Online dispute resolution: new model for e-consumers and e-companies

Rinaldo Sali

Abstract

A new model of online mediation born in Milan will be analysed as a new method of online dispute resolution (ODR). This new model could tell us if ODR will only improve traditional alternative dispute resolution (ADR) methods or radically change the way to solve dispute. This paper would also underline the need for new standards and rules for the net economy, in order to avoid a lack of e-consumers protection.

1. A new ODR service

The Milan Chamber of Arbitration ("Camera Arbitrale di Milano"), www.camera-arbitrale.com, is a public ADR provider created by the Milan Chamber of Commerce. The Chamber offers mediation and arbitration procedures both for B2B and B2C commercial disputes. In 2000, the Chamber had this results: 71 arbitrations and 125 mediations (B2C 75%).

As many other national and international institutions, the Chamber of Arbitration recognizes the need for new approaches to ecommerce disputes. Traditional ADR is not likely to be a suitable method in cyberspace: new methods of ODR, online dispute resolution, are more and more necessary. Therefore the Chamber has decided to create a new service for online dispute resolution.

The new ODR service "RisolviOnline" is available and operating on the web site of the Chamber of Arbitration since July, 2001. RisolviOnline is an ODR service that can be used to settle all B2B, B2C and C2C e-commerce and Internet related commercial disputes.

1 Camera Arbitrale di Milano (Milan Chamber of Arbitration), Piazza Affari, 6 20123 Milan, email: sali@mi.camcom.it, Internet: http://www.camera-arbitrale.com
2 For C2C market, think to auction sites, like www.eBay.com, where both buyer and seller could be private citizens or consumers.
2. The choice of the online model

In designing the new service we had to evaluate some different options:

1. Mediation or arbitration?
   Mediation is more suitable than arbitration on the web. Arbitration needs a greater degree of formality that is still difficult to realize on line (written form; signature; ...). The internet environment seems to be more favorable to the typical informality of mediation procedures. Therefore, we have chosen mediation.

2. Blind negotiated model or open model?
   The blind negotiated model works like a sort of auction in which the parties never see, until the end, the amounts offered online by the other party; for this negotiated model see ODR providers like:
   - www.clicknsettle.com
   - www.cybersettle.com
   - www.settleonline.com
   The online mediation or "open model” that substantially duplicates the traditional mediation procedure, using email and chatroom conferencing systems to recreate, in the electronic environment, the typical situation of a mediation hearing.
   For this model see also:
   - www.eresolution.com
   - www.onlineresolution.com
   - www.squaretrade.com
   - www.resolutionforum.com

   For our RisolviOnline we finally chose the open model. The blind model, in fact, could be particularly useful where the disagreement is only over money; the open model, instead, seems to be more suitable where the dispute involves other issues (i.e. the quality of the good purchased or matters related to consumers’ protection). In the open model, which is a model of online mediation, we have a complete online dialogue between the parties and the online mediator in a chat room, not limited to the economic amount in dispute.

3. The process of RisolviOnline: how it works

The mediation procedure can be activated only electronically, through the web site of the Milan Chamber of Arbitration. Claimant must fill out the form and email it to the Chamber of Arbitration. The information required are: name and last name; address, email and telephone number. The claimant should also specify the name and address and email (if known) of the other party.
The claimant is required to briefly describe the dispute according to its point of view and to indicate the amount of the dispute. He may also add attachments. Claimant should indicate his credit card number for payment.

On receipt of the form, RisolviOnline contacts - either by email or by telephone – the opposing party and seeks to obtain their consent to participate in online mediation.

If that party agrees, the mediator is appointed to the case; at this moment RisolviOnline officially communicates to the parties the day and time for the first virtual meeting. RisolviOnline also assigns to the parties the number of the procedure and a personal password to access the chatroom.

In the chatroom the mediator can then initiate the dialogue with the parties and try to settle the case. Email are used for all communication. The system is arranged in such a way that the parties and the mediator can choose the type of contact they intend to have: either with everybody (reply to all) or with one of the party or with the mediator only. As happens in traditional mediations the system allows the mediator to meet online separately with either party for a private discussion (caucus). If an agreement is reached, the mediator drafts the agreement and communicates it via email to the parties.

The basic idea, underlying RisolviOnline, is that mediation should encourage communication and direct exchange between the parties and that the mediator should just help them to discuss issues openly and find, through dialogue, a solution satisfactory to both. This idea is more in keeping with the traditional (non virtual) mediation: indeed, the traditional mediator has a range of psychological techniques to apply, which make possible an interpretation of the parties’ non verbal language, attitudes, emotions and most immediate reactions.

RisolviOnline has those main aims:

1) to offer a new mechanism for internet and ecommerce disputes;
2) to verify whether ODR could improve traditional ADR methods or radically change the way to resolve disputes;
3) to introduce rules and standards for the net economy, in order to avoid a lack of consumer and small companies protection.

4. The need for new technical solutions

Further effort is absolutely necessary in order to improve the level of online communication.

New software systems must satisfy the following requirements:

1. a software that strengthens the role of conciliator/mediator to regulate the chat and the intervention of the parties;
2. a software offered by the ODR provider to be downloaded by the parties in order to give them their private archive where to file documents on the case;
3. a software to improve a no time hearing: the opportunity to have a mediation hearing 24 hour a day, instead of a date and time limit for the hearing;
4. the spread of video and audio communication system that can make possible effective visual and emotional communication.

5. New ODR fields and trends

Specific application of ODR systems are predictable in this fields:
1. online submission of claims to governmental institutions by citizens and associations. See, for example, The European Ombudsman http://www.euro-ombudsman.eu.int/home/en/default.htm that investigates complaints about mal-administration by institutions and bodies of the European Union.
2. online B2C transactions (ecommerce or Internet related)
4. environmental mediation: the use of ODR systems to reduce claims and disputes between environmental companies, local governments and environmental protection associations and citizens.

Finally, what we can see now in ODR is:
contradictory tendencies: towards a diminishing, in some cases, of the mediator’s role (the ‘blind model’); but also the discovery that the machine can help a mediator in mediating and reducing differences (the ‘open’ model, with expectations of software future improvement). The secret of successful for online ADR lies perhaps in knowing how to combine these two trends;

a globalizing tendency: ecommerce disputes take place between parties who may be geographically very far apart, who have never met but have done business together, and who resolve their dispute without ever meeting physically. These parties do not even need to know the location of their legal ‘court’;

a localizing tendency: the parties find themselves in an environment (the Internet) which both creates the context for their business and finds the means of resolving any disputes. The Internet is the widest possible environment, but it is an environment at all, and, within an environment, the “group justice” of the participants prevails; you behave yourself and settle your disputes according to the environment’s rules, or you cannot belong any more. Online marketplaces are no more than the historical continuation of the old merchant courts.
Bibliography


