires a quick and effective solution; parties are reluctant to reveal their real interests and issues; and/or parties prefer a confidential resolution. However, whether mediation or arbitration is preferred by the parties generally depends on the "cultural and legal traditions of the parties" involved. In case of bankruptcy, according to the Egyptian legal system, mediation is strongly advised as a preliminary stage. Same applies to family law, in case of divorce, parties are strongly advised to exhaust mediation, which could happen face to face or through a mediator.

2.3 ARBITRATION

Arbitration is the most widely preferred method of international dispute resolution. It is a final, binding process where parties agree to submit the dispute to one or more arbitrators who will settle it with an enforceable award. Arbitration is preferable to litigation for many reasons. Foremost, arbitration yields a binding award which can be easier to enforce than a foreign court judgment. It also maintains the privacy of the parties. Arbitration provides a neutral forum, protecting against any real or perceived prejudices or unfamiliar legal practices in either party's domestic jurisdiction. Such as the case of conflict of laws where a foreign investor doing his business in a country that applies Islamic law, he will consider his interests and bonuses as his rights, but under Islamic law this is prohibited under (Ribba Theory) unless he is doing a joint work. In this case the

⁽⁸⁾ See Sagartz, *supra* note 6, at 697.

arbitration will be an ideal way to settle disputes that may arise taking into considerations both cultures and both legal systems. Additionally, parties can choose arbitrators based on many factors, including expertise in a particular subject matter, international experience, and the ability to understand cross-cultural issues. Finally, parties are able to customize the arbitral procedures for disputes arising out of the contract by utilizing either arbitral institution procedure or ad hoc procedures. Overall, arbitration provides parties with greater control over the management and presentation of the dispute.

2.3.1 Arbitration Institutions and Rules

Practically every arbitration institution which is of significance maintains a web page on the Internet. Thereby, arbitration institutions normally do not confine themselves to describe their organization and to specify their addresses. They also publish local arbitration rules as well as other information regarding arbitration in their respective countries. All this information may be retrieved by a simple mouse-click. Here is a list of useful web-sites.⁽⁹⁾

Dr. Walaah Arakeeb

⁽⁹⁾ **Austria:** Internationales Schiedsgericht der Wirtschaftskammer Wien
<http://www.wk.or.at/arbitration/engl/Default.htm>

Belgium: Center for Arbitration and Mediation
<http://www.cepani.be/english.html>

Canada: British Columbia International Commercial Arbitration Center
<http://www.bcicac.com/cfm/index.cfm>

China: China International Economic and Trade Arbitration Commission (CIETAC) <http://www.cietac-sz.org.cn/cietac/index-e.htm>

Croatia: Permanent Arbitration Court at the Croatian Chamber of Commerce <http://www.hgk.hr/komora/sud/index.htm>

Denmark: Danish Institute of Arbitration (Copenhagen Arbitration)
<http://www.denarbitra.dk/>

Egypt: Cairo Regional Center For International Commercial Arbitration (CRCICA) <http://www.crcica.org.eg/>

England: CIArb Chartered Institute of Arbitrators
<http://www.arbitrators.org/>

2.4 ARBITRATION AND CONCILIATION IN THE ISLAMIC LAW

To most American and laymen alike, Islamic law what we call in Arabic "Sharia" is unknown quantity. Geographical distance, cultural diversity and language barriers all contributed to making Islamic law such an Esoteric subject, accessible only to the initiated few. To have to do with such an unfamiliar and misunderstood legal system in anyway is reason for doubts and tribulations. The majority of businessmen prefer to arbitrate rather than litigate their transnational disputes in order to avoid the uncertainties involved in pursuing remedies in foreign courts applying foreign law. How could we propose to American businessmen arbitration before a panel which may have to apply Islamic law either because of a choice of law clause in the contract, or because it is the law which is otherwise applicable ?

LCIA London Court of International Arbitration <http://www.lcia-arbitration.com/lcia/>

South Africa: Arbitration Foundation of Southern Africa

<http://www.arbitration.co.za/>

Supranational: ICC Court of Arbitration <http://www.iccwbo.org>

ICSID International Center for Settlement of Investment Disputes (World Bank) <http://www.worldbank.org/icsid/index.html>

Permanent Court of Arbitration, The Hague <http://www.pca-cpa.org/>

UNCITRAL Rules and Model Laws <http://www.uncitral.org/en-index.htm>

WIPO World Intellectual Property Organization Arbitration Court

<http://www.arbiter.wipo.int/center/index.html>

Sweden: Arbitration Institute of the Stockholm Chamber of Commerce

<http://www.chamber.se/arbitration/english/index.html>

Switzerland: ASA Swiss Arbitration Association <http://www.arbitration-ch.org/>

Chambre de commerce et d'industrie de Geneve <http://www.cci.ch/geneve>

ZCC Zurich Chamber of Commerce <http://www.zurichcci.ch>

USA: AAA American Arbitration Association <http://www.adr.org>

Chicago International Dispute Resolution Association (CIDRA)

<http://www.cidra.org/>

I may add here that Islamic law is strictly applied in all branches of law by many countries -beginning with criminal law and ending by family law, without any modification or amendment to harmonize it with our modern society- with which the US-

Arab chamber of commerce is involved, and in all of those countries it has greatly influenced the present day written law of those countries. In addition, many of the Arab countries have formally designated Islamic law as a supplementary source of guidance for the decision makers to fill in gaps in the written law. ⁽¹⁰⁾ This being the case, it is legitimate to ask, before embarking on a discussion of arbitration in US-Arab trade relations, such question as what is the position of Islamic law with regards to Islamic arbitration. Are arbitral awards considered binding and enforceable, what is Islamic contract law like and how could it solve major issue likely to arise in international commercial arbitration?. A point of debate arise here is whether the Islamic law encompass the new version of arbitrations, that is considered an urgent legal need in our new technological era?. ⁽¹¹⁾

Dr. Walaa Arakeeb

⁽¹⁰⁾ The Egyptian constitution of September 11 1971, gives Sharia in general a similar role to that assigned to it by the very similar constitution of the UAE, Bahrain, Kuwait and Qatar.

The same phraseology is used in all those constitutions "Sharia a primary source of law" (Egyptian Constitution, Art. 2) However, in the UAE, Bahrain and Kuwait and Qatar Sharia has always been kept in the background as a result of commercial pressure, whereas in Egypt, traditional Sharia principle has been acknowledged and still influence model Egyptian statute and doctrinal view.

See Ann Elizabeth Mayor, Islam-izing Egypt law: ago-slow policy?, Middle East executive claiming that the Egyptian legal system only pay lip service to Sharia and that its full force and effect can be avoided, from my own point of view, I think the writer got a slow understanding and mixed between the source of law and the rules of law.

⁽¹¹⁾ See Dr. Sofi Abu Taleb, APPLYING SHARIA IN ARAB ISLAND, the theory of (Maslaha Morsalah) discussing how the Islamic law could be able to

Historically Islamic law has always been sensitive for the requirement of international trade because it was born in an environment which was very much involved in that trade and in fact depended on it for its livelihood.⁽¹²⁾ The city of Mecca in the 7th century A.D was a center of trade between east and west, where caravans bearing the goods of India and beyond stopped on their way to the Mediterranean world. Before his missions the Prophet Mohammad was himself a participant in that active international trade. Pre-Islamic Arabs were importers from the west, exporter to the west, middlemen and transporters in that vast chain of commercial exchanges. The law which came into being with the advent of Islamic law had to accommodate the needs of that trade and continue to protect the legitimate interest of those participating in it⁽¹³⁾.

In the culture framework of Islam commerce has a very important place: "9/10th of God's bounty is to be found in commerce" the Prophet himself proclaimed. Naturally, such wide commercial activity gave rise to occasional dispute. Because of the lack of a central government and of a structured formal judiciary, these disputes had to be resolved by arbitration. History had preserved the names of pre-Islamic and Islamic wise men that became famous arbitrators and where highly regarded for their fairness and impartiality. In a well-known episode of Islamic history a very important dispute in a much larger framework with much higher stakes were settled by arbitration, is referring to an incident

where a dispute arose over succession to the supreme office of the nation and was put to arbitration. The

encompass any advanced technology as long as it is bringing prosperity for the Islamic community. Therefore, the interest for the Islamic community occupying high rank in its classification.

⁽¹²⁾The holly book Quran Kareem, God calling his Prophet Mohammad: " be merciful, follow the custom, and forgive the ignorant"

⁽¹³⁾ The custom theory see Dr. Sofi Abu Taleb, supra note 11.

arbitration, as some Islamic commentators suggest, resulted in the loss of the Khalifa to Ali and in confirming Mu'ayiwah as the first Khalifa of the Omayyah family line. This may well be the most important single arbitration as a dispute settlement method. Arbitration, therefore, is well imbedded in the Islamic mind and has a definite place in Islamic law. As I already mentioned before, in the present day laws of the Arab countries contain provisions regulating arbitration and ensuring the enforceability of arbitral awards. ⁽¹⁴⁾Islamic law poses no problem whatsoever, with regard to the admissibility to arbitration as a method of dispute settlement or to the binding nature or arbitral award and their enforcement. In fact several Arab countries are as of now parties to the New York Convention in the enforcement of foreign arbitral award and others are expected to follow suit. As to the application of Islamic law to the merits of a claim subject to arbitration, lack of familiarity with the principle and substantive rules of Islamic law is a possible source of hesitation. The fact, however, is that there is nothing exotic or unreasonable in Islamic law as they apply to business transactions all law is a response to social needs⁽¹⁵⁾ and because of the essential similarity of those

⁽¹⁴⁾ Arbitrations in the Egyptian law No.27 1994 promulgation the law concerning arbitration in civil and commercial matters.

Art. 2 " An arbitration is commercial within the scope of this law when the dispute arise over a legal relationship of an economic nature, whether contractual or non-contractual "

Art.4, Para. 1: " for the purpose of this law , the term "arbitration" means voluntary arbitration agreed upon by two parties to the dispute according to their own free will whether or not the chosen body t which the arbitral mission is entrusted by agreement of the two parties is a permanent arbitral organization or center

⁽¹⁵⁾ The Theory of Public Need in Islamic law. Sees supra note 2 . see also US-Arab Commercial and Conciliation, Oct 26th 1994, windows on the world, one world trade center New York City.

Professor Jamal Badr, adjunct Professor of Islamic law, New York University "ARBITRATION IN THE SHARIA LAW"

needs in the human societies the various legal systems provide comparable solutions to similar problems.

Lawyers who have studied Islamic law have not failed to note the striking similarities of its rules in the areas of business law to the corresponding rule of their own systems. One or two examples will serve to illustrate the point.

The basic rules of business law are obviously the binding force of the contract. Islamic law elevate these rules to a level of religiously binding principle. The Quran, the holy book of Islam enjoins believers to strictly perform their contractual relation (chapter v, verses 1). Because of the Quranic religion the sanctity of the contract and its binding force are immutable rules of Islamic law, from which there can be no deviation.

Those concerned with international arbitration will recall that the ARAMCO award invokes Islamic law in upholding the binding force of the oil concession. More recently, the award handed down in the Texaco overseas and California Asiatic v. the government of Libya.⁽¹⁶⁾ In one arbitration, a panel awarded specific performance in favor of the multinational oil companies and against Libya, however, the parties settled the dispute for 76\$ million in petroleum. The principle behind Texaco case was Nationalization and the Protective Arbitration Clause. I have explored this case, at this point of my research, in order to demonstrate the Islamic legal principles which:

1) function in our modern world along side the common legal system which put emphasis on private interests, and prohibits expropriation under any circumstances,

⁽¹⁶⁾ Texaco Overseas Petroleum Co. v. Libyan Arab Republic, 53 I.L.M 389 (1979); Saudi Arabia v. Arabian American Oil., 27 ILR (Sauser Hall, Badawi/ Hassan, Habachy, arbs., 1985) see more cases in this realm, INTERNATIONAL PETROLEUM TRANSACTIONS Ernest Smith/ John law/ 2nd edition Chapter 5 pp-.346 and 370.

2) with emphasis on parties will, that demonstrates contractual provisions governed by Islamic law, and highlighting the binding contractual nature,

3) the legal principle that gives full respect to the arbitral clauses, that is agreed upon by the contracting parties, encompassed in our Islamic legal system.

