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## Skeptics of the Screen: Irish Perceptions of Online Dispute Resolution

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# Skeptics of the Screen: Irish Perceptions of Online Dispute Resolution

## Abstract

This paper captures current trends in Online Dispute Resolution (ODR) and its potential use in Ireland by analyzing Irish practitioners' current attitudes and awareness of ODR. Ultimately, this work provides the groundwork for future research into Ireland's use of ODR. This exploratory research will hopefully guide researchers in understanding ODR's users and consumption.

Data collection came from an online questionnaire sent to practitioners in the field of conflict intervention in Ireland who reported their experiences and perspectives of ODR. One hundred and twenty-four (124) surveys were used in this analysis. These questionnaires produced both quantitative and qualitative data. Approximately 900 people were asked to complete the survey.

The author found surveyed participants were skeptical regarding ODR with very few actually using online technologies to aid in resolving disputes. A popular sentiment among participating practitioners felt ODR was not better than face-to-face meetings yet thought it was worth exploring further. Finally, the author found that those who had heard of ODR are more likely to believe they could assist parties in reaching a settlement entirely using video technology.

## Keywords

online dispute resolution, Ireland, trends

## Disciplines

Collective Bargaining | Dispute Resolution and Arbitration | International and Comparative Labor Relations | International Business | Labor and Employment Law

## Comments

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**Skeptics of the Screen:  
Irish Perceptions of Online Dispute Resolution**



Simon James Boehme

Edward M. Kennedy Institute for Conflict Intervention

Maynooth University

Thesis submitted for

Master of Arts

2015

To James A. Boehme, my grandfather

SKEPTICS OF THE SCREEN:  
IRISH PERCEPTIONS OF ONLINE DISPUTE RESOLUTION

Simon J. Boehme  
Maynooth University 2015

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Simon James Boehme

## BIOGRAPHICAL SKETCH

Simon J. Boehme is a Mitchell Scholar studying at Maynooth University's Kennedy Institute for Conflict Intervention. He graduated with honors from Cornell University in Ithaca, New York in 2014. He received a Bachelor of Science in Industrial and Labor Relations and wrote his thesis on New York State's public education teacher evaluation due process system. He is a 2014 Merrill Presidential Scholar, 2013 Truman Scholar, 2010 Coca-Cola Scholar, and 2009 Bezos Scholar. Simon was appointed to serve on the National Advisory Committee on Institutional Quality and Integrity (NACIQI) by Secretary of Education Arne Duncan. His term ends in 2019. He was a guest lecturer on the topics of negotiations and employment relations for the Department of Law and Business School at Maynooth University and the School of Business at National University of Ireland Galway. He has worked at the Scheinman Institute on Conflict Resolution in Ithaca, New York; African Leadership Academy in Johannesburg, South Africa; Grassroots Research and Advocacy Movement (GRAAM) in Mysore, India; and the White House in Washington, DC. In 2010, Simon led his high school to win the first White House Race to the Top Commencement Challenge. Simon was born and raised in Kalamazoo, Michigan.

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Above all, thank you to my family for their love and care.



## DECLARATION OF ORIGINALITY

I have read and understood the Maynooth University policy on plagiarism. I declare that this thesis is my own work and has not been submitted in any form for another degree or diploma at any university or other institution of tertiary education. Information derived from the published or unpublished work of others has been acknowledged in the text and a list of references is given.

Signature:

A handwritten signature in black ink that reads "Simon Boehme". The signature is written in a cursive style with a long horizontal stroke at the end.

Date: June 17, 2015

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## CHAPTER ONE: INTRODUCTION

The Internet is a resource that goes far beyond sharing photos of puppies, tweeting, sharing articles on Facebook, and buying books from Amazon. It is a portal for businesses to reach new customers and make new deals. Governments at every level are able to reach more constituents than before. Family members are able to stay in touch with people all across the world. The concept of distance is increasingly, and maybe alarmingly, becoming a thing of the past. The connected world presents new challenges and opportunities.

For those in the field of conflict resolution, the Internet provides an especially exciting prospect. How should mediators and arbitrators react to their new ability to reach new clients and resolve conflicts from greater distances? The new generation of mediators and arbitrators in particular will discover avenues of facilitating conflict that are bold and innovative. While the impact of Internet has not threatened the traditional methods of alternative dispute resolution, its implications are still undetermined.

If conflict resolution and technology were in a relationship, its status would be “complicated” and certainly, at this point, not married. The idea of alternative dispute resolution in the Internet age is just starting to shape its place in the World Wide Web. The idea is still young and forming. It will be like this for a while as technology advances and shapes the way we communicate.

Currently, conflict intervention on the Internet exists in many spaces. E-commerce platforms are organizations and governing bodies using to web-based software to resolve disputes. For example, Cybersettle.com resolves healthcare claims in automation. Alternative dispute resolution (ADR) uses online technology, either completely online or supplement a

conflict resolution offline, in the process. Computers have enabled the ability to use mediation and arbitration at a distance. These methods of resolving disputes are typically called online dispute resolution (hereafter referred to as ODR).

### *What is ODR?*

ODR is a field continually shaped by new technological advancements and innovative practices of integrating technology in disputes. Due to the evolving nature of ODR, it is difficult to find consensus around a specific definition. One definition of ODR: “Intelligent application of information technology to human interaction” (D. Rainey, personal communication, March 27, 2015). A recent explanation captures the essence of ODR, “Think of ODR as a tree with two major branches. One branch focuses on using the algorithmic power of computers to help people resolve their issues in a fair and transparent way...the second branch focuses on using computers to facilitate human communication” (Fowlie et al., 2014).

These two branches consist of the primary technologies used by practitioners and consumers of ODR. One of the most common tools of those using computer technology to resolve disputes is blind bidding systems. Technology allows two parties to input a range of bids that would settle the dispute for one party, while the second party does the same. If any of the matching bids are within a specific range, the case ends. If none of the bids from the two parties match, the case is not settled and no information is revealed (Fowlie et al., 2014).

The other branch is ODR, facilitating human communication, is defined by asynchronous or synchronous technology for disputing parties to use in tandem with a third-party neutral. Synchronous technology occurs when all parties are simultaneously communicating. For example, a video teleconference with a party in Kathmandu, Nepal, may be talking with another party in Cape Town, South Africa, while the neutral is in London, United Kingdom.

Asynchronous platforms allow parties to login at their leisure and answers are archived (Fowlie et al., 2014). An example of this would be Modria (1).

Within these two branches of ODR there is limited research about their application and effectiveness. This dissertation aims to begin peeling back the complex, thick onion-like layers of ODR's consumption, application, and perceptions by practitioners in Ireland. This research will permit a new understanding of the future of ODR.

### *Research Questions*

This research aims to address a void within the literature on ODR, specifically relating to contemporary practitioners and their use of it.

- What are the current trends in Online Dispute Resolution (ODR) in Ireland and other parts of the world in the literature?
- How do current practitioners in Ireland view and use ODR in their current work? How does they perceive ODR within the context of their practice?
- What are the best available ODR practices mediators are using in Ireland?

These questions will guide the following research.