The Arbitration relied on Islamic law in upholding the contractual nature of a concession whereas other legal systems "civilized systems either in civil law or common law" particularly those of continental Europe may have characterized a concession as an act of authority revocable at will by the government in the public interest.⁽¹⁷⁾ You see from those precedents how application of the substantive rules of Islamic law⁽¹⁸⁾ resulted in an outcome favorable to the foreign corporation dealing with Islamic governments and thus upholding the sanctity the agreements of all kinds, a corner stone of the security of transaction indispensable for the smooth running of international trade.

Another issue which gives rise to dispute between parties to long term transnational contracts is the effect of intervening events on the performance of those contracts. In the lifetime of a 20 year contract say, oil purchase or oil exploration and sharing, new unexpected circumstances are likely to occur which hamper performance by one or the other party of its obligation under the contract. With regard to the resulting delay or inability to perform, Islamic law takes a more liberal and more flexible position as compared to some other legal systems.

⁽¹⁷⁾ "One author explains why Saudi Arabia did not favor outright nationalization, see also supra note 7 p. 339

⁽¹⁸⁾ A` Abd al-sattar, AL-SHARIA AL- ISLAM AND THE LAW, pp 19-21

I know of two ongoing arbitration where at present United States corporation are invoking those more liberal Islamic rules in justification of their suspension of performance due to intervening circumstances which were beyond their control and were unforeseen by them which they entered into their long term contractual arrangements with two state-owned corporation in two Arab countries. In a significant change which may be a sign of the time, in those two arbitrations the American party is respondent and the state-owned Arab oil operation claimant. It would be interesting to watch the outcome of those two arbitration and see to what extent application of Islamic law will provide relief for the parties seeking such relief.

It will be more interesting from my point of view to see how the application of Islamic law reacts with the new version of arbitration and mediation, which operates with the world-wide web. My Islamic sense prompts me to legitimate and consider the practical

interest for our world and respect advanced technology level that we achieved to facilitate our world.

2.5 THE EGYPTIAN PERSPECTIVE OF THE INTERNATIONAL COMMERCIAL ARBITRATION

More than one hundred years ago, Egypt was the first Middle Eastern country to adopt a legal system based on codifications mainly inspired by French and Italian models. With regard to arbitration, both the National and Mixed courts functioning under that system applied provisions similar to those which prevailed during the 19th century in other civil law countries. When the Mixed courts were abolished as of October 1949, similar provisions remained under the unified Code of Civil and Commercial Procedure which contained a

chapter on "Arbitration"⁽¹⁹⁾ Almost two decades thereafter, a new Code of Procedures (CCCP) was promulgated by virtue of law No. 13 Of 1968. In this Code, which is presently in force, most of the previously codified rules concerning arbitration were maintained in a corresponding chapter on "Arbitration"⁽²⁰⁾. However, there are certain significant differences between the rules contained in the 1949 Code and those adopted in 1968. Among the amendments introduced in the 1968 Code, the most important is the abolition the court's power-recognized under Art.825 of the old Code-to appoint the arbitrator(s) of in case the parties fail to cooperate in establishing the arbitral tribunal in order to fill the vacancy due to an arbitrator's death, resignation or inability to act in whatever reason. The legislator's preferences for a solution which prohibits the court from intervening in the process of appointing the arbitrator(s) reflects a philosophy based on the concept that the core of resources to arbitration is the confidence placed by the parties in the person of the arbitrator(s)⁽²¹⁾.

2.5.1 Compulsory Arbitration

The arbitration envisaged by the Code of Civil and Commercial Procedure (CCCP),which is essentially contractual in nature, became of lesser importance from a practical point of view during the period that witnessed the decline of the free enterprise economy in Egypt and the socialization of all basic activities⁽²²⁾. The State pre-eminence, either directly or through the public sector (nationalized enterprises), led to the adoption a new method of settlement of disputes which

⁽¹⁹⁾ Law No.77 of 1949 (Arts. 818-850 of the code)

⁽²⁰⁾ Law No. 13 Of 1968 (Arts.501-513)

⁽²¹⁾ See Samir Saleh, COMMERCIAL ARBITRATION IN THE ARAB MIDDLE EAST, pp 201

⁽²²⁾ A bu al-wafa , AL-TAHKIM, pp 40-2

became known as "compulsory arbitration". This special type of arbitration is imposed by the law governing the legal framework applicable to the various public organizations or companies owned by the State ⁽²³⁾ All disputes emerging between a governmental body or agency and a public authority, organization or public sector company, or among these entities, fall exclusively under the jurisdiction of arbitration panels to be established for each case through the Ministry of Justice, whose intervention is not limited to the administration of the system, but extends to the appointment of a member of the judiciary to act as the arbitration panel.

2.5.2 Mixed System of Arbitration "Hybrid"

With the adoption of the open door policy as of 1974⁽²⁴⁾, the Egyptian legislator sought to revive the domestic private sector and to encourage new joint ventures with foreign

partners. This policy was reflected in the Arab and Foreign Investment Law No. 43 of 1974 which attempted to introduce the innovations with regard to settlement of disputes techniques by:

(i) recognizing in Art. 8(1) that the foreign private investor has the freedom to opt for the conclusion of a specific arbitration agreement. Calling for arbitration in conformity with the methods provided for in the Egyptian arbitral treaty and the investor's domicile, or otherwise, to act within the framework of World Bank's ICSID Convention of 1965 whenever this convention is applicable.

⁽²³⁾ Law No. 60 1970, and presently law No.97 of 1983

⁽²⁴⁾ The major period in the Egyptian history which had been enacted in this period many laws that adopted the new dimension "substituted the communalism by the stream toward free market".

(ii) Introducing in Art. 8(2) an alternative method of voluntary arbitration, which applies only when the parties agree to it.

The latter special type of voluntary arbitration, however, is characterized by the fact that the choice of the third presiding arbitrator is left to the Egyptian Supreme Judiciary Council, which assumes a role similar to that exercised by the Ministry of Justice with regard to the composition of the public sector arbitration panels. In practice, such recourse to a governmental body has proved unattractive to foreign private investors, since there are no reported precedents which indicate that the alternative system provided for Art. 8(2) has functioned effectively. Therefore, the new Investment Act⁽²⁵⁾ which became applicable as 21 July 1989 abolished that type of arbitration. Art. 55 of the New Law has opted for adding to the three alternatives previously provided for in the old Art. 8(1), a fourth one of recourse to the Cairo Regional Arbitration Center.

Dr. Walaa Araakeeb

Law No. 27 for 1994 Promulgating The Law Concerning International Commercial Arbitration In Civil and Commercial Matters: The Cairo Regional Center⁽²⁶⁾ emphasized the need for adopting the UNCITRAL Model Arbitration Law,⁽²⁷⁾ as the basis for reform of the Egyptian Legislation, at least with regard to international business. The efforts of the Center led to the establishment by the Minister of Justice of a Committee entrusted with the preparation of the new Law. Law No.27 for

⁽²⁵⁾ Law No. 230 of 1989

⁽²⁶⁾ Egypt: Cairo Regional Center For International Commercial Arbitration (CRCICA) <http://www.crcica.org.eg/>

⁽²⁷⁾ See www.uncitral.org. also AAA American Arbitration Association <http://www.adr.org> Chicago International Dispute Resolution Association (CIDRA) <http://www.cidra.org/>

1994 regarding International Commercial Arbitration in Civil and Commercial Matters explicitly defines the scope of the procedural rules applicable, both with regard to their contents and various sources as well as the territorial limits for their application. The principles can be summarized as follows:

- (a) As a general rule, any arbitration conducted on the Egyptian territory has to be governed by the provisions contained in Law No. 27 for 1994 (Art.1(1),first part), provided that the dispute relates to an international business transaction as defined in Art.2.

The rules provided for in this Law may govern any international arbitration taking place out of Egypt if the parties to the arbitration decide to do so by their mutual agreement (Art 1).

- (b) The parties may equally agree to extend the applicability of the rules contained in this law to govern domestic arbitration.
- (c) However, the parties are also free to exclude the applicability of this law by their mutual agreement and to submit their international arbitration to another legal system, in spite of the fact that said arbitration is taking place in Egypt (Art. 1(1), last part). In other words the rules concerning the procedural law to be applied can be excluded by the mutual consent of the parties. Thus, these rules are not to be considered as a public policy; they are subordinated to the higher judicial principle of the autonomy of the parties to choose the rules that best suits their interest in settling their dispute through arbitration.
- (d) The freedom of the parties to select the best-suited rules to be followed by the arbitral tribunal in conducting the proceeding is not limited to the choice of a national legal

system, since the parties are entitled, according to Art. 24(1), to submit their arbitrations to the rules prevailing under the system of any arbitral organization or arbitral center existing in Egypt or abroad.

- (e) The arbitrators are, nevertheless, under the obligations to treat that parties to the a arbitration with equality, and to provide each of them with a full and mutually balanced opportunity to expose his case (Art.25).

Such obligations reflect a world-wide *general principle of procedural law*, which can therefore be assumed to be always valid in what ever system the parties may chose.

2.5.3 The Reality of Arbitration

In the absence of reliable data or any sort of statistics, it's hard to provide precise indications about the role of the voluntary arbitration subject to the rules of the Code of

Procedure within the domestic scene. Some cases of *ad hoc* arbitrations have been reported as a result of subsequent judicial proceedings, but institutional arbitration is almost nonexistent with regard to the various field of local economic activities.

In search of a more effective type of arbitration which could be accepted with the business community, the Egyptian Government directed its efforts towards the establishment of an internationalized institutional arbitration system. The new policy led to the conclusion of an international agreement with the Asian-African legal consultative committee (in the form of an exchange of letters on 28 January 1978 and a subsequent exchange of letters on 15 November in 1983, forming an agreement which was approved by the Egyptian parliament on 20 March 1984 and

ratified by presidential Decree No. 104 of 1984 dated 24 March 1984.) Since then, the Cairo Regional Center for International Commercial Arbitration started to function administering arbitrations in accordance with the UNCITRAL Arbitration Rules of the 1976. The center's own rules are available in Arabic and English.

The Cairo Regional Center⁽²⁸⁾ has assisted in promoting a new spirit of awareness among the Egyptian officials about the modern developments taking place in the field of international commercial arbitrations, both through organizing international seminars in

Cairo, and by participating in world wide activities which opened the horizon for an enriched comparative approach. Arbitration certainly is the method most frequently used for the settlement of disputes arising out of international economic relations. Arbitration clauses are habitually included in all type of business transaction, even those concluded with the government or its agencies concerning public works, project of general interest or the exploitation of natural resource. However, in recent years doubts have arisen as to the advisability of this practice, due to the fact that a number of Egyptian contracting parties, who accepted the reference of future disputes to arbitration, have challenged the validity of such arbitration clauses when a dispute arose. In most cases they did not simply abstain from participating in the arbitral proceeding, but also initiated litigation alleging that the arbitration clauses are contrary to mandatory domestic rules which they deem applicable also in relationship containing a significant foreign element. The new law ⁽²⁹⁾aims primarily to

⁽²⁸⁾ Cairo Regional Center For International Commercial Arbitration (CRCICA) <http://www.crcica.org.eg/>.

⁽²⁹⁾ Law No. 27 for 1994 promulgating the law concerning arbitration in civil and commercial matters.

eliminate this attitude which has damaged the image of arbitrations in Egypt and really consider as an official source for international commercial arbitration in my country.