### *Definitions of Terms*

For the purpose of this study, ODR is defined as using Internet technology in some capacity to facilitate a conflict resolution either using real-time technology, such as video teleconferencing and Skype, or asynchronous e-commerce platform or text-based communication such as Modria or Cybersettle is using ODR.

### *Thesis Outline*

This thesis aims to answer the research questions stated. In Chapter Two, this thesis will provide a summary of the literature associated with ODR. The literature will review ODR in the

American, Irish, and European Union context. The methods selected for conducting this research will be explained in Chapter Three. In Chapter Four, the results of the questionnaire are presented. Chapter Five discusses the findings. Finally, Chapter Six provides a broader framework for ODR and its use with practitioners along with areas for future research in the area.



## CHAPTER TWO: LITERATURE REVIEW

Online dispute resolution is a blossoming field that intrigues conflict resolution and legal researchers, along with practitioners (Tyler & Raines, 2005). Ethan Katsch and Janet Rifkin have dubbed technology's role in conflict management as "the fourth party" (2001). This role suggests it may replace the third party and also may be a mechanism to assist the third party through the process. ODR is typically divided into two different fields: e-commerce and alternative dispute resolution (Solovay & Reed, 2013).

### *History of ODR*

Katsh and Rifkin classify the history of ODR in three sections: pre-1995, 1995-1998 and 1998 to the future (2001). The pre-1995 era of ODR was described as no specific institutions dedicated to ODR. Many disputes that arose were addressed informally and in certain contexts. From 1995-1998, universities and foundations started to explore ways of resolving disputes. This period recognized that cyberspace organizations had to focus on increasing disputes in an organized way. Finally, post-1998 was the birth of ODR organizations when governmental and commercial interests in using online technology to solve problems sprouting from cyberspace (Katsh & Rifkin, 2001). While much has changed in the landscape of ODR since Katsh and Rifkin's book was published in 2001, and will continue to change, ODR's understanding has taken many paths including ethical limitations.

Within the ODR field, there are many ongoing discussions about the ethical standards. A 2009 guide for ODR practitioners was released entitled, "Online Dispute Resolution Standards of Practice" (National Centre for Technology and Dispute, 2009). These guidelines outline suggested principles all practitioners should adopt with regards to issues of fairness,

transparency, and the role of third parties. Practitioners are also advised to become familiar with the technology they are using and its security features in order to share this information with the disputing parties (Rainey, 2014). The third party has to be able to develop a way to express the risks to ensure parties have self-determination (D. Rainey, personal communication, March 27, 2015). Above all, changes in ethics will be evolutionary, not revolutionary (Rainey, 2014).

### *Dispute System Design and ODR*

Some suggest that information technology should be an ally for dispute system design (Rabinovich-Einy & Katsh, 2012). Dispute system design (DSD) is seen as useful tool and lens to view ODR's future development. DSD's origins begin in the book, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* in 1988 (Ury et al.), shifting the discourse from an individual to structural perspective. The book examined wildcat strikes in the mining industry in the United States, finding that communication existing between management and miners was most successful in resolving conflict (Ury et al., 1988). The communication focused on each party's interests, which yielded fewer costs and greater beneficial outcomes for each party. This research led to further research on system-wide learning and prevention of conflict (Costantino & Merchant, 1996). Much research has been added to system-wide conflict resolution since, including some that discuss ODR (Lipsky et al., 2003).

ODR written in the context of DSD has been growing. Bordone wrote about the lack of information involving ODR options and insufficient motivations for disputing parties to participate in ODR (1998). However, the increasing size of institutions, desire to find systematic issues and geographical dispersion may provide some motivation (Rabinovich-Einy & Katsh, 2012). Online corporations understand the importance of both responding to disputes and to analyze, anticipate, and address conflict (Rabinovich-Einy & Katsh, 2012).

Much attention has focused on resolving disputes online and offline, especially confronting the idea of dealing with parties at a distance (Rabinovich-Einy & Katsh, 2012). Distance learning, for example, has been well researched. Thomas Russell's research is most notable for examining hundreds of studies that found no significant differences in face-to-face or distance in student learning (Russell, 1999).

Research also points to the theoretical questions impacting ODR. Lipsky and Avgar pose important negotiation and bargaining theories to ODR, drawing from Richard Walton and Robert McKersie's landmark work in the 1960s (2007). While they did not carry out the research required to test their hypothesis, they contribute ways in which practitioners may find it easier or more difficult for integrative and distributive bargaining to work in ODR. They make a noteworthy claim that current analysis of ODR does not examine dispute resolution "in the physical world" and treats ODR as a singular phenomenon rather than a "wide umbrella" of resolution tools (Lipsky & Avgar, 2007).

#### *Availability of ODR*

One of the most comprehensive research undertakings of ODR was conducted in Australia by two researchers who analyzed 76 ODR websites (Tyler & Bretherton, 2003). They found that most of the ODR providers came about in 1999 and 2000 during the "entrepreneurial phase." Most providers exist in the United States with 43 organizations; Europe is second with 20 organizations. Nineteen (19) of the 76 websites are no longer active. The prevailing forms of ODR used by these websites were mediation and arbitration. Automated negotiation and complaint handling were the next most popular services provided. Many websites were not entirely based online: some integrated traditional methods such as phone and face-to-face

meetings. Videoconferencing was used by 17 percent of the surveyed providers (Tyler & Bretherton, 2003).

Only 24 websites had data available about the number of cases they had attracted. This included SquareTrade as the most known popular company with 200,000 cases by February 2002. However, the known outcomes of these cases were rarely revealed: only eight companies provided statistics. The range of advertised successful settlement was from 40 percent to 95 percent (Tyler & Bretherton, 2003). Since this research has been conducted, companies have changed along with advancements in information technology, yet this research continues to stay relevant in terms of setting parameters for ODR examination.

Part of the researchers' eternal struggle is accessing organizations' internal information, in particular dispute resolution systems data. Much of this is undocumented (Gadlin, 2000). Moreover, research is limited in the government. In collaboration with the University of Massachusetts and the United States National Mediation Board (NMB), experiments with students and NMB mediators' using an asynchronous, text-based ODR platform have been performed. The participants were able to adapt easily to the ODR platform and move toward reaching a solution (Katsh et al., 2006). Participants found the massive amounts of text as a barrier to effectiveness and complained about the anonymity of posts. However, the mediators who supervised the project found the platform to be promising (Katsch et al., 2006).

### *Initiatives and Ventures*

The popular online bidding website, eBay, is one of the most cited examples of ODR (Rabinovich-Einy & Katsh, 2012). SquareTrade, a private entity, handled the ODR operations for eBay. eBay sellers were offered a seal that signaled to buyers that SquareTrade actually existed and would engage in dispute resolution if there was a problem (Rabinovich-Einy &

Katsh, 2012). The dispute resolution system first implemented a software-based process (with no human third-party intervention), and if the dispute was not resolved at that stage, it would then go to a human mediator. This process relied on “communication, management and processing of information” (Rabinovich-Einy & Katsh, 2012). SquareTrade designed the software to shape the communication of information toward reaching a consensus-based outcome by discovering preferences of parties through selecting choices on a form. Additionally, SquareTrade was able to collect data on the type of conflict and ultimately enhance its dispute resolution process and attempt to build more trust online. In five years, SquareTrade handled over two million disputes. Eventually, eBay developed an internal ODR system. They found that most conflicts arose from miscommunication (Rabinovich-Einy & Katsh, 2012). Many of the questions prompted in the DSD literature were confronted by eBay’s ODR system and their answers differed from what some might expect for an offline dispute resolution process, such as “broad confidentiality and individualized tailoring of process structure” (Rabinovich-Einy & Katsh, 2012).