CHAPTER III

E-DISPUTE RESOLUTION

3.1 ELECTRONIC COMMERCE AND ODR

In the context of this comment, e-commerce refers to commercial transactions that occur online. This includes purchases made by individual consumers from online commercial retailers, transactions for the sale of goods by a business from another business, and the purchase of goods by a private individual from another private individual. This comment focuses on e-commerce disputes because online disputes are likely to arise in an e-commerce context.⁽³⁰⁾ An example of an individual versus individual online dispute is when Buyer bids the highest price for an item auctioned by Seller through an online auction venue such as eBay.⁽³¹⁾ Seller refuses to accept Buyer's winning bid and does not go through with the transaction. Buyer has little recourse through eBay because although eBay will investigate complaints, it has no power to compel Seller to complete the transaction or to force Seller to pay damages.⁽³²⁾ The auction site might exclude Seller

Dr. Walaa Arakeeb

⁽³⁰⁾ See George H. Friedman, *Alternative Dispute Resolution and Emerging Online Technologies: Challenges and Opportunities*, 19 *Hastings Comm. & Ent. L.J.* 695, 709 (1997)

⁽³¹⁾ Ebay (visited Jan. 21, 2001) <<http://www.ebay.com>>. Ebay is an online auction house where Internet users may sell and purchase items ranging from concert tickets to antique jewelry. See *Id.*

⁽³²⁾ Ebay's User Agreement provides in its release from liability clause that since it is only a venue for trading, it is not involved in the actual transaction between the consumer and a third party, and therefore, it is not

from using eBay's site in the future or it may give Seller a bad rating, depending on the egregiousness of the act. Seller may not have wanted to complete the transaction for a number of reasons. For instance, Buyer may have violated auction customs by submitting his winning bid just before the auction closed, or Seller may have received a better offer after the auction closed. EBay currently offers dispute resolution through Square Trade, an online dispute resolution provider.

A similar problem may arise when an individual conducts business with an online merchant. Buyer purchases a license to use software from Merchant through Merchant's web site. Buyer downloads the software and uses it in violation of the license. Merchant wants to stop Buyer's illegal use of its software.

An online business may also find itself in a dispute with another online business. In one case, eBay sued another online auction site for trespass because the rival web site sent an automated query program, or "robot," to search eBay's web site for bidding prices. This burdened eBay's computer network since the excess traffic to its web site by the robots took up valuable capacity. These different types of disputes illustrate the range of problems that could arise over the Internet. Because the problems are diverse and relate specifically to the Internet, a resolution system created solely for the purpose of resolving such disputes could better address such problems.

a party to disputes involving the consumer and a third party. See eBay User Agreement 3.3 (visited Jan. 21, 2001)
<<http://pages.ebay.com/help/community/png-user.html>.

3.1.1 On-Line Dispute Resolution ("ODR") for the Middle Class

The smaller realm of on-line dispute resolution ⁽³³⁾ offers a glimpse at the scope of the new problems and perhaps some guidance for other areas as well. ⁽³⁴⁾ Even the name, on-line dispute resolution, or the easier but less aesthetic acronym, ODR, creates definitional and jurisdictional issues. On-line dispute resolution may describe dispute resolution that occurs in whole or part on-line. It encompasses both disputes that arise off-line, in the real world, but are handled on-line and those that arise in cyberspace. In the former, traditional forms of out-of-court dispute resolution are adapted to utilize to some extent electronic means. Examples of this form of on-line dispute resolution would include arbitration that occurs in part by use of electronic means of communications or at the other end of the spectrum, negotiation by means of high automation programs. These basically consist of software that match demand/settlement responses without human intervention.

Dr. Walea Arakeeb

⁽³³⁾ One way to view ODR is as a concentric circle within on-line legal services or web-based legal services but sometimes it can be used interchangeably in light of the broader definition of what constitutes dispute resolution. Both circles share problems of maintaining quality and ethical standards. This article focuses on the smaller area of ODR and does not address in detail some of the other areas that also offer promise for middle-class lawyering, such as the "self-help" sites and gel referral sites.

⁽³⁴⁾ See generally Frank A. Cona, *Application of Online Systems in Alternative Dispute Resolution*, 45 *Buff. L. Rev.* 975 (1997); M. Scott Donahey, *Dispute Resolution in Cyberspace*, *J. Int'l Arb.*, Dec. 1998, at 127; M. Scott Donahey, *Current Developments in Online Dispute Resolution*, *J. Int'l Arb.*, Dec. 1999, at 115; Veijo Heiskanen, *Dispute Resolution in International Electronic Commerce*, *J. Int'l Arb.*, Nov. 1999, at 29; Michael E. Schneider & Christopher Kuner, *Dispute Resolution in International Electronic Commerce*, *J. Int'l Arb.*, Nov. 1997, at 3.

⁽³⁵⁾The focus in this type of ODR is on the mechanisms and means used to resolve the dispute without reference to the source of the dispute.

The dispute being resolved could be generated by a property or tort claim and have no relationship to electronic commerce. In the second category, on-line dispute resolution of on-line generated disputes, the focus is on ways to resolve disputes that result from transactions, such as purchases of goods or services that have occurred in electronic commerce and may or may not be delivered on-line. In this category the focus is on the source of the dispute, rather than on the means used to resolve it. These two categories, on-line handled and on-line generated, as a practical matter overlap at several places, especially when both the source of the dispute and the dispute resolution mechanism involve electronic commerce, such as domain name disputes that are handled on-line.

Both types of ODR, on-line and off-line generated, raise problems of jurisdiction, choice of law, and enforcement. Both create issues of scope and definition. Both require a determination whether consumer transactions are included and what role mandatory law plays. Both raise practical problems such as handling electronic documents, ensuring authenticity, and providing confidentiality. Thus, many of the concerns raised in connection with on-line dispute resolution are also applicable to dispute resolution generated by on-line activities. ODR itself becomes electronic commerce since it is a service occurring in cyberspace.

The regulation of ODR as part of e-commerce has spawned extensive debates, both domestically and internationally, about self-regulation as opposed to governmental intervention, as well as about jurisdictional

⁽³⁵⁾ The best known examples of the high automation form are: click n settle, cyber settle, and settle on-line

authority. ⁽³⁶⁾ Embroiled in the debate is the role of the "consumer," who in the context of ODR is also the "client." For example, in the area of consumer transactions, the approaches taken by different countries reflect underlying differences in philosophy and the role that government should play in controlling transactions in electronic commerce. The current attitudes in the United States and in the European Union toward electronic commerce illustrate these contrasts.

The EU provides more protection for consumers, not merely as to truthful advertising (as in U.S.), but also as to the right to be sued in the country of one's residence and right to access to courts. The rights accorded consumers in electronic commerce must not be less than those in traditional non-electronic transactions. ⁽³⁷⁾ The United States, although

Dr. Walaah Arakeeb

⁽³⁶⁾ The efforts of The Hague Conference on Private International Law to negotiate an international convention for the enforcement of foreign judgments illustrates the increasing role that e-commerce has played, especially in connection with issues of jurisdiction. See Hague Conference on Private International Law, Jurisdiction and Foreign Judgments in Civil and Commercial Matters, Interim Text (2001), <http://www.hcch.net/e/workprog/jdgm.html>. The website also contains several studies of e-commerce and jurisdiction undertaken by the Hague Conference in connection with the negotiations. "Around the time the treaty writers sat down to work, the e-commerce sector took off. Suddenly, they found themselves trying to set global rules on how to regulate a new form of commerce that hardly recognized borders." Paul Hofheinz, *Global Treaty On E-Commerce Faces Hurdles*, Wall St. J., Aug. 16, 2001, at A11.

⁽³⁷⁾ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in Respect of Distance Contracts, 1997 O.J. (L 144) 19, <http://europa.eu.int/eur-lex/en/lif/dat/1997/en/397/0007.html>; Directive 99/44/EC of the European Parliament and of the Council of 25 May 1999 on the Sale of Consumer Goods and Associated Guarantees, 1999 O.J. (L 171) 12, [352](http://europa.eu.int/smartapi/cgi/sga doc?smartapi!prod!CELEX numdoc&lg=Enenumdoc=31999L0044&model=guichett; Directive 2000/31/EC of 8 June 2000 of the European Parliament and of the Council on Certain Legal Aspects of Information Society Services, in Particular</p></div><div data-bbox=)

enforcing truthful advertising, has generally advocated a path of self-regulation, not government intervention. This philosophy has permeated not only the transactions, but any mechanisms for dispute resolution connected with these transactions in electronic commerce. Thus, there is an inherent difficulty in the global context in trying to harmonize laws governing ODR and other remedies for transactions involving electronic commerce, due to the varied governmental policies and objectives sought and the varied cultural contexts in which they are applied.

The focus on on-line mechanisms for dispute resolution is a direct response to the uncertainty generated by a lack of uniformity in applying judicial and prescriptive jurisdiction to electronic commerce. This uncertainty, in turn, is causing an increasing barrier to trans-border commerce. Parties to cross-border transactions must have confidence not only in the ability to surmount technological barriers, such as the need for authenticity and privacy, but also in the capacity to resolve subsequent disputes in an equitable and efficient manner, even if those disputes involve parties and occurrences half way around the world. Nowhere is this need more pronounced than in transactions involving consumers as purchasers. Thus, providing a uniform approach to remedies for transactions involving electronic commerce may facilitate and increase electronic commerce itself. These remedies would connect rules for transacting business electronically with mechanisms

Electronic Commerce ("Directive on electronic commerce"), 2000 O.J. (L 178) 1, www.fs.dk/uk/acts/eu/ehand-uk.htm; infra notes 77-86 and accompanying text. In the recent Commission Recommendation, the European Commission stated that a consumer should be informed of his option "of seeking legal redress through his own judicial system." Commission Recommendation 2001/310/EC of 4 April 2001 on the Principles for Out-of-Court Bodies Involved in the Consensual Resolution of Consumer Disputes, 2001 O.J. (L 109) 56, <http://europa.eu.int/comm/consumers/whatsnew/oldnews0105en.html>.

for resolving related disputes by means of ODR. ⁽³⁸⁾By assuring customers of a process for dispute resolution on-line, consumer confidence has been increased.

3.1.2 The Emergence of ODR

The emergence of ODR has generally followed two basic and sometimes overlapping paths. The first type of ODR, the new medium ODR, has been an outgrowth of some of the traditional and existing forms of ADR moving into cyberspace with the availability of expanding technology. For example, the Inter-Pacific Bar Association ("IPBA") has taken traditional arbitration and created a platform and rules to utilize new technology to create a forum for international arbitration that will be cheaper and faster than traditional arbitration. ⁽³⁹⁾Several of the traditional centers for ADR have expanded to incorporate on-line services, hoping to take advantage of the new technology to create a more efficient mechanism. ⁽⁴⁰⁾From this new medium, traditional providers, ⁽⁴¹⁾ also hope to expand the market for ADR by making it more affordable and more accessible - and ultimately a more attractive alternative than litigation. Thus the new technology has made expansion to cyberspace possible, also spawning a movement for simpler procedures. The new medium has brought with it new needs,

Dr. Walaah Arakeeb

⁽³⁸⁾ The most successful example of this is the eBay/Square Trade partnership which has helped to resolve disputes between buyers and sellers.

⁽³⁹⁾ The use of the electronic medium for arbitration and its effect on the requirement for a "writing" in connection with the existing New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as well as on the UNCITRAL Model Law on International Commercial Arbitration, has been studied recently by the UNCITRAL Working Group on Arbitration which has made some legislative and interpretative recommendations. See Report of Working Group, supra note 3.

⁽⁴⁰⁾ These include the ICC and the American Arbitration Association.

⁽⁴¹⁾ These include CPR Institute for Dispute Resolution and National Arbitration Forum.

such as providing security and privacy. Even the simple problem of submitting an essential exhibit, such as a contract that exists in the paper and pen world, mandates an adjustment for a totally electronic world.