Numerous articles have been written about Cybersettle (2), a private company holding patents on its process of “blind bidding” and said to have facilitated more than \$2 billion in settlements, according to the company website (Logue, 2004; Glatter, 2013). It developed a creative way of doing something online for which offline mediation was insufficient (Rabinovich-Einy & Katsh, 2012). Rabinovich-Einy and Katsh describe Cybersettle’s blind-bidding system best (2012). Party A told the computer program the maximum amount of money it was willing to pay and the Party B instructed the computer program the amount of money it would accept. Party A and Party B each set their maximum and minimum amounts of payment. This, ideally, would have created a range of settlement. If the offer and demand were in a mutually agreed upon percentage by the parties, they would split the difference. This resulted in

a settlement. However, if the two parties were not in the range of bargaining they did not reach a settlement. The demand and offer are kept confidential. Originally dealing only with malpractice claims, Cybersettle also had an agreement with the City of New York from 2004 to 2009 to handle most claims before litigation, which resulted in handling thousands of dollars worth of transactions (Liu, 2010). The relationship ended in 2010.

Other websites have allowed disputing parties to have discussions online, such as the Mediation Room and Modria (3). The Mediation Room is a secure platform that allows mediators to manage communication, yet the network does not have the capabilities to move the parties toward resolution (Rabinovich-Einy & Katsh, 2012). Additionally, it does not have the data power that Cybersettle does to improve systems and reduce conflict. Modria is a growing website that is used by a wide range of organizations, including schools and governments. It uses cloud-based software for the United Kingdom's national and local government use (Legal Insider, 2013).

A private arbitration system used for car accidents was Benoam (Rabinovich-Einy & Tsur, 2010). Established in 2002, the web-based model offered a quick process using written communication and avoiding incommensurable amounts of paperwork (Rabinovich-Einy & Tsur, 2010). Most cases were resolved online based on submissions of pleadings and evidence. Very few face-to-face meetings took place. Detailed rules helped to make the system more efficient, making it more predictable and consistent (Rabinovich-Einy & Tsur, 2010). Additionally, precedents emerged to protect fairness. Arbitrators subjected themselves to the previous rulings, whether they agreed with it or not (Rabinovich-Einy & Tsur, 2010).

Benoam's system is notable for two additional reasons. First, the procedures were transparent. Departing from typical ADR procedures, the Benoam database stored all the rulings

and communications along with sending a copy of the proceedings to the insurance company if it was a party (Rabinovich-Einy & Tsur, 2010). This allowed for some information released to the public. Finally, professional arbitrators were employed by Benoam to ensure fairness. People familiar with arbitration and the system assisted in creating a level-playing field for the participants (Rabinovich-Einy & Tsur, 2010). Benoam transformed certain perceptions about dispute resolution. Rather than creating a closed mechanism to resolve individual disputes. Benoam “had created a system that has generated common norms and clarified existing rules” (Rabinovich-Einy & Katsh, 2012). Additionally, flexibility, an important and traditional component of ADR and DSD was not prominently featured in this software-based approach. In order to create the software, the designers had to think through to the smallest detail to ensure smooth operation and process, making Benoam significant software in ODR (Rabinovich-Einy & Katsh, 2012).

### *Surveying Users*

While there is a broad understanding of the platforms available, little research exists on the practice of ODR (Raines, 2005). However, Susan Raines attempted to capture the emotions and cognitive limitations of ODR by surveying ten ODR practitioners (mostly from SquareTrade), using her personal experiences as an ODR practitioner, and gathering feedback from a 2004 conference in Sacramento, California, where many ODR practitioners convened (Raines, 2006). She discovered that many in the ODR field were nontraditional workers who enjoyed the convenience of ODR to work at home. She also found that those in ODR typically experience parties who are angrier in their opening statements. Especially in asynchronous environments, it is critical for the third-party neutral to take the appropriate time to de-escalate the anger and, throughout the conflict, to remind parties where they are in the process. Trust

building was identified as another critical area for ODR practitioners. Trust is hard in offline conflicts and can be especially difficult with conflicts online. Practitioners reported building positive relationships, joint creation of ground rules, encouraging parties to look into each other's reputation, or briefly introducing themselves with a biography and photo. When building relationships is not conducive to the topic, some neutrals used calculus-base trust (Raines, 2006). Calculus-base trust engages the party to do what he or she promises or what is expected from them to avoid a penalty. This trust is not based on empathy (Raines, 2006).

Additional research has surveyed experienced mediators. One study surveyed nearly 200 mediators across the world examining their careers and business challenges (Raines et al., 2013). Mediators from the United States to Israel to South America were recruited to participate in this self-selected survey. The authors contacted mediators in their network and asked for recommendations, along with contacting mediation program directors for "highly experienced and skilled" mediators. They also emailed a listserv for mediators. Two hundred and twenty (220) mediators were asked to participate, and 182 completed the survey. The survey was online and took place from April to October 2010 (Raines et al., 2013).

The majority of respondents were over the age of 50. Men and women were nearly equally represented in the survey. The majority of mediators were satisfied with their work. Open-ended questions were used to solicit responses from the mediators on business challenges. Other questions ranged from satisfaction with the mediation process to dealing with difficult clients. Experienced mediators also desired contact and support from other mediators, along with a desire to develop their skillset (Raines et al., 2013). The survey had no questions regarding ODR.



A child-based alternative dispute resolution method and its use of technology were also surveyed. Known as “parenting coordinating,” parents come up with a parental plan using various interventions, including technology (Coates et al., 2004). Researchers sent an online survey to parent coordinators listservs. Fifty-one (51) questionnaires were used for data analysis (Hayes et al., 2012). They found that communication channels used were not face-to-face, rather e-mail and telephone communication. Text messages and formal websites were reportedly used but not as frequently as email (Hayes et al., 2012).

### *ODR in the European Union*

In the European Union, there is little legal research on ODR as compared to research in the United States (Cortés, 2010). The lack of research may be due different legal cultures and various languages across the EU. The EU has “very few concrete” initiatives on ODR, more than likely due to awaiting industry development (Cortés, 2010). Despite this, ODR is growing, especially in e-commerce. The most common type of cross-border shopping in the EU is e-commerce (Cortés, 2010). European Small Claims Procedure was created in 2007 with the purpose of settling cross-border claims less than €2,000 (Poblet & Ross, 2011). Additionally, the EU has invested in some ODR projects aiming to resolve conflicts between sellers and consumers including the Electronic Consumer Dispute Resolution scheme (ECODIR) and Euro-Label trustmark (Cortés, 2010). The European Consumer Centres Network (ECC-Net) is another EU led initiative aiming to build confidence in consumers by informing them of their rights and avenues of resolving cross-border disputes (Cortés, 2010). This serves to create a database on conflict resolution providers. These organizations may not offer ODR services, although some do. Consumers can submit queries to the ECC-Net and then get a recommendation on how to resolve their dispute. However, this process is voluntary meaning the company or seller has no

obligation to use the ADR or ODR services recommended by the ECC (Cortés, 2010). Specifically in Ireland and the United Kingdom, their two ECCs have worked as clearing houses for business-to-consumer “disputes between UK web traders and Irish consumers and vice versa” (Cortés, 2010).