The second type of ODR results from, and is ancillary to, the burgeoning of electronic commerce. Electronic commerce, inherently trans-border - whether domestic or international - and inherently anonymous has generated multiple industries to create mechanisms to instill trust and confidence in the new marketplace for both business and consumer transactions. Some of these mechanisms involve providing security, such as through digital signature procedures. Other forms attempt to provide audit services to ensure that the real world entities match those in cyberspace. Still others attempt to bolster confidence in e-commerce transactions through the mechanism of trust marks.⁽⁴²⁾ The trust mark system is no different from the "Good Housekeeping Seal of Approval," except that it certifies the reliability of the merchant/seller or "e-tailer" rather than a product. The trust mark concept first gained support in the European Union countries and now exists in the United States and Asia as well. For example, one system, Trusted Shops, a German-based site, provides a money back guarantee to consumers who purchase from shops that belong to the group, while Which is online, a UK

⁽⁴²⁾ One of the best examples of the trust mark system in connection with e-commerce is the seal program established by Square Trade which specifically incorporates reliable and inexpensive on-line dispute resolution. Square Trade lists the five most important considerations to buyers as including "seller's commitment to mediation" and requires as part of the Square Trade Seal that the seller is "committed to resolving disputes - including responding to disputes filed with Square Trade within 2 business days." Square Trade, Seal Program, Learn More, at https://www.squaretrade.com/sap/jsp/lm/learn_seal.jsp;jsessionid=wmssaurev1?vhostid=tomcat2&stmp=square+trade&ntid=81gjporef1&sapid=wmssaurev1

trust mark system, requires that complaints be handled fairly and that consumers must be provided with procedures for solving disputes. The trust mark was designed in part to fill the vacuum of uncertainty created by the unanswered questions of jurisdiction and choice of law in cyberspace.⁽⁴³⁾ How does this relate to the creation of ODR? To help fill the void of confidence in the use of e-commerce, especially in the consumer context, retailers have focused on providing means of redress for customers who are often located a continent away.⁽⁴⁴⁾ The trust mark encourages the buyer to trade the comforts of local (or national) courts for certain guarantees of conflict resolution. These methods for redress/recovery have generally utilized ODR mechanisms. One well-known and highly successful example of this is the e-tailer eBay, the on-line auction site. To increase consumer confidence in the virtual auction process, eBay hired Square Trade to provide eBay customers with mediated ODR that would be an inexpensive and fast alternative to traditional litigation or off-line ADR.⁽⁴⁵⁾ Other e-tailers have chosen to incorporate ODR and to assure consumers of the availability of an internal redress system.

⁽⁴³⁾ Which Online actually avoids choice of law issues by requiring that UK law must be used.

⁽⁴⁴⁾ For example, a recent survey by Consumers International, a group of 260 consumer organizations in almost 120 countries, found that on-line shoppers were not receiving goods they purchased or receiving refunds. In addition, only twenty percent of websites surveyed provided clear information on the total cost of the transaction. Consumers International, Should I Buy? Shopping Online 2001: AN INTERNATIONAL STUDY OF COMPARATIVE ELECTRONIC COMMERCE (2001), http://www.consumersinternational.org/CI_Should_I_buy.pdf.

⁽⁴⁵⁾ Square Trade now provides this service to eBay and several other companies.

3.1.3 The Advantage of ODR

ODRS confer a number of advantages to online users. Many of the advantages relate to the advantages commonly associated with traditional ADR, but ODRS' value is twofold because of online communication. "The process will allow for greater flexibility, more creative solutions and quicker decisions." The combination of ADR and online communication will enhance a user's online experience.

A. Convenience

The main advantage of ODRS is that parties will not have to commute over long distances to resolve their dispute. Many online transactions occur between parties located in different areas. In some cases, the parties may reside in different countries. If the parties are far apart, at least one party will have to travel far to litigate. This may be time consuming and expensive. Online communication solves the problem because the parties could sit at their home computers and settle the matter⁽⁴⁶⁾. Another convenience factor for the parties is that some ODRS, such as the settlement mechanisms, are available twenty-four hours a day and seven days a week.⁽⁴⁷⁾ When a dispute arises, the parties can settle their differences right away instead of having to wait weeks or months before their case goes to trial. The other types of ODRS may not be available upon demand, but the turnaround time is still faster than if the parties took their case to court. A beneficial aspect to this is that parties will have their differences addressed immediately.

⁽⁴⁶⁾ See Catherine Kessedjian & Sandra Cahn, Dispute Resolution On-Line, 32 Int'l Law. 977, 978 (1998).

⁽⁴⁷⁾ See George H. Friedman, Alternative Dispute Resolution and Emerging Online Technologies: Challenges and Opportunities, 19 Hastings Comm. & Ent. L.J. 695, 709 (1997).

Related to availability is the convenience of scheduling. If parties chose to mediate their disputes through e-mail or a user group, then any of the parties may post messages and read posted messages at any time, avoiding the hassles of trying to find a time to meet and phone tagging.

Parties also do not have to worry about an inexperienced person overseeing the dispute because sites like the Online Ombuds Office have mediators and arbitrators trained in ADR and computer usage. Using ADR also means flexibility in procedural rules because the mediator can adapt the process to suit the needs of the parties.

B. Low-Cost

Litigating a dispute can be costly. A major portion of the expense is the cost of hiring an attorney. In many instances, parties engaging in online dispute resolution through ODRS will not have to consult an attorney at all. For instance, if each party knows the range within which he will settle the case, then the parties may use a settlement mechanism type of ODRS to resolve their dispute. Additionally, ODRS can save the parties the cost of long-distance calls and teleconferencing.

C. Legitimate to Online Users

Related to the Law Merchant concept, online users are more likely to adhere to the judgments of their own virtual communities than the laws of physical space far away from where they live. People are more likely to accept a system of law that evolves from the community it governs. This could be true of virtual communities as well: If parties perceive that online dispute resolution models address their disputes more effectively, more efficiently, more equitably, and more legitimately, the advantage of taking the dispute to the non-virtual world will disappear. Indeed, in an ideal world, the dispute resolution model of Cyberspace may

become so attractive that real world disputants might be moved to take their disputes online for resolution.

D. Avoiding Jurisdiction Issues

The advantage that ODRS has over land-based legal systems is that it avoids the problem of whether the court has jurisdiction over an issue. Take, for example, a case where Californian invites Floridian via e-mail to enter into an extended business relationship. Californian may be amenable to service in Florida even though Californian has never set foot in Florida or conducted any other business in Florida. Generally, courts will treat e-mail and other electronic communication like phone calls or surface mail when it comes to jurisdiction, and online distribution of software, information, and other electronic goods from the forum state receive the same kind of treatment as physical goods distributed from that state. If Californian sought and obtained an online distribution agreement with Floridian in the forum state, then Californian's activity would satisfy the purposeful availment requirement of the minimum contacts test. Finally, an electronic point-and-click contract sent to the forum state via the Internet is analogous to a paper contract sent to that state.

Despite these general rules the courts have not established a clear line of rules for finding personal jurisdiction in online transaction cases. On the other hand, ODRS avoids jurisdiction issues altogether because parties can bind themselves to dispute resolution through the arbitration agreement.

The jurisdiction issue is especially relevant in light of the global nature of the Internet. Conducting business over the Internet will leave some parties facing foreign jurisdiction and foreign law. The international character of a site like the Cyber Tribunal had one solution to the problems arising out of

international Internet transactions. ⁽⁴⁸⁾Cyber Tribunal offered its services in French, English, and Spanish, thus resolving most of the language problem. Perhaps in the future, as the demand grows there will be an increase in multi-national and multi-lingual ODRs. Not only could ODRs resolve international disputes, it will also reduce the burdens of both national and foreign court systems as well. For instance, a French judge, on average, did not hear a case filed in 1998 until 2000.

3.2 THE FORMS OF ARBITRATIONS ON LINE

A basic question in the context of ODR is what constitutes "dispute resolution?" Surely it includes arbitration, mediation, negotiation and the more recognized forms of ADR. But when applied to e-commerce, it has been expansively defined to cover internal and external complaint mechanisms. ⁽⁴⁹⁾It takes within its purview mechanisms established by governmental units, such as the FTC's on-line mechanism for initiating complaints in the global community, econsumer.gov. This dispute resolution system is a cooperative effort of entities in several countries. Dispute resolution also encompasses high automation ODR systems with no real human intervention, such as cyber settle and click settle. Both of these sites offer a service that resolves disputes through what amounts to a bidding program for which the user pays a fee, which may be based on the amount in controversy.

Dr. Walaah Arakeeb

⁽⁴⁸⁾ See Cyber Tribunal <<http://www.cybertribunal.org/English/html/serviceseng.asp>>. Although the Cyber Tribunal project ended in December 1999, other sites could offer their services in different languages.

⁽⁴⁹⁾ See, e.g., <http://BBBOnline.org>

Private entities supplying ODR are quite varied, both in level of automation and in services provided.⁽⁵⁰⁾ The majority provide non-binding dispute resolution, usually in the form of mediation or some other less-structured service. The interactive websites vary in degree of personalized response and depth of advice provided. There are interactive chat rooms and sites that provide free answers to legal questions. Some act also as referral services and route the client to a legal professional appropriate for the dispute or legal need. Still others are designed to provide certain services or answers on a per-use basis. Some sites are multi-functional, providing arbitration, mediation, and other services, while others are layered to provide escalating levels of service as necessary.⁽⁵¹⁾ Not all ODR is interactive. State Bar associations, such as that of Maine, do not answer questions on-line but provide forms which may be downloaded and which are designed to cover a range of legal services, including divorce. State and local governmental entities often have passive websites that provide advice and forms for handling disputes.

There are also multiple computer programs that one can purchase that create these forms for routine legal matters, including disputes such as divorce. Some of the general legal sites passively provide information on aspects of dispute resolution. Other sites are designed to act like a clearinghouse for complaints, such as the BBB Online, and may require merchant members to agree to be bound by any determination. Consumers can obtain advice and information

⁽⁵⁰⁾ For instance, one site actually allows a mock trial where the client can submit a real case to a "jury." See <http://www.icourthouse.com> (last visited MAR 24, 2002). A UK site, Desktoplawyer.co.uk, allows one to prepare complicated documents and also offers a separate program for over-the-phone advice.

⁽⁵¹⁾ See, e.g., <http://OnlineResolution.com> (last visited MARCH. 24, 2002); <http://IntelliCourt.com> (last visited MARCH 24, 2002).

on handling disputes from combination sites that provide passive and interactive help from consumer and private interests groups, professional associations, and recognized ADR providers.

All of these sources provide "legal services," in the form of information, counseling, or actual conflict resolution, and all seek to provide these inexpensively or without charge and efficiently. Many of these services are provided by non lawyers or lawyers acting outside of their professional context and, thus, are frequently beyond the reach of legal disciplinary authorities and outside the realm of unauthorized practice of law. The wealth of ODR sources has expanded the market of potential customers (or clients) by making access not only cheaper, but easier. Access is now available when the consumer needs, often twenty-four hours a day, allowing the consumer to "time-shift" dispute resolution just as the video cassette recorder has done for television viewing.

A quick perusal of some of these sites reveals several common shortcomings. A large number do not contain any geographical limitation but, like cyberspace itself, appear to be borderless. A significant number contain extensive disclaimers of liability, the practice of law, or the creation of any attorney-client relationship. The majority do not appear to provide any method of redress for dissatisfaction with the dispute resolution services provided. The amount of information supplied about the ownership of the entity or individual ODR provider, training, licensing, and selection of lawyers or neutrals, monitoring or auditing of performance, and potential enforcement of any ultimate result is often insufficient. A significant number do, however, contain statements about privacy and confidentiality of communications.

Some of the better ODR provider sites, such as Square Trade, partner with merchants to provide a seal that includes dispute resolution components. Square Trade emphasizes disclosure of policies and adherence to ethical standards. Another ODR provider, Online Resolution,⁽⁵²⁾ offers full service ODR, including evaluation, mediation, arbitration, and negotiation of a myriad of claims, including e-commerce, EEOC, and family conflicts, among others. Online Resolution states that it adheres to ethical standards for neutrals designed by the ABA, SPIDR, and the American Arbitration Association ("AAA") and provides details of those standards, as well as policies of confidentiality and privacy. In connection with its mediation services, Online Resolution partners with a neighbor, MyCounsel.com, that offers more traditional legal services and advice but for flat fees. My Counsel handles a range of disputes from personal injury to landlord/tenant and provides different levels of service, from consultation and evaluation to initiation of a claim. It refers clients to "certified lawyers" who may consult on-or off-line. My Counsel also provides estimates of response time and a thirty day full money-back guarantee. In contrast, several other online sites amount to little more than advertising ventures by practitioners or referral services or computer programs for settlement.

3.2.1 Traditional Arbitration in an E-version

Another category of dispute resolution providers is those that have taken traditional arbitration techniques and applied them to both on-and off-line disputes to create a faster and more efficient process.⁽⁵³⁾ Arbitration may lend itself more to

⁽⁵²⁾ See <http://onlineresolution.com> (last visited march , 31, 2002).