Most recently, the European Commission has released a new consumer ADR directive and consumer ODR regulation (2013). The regulations aim to let consumers resolve conflict without going to court in an inexpensive and easy way (European Commission, 2013). The ADR directive mandates member states by July 2015 to ensure they have at least one ADR entity, meeting the European Commission requirements, available for consumers in cross-border and domestic consumer disputes. The ODR regulation creates an EU-wide online platform for resolving online disputes and will operate using every EU language by 2016. ADR entities are obligated to have electronic communications and website.

#### *Ireland’s Small Claims Procedure*

The district court in Ireland hears small claims on the basis of Rules 1997 and 1999, creating the Small Claims Procedure (Cortés, 2010). Eligibility to use this procedure is limited to only consumers who purchased goods or contracted services, including torts, from a private business (Cortés, 2010). It is possible to file a claim online. The complainant reads the rules and completes an application on a secure website. A district court clerk examines the claim and determines if it is appropriate for the procedure. If the claim is rejected, an email is sent notifying them of the decision and outlining the reasons. If accepted, it is processed and the complainant is notified over email with a case number and pin number to track the progress of the case online (Cortés, 2010).

The respondent has three options: ignore, accept, or contest. If the respondent ignores the claim, after a certain period of time the claim is declared undisputed and the district court will make an order requiring the respondent to pay. Another option for the respondent is accepting claim. This leads to the district court, again, ordering the respondent to pay and close the case. Finally, if the respondent challenges the claim, the clerk will negotiate with both parties and try to reach an agreement. With the aid of the clerk, over half of cases are settled (Cortés, 2010). This procedure's key advantage is its accessibility to consumers, allowing tracking of its progress at anytime (Cortés, 2010).

Dispute resolution research in Ireland is increasing. Workplace mediation is increasing in Ireland; however, more research is required (Curran, 2015). Empirical research on Ireland's workplace and its relationship to mediation is limited, but Margaret Bouchier conducted a study surveying human resource managers and external mediators (2013). Her study aimed to understand the efficacy and quality of external mediation in the workplace. She collected 32 completed questionnaires and found generally high satisfaction of the process and results. Additionally, a high settlement rate was found among those surveyed (Bouchier, 2013). There is no known research on ODR in Ireland.

### *Gaps in Research*

Research in ODR is limited, especially in understanding its current use by practitioners. While there are attempts to measure its effectiveness and usefulness, most ODR knowledge exists within the industry. Comprehending tools such as SquareTrade and Cybersettle are limited by what the companies decide to reveal. The European Union has various government initiatives aimed to encourage consumer use of ODR. In Ireland, the Small Claims Procedure utilizes ODR in its procedure. There are some attempts made by Raines to capture practitioners' thoughts on

the field of conflict resolution and ODR (2013). However, research is incomplete on taking practitioners understanding of ODR. Especially in Ireland, there is a need within the literature to begin exploring ODR. This pilot research aims to fill the void in ODR by understanding practitioners views, beginning the conversation in Ireland, and knowing the demographics of practitioners who use these tools. This dissertation attempts to add to the growing body of literature in dispute resolution regarding awareness of ODR and its various tools among practitioners.

## CHAPTER THREE:

### METHODS

The primary research method used in this study was an online questionnaire sent to practitioners in Ireland and Northern Ireland. The survey consisted of multiple choice and free response questions regarding ODR. Approximately 900 people received the URL link to complete the survey.

#### *Questionnaire for Practitioners*

A self-selected pool of participants was used in this study. Only practicing mediators, arbitrators, or conflict interventionists were only permitted to participate in this study. Selected email listservs were utilized for this research. The research link was not posted to any social media websites. No one mailed in results.

There are an unknown number of conflict interventionists in Ireland and Northern Ireland. Many specific organizations may claim a certain number, but it is hard to calculate given private practices, law firms, and academics that are involved in conflict resolution. This prevented the research study from conducting a simple random sample. A nonprobability sampling, specifically a judgmental sample was utilized for this research.

Qualtrics software was used to design and deliver the questionnaire. In order to access the survey, the participant must have had the Qualtrics link. The Qualtrics link was active February 18 to April 1, 2015: [https://cornell.qualtrics.com/SE/?SID=SV\\_2rVP6Tv4XPf6RhP](https://cornell.qualtrics.com/SE/?SID=SV_2rVP6Tv4XPf6RhP). The complete questionnaire is in Appendix A.

The Kennedy Institute at Maynooth University, Mediators' Institute of Ireland (MII), and author of this dissertation delivered the questionnaire via email. The survey was sent to associated practitioners and lecturers of the Kennedy Institute on February 19, 2015. This email

listserv had 85 practitioners. Subsequently, using the MII online database, individual emails were sent from the author to every name from March 3 to March 5, 2015. The email list from MII included 216 practitioners with email addresses. On March 12, 2015, MII sent an email to 760 practitioners asking for their participation in the questionnaire. Those receiving an individual email, 216 practitioners, were included in the MII mass email to 760 people. Practitioners on this list included mediators in Ireland and Northern Ireland. Due to the uncontrollable nature of tracking if the survey link was forwarded to other mediators and conflict interventionists not on the original listserv, the author estimates approximately 900 people were invited to participate in the questionnaire.

### *Questions in Survey*

The survey began with instructions and question asking for consent to participate in the survey. Once the participant had agreed to the terms of the questionnaire, he or she provided basic demographic information including age group, ethnicity and gender. Information was collected on his or her experience as a mediator or arbitrator. The number of years as a professional in the field and the specific type of work they did, for example, mediation, peacemaking, and arbitration, among others, were collected.

Participants were then asked if they had heard of ODR. They could answer with a “Yes” or “No”. The next question asked if they had used ODR previously, with the options of “Yes” or “No” to answer. These two questions were required. If a respondent had attempted to skip one or both questions and move on, the survey prevented them.

The next question asked participants if they had conducted mediation when the parties were separated by distance. Three options were presented: “Yes, and I used ODR,” “Yes, and I did not use ODR,” and “No.” They were asked what kind of ODR tools they had use, allowing

them to select many options including “Video teleconferencing”, “Skype or Google Hangout” and “E-Commerce Platform”. The answer “None” was also available.