⁽⁵³⁾ See generally Roger P. Alford, *The Virtual World of Arbitration*, J. Int'l Arb., Aug. 2001, at 449; Arsic Jasna, *International Commercial Arbitration on the Internet, Has the Future Come Too Early?*, J. Int'l Arb., Sept. 1997, at 209.

the on-line medium than mediation. It is designed for communication that is not as much dialogue, but submission of evidence, testimony, and positions to a neutral decision-maker or decision-makers. These decision-makers in the international context are often dispersed around the world, as are the parties. Commercial arbitration also has many existing mechanisms for enforcement, such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Inter-American Convention of International Commercial Arbitration. By using the on-line environment, one can reduce costs of travel and in-person hearings, as well as increase the speed by which evidence and argument are presented and decisions reached. The trade for some of these cost savings is foregoing live testimony, viewed in the Anglo-American tradition as an important aspect of judging credibility. Thus, on-line technology offers a creative solution to the high transaction costs associated with off-line arbitration.

One example of the potential of on-line dispute resolution is the current project of the IPBA to establish a cyber arbitration system. Their rules look a bit like the traditional transnational arbitration tribunals, such as the ICC or LCIA, but with the new technology incorporated, so that timing and definitions are changed. The IPBA has incorporated digital technology, utilizing the Internet, to conduct multi-location hearings. At least initially, some activities would be conducted "on-site" since not all parties would be able "to participate by "cyber' means." This realization reflects the difficulties in conducting on-line arbitration when not all participants have the newest technology, especially in emerging economies, a factor that is relevant in the international context. The IPBA has also considered the difficulty in attracting disputes to a new forum and the role that clients could play in encouraging the use of the new technology, especially as a means of cost

reduction and as an attractive and efficient alternative to current methods of off-line arbitration.

3.2.2 Automatic Arbitration (Software Arbitration)

As we move from less complex communication to more complex communication, we move from software that might be bought "off the shelf," in that it is ubiquitous and requires minimal online skills, to software that does more but requires more. If there is anything that is central to the capabilities we have for interacting online, for both delivering expertise and enhancing expertise, it is software. A principal challenge for anyone or any group wishing to provide dispute resolution services over the Net is to find or design software that handles sophisticated levels of communication and yet does not have a high learning curve for users. This is a considerable challenge since the third party or even one of the disputants is unable to employ the software effectively, the process will not work optimally.

The net is an ever-growing, infinitely expandable information and knowledge space. It is increasingly easy to deliver information to anyone and to any place from anyone in any other place. Delivering useful, valuable, and expert information, however, is not the same as delivering expertise. Sometimes, information alone may be sufficient to fulfill what a user needs, and the Internet excels at easy, cheap access to information. Often, however, something more than information is required. In this sense, expertise requires an interactive informational process, one where the Web site receives information from a user, processes it in some way, provides some analysis and results to the user, and perhaps then begins the process again.

Consider the situation of a subscriber to an Internet Service Provider (ISP), who has her account cancelled because it was determined that she had allowed others to use her account in ways that violated the ISP's terms and conditions. Anyone in this or any similar situation would want to know whether the subscriber has any rights and, if so, whether there are any legal remedies. In addition, the user might find online a list of persons who had experience in dealing with such problems. There might even be all sorts of information online about strategies that have proven successful in the past in dealing with the problem. This is all information of value, and if the information has come from the Web site of an ODR provider, the sense that the ODR provider has knowledge and expertise will be enhanced.

Dr. Walaah Arakeeb

The principle challenge of expertise, however, goes beyond providing useful information. In an online mediation, information would certainly be provided to the parties as part of the process but the parties will find value in the process only if the mediator does something more. The mediator needs to respond appropriately to communications, to keep the parties "talking," and to move them somehow toward a mutually acceptable solution.

Cyberspace is, increasingly, a place where there are *processes* available to users as well as *information*. This should not be surprising since processes are sets of informational transactions and exchanges. What makes building processes out of informational transactions difficult is structuring and regulating the flow of information and the numerous informational exchanges among the parties. Fighting online, negotiating online, and mediating online all involve the sending and exchanging of messages, but it is the third party's management of and involvement in the message-exchanging process that provides the value the parties are seeking.

Some processes require richer and more flexible means for managing the flow of information, and these processes are inevitably more difficult to build in the online environment. Face-to-face sessions are prized not because of the fact that the parties can see each other's face but because seeing faces adds new opportunities for communicating information and interacting efficiently. The ongoing goal for ODR programs is to gradually increase the richness of interaction online and thus allow for expertise to be applied more efficiently and effectively.

It was written recently that the Internet is "the biggest collective expert known to humanity."⁽⁵⁴⁾ In some of the online mediations we have done, we have been more willing than we might have been offline to have co-mediators, or to link a mediator with a particular kind of experience with someone with a different kind of experience. The availability of doing this increases not only because of the ease of communication but because the pool of possible mediators is not limited by geographical location.

The linking of people at a distance with machines that can assist these people has the potential to lead to a new conceptualization of the dispute resolution process. The most familiar model assumes that there are three parties to the process, the two disputants and the third-party neutral. Even when there is a multi-party dispute with many disputants, ADR is still commonly thought to be three sided, with all of the disputants grouped together as the two disputants, and joined the third party, the mediator or arbitrator.

⁽⁵⁴⁾ See University of Massachusetts Center for Information Technology and Dispute Resolution Online ODR Bibliography (visited Mar. 26, 2002) <<http://www.disputes.net/cyberweek2001/onlinebibliography.htm#reports>>. The site contains a list of resources generated by these conferences.

As collaborative and consensus-building software applications become both more powerful and more widely used, we may begin thinking of dispute resolution as having a "fourth party," "at the table," the technology that works with the mediator or arbitrator. Just as the role of a third party can vary in different contexts, so can the role of the fourth party. It can, in different circumstances, be more or less relied upon and be more or less influential, but the role, nature, and value of this fourth party needs to be understood and recognized.

The fourth party does not, except in a few well-defined instances such as blind bidding, *replace* the third party. But it can be considered to *displace* the third party, in the sense that new skills, knowledge, and strategies may be needed by the third party. It may not be co-equal in influence to the third-party neutral, but it can be an ally, collaborator, and partner. It can assume responsibilities for various communications with the parties, and the manner in which the third and fourth parties interact with each other will affect many parts of the dispute resolution process.

A concept of a "fourth party" represented by technology can be jarring, and its acceptance certainly will not be immediate. Yet, new technologies challenge beliefs as well as practices, and concepts as well as doctrines.⁽⁵⁵⁾ Given the high level of online disputing, ongoing attention to online dispute resolution and ongoing development of technological applications can only be expected to grow.

⁽⁵⁵⁾ See Square Trade, Our Partners (visited Mar. 26, 2001) <<http://www.squaretrade.com/aboutus/partners090600.jsp>>.

3.2.3 E-Mediation

There have been several providers who have tried to translate the mediation process to cyberspace.⁽⁵⁶⁾ Early projects were conducted by the Center for Information Technology and Dispute Resolution, established in 1997, at the University of Massachusetts, as part of the work of Online Ombuds. Online Ombuds provided ODR for a two-month period to mediate disputes on-line between buyers and sellers on eBay, the on-line auction system. Online Ombuds utilized a single mediator, with Internet e-mail for all communications.⁽⁵⁷⁾ This initial project was subsequently taken over by Square

⁽⁵⁶⁾ See <http://OnlineResolution.com> (last visited Mar. 24, 2002); <http://www.squaretrade.com> (last visited Mar. 25, 2002); <http://internetneutral.com> (last visited Oct. 24, 2001); <http://mediate-net.org> (last visited Mar. 16, 2002).

⁽⁵⁷⁾ The mediator used e-mail to see if the non complaining party was willing to participate and to get the basic information. Each party provided a narrative from which the mediator attempted to distill basic issues and posit facts and conditions. Out of 225 complaints, mediation was attempted with 144. Of these, not surprisingly, three quarters were brought by buyers. About forty-six percent of disputes that were filed for mediation procedures were resolved by the mediation.

The director of the U Mass Center, Ethan Katsh, has written about some of the difficulties with the on-line mediation process and the impact of translating what usually occurs verbally into written text and the transferring of e-mail and messages from one party to another, with the mediator framing and shaping the communications. The process was timely, but not necessarily cost-effective if conducted for a for-profit procedure. On the other hand, it certainly increased consumer confidence of buyers on eBay when there was a potential for dispute resolution. It is questionable whether it provided more comfort than a chargeback mechanism through a credit card would do. It also may do no more than the existing mechanism eBay provides of allowing the posting of feedback that in effect ties one's reputation as a seller to buyer satisfaction. Online Ombuds has posted transcripts of five on-line mediations that were conducted in March of 1999 as part of a pilot project with eBay. See <http://www.disputes.net/cyberweek2000/eBay/ebayintro.htm>.

Trade, a for-profit enterprise that partners with retailers to provide ODR. The effectiveness of on-line mediation has been questioned. Mediation is often recommended and encouraged where parties have had an ongoing relationship and the mediator can draw on the parties' prior and continuing experience. That is missing in many ODR transactions where the parties are often consumers or buyers in one-shot deals and there is no past experience and not much interest in ensuring a future working relationship, but only an interest in resolving this one dispute. Most importantly perhaps, the medium itself creates a challenge for mediation, where interpersonal connection is often considered crucial. In ODR, written on-line communications often lose the tone of the participants. One is not able to judge how flexible a party might really be and whether a party's feelings on a point are strong or weak. There are no visual cues to guide the mediator. Nor is there an opportunity for the parties to feel a sense of shared accomplishment and shared goals.

The underlying question is whether physical distance means or creates psychological

distance? And whether loss of personal contact means loss of personality, reputation, and confidence, all important to mediation and to a lesser extent to arbitration. The on-line medium for mediation also raises questions where there may be limited access to the new technology, especially in the consumer population in connection with on-line resolution of non-electronically generated disputes. Even among users of computers, there may be discomfort with using the medium for lengthy or detailed communications. A final limitation of on-line mediation is the perceived need for written procedures or rules when working in the written form and without verbal communication. Yet mediation often requires a level of

flexibility and fluidity in process that does not lend itself to detailed procedures and rules.

A. An Overview of the Internal-Neutral Mediation Rules.

The Internet Neutral Mediation Rules (the "Rules") will apply to all mediations conducted by the Internet Neutral. Parties may incorporate the Rules by reference in their contracts. Internet Neutral Mediation is private, voluntary, confidential and non-binding. The Internet Neutral itself does not act as Mediator. The Internet Neutral administers the Mediation process in accordance with these Rules and the agreement of the Parties, teaches Mediation and Internet communication skills to its mediators, and maintains a panel of qualified, experienced mediators with an understanding of current legal and business practices, as necessary for the matters pending before Internet Neutral. A Party may submit a case to the Internet Neutral and request the Internet Neutral to invite the other Party to participate in Mediation. See Request for Mediation Form. If the other Party does not agree to participate in Mediation, no fee is due. If the other Party agrees to participate in Mediation, then the applicable fees are due.

B. Agreement of the Parties

The Parties shall sign a Mediation Agreement prior to the initiation of Mediation, which obligates each of them to abide by these Rules.

C. Initiation of Mediation

A Party who believes a dispute exists which should be mediated under the terms and conditions of a pre-existing contract, shall file a Mediation Demand with the other Party and the Internet Neutral. A Party who believes a dispute exists which should be mediated by Internet Neutral, although no

pre-existing contract requires it, may file a Mediation Request with the other Party and the Internet Neutral. Either form shall clearly, though as briefly as practicable, state the substance and scope of the dispute, the party's position relative thereto, including legal and factual justifications therefore, the right or remedy sought, and any other pertinent matters.

D. *Mediator*

The Internet Neutral shall propose a Mediator and supply information sufficient under the Model Standards of Conduct for Mediators to allow the Parties to ascertain whether the proposed Mediator has any financial or personal interest in the result of the Mediation and is otherwise qualified. If the Parties agree that the proposed Mediator has no such financial or personal interest and is otherwise qualified, then such proposed Mediator shall be appointed to act as Mediator. If not, the Internet Neutral shall propose another qualified Mediator, and so on. If any Mediator becomes unwilling or unable to serve, Internet Neutral will appoint another Mediator, unless the Parties agree otherwise. Once a Mediator has been appointed, the Mediator will administer the Mediation through completion, subject to consultation with the Parties, the prior agreements of the Parties, and these Rules. The Mediator will schedule submission of evidence and memoranda, preliminary joint sessions, as and if necessary, and the Mediation session(s) at the convenience of the Parties and within the agreement of the Parties.