Depending on how the participant responded to his or her previous use of ODR determined the next three questions. If the participant said “Yes,” three questions would appear on the survey. If the participant said, “No,” three different questions would appear. For those people who responded “Yes,” the questions asked the participants to draw on their experiences using ODR. The questions had five response options: “Strongly Agree,” “Agree,” “Neither Agree nor Disagree,” “Disagree,” and “Strongly Disagree.” The first question read, “To what extend do you agree or disagree with the following statement? ODR enhances my effectiveness as a mediator in reaching a resolution.” The next question asked participants to respond to “ODR inhibited my ability to manage information sharing to the disputing parties.” Finally, the respondents were asked to share their thoughts on, “From my experience, ODR is more effective than face-to-face conflict intervention.”

If the participants responded “No” to their use of ODR previously, they were asked similar questions and provided the exact same five responses. The first question posed to the participant inquired, “To what extend do you agree or disagree with the following statement? If I did use ODR, I believe it would enhance my effectiveness as a mediator in reaching a resolution.” The next two questions asked if they thought ODR inhibited their ability to manage information and if they believed ODR was more effective than face-to-face conflict intervention.

The next question was posed to everyone participating in the survey. It asked if “ODR should be taught to every new mediator entering the field.” The same five response options were provided. The following question asked participants if they had mediated either an entire or part of a mediation session over video teleconference. They could respond “Yes” or “No.” If they

responded, “Yes,” two additional questions were presented: the problems they encountered with video teleconference and a description of their experience with the online technology.

Additionally, practitioners were asked if they had taken a course or seminar on ODR. They were also asked if they “could adequately assist parties in a dispute if [they] could only interact over video teleconference.” Next, the survey asked if practitioners had been involved in a conflict where the parties never met face-to-face. If someone responded “Yes,” a second free response question would appear. It inquired if they had used ODR and what the outcome of that conflict was.

The remaining questions were all free response fields. The free response questions asked participants to discuss some of the advantages and disadvantages of using ODR. Practitioners were then asked, “If you are not using ODR in your current practice, would you consider using it? Why? If you were using ODR, would you recommend it to other practitioners? Why?” Finally, respondents had space to write additional comments.

### *Data Analysis*

Excel and DataDesk were the primary medians of quantitative data analysis. While Qualtrics provided updated summary statistics as surveys were submitted, the author used DataDesk to verify all results. Logistic regressions were run on DataDesk as well. The author used two p-values, 0.15 and 0.05. A p-value below 0.15 but above 0.05 was significant. A p-value below 0.05 was statistically significant. The p-value, 0.05, follows the conventional level of significance; the 0.15 follows a higher p-value gradually being accepted by critics (Nuzzo, 2014). It is noteworthy that p-values do no matter for non-random sampling (this research) as it defeats the normal distribution and central limit theorem (Figueiredo Filho, 2013). This research follows the tradition of Ronald Fisher who introduced p-values – statistical analysis in this thesis



is not a definitive test but points to areas of research “worthy of a second look” (Nuzzo, 2014). Excel was used to clean and code the data. The author completed all statistical analysis.

For qualitative data, a basic thematic analysis occurred. This is a common research practice by finding and logging themes within data (Braun & Clarke, 2006). The author did not just count words but searched for ideas, both implicit and explicit, through a specific process (Guest, et al., 2011). The questions recommended for analysis (Emerson et al., 1995):

- What are people doing? What are they trying to accomplish?
- How exactly do they do this? What specific means or strategies are used?
- How do members talk about and understand what is going on?
- What assumptions are they making?
- What do I see going on here? What did I learn from note taking?
- Why did I include them?
- What strikes you?

Johnny Saldana added the last question (2009). These questions guided the author through analysis of free response questions. A series of steps were followed: reviewing data, generating codes, exploring themes, and defining themes (Braun & Clarke, 2006). The majority of analysis was spent on generating codes and exploring themes.

### *Ethical Concerns*

There were no major ethical concerns for this research. No vulnerable people were involved. There are no anticipated consequences, as names of the people who took the survey are not revealed. Any information revealed about the participants is presented in summary data, ensuring no individual data is discernable. This data will be held in a secure location for a set number of weeks and subsequently destroyed.

The questionnaire sent to practitioners was voluntary and no reward was given to those who completed it. Those who participated in the survey were notified of the confidentiality, anticipated benefits, zero compensation, and contact details of the project supervisor before commencing. At any point during the survey, the participant could stop taking it. To ensure every participant who took the survey understood the policies set forward, they had to agree to the questionnaire terms before answering any questions related to the research.

When selecting a service provider to host the questionnaire, many options were taken into consideration. Most importantly, the provider had to have the latest security features and ensure limited access to the data to protect the participants. The platform also had to be convenient and an attractive presentation. Qualtrics was the best option. Cornell University in Ithaca, New York, the author's alma mater, contracted Qualtrics to provide its surveying needs to faculty and students. Qualtrics met the standards under its server administration requirements under its Standard Operation Procedure No. 16: Computer- and Internet-Based Human Participant Survey Research (2010). Specifically, Qualtrics written policies on security, privacy, and confidentiality met the threshold for Cornell. Cornell found that using Qualtrics poses "no greater risk than everyday use of the internet" (2010). The author used his Cornell account to access Qualtrics and design the questionnaire. No costs were associated with designing and implementing the survey with Qualtrics.

All text for advertising was approved by the research advisor. While there was some consideration given to authenticating those who participated in the survey, the primary listservs used to distribute the questionnaire were trusted and had gatekeepers ensuring targeted participants for the survey. If the author was not sending out the questionnaire from his email

address, specific text was provided to the third-party to send in the email over the listserv (Cornell University, 2010).

Additionally, special attention was given to mandatory versus non-mandatory questions in the survey (Cornell University, 2010). The author did his best to limit mandatory questions. The final survey had ten mandatory questions. As participants were reminded in the beginning of the survey, participants could exit at any time. A few of these mandatory questions were necessary to guide the participants to certain questions depending on their responses.

This methodological choice is not common for dispute resolution. Following Raines international survey of practitioners, the sampling and distribution of questionnaires were similar to this research (2013). There is no model in the literature to create questions on ODR for practitioners, especially with research emphasis on e-commerce. These questions were designed to provide a preliminary understanding of what is emerging, if anything, in the field of ODR.

CHAPTER FOUR:  
RESULTS OF QUESTIONNAIRE

One hundred and sixty-three (163) people opened the survey link. One hundred and fifty-two (152) respondents answered the preliminary question asking if they agreed to the terms of the survey. From this, only 124 questionnaires were completed and used for data analysis.

*Experience and Demographics*

Table 4.1 demonstrates that most of the practitioners who took this survey were female (48%). Fifty-two (52) percent of the respondents were male. The median age group was 50 to 59 years old. Most people were above the age of 50 years old, as seen in Table 4.2. Two people were 70 years of age or older, while the two largest age groups were 50 to 59 (44%) and 60 to 69 (25%). The youngest reported respondents were in the group of 30 to 39 years old (8%). Twenty-one (21) percent of the respondents made up the 40 to 49 year old age group. No one was in the age group of 19 to 29.

Table 4.1: Sex of Practitioners

	Practitioners
Male	65 (52%)
Female	59 (48%)

*n*=124

The years of experience ranged from one to forty years. The most common number of professional years in conflict resolution was five (15%). After that, first year and third year professionals were common (both 13%). Compiling the years of experience, the majority of practitioners had ten years or less (70%). Five years of experience was the median. A text box provided each participant the chance to denote his or her ethnicity. An overwhelming number wrote “Irish,” “Caucasian,” or “White” (*n*=112).