Dr. Walaah Arakeeb

CHAPTER IV**KEY ISSUES FOR ONLINE MEDIATION**

After having described the various forms of ODR in chapter 3, I will restrict myself to online mediation in this chapter. I will make an inventory of the most important issues of online mediation and will describe how these issues have been or can be dealt with.

It is often thought that one of the most important reasons mediation can be successful is a result of face-to-face contact between parties en the mediator. Mediators are supposedly experts at reading body language. With online mediation there is no face-to-face contact, so the mediator obviously needs other skills besides being able to read body language. Offline mediators are trained to help people tell their stories and to manage the conversational process of mediation sessions. They are trained to remain impartial, to summarize and reframe. They use techniques of active listening and are experts in agreement writing.⁽⁵⁸⁾ Not all of these skills are equally suitable to online mediation. With

online mediation there are other things that are essential. In the following paragraphs I will try to identify the key issues for online mediation.

4.1 TRUST ISSUE

An essential aspect of mediation, whether online or offline is trust. It is essential for a good mediator to be able to establish trust between himself and the disputing parties. In face-to-face mediation this trust is established during the mediation sessions. Where online mediation is concerned it seems far more difficult, though no less important, to establish

⁽⁵⁸⁾ See Regulating Virtual Arbitration in Cyberspace, 24 Ohio N.U.L. Rev. 769. Also <http://www.disputes.net>

and maintain trust. Offline mediation often takes place between parties that have an ongoing relationship and history together. Their common goal is to reach a solution that will be acceptable to both parties and will damage the relationship as little as possible, so that future relations will not be endangered. This is important to both of them and the mediator can use information about their history. In the online mediation process, parties often do not know each other and do not have an ongoing virtual or real-time relationship of any kind. The parties are involved in an electronic commerce transaction in a consumer/merchant relationship (onlinemediators.com) or a consumer/consumer relationship (eBay.com). In most cases these parties have not had dealing with one another before the dispute arises.⁽⁵⁹⁾ The mediator can not draw on the relationship or ask about the background of the dispute in relation to earlier interactions between parties, because there have not been any. The fact that there is no face-to-face contact but communication takes place via e-mail or real-time online, make difficult for the mediator to manage or temper the tone of the interactions or use his skills in reading body language.⁵¹ It is therefore far more difficult to establish and maintain trust.

4.1.1 Identity and Digital Signatures

There are several trust-related problems where online transactions and online mediation is concerned. First of all, the identity of the person you are dealing with is not always clear. How can one be sure that the person one is dealing with is who he claims to be? Here digital signatures can play an

⁽⁵⁹⁾ D. Mednicoff, Bidding for Community on the Internet, ADR ONLINE MONTHLY, April 1999, <http://128.119.199.27/center/mednicoff.htm>
<http://www.ombuds.org/center/index.html> (last visit. April, 12. 2002)

important part. There is already EU legislation in the form of a directive, which has to be implemented in all EU member states in the year 2001⁽⁶⁰⁾. In the US, on June 30, 2000, president Clinton signed into law the 'Electronic Signatures in Global and National Commerce Act', which will be active on October 1, 2000⁽⁶¹⁾. This act gives a signature or record sent through cyberspace the same legal validity as a pen-and-paper document. The fact that a digital signature and digital records have the same legal validity as written documents, makes it far easier to check someone's digital identity. In fact, it might well prove more difficult to falsify digital signatures than written signatures. A digital signature is an authentication method that uses public-key cryptography.⁽⁶²⁾ The digital signature plays an important part in ensuring the authenticity, integrity and non-repudiation of data communication, thus enhancing trust. Closely linked with the problem of identity on the Internet are the problems of data security and confidentiality.

4.1.2 Data Security and Confidentiality

How can one be sure that the data sent and received have not been tampered with and how can you be sure that no unauthorized third parties have access to the information? Here again, encryption plays an important part in ensuring

⁽⁶⁰⁾ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. Official Journal L 013 , 19/01/2000 p. 12-20. Also see <http://www.ispo.cec.be/ecommerce/legal/digital.html> (last visit April.12.2002)

⁽⁶¹⁾ See also <http://www.mbc.com/ecommerce/legis/congress.html#hb1714> (last visit April.13.2002)

⁽⁶²⁾ For an extensive description of cryptography and encryption see B.J. Koops, THE CRYPTO CONTROVERSY, A KEY CONFLICT IN THE INFORMATION SOCIETY, 1999, 1st edition, The Hague/London/Boston, chapter 3.

confidentiality and data security. Encryption makes it possible for the mediator and the parties to communicate without the risk of unauthorized third parties having access to their communication, thus creating secure data communication. For a mediation procedure to be successful, confidentiality is essential. In an offline mediation procedure confidentiality is not really a problem. Most communication is oral; transcripts of conversations are usually not made. Any written documents that do exist only circulate in a very small group of people. This is different with online communication. First of all, the communication takes place in written form over insecure networks. To transfer the data over the Internet there are numerous temporary copies made along the way. This is inherent to the nature of the Internet. It is necessary to make copies on the routers when transferring data from one computer to another, to make copies when downloading or uploading information.⁽⁶³⁾ In Cyberspace communication takes place through constant copying. This is something the mediator has to be aware of. He must take all possible precautions to make sure that (automatic) backups are kept no longer than necessary and are not accessible to unauthorized third parties. These precautions do not guarantee complete confidentiality. The only way to protect data and to guarantee confidentiality is

⁽⁶³⁾ See e.g., Council of Better Business Bureaus, Inc. & BBB Online, White Paper, Protecting Consumers in Cross-Border Transactions: A Comprehensive Model for Alternative Dispute Resolution (2000), <http://www.bbbonline.org/about/press/WhitePaper.doc>. The website has a specific section allowing one to "File a Complaint." <http://bbbonline.org> (last visited April. 21, 2002). Another website for filing "e-commerce cross-border complaints" is <http://www.econsumer.gov>, a site which is a joint project of the International Marketing Supervision Network and the Consumer Sentinel and maintained by the FTC. The site provides for complaints to be filed in multiple languages.

through encryption. Encryption is the automated process of making data inaccessible to

unauthorized people by means of an algorithm and a key. Decryption is the reverse process. A popular method to guarantee confidentiality is the so-called asymmetric crypto system: this system uses two different keys (a public and a private key) for encryption and decryption of data.⁽⁶⁴⁾ This means that without the right key no one can read the message. The key, needed to read the message, is sent to the recipient separately from the message and reaches him by another route than the message itself. When the confidentiality has been guaranteed by means of encryption, the fact that the Internet is built up from copies also has its advantages. The complete written file is accessible to both parties and the mediator at all times to check certain details or to see how things are. It is not necessary to take notes because everything is already written down⁽⁶⁵⁾

⁽⁶⁴⁾ B.J. Koops, *THE CRYPTO CONTROVERSY, A KEY CONFLICT IN THE INFORMATION SOCIETY*, 1999, 1st

edition, The Hague/London/Boston, p.35.also 31 J. Marshall L. Rev. 1045

⁽⁶⁵⁾ See, e.g., Council of Better Business Bureaus, Inc. & BBB Online, White Paper, Protecting Consumers in Cross-Border Transactions: A Comprehensive Model for Alternative Dispute Resolution (2000), <http://www.bbbonline.org/about/press/WhitePaper.doc>. The website has a specific section allowing one to "File a Complaint." <http://bbbonline.org> (last visited Oct. 24, 2001). Another website for filing "e-commerce cross-border complaints" is <http://www.econsumer.gov>, a site which is a joint project of the International Marketing Supervision Network and the Consumer Sentinel and maintained by the FTC. The site provides for complaints to be filed in multiple languages. See also <http://www.clicknsettle.com> (last visited Oct. 24, 2001); <http://www.cybersettle.com> (last visited Oct. 24, 2001); <http://www.settleonline.com> (last visited Oct. 24, 2001); see infra Part I.B.1.

4.2 PRIVACY

Another important issue that has to be addressed when setting up an online mediation procedure, is privacy⁽⁶⁶⁾. Where privacy is concerned, parties should be made aware of the ways in which their privacy is protected and in what ways personal information is stored or used by the mediator or mediation company. It is imperative that the mediator or the mediation firm should have a privacy policy⁽⁶⁷⁾, which addresses a number of issues. Any dispute that they receive via a website must be treated in accordance with rules of confidentiality. The disputes must only be known to the parties involved in the dispute, including the mediator. All personal data must be recorded and used with great care. By making strategic use of security possibilities, it is possible to guarantee that the right of respect for personal privacy of all parties involved in an online mediation procedure is respected. Here again encryption plays a key role.

Dr. Walaah Arakeeb

⁽⁶⁶⁾ see as e.g. BBB On Line Privacy Program Dispute Resolution Process: Privacy Policy Review Service and Privacy Review Appeals Board (visited Apr. 11, 2002)

<<http://www.bbbonline.com/business/privacy/DR/index.html>>.

⁽⁶⁷⁾ For an excellent discussion of the historical and philosophical development of privacy theory in US law , see further TRANSFORMING PRIVACY: A TRANSPERSONAL PHILOSOPHY OF RIGHTS (New York , 1998.). see also CSH Wartz and Reidenperg, DATA PRIVACY LAW (Charlottesville, 1996) see Lexis Nexis 429US 589 (1977). See also Laird v. Tatum, 408US 1 (1972) . (Unsuccessful challenge to surveillance by the united states army by the civilian activities during there peace time); Paul v. Davis,424 US693(1976) .(No constitutional protection against the publish disclosure by police of individual arrest of a shopliftings charge , even though he has been never convicted); United states v. Miller,425 US 435(1976) (no protect able forced amendments interest in bank records relating other bank deposits account maintained pursuant to the bank secrecy act).

In a privacy policy, parties must also be made aware of the fact that the mediation site will probably make use of cookie technology. They need to be told that if they do not want any cookies to remain on their hard disk, they can use their browser options to switch off the cookie technology. There are several privacy policy generators to be found on the Internet that can help the mediation organization to make its own privacy policy.⁽⁶⁸⁾ Since August 2000 the OECD Privacy Policy Statement Generator has been made available.⁽⁶⁹⁾

4.3 IN THE SHADOW OF THE LAW "LEGITIMACY"

Another important aspect of offline mediation, and indeed for ADR in general, is the fact that it always takes place 'in the shadow of the law'.⁶¹ This means that the disputing parties that are trying to find a solution through alternative dispute resolution are aware of the legal rules governing the area of their dispute. The outcome that the law will impose if no agreement is reached gives each party a reasonably good idea of its bargaining position. Parties will take the law into consideration when setting out a strategy in the ADR procedure. ⁶² For e-disputes there is the problem that it is not obvious what law applies, especially with cross border e-disputes⁽⁷⁰⁾. In the eBay project, that I will describe, the

⁽⁶⁸⁾ <http://www.the-dma.org/policy.html#form> (last visited April.10,2002)

⁽⁶⁹⁾ See generally Catherine J. Lanctot, Attorney-Client Relationships in Cyberspace: The Peril and the Promise, 49 *Duke L.J.* 147 (1999); Richard Zorza, Re-Conceptualizing the Relationship Between Legal Ethics and Technological Innovation in Legal Practice: From Threat to Opportunity, 67 *Fordham L. Rev.* 2659 (1999); Katy Ellen Deady, Note, Cyber advice: The Ethical Implications of Giving Professional Advice over the Internet, 14 *Geo. J. Legal Ethics* 891 (2001). Also see <http://cs3-hq.oecd.org/scripts/pwv3/pwhome.htm> .

⁽⁷⁰⁾ D. Post, Governing Cyberspace, in the 43 *Wayne Law Review* 155, 1997, also published online at <http://www.cli.org/DPost/ascl.htm>. He said "There are, appropriately enough given the binary nature of the information

researchers of the University of Massachusetts came to the conclusion that the context of the dispute resolution system provides the relevant "law" that will encourage parties to participate in online mediation and makes sure they comply with the outcome of the procedure. This is consistent with the second process that Post describes.

Dr. Walaah Arakeeb

traveling in cyberspace, two radically different processes through which order can emerge in this environment. (...). [One] involves an increasing degree of centralization of control, achieved by means of increasing international coordination among existing sovereigns, through multi-lateral treaties and/or the creation of new international governing bodies along the lines of the World

Trade Organization, the World Intellectual Property Organization, and the like. If choice of law is hopelessly confused, in other words, we can eliminate the choice by imposing a single, uniform legal standard worldwide. [The other] invokes a radical decentralization of law making, the development of processes that do. Some of these decentralized processes will look familiar to us as a kind of "electronic federalism". In this model, individual network access providers, rather than territorially-based states, become the essential units of governance; users in effect delegate the task of rule-making to them – confer sovereignty on them - and choose among them according to their own individual views of the constituent elements of an ordered society. The "law of the Internet "thus emerges, not from the decision of some higher authority, but as the aggregate of the choices made by individual system operators about what rules to impose, and by individual users about which online communities to join. Mobility - our ability to move unhindered into and out of these individual networks with their distinct rule-sets - is a powerful guarantee that the resulting distribution of rules is a just one; indeed, our very conception of what constitutes justice may change as we observe the kind of law that emerges from uncorked individual choice. "

4.3.1 The eBay ODR Experiment and the Shadow of eBay Law

At the end of 1998, eBay, the largest auction site in the US, approached the researchers of the University of Massachusetts to conduct a pilot project in order to find out whether online dispute resolution could be a useful means of solving problems that occurred on their site. The researchers began their project in 1999, choosing mediation over arbitration, because of the voluntary nature of mediation. The researchers wanted to ascertain how effective an online mediator could be when interaction occurred without face-to-face meetings⁽⁷¹⁾. The eBay experiment showed that the number of disputants willing to participate in online mediation was 75% whereas in other experiments with offline mediation the number of participants willing to participate was around 50%. In all instances mediation was explained to be a voluntary process. The reason why so many eBay users were willing to participate was not so much the wish to reach a mutually acceptable outcome, but rather the wish to keep on using the eBay site in the future. The eBay site is a virtual market place where buyers and sellers meet. Public safety is therefore very important and this is achieved through several means, among which a 'feedback rating system' is the most important.

After any transaction is completed, buyers and sellers can post feedback as to the conduct of the buyer or seller. If you wish to buy an item you can easily check the feedback rating of the seller before you bid on an item. If you have found a possible buyer you can check his rating also. It is therefore very important to eBay users to acquire a positive feedback

⁽⁷¹⁾ See Ebay (visited Apr. 12, 2002) <<http://www.ebay.com>>. Also see Ebay, Inc., Services: Escrow Overview (visited Apr. 12, 2002) <<http://pages.ebay.com/help/community/escrow.htm/>>.

rating if they wish to remain active on the eBay site. Taking part in a voluntary dispute resolution service can help both buyers and seller to keep a good rating. This means their future in the eBay marketplace will be safe, which is important to them. The Massachusetts researchers state that the mediation on the eBay site takes place in the 'shadow of eBay law'⁽⁷²⁾. The 'eBay law' is the 'law of the Internet' that Post mentions. It emerged as the aggregate of the choices made by eBay as the individual system operator about what rules to impose, and by the eBay-users in choosing to join the eBay community.⁽⁷³⁾ Another important issue for online mediation, and one closely linked with the concept of the shadow of the law is compliance.

Dr. Walaa Arakeeb

How can you be sure the other party will comply with the outcome of the dispute resolution process? With offline mediation compliance is high, because the mediation agreement that is usually the outcome of the process, can be made legally binding according to the applicable law. As the researchers found out in the eBay project, compliance with the result of an online mediation procedure was high as a result of 'eBay Law'. The party that 'lost' did not want to jeopardize his or her position in the eBay community and was therefore willing to comply with the outcome. The researcher also noted that if a virtual marketplace would choose online arbitration or some other form of binding rulings, compliance could be achieved by using the threat of exclusion from the virtual marketplace.⁽⁷⁴⁾ This of course would be another form of the 'law of the Internet', and would also assure compliance with

⁽⁷²⁾ <http://www.disputes.net/cyberweek2000/ohiostate/katsh.htm> , p. 5 and p. 15-16.(last visited March .25,2002).

⁽⁷³⁾ <http://www.cli.org/DPost/ascl.htm>. (last visited April .10th, 2002).

⁽⁷⁴⁾ <http://www.disputes.net/cyberweek2000/ohiostate/katsh.htm>. (last visited April. 11, 2002).

the outcome of the dispute resolution procedure⁽⁷⁵⁾. Where binding advice is used in offline consumer complaint resolution, the same mechanism of the threat of expulsion is used to achieve compliance from companies.

In the eBay experiment, it proved not necessary to obtain a writ of execution to achieve compliance. The Square trade initiative, which resulted from the eBay experiment, uses

the same basis of people not wishing to jeopardize their position in the eBay society. With the online mediator initiative, that is not restricted to ecommerce transactions, parties can either accept the outcome as it is, or assure compliance by making the outcome legally binding in a contract.

4.3.2 *WIPO Procedures for ODR*

The World Intellectual Property Organization (WIPO)⁽⁷⁶⁾ developed recommended uniform processes for resolving disputes over Internet domain names that conflict with trademarks.⁽⁷⁷⁾ The procedures now are in use to resolve disputes involving domain name registrars, who agree on the need for uniform dispute resolution procedures covering this set of disputes.⁽⁷⁸⁾

⁽⁷⁵⁾Konnie G Kustron, Integrating the Internet into a Legal Research Program , 13 J.P. Educ. & Prac. 131

⁽⁷⁶⁾ See World Intellectual Property Organization (visited Apr. 11, 2002) <<http://www.wipo.org>>.

⁽⁷⁷⁾ See World Intellectual Property Org., Final Report of the WIPO Internet Domain Name Process, (visited Apr. 11, 2000)

<http://ecommerce.wipo.int/domains/process/eng/final_report.html>.

⁽⁷⁸⁾ See World Intellectual Property Org., WIPO Internet Domain Name Process (visited Apr. 11, 2000)

<<http://ecommerce.wipo.int/domains/process/eng/wipo1.html>>

Article V of the WIPO report on Internet domain name conflicts with trademarks, providing for "administrative" resolution of complaints, allows for complaints and responses to be filed electronically and provides, with respect to hearings, under Article 27:

- a. Normally, the determinations on Complaints under these Rules are to be made with reference to the file alone. However, as an exceptional matter a Panel may, at the request of a Party or on its own motion, determine in relation to a particular complaint that a hearing shall be held with the participation of the Parties.
- b. For the purposes of this Article, "hearing" shall include a physical meeting, a telephone or video conference and the simultaneous exchange of electronic communications in a manner that allows the Panel and the Parties to receive any communication sent by one of them and to send communications to the others.⁽⁷⁹⁾

Dr. Walaah Arakeeb

⁽⁷⁹⁾ World Intellectual Property Org., Final Report of the WIPO Internet Domain Name Process (visited Apr. 11, 2002) <<http://ecommerce.wipo.int/domains/process/eng/final/report.html>>.

CHAPTER V**THE LEGAL ENVIRONMENT FOR SUCCESSFUL E-MEDIATION**

In the light of the issues discussed in chapter 4, I want to establish the basic Conditions that have to be fulfilled to make online mediation a useful alternative To litigation in solving cross border transaction in the World Wide Web. I want to find out whether legislation is necessary or if participation of my thesis and compliance can be realized in another way. Online mediation has a lot of advantages to offer: low or no cost dispute resolution, no legal hassle, equality of arms etc. There are, however some serious obstacles to overcome before online mediation, or indeed any other form of ODR, will become a serious alternative to litigation or offline ADR.

5.1 CREATING A WARINESS

The biggest obstacle at this point in time for the EGYPT is the fact that online dispute resolution is a phenomenon that is not yet very well known to the legal profession and I think it is safe to say that it is as yet completely unknown to the general public. Where offline ADR is concerned, most lawyers have become aware of the existence of offline mediation over the last ten years in my country. The same however, can not yet be said for online forms of ADR and mediation. It might take another decade for online mediation and other forms of ODR to become accepted as fully legal infrastructure forms of dispute resolution. As far as the general public is concerned; if they have heard of mediation, it is usually in the context of divorce proceedings under the Islamic law "Shariha" and they are often under misapprehension that mediation is some form of marriage counseling⁽⁸⁰⁾. Awareness of the existence of

⁽⁸⁰⁾ Sees supra note 2

offline ADR or mediation is for the most part nonexistent. This may well prove to be the biggest hurdle that online mediation has overcome to become a serious alternative to litigation or even offline ADR.

The first step towards the acceptance of Online Dispute Resolution, is making the public aware of offline ADR. The Egyptian government is creating awareness for ADR as part of the modernization of the legal system⁽⁸¹⁾. ADR is promoted for a number of reasons, the most important one being the fact that successful ADR will help to alleviate the pressure on the judicial system, thus lowering the caseload for the courts and at the same time raising the 'quality' level of the cases that do go to court.⁽⁸²⁾ A problem, when trying to create ADR awareness, is the fact that ADR is based on confidentiality. Success stories can not be publicized or used as examples to try and persuade potential users to try alternative dispute resolution. The mediation process is unfamiliar to most people and as it is a voluntary process, it is not likely many people will volunteer to take part in a process they do not know and do not understand.⁽⁸³⁾ Online Dispute Resolution is even less well known to the general public. Another obstacle on the road to accepting Online Dispute Resolution is the fact that there is still a large group of people who are not yet used to the Internet. This is not an obstacle to people with an e-dispute, because they are Internet users by nature, but it may initially be a problem that will hinder the widespread acceptance of online dispute resolution as a fully-fledged alternative to ADR and

Dr. Walaah Arakeeb

⁽⁸¹⁾ Arbitrations in the Egyptian law No.27 1994 promulgation the law concerning arbitration in civil and commercial matters.

⁽⁸²⁾ http://www.minjust.nl/a_beleid/thema/modro

⁽⁸³⁾ C. Hart, Online Dispute Resolution and Avoidance In Electronic Commerce, an article submitted for the Uniform Law Conference of Canada, august 1999, located at <http://www.law.ualberta.ca/alri/ulc/current/hart.htm> .

litigation. The combination of two relatively new phenomenon's will in all likelihood meet with resistance from different sides. Therefore it is essential to create trust in ODR, not only as a means of getting ODR accepted by the general public, but also to enhance trust in e-commerce itself. By creating an online form of dispute resolution, e.g. online mediation, that takes issues like data security and privacy seriously, uses encryption techniques and digital signatures this trust can be created right from the start. Lessons can be learned from the experiences in related fields, like setting up Certification Service Providers (CSP's). ODR seals can be a way of advertising the fact that a company is willing to settle e-disputes online. I imagine there will a different seal for different forms of ODR. In the US there are seals from 'Online Mediators' and 'Square trade' and 'BBB *On line*' and various others.

It is very important when introducing seals like these to make sure that companies do not use these seals as a mere marketing mechanism, but follow the rules. Control is necessary. The BBB *On Line Reliability Program* for instance, will immediately take away the seal if a company does not comply with the outcome of an *BBB On Line* procedure.⁽⁸⁴⁾ Another problem with seals is the fact that there seems to be an ever-growing number of seals of different kinds. In the end this may create the undesired effect that people will not know the value of any seal. This is something we in Europe can prevent by trying to create one European standard right from the start, for instance by incorporating the online dispute resolution seal in an existing seal like the Web trader seal.⁽⁸⁵⁾ This has the extra advantage of hooking up with an existing strong network of European Consumer Organizations, thus adding to the credibility of the seal. This could be done in a

⁽⁸⁴⁾ See <<http://www.bbbonline.com/business/privacy/DR/index.html>>. (last visited April.15,2002)

⁽⁸⁵⁾ See <http://www.consumentenbond.nl/webtrader>

way similar to the BBB *On Line* Reliability Program, a trust mark program on the Internet⁽⁸⁶⁾. This would mean that companies, displaying the Web trader seal would have to commit to a set of standards, which would include the requirement that the company will agree to solve any dispute involving consumer products and services by online dispute resolution if the consumer should wish to do so. By leaving the choice with the consumer, companies will avoid the risk of having an unfair contract term in their consumer contracts, because the consumers are free to opt for litigation, if they should wish to.⁽⁸⁷⁾

5.2 SELF REGULATION

The first proposed ODRS framework, the self-regulatory model,⁽⁸⁸⁾ provides that the current ODRS be given time to develop on its own. In other words, it would leave the current ODRS to the "invisible hand" of cyberspace. Over time, a system will develop to reflect the uniqueness of the Internet and disputes arising from it. The self-regulatory system would "promote dispute resolution; or rather, dispute resolution principles will drive the effort to self-regulate, obviating the

Dr. Walea Arakeeb

⁽⁸⁶⁾ See <http://www.bbbonline.org/businesses/reliability/standards.html>

⁽⁸⁷⁾ See The European Council Directive on Unfair Contract Terms in the annex sub q) expressly forbids the contractual term that excludes or hinders the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract. See: Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts, to be found at:

http://europa.eu.int/comm/consumers/policy/development/unfa_cont_term/uct_en.html

⁽⁸⁸⁾ See Alejandro E. Almaguer & Roland W. Baggot III, *Shaping New Legal Frontiers: Dispute Resolution for the Internet*, 13 Ohio St. J. on Disp. Resol. 711, 718 (1998).

need for governments to intervene and legislate along geopolitical lines." According to this model, the existing systems may or may not be the same systems that will operate in the future. The problem with this model is that it does not promote the legitimacy of ODRS. As e-commerce grows and becomes more complex as more users of differing capabilities come online, the need for ODRS will be greater than ever, and disorganized ODRS will not adequately serve online communities. Arguably, a system on pace with the mores and customs of the Internet is better suited to meet its needs.