Table 4.2: Age Group of Practitioners

	Practitioners
30-39	10 (8%)
40-49	26 (21%)
50-59	55 (44%)
60-69	31 (25%)
70 or older	2 (2%)

*n*=124

The types of dispute resolution practiced by the respondents were captured in the survey. Practitioners could select more than one field (*n*=124). Workplace and organizational mediation was the most common area (69%). Family mediation (45%) and community mediation (37%) followed as popular fields of practice. Less popular fields included commercial mediation (22%), conflict resolution in education (19%) and restorative practice (16%). Arbitration (10%) and peacemaking (4%) were represented as well.

*Perspectives on ODR*

Practitioners gave details on their experience with ODR (this can be found in Table 4.3). Most of the practitioners have heard of ODR (61%). It is important to note a definition of ODR was provided in the beginning of this survey.

Table 4.3: Heard of ODR

	Practitioners
Yes	76 (61%)
No	48 (39%)

*n*=124

However, those who have used ODR are rare. Only ten people in the survey had previously used ODR. A large majority had not used ODR previously in their experience. These results are found in Table 4.4. Another question asked if they had conducted mediation where the parties were separated by distance. Seven people responded that they had mediated a session and used ODR. Twenty-three (23) people said they did not use ODR but did mediate parties separated by distance. Nearly 25% of the respondents had mediated parties from a distance. The remaining participants had reported no mediating from a distance ( $n=123$ ).

Table 4.4: Used ODR Previously

	Practitioners
Yes	10 (8%)
No	114 (92%)

$n=124$

The type of ODR tools used in the past or currently used is found in Table 4.5. Participants were asked to select all of the tools that applied. Most of them utilized Skype (12%) and video teleconference (7%). No one used an e-commerce platform.

Table 4.5: ODR Tools Practitioners Use

	Practitioners
Video Teleconferencing	8 (7%)
Online-text Based Mediation Website	2 (2%)
Skype	14 (12%)
Other	5 (4%)
None	96 (81%)

$n=188$

Those who had used ODR were asked a series of questions to explain their experiences. Forty percent (40%) of practitioners agreed that ODR enhanced their effectiveness, as Table 4.6 demonstrates. However, most had neutral feelings (50%).

Table 4.6: Practitioners Perceptions on ODR Who Used it (n=10)

<i>Question</i>	<i>Strongly Agree</i>	<i>Agree</i>	<i>Neither Agree or Disagree</i>	<i>Disagree</i>	<i>Strongly Disagree</i>
<b>Enhances Effectiveness</b>	1 (10%)	4 (40%)	5 (50%)	--	--
<b>Inhibited ability to Manage Information to Parties</b>	--	1 (10%)	3 (30%)	5 (50%)	1 (10%)
<b>ODR is More Effective Than Face-to-Face Meetings</b>	1 (10%)	1 (10%)	2 (20%)	4 (40%)	2 (20%)

When using ODR, respondents found it was a useful tool for managing information (50%). Only one person found that ODR stood in the way of effectively managing information. Most people did not agree that ODR was more effective than face-to-face meetings. Forty percent (40%) of practitioners disagreed with the statement that ODR was more effective and 20% strongly disagreed.

Table 4.7: Practitioners Perceptions on ODR Who Have Not Used it

<i>Question</i>	<i>Strongly Agree</i>	<i>Agree</i>	<i>Neither Agree or Disagree</i>	<i>Disagree</i>	<i>Strongly Disagree</i>
<b>Enhances Effectiveness (n=112)</b>	4 (4%)	20 (18%)	53 (47%)	26 (23%)	9 (8%)
<b>Inhibited Ability to Manage Information to Parties (n=113)</b>	6 (5%)	34 (30%)	39 (35%)	29 (26%)	5 (4%)
<b>ODR is More Effective Than Face-to-Face Meetings (n=113)</b>	--	--	14 (12%)	57 (50%)	47 (37%)

In Table 4.7, practitioners' perceptions of ODR were questioned if they had not used it previously. The results were mixed. Most participants were neutral when asked if ODR enhanced effectiveness (47%) and if ODR inhibited the ability to manage information (35%). When asked

if ODR was more effective than face-to-face meetings, practitioners overwhelmingly disagreed. No one responded favorably.

Participants in the questionnaire responded to their experiences of mediating sessions when the parties had never met face-to-face. This can be seen in Table 4.8. Respondents were asked if they used ODR when the parties had never met in person. Shuttle mediation was the most common response. Most of them had come to a resolution. A minority of practitioners had mediated a session where the parties had not met in person (32%). Very few people used ODR in this situation.

Table 4.8: Mediated Sessions With Parties Never Meeting Face-to-Face

	Practitioners
Yes	39 (32%)
No	84 (68%)

*n*=123

Practitioners' use of video teleconference technology in mediation occurred rarely. Very few people had conducted a mediation session, either entirely or partly, using video teleconference technology (11%, *n*=123). Those who had used it reported confidentiality concerns, saw the platform as impersonal, and had accessibility issues to one or both parties (45%, *n*=11). Practitioners also found it hard to manage information sharing and had to have additional face-to-face meetings (36%, *n*=11).



Table 4.9: Believe They Could Adequately Assist Parties on ODR

	Practitioners
Yes	70 (57%)
No	52 (43%)

*n*=122

In Table 4.9, most practitioners expressed a belief that they could adequately assist parties by exclusively utilizing ODR in resolving conflict. Fifty-seven percent (57%) believed they could use information technology only and forty-three percent did not agree.

Table 4.10: Attended an ODR Course

	Practitioners
Yes	9 (7%)
No	114 (93%)

*n*=123

Most people have not taken a course or professional development seminar on ODR. Only seven percent of the practitioners had attended an educational course focused on ODR, evident in Table 4.10. There was a general belief that ODR should be taught to mediators (Table 4.11). However, a sizable amount of people did not think ODR should be taught to new mediators in the survey.

Table 4.11: Teaching ODR to New Mediators

	Practitioners
Strongly Agree	6 (5%)
Agree	60 (49%)
Neither Agree or Disagree	31 (25%)
Disagree	22 (18%)
Strongly Disagree	4 (3%)

*n*=123

### *Qualitative Analysis*

Free responses ranged from one-word answers to paragraph replies discussing the benefits and disadvantages of incorporating ODR into practitioners' current work. There were also some additional comments. The first free response focused on the benefits of ODR. One respondent summarized the overall theme very well: "Enables process where parties are geographically separated...cost savings...[and] where parties would be uncomfortable in room with other." Many people suggested the benefit of saving money on travel and facilities. The idea of emotionally charged cases, such as child abduction, was brought up numerous times. When the parties could not meet in person, ODR was seen as a viable alternative. One person suggested, "Anxiety can be reduced" when the parties are separated. Some suggested that ODR was "timesaving" and "presumably a speedier result." Additionally, ODR was sometimes seen useful for "non-continuing relationships, consumer rights issues."

The topic of accessibility was mentioned a few times. Some thought ODR benefitted older populations and those who could not meet "for financial reasons." Moreover, the idea of using ODR in premediation and the early stages of the process would assist the parties in

resolving their conflict. Overall, convenience, safety and cost savings were the most cited benefits of ODR. Ninety-one (91) people responded to this section.

Numerous disadvantages associated with ODR were mentioned, such as, “face to face hard to beat” and “parties can’t eyeball.” Many of the comments discussed the various “impersonal” components of ODR. Conflict interventionists noted, “Body language lost” multiple times. ODR was seen as losing the “real human connection” and caused mediators to “lose the feel for the situation” and have difficulty being able to “identify the dynamic.” ODR was seen to hinder mediators picking up non-verbal cues as well. Many people concluded, “face to face is the best option.” Confidentiality concerns and trust building were mentioned a few times by respondents.

Some touched on the fact that “one or both parties may not be proficient or equally proficient in its use.” One participant worries that ODR will be “used as a reductionist process, called mediation and consist of drop down menus” that will completely lose the human touch. This person cited Vancouver as an example where court mediation service went through cost cutting. Technology glitches, with an emphasis on connectivity, were seen as a drawback to ODR.

Respondents were asked to describe their video teleconference experiences. Nine people provided comments on the platforms they used and when it was utilized. Two people used Skype solely for the pre-mediation phase of mediation. Three people mentioned they used video teleconference technology when the parties were separated by distance. Additionally, a few people discussed connectivity issues when conducting a session over video teleconference. The question did elicited positive responses on how successful they were to modifying their process to incorporate ODR.

When asked if practitioners would consider using ODR if they do not currently use it, answers ranged from “no” to “only as a last resort” to “definitely.” However, a majority of people were open to trying ODR in their practice. Some people who said ‘no’ often mentioned a reoccurring theme from previous responses: face-to-face is ideal. One hundred (100) people responded to this question.

Finally, additional comments were recorded. For those who did comment, some mentioned they did not know much about ODR and would explore it for the future. Many still expressed concern of losing interpersonal skills and the “personal touch” of an in-person mediation session. One person noted, “Technology has not been a feature of Irish industrial relations dispute resolution practices to date...not to my knowledge has the deployment of technology...[been considered] by main players.”

### *Linking Age*

A series of logistic regressions were run to understand the complex relationships between the variables in this questionnaire. One relationship examined was age and perception of ODR (found in Table 4.12). The perception of ODR was established by using the “Assist Parties over Video” variable, which captured practitioners’ thoughts of completing a mediation session exclusively using video teleconference technology. This variable was used because of the question’s dichotomous nature, either answering yes or no, and understands respondents’ perspective on relying on technology. The “Age under sixty” variable was created by grouping ages 19 to 59 and 60 and above. The relationship between those under the age of sixty and believing they could assist parties only using video teleconferencing was significant with a coefficient of 0.1498. This means those who believe they could assist parties exclusively over

video technology are more likely to be under the age of 60. While this does not suggest correlation or causation, it is important to note the role of age in using technology.

Table 4.12: Assist Parties over Video

	<i>Coefficient</i>	<i>Std. Err.</i>
Age under sixty	.1498*	.1392

Note: p<.15, ‘\*’

*Linking Video Teleconferencing*

Another logistical regression was run to examine the relationship between practitioners who had previously engaged in video teleconference sessions and those who believed they could assist parties in resolving conflict entirely over video teleconference technology. While this may sound intuitive to have a positive relationship, it is important to test those with previous experience to see if they would use the technology again. Because the practitioners who did use the technology before could have only used video teleconference technology for a part or the entire session, the question in the survey was too broad. Despite this, the relationship did have a positive and significant relationship. Table 4.13 presents a positive coefficient of 0.0873. This suggests practitioners who have used video teleconference previously are more likely to believe they could exclusively assist parties reach a settlement only using this technology. Again, this result is only examined for further exploration due this research having a small sample of people who used ODR previously and specifically video teleconference technology.

Table 4.13: Previous Videoconference User

	<i>Coefficient</i>	<i>Std. Err.</i>
Assist Parties over Video	.0873*	.1175

Note: p<.15, ‘\*’

*Linking ODR Education*

Understanding the relationship between those who took an ODR course and used ODR previously found an interesting result. This result is interesting to examine to see if ODR courses

encourage mediators to use it in their practice. A positive relationship was found with a coefficient of 0.1385, as seen in Table 4.14. The p-value was 0.10. This means those who took an ODR course were more likely to use ODR. While it is unknown if these mediators took the course before or after they started using ODR, this is an intriguing result. More research is required.

Table 4.14: Taken an ODR Course

	<i>Coefficient</i>	<i>Std. Err.</i>
Used ODR	.1385*	.0853

Note:  $p < .15$ , ‘\*’

### *Linking Perspectives*

The final examination looked at the relationship between people who have heard of ODR and those who believed they could assist parties entirely on video teleconference. This analysis is important in understanding practitioners’ confidence in ODR. While still a budding field, if practitioners have heard of ODR, there may be greater confidence in and openness to trying these tools. If ODR is not well understood, there may be greater hesitation in attempting to use these tools. It is important to note that the questionnaire had defined ODR in the beginning so the participant knew what ODR was before answering any questions. A logistic regression was used for the “Assist Parties over Video” variable, which was statistically significant. The variable had a coefficient of 0.3675 (seen in Table 4.15). This model suggests that practitioners who had previously heard of ODR are more likely to believe they are able to assist parties over video teleconference technology.

Table 4.15: Practitioners Heard of ODR

	<i>Coefficient</i>	<i>Std. Err.</i>
Assist Parties over Video	.3675***	.0631

Note:  $p < .05$ , ‘\*\*\*’

## CHAPTER FIVE: DISCUSSION

The research findings provided an interesting, while limited, view of ODR in Ireland. Very few people in this study have used ODR in Ireland. This research was only able to get some indications of what practitioners think of ODR's usefulness, effectiveness, and weakness. Despite few people using information technology tools in conflict resolution from this survey, a greater understanding of practitioners perceptions were captured. These perceptions glean insight into potential barriers of entry and explain the future of ODR.

As very few people had used ODR in this study, barriers of entry may include a lack of awareness of training programs. A small number of people had taken an ODR course in the survey. Those who had taken a course were more likely to use ODR in this survey. Despite not knowing if the ODR course or using an ODR tool came first for this small sample, the results provide a unique insight of why mediators may start to use ODR. Moreover, the skepticism of ODR could be an entry barrier to this field. Skepticism pervades the results of the questionnaire and could prevent people from trying ODR.

Interestingly, no Irish practitioners had previous experience with e-commerce platforms. This number may change with the upcoming EU regulations due to be implemented shortly after the submission date of this thesis. It is surprising that no one used e-commerce platform especially due to the large amount of research on the topic.

The population of the survey was generally older and not highly experienced, with the median age of five years of experience. It would be interesting to continue tracking them to see if their views on ODR change. Nearly everyone identified as being Caucasian in the study. Respondents in this survey were more likely to work in workplace mediation.

Those people who had used ODR had interesting differences when compared those who had not. Generally, those who had used ODR in this survey found it to be practical and valuable. The perception of ODR, among those who have not previously used it, had a fairly consistent neutral leaning negative view. An overwhelming group found ODR to be not better than face-to-face communication, whereas a few people who had used it thought it might be better. Many thought it did inhibit managing information-sharing between parties, while most people who had used ODR did not think that. Most people who had used ODR disagreed that it prevented good communication between parties. Finally, people with experience in ODR tended to agree it heightened effectiveness while those with no experience in ODR tended to disagree with that statement. Despite the small sample of ODR users, this presents a possibly skewed perception of ODR's positive components, which could be a potential barrier to profiting from ODR's benefits; however, more research is required.

There was an overall sentiment that ODR deserves attention in the future. While mediators in the survey tend to think face-to-face is better, there is not a strong sentiment that ODR should not be embraced. Mediators, despite the majority of them having not used it before, recommended it be taught to novices and trainees. The confidence in mediators to use the technology was mixed, nearly an even split. Mediators were unsure if they could lead an entire session over videoconference.

The relationships established in this research cannot be equated with causation or correlation. That those who heard of ODR previously are more likely to believe they could serve as a third-party over video teleconference technology is interesting on many levels. A possible explanation of this comes from a perception ODR is easy to access and use. In spite of people's



lack of experience in ODR, they have a great deal of confidence in using technology: this is another explanation.

From the free response answers, skepticism was an overarching theme. Many mediators made a scale of human touch using a cost-benefit analysis. Many viewed options like Skype and video teleconference as less of a cost on what many would label the essence of mediation – the human touch. These products seemed to still have some costs because it is not face-to-face and cannot get the best reading of body language. Text-based platforms, such as using drop down menus, were seen as bearing the highest cost. These means of resolving conflict nearly or completely removed the human side of mediation.

ODR was also seen as a wrench, not a toolbox. A wrench is of use in certain situations. Similarly, ODR is limited for only a few types of disputes – particularly useful when the parties are separated and when the parties are not comfortable with each other in the same room. Most respondents did not find the wide array of ODR tools and its flexibility as a benefit within the mediation process. Many placed ODR outside of the mediation context, not viewing it within the field. Participants did not see ODR as offering many tools to aid them, rather viewing it as an end. This perspective is interesting for developers of ODR platforms and for consumers hiring mediators.

An undercurrent of positive interest surfaced from the qualitative data. Many mediators expressed a reserved curiosity about ODR. Their willingness to experiment with it in their own practice was apparent. However, there were strong reservations. Many still expressed concerns about losing the human touch. Nonetheless, a prevailing idea of embracing technological advances in small steps was a common theme.

## CHAPTER SIX:

### CONCLUSION

As an exploratory piece of research, the findings provide a glimpse into the bright future of ODR. It makes a small dent in what Lipsky and Avgar refer to as a lack of understanding of dispute resolution in the “physical world” (2007). Research in the field is limited to specific tools and dispute system design. Placed within the context of the European Union and Ireland, ODR literature becomes even more narrow and difficult to find in the literature. With no ODR research in the Irish context, this research aims to start the conversation, especially bridging the gap of research and practice. Ideally, practitioners will be able to use this data and apply it to their practice. Emails were sent back to the author and listserv administrators indicating a desire to retain copies of the final report and requesting for more information about ODR. ODR may be a field Irish practitioners wish to explore further or to avoid in their own practice. Moreover, researchers in Ireland and abroad may scrutinize and potentially find inspiration in this study.

The method used to collect data provided a unique insight into Irish mediators. Out of an estimated 900 surveys, 124 were returned and compiled for analysis. It was a non-random sample survey electronically sent via mediation listservs. Access to the survey could only occur if the person obtained the unique URL address. There were no major ethical concerns as the author selected a secure and reliable survey provider and no vulnerable people were included in the sample.

The survey revealed many interesting results. Most of the surveyed respondents were aware of ODR despite very few using the technologies to aid in resolving disputes. A popular sentiment among participating practitioners was that ODR was not better than face-to-face meetings yet thought it was worth exploring further. Those who had heard of ODR are more

likely to believe they could assist parties in reaching a settlement entirely using video technology. Practitioners expressed a great deal of skepticism, yet recognized it was useful in limited situations.

### *Research Questions Answered*

This research answered some questions and left some unanswered. Above all, many of these questions require further research for complete answers. Discovering current trends in Ireland and elsewhere in the literature was the first question. In Chapter Two, no research in Ireland pertaining to ODR was found. Across Europe, some research was found. The United States had the most research on ODR.

The second question asked about practitioners' current views and use of ODR, along with their perception of it within the context of their practice. The research presented found that mediators in Ireland who participated in this study viewed ODR with suspicion and do not use it. However, there is a general sentiment of being open to use it despite the narrowly drawn ways ODR would be helpful.

The third question, to learn more about best practices, could not be answered, as this questionnaire had a very small sample of ODR users. Future research will have to disclose best ODR practices Irish and other mediators are using.

This study also investigated ODR in the context of workplace and family mediation, whereas most of the current literature focuses on commercial ODR. Most of the respondents of the questionnaire came from those workplace and family practices and provides exciting new insight in ODR. As ODR grows, research will need to examine all components of ADR, not just commercial, workplace, and family mediation areas. Hopefully the Irish workplace research beginning to flourish will observe and build on this dissertation. While this study cannot make

any generalizations about Irish mediators compared to others across the world, this research suggests Irish usage of ODR is limited from the respondents. Further research in Ireland and around the world must be promoted to discover who is using ODR and how it is perceived. However, there is big potential in this growing field. Key limitations are highlighted below along with future directions in research.

### *Limitations*

Administering a survey presents many challenges. Typical concerns include dishonesty, along with participants' interpreting questions differently. Response bias was also a concern, as respondents may want to tell a researcher what he or she wants to hear. Even more issues arise when the survey did not follow a specific sampling method. The author did not use cluster, random, or stratified sampling, which would have strengthened the validity of the survey. This is difficult in the mediation field, as there is no known comprehensive list of Irish mediators. A more demarcated and accessible group would provide more reliable results. As this survey reached people through closed listservs, selection bias occurred.

Since the literature on ODR lacks consensus on a definition, there is strong likelihood mediators used ODR without knowing it. Some in the field consider aiding parties in resolving their conflict over email as a form of ODR. While the author attempted to define it for the purposes of this research, many may disagree with it. As technology continues to evolve and integrate in daily lives, the line of ODR and ADR may become blurry.

The content of the questionnaire could have been improved vastly, specifically, questions regarding barriers of entry, years involved with ODR, number of cases engaged with ODR, and settlement rate of cases using ODR versus no ODR. The format of some questions could have had minor adjustments to create more flexibility for data analysis. Respondents were asked if

future mediators and conflict interventionists should have knowledge in ODR, with five options ranging from strongly agree to strongly disagree. This should have been a dichotomous affirmative or negative answer. Additional questions could have scrutinized particular details of a session using ODR, such as where the parties were located when using ODR, how many times the parties met on an online platform, if the parties spoke the same language, how ground