BIBLIOGRAPHY

1. Books

A bu al-wafa , AL-TAHKIM.

A` Abd al-sattar, AL-SHARIA AL- ISLAM AND THE LAW.

ALAN REDFERN, LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION (2nd ed. 1991).

AMERICAN ARBITRATION ASSOCIATION, DRAFTING DISPUTE RESOLUTION CLAUSES -A PRACTICAL GUIDE (1999).

B.J. Koops, THE CRYPTO CONTROVERSY, A KEY CONFLICT IN THE INFORMATION SOCIETY, (1st ed. 1999).

CSH Wartz and Reidenperg, DATA PRIVACY LAW (1996).

ERNEST E. SMITH & JOHN S. DZIENKOWSKI, et al., INTERNATIONAL PETROLEUM TRANSACTIONS (2nd ed.).

Ernest Smith and John Law, INTERNATIONAL PETROLEUM TRANSACTIONS (2nd ed.).

GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION: COMMENTARY AND MATERIALS, (2nd ed. 2001).

GRAHAM & TROTMAN, ARAB COMPARATIVE & COMMERCIAL LAW : THE INTERNATIONAL APPROACH: PROCEEDINGS INTERNATIONAL BAR ASSOCIATION FIRST ARAB REGIONAL CONFERENCE, CAIRO 15-19 FEBRUARY 1987 VOLUME 1 & 2 (1987).

GRAHAM & TROTMAN, INTERNATIONAL CHAMBER OF COMMERCE (1984).

Jamal Badr, ARBITRATION IN THE SHARIA LAW.

JAN C. SCHULTSZ, ET AL., THE ART OF ARBITRATION: ESSAYS ON INTERNATIONAL ARBITRATION: LIBER AMICORUM PIETER SANDERS, 12 SEPTEMBER 1912-1982 (1982).

JOSEPH M. LOOKOFKY, TRANSNATIONAL LITIGATION AND COMMERCIAL ARBITRATION: A COMPARATIVE ANALYSIS OF AMERICAN, EUROPEAN, AND INTERNATIONAL LAW (1992).

LAURA FERRIS BROWN, THE INTERNATIONAL ARBITRATION KIT : A COMPILATION OF BASIC AND FREQUENTLY REQUESTED DOCUMENTS (4th ed. 1993).

MAHMOOD BAGHERI, INTERNATIONAL CONTRACTS AND NATIONAL ECONOMIC REGULATION: DISPUTE RESOLUTION THROUGH INTERNATIONAL COMMERCIAL ARBITRATION (2000).

MARIA ALFORQUE & LOTFI MAKTOUF, SYMPOSIUM ON U.S.-ARAB COMMERCIAL ARBITRATION AND CONCILIATION (1984).

MARK HULEATT-JAMES & NICHOLAS GOULD, INTERNATIONAL COMMERCIAL ARBITRATION: A HANDBOOK (2nd ed.).

MOHIE ELDIN, ET AL., ARBITRAL AWARDS OF THE CAIRO REGIONAL CENTER FOR INTERNATIONAL COMMERCIAL ARBITRATION (2000).

PATRICK J. O'KEEFE, ARBITRATION IN INTERNATIONAL TRADE (1975).

ROCKY MOUNTAIN MINERAL LAW FOUNDATION, (2000).

SAMIR SALEH, COMMERCIAL ARBITRATION IN THE ARAB MIDDLE EASE: A STUDY IN SHARIA AND STATUE LAW.

Sofi Abu Taleb, APPLYING SHARIA IN ARAB ISLAND.

THOMAS OEHMKE, COMMERCIAL ARBITRATION (1987).

THOMAS OEHMKE, INTERNATIONAL ARBITRATION (1990).

TRANSFORMING PRIVACY: A TRANSPERSONAL PHILOSOPHY OF RIGHTS (New York , 1998.).

WILLIAM F. FOX, INTERNATIONAL COMMERCIAL AGREEMENTS : A FUNCTIONAL PRIMER ON DRAFTING, NEGOTIATION, AND RESOLVING DISPUTES (1998).

YVES DEZALAY & BRYANT G. GARTH, DEALING IN VIRTUE, INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER (1996).

2. Articles and Book Chapters

Alejandro E. Almaguer & Roland W. Baggot III, *Shaping New Legal Frontiers: Dispute Resolution for the Internet*, 13 Ohio St. J. Disp. Resol. 711, 718 (1998).

Alternative Dispute Resolution Cyberspace: There is more on the line, than just getting "on", 7 ILSA J Int'l & Comp L 133.

American Arbitration Association, *Electronic Commerce Mediation and Arbitration 1937 – 1993*, 48 v. ill. 23-28 cm.

Andrew Sagartz, Note & Comment, *Resolution of International Commercial Disputes: Surmounting Barriers of Culture Without Going to Court*, 13 Ohio St. J. Disp. Resol. 675 (1998).

Arsic Jasna, International Commercial Arbitration on the Internet, *Has the Future Come Too Early?*, J. Int'l Arb., Sept. 1997, at 209.

C. Hart, *Online Dispute Resolution and Avoidance In Electronic Commerce*, Uniform Law Conference of Canada, August 1999, available at <http://www.law.ualberta.ca/alri/ulc/current/hart.htm> .

Catherine J. Lanctot, *Attorney-Client Relationships in Cyberspace: The Peril and the Promise*, 49 Duke L.J. 147 (1999).

Catherine Kessedjian & Sandra Cahn, *Dispute Resolution On-Line*, 32 Int'l Law. 977, 978 (1998).

Commission Recommendation 2001/310/EC of 4 April 2001 on the Principles for Out-of-Court Bodies Involved in the Consensual Resolution of Consumer Disputes, 2001 O.J. (L 109) 56, <http://europa.eu.int/comm/consumers/whatsnew/oldnews0105en.html>

Council of Better Business Bureaus, Inc. & BBB Online, White Paper, *Protecting Consumers in Cross-Border Transactions: A Comprehensive Model for Alternative Dispute Resolution* (2000), available at <http://www.bbbonline.org/about/press/WhitePaper.doc>.

D. Mednicoff, *Bidding for Community on the Internet*, ADR ONLINE MONTHLY, April 1999.

D. Post, *Governing Cyberspace*, 43 Wayne Law Review 155, 1997.

Dana H. Freyer, *Practical Considerations in Drafting Dispute Resolution Provisions in International Commercial Contracts: A U.S. Perspective*, N97 ICB ABALGLED B-75, B-76 (1997).

Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. Official Journal L 013 , 19/01/2000 p. 12-20.

Directive 2000/31/EC of 8 June 2000 of the European Parliament and of the Council on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce ("Directive on electronic commerce"), 2000 O.J. (L 178) 1, available at www.fs.dk/uk/acts/eu/ehand-uk.htm.

Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in Respect of Distance Contracts, 1997 O.J. (L 144) 19, available at http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397/0007.html.

Directive 99/44/EC of the European Parliament and of the Council of 25 May 1999 on the Sale of Consumer Goods and Associated Guarantees, 1999 O.J. (L 171) 12, <http://europa.eu.int/smartapi/cgi/sga doc? smartapi! prod! CELEX numdoc&lg=Enenumdoc=31999L0044&model=guichett>.

Ebay, Inc., *Services: Escrow Overview*, <http://pages.ebay.com/help/community/escrow.htm>.

Frank A. Cona, *Application of Online Systems in Alternative Dispute Resolution*, 45 Buff. L. Rev. 975 (1997).

George H. Friedman, *Alternative Dispute Resolution and Emerging Online Technologies: Challenges and Opportunities*, 19 Hastings Comm. & Ent. L.J. 695, 709 (1997).

Harold I. Abramson, *Time to Try Mediation of International Commercial Disputes*, 4 ILSA J. Int'l & Comp. L. 323, 325 (1998).

Henry H. Perritt, *Dispute Resolution in Cyberspace: Demand for New Forms of ADR*, 15 Ohio St. J. on Disp. Resol. 675 (2000).

Jean Braucher, *Rent-seeking and risk-fixing in the new statutory law of electronic commerce: difficulties. In moving consumer protection online* (Contracts Symposium), Wisconsin Law Review 527-564 (2000).

Katy Ellen Deady, Note, *Cyber advice: The Ethical Implications of Giving Professional Advice over the Internet*, 14 Geo. J. Legal Ethics 891 (2001).

Konnie G Kustron, *Integrating the Internet into a Legal Research Program*, 13 J.P. Educ. & Prac. 131.

M. Scott Donahey, *Current Developments in Online Dispute Resolution*, J. Int'l Arb., Dec. 1999, at 115.

M. Scott Donahey, *Dispute Resolution in Cyberspace*, J. Int'l Arb., Dec. 1998, at 127.

Mediation: Has Its Time Come?, 15 Ohio St. J. on Disp. Resol. 735 (2000).

Michael E. Schneider & Christopher Kuner, *Dispute Resolution in International Electronic Commerce*, J. Int'l Arb., Nov. 1997, at 3.

Minimizing disputes in B2B e-commerce transactions, 8 Corporate Counsel 11A3 (2001).

Paul Hofheinz, *Global Treaty On E-Commerce Faces Hurdles*, Wall St. J., Aug. 16, 2001, at A11.

Regulating Virtual Arbitration in Cyberspace, 24 Ohio N.U.L. Rev. 769.

Richard Zorza, *Re-Conceptualizing the Relationship Between Legal Ethics and Technological Innovation in Legal Practice: From Threat to Opportunity*, 67 Fordham L. Rev. 2659 (1999).

Roger P. Alford, *The Virtual World of Arbitration*, J. Int'l Arb., Aug. 2001, at 449.

Square Trade, *Seal Program, Learn More*, available at <https://www.squaretrade.com/sap/jsp/lm/learn>.

Study uncovers dispute risk management needs for e-commerce, 8 Corporate Counsel A3 (2001).

Taking E-commerce to Task; panel ponders guidelines for providing ADR to settle online disputes, ABA Journal, 87, 89(1), (2001).

Tamara Loomis, *E-Signature: after more than a year, few electronic contracts*.

The E-Sign Act of 2000—the triumph of function over form in American contract law (electronic signature), 76 Notre Dame Law Review 4, 1183-1213 (2001).

The Inter-American Convention on International Commercial Arbitration Implementation Act [microform]: report, 1828 Washington, D.C.: U.S. G.P.O. 9 (1986).

Veijo Heiskanen, *Dispute Resolution in International Electronic Commerce*, J. Int'l Arb., Nov. 1999, at 29.

World Intellectual Property Org., *Final Report of the WIPO Internet Domain Name Process*, available at http://ecommerce.wipo.int/domains/process/eng/final_report.html.

World Intellectual Property Org., *Final Report of the WIPO Internet Domain Name Process*, available at http://ecommerce.wipo.int/domains/process/eng/final_report.html.

World Intellectual Property Org., *WIPO Internet Domain Name Process*, available at <http://ecommerce.wipo.int/domains/process/eng/wipo1.html>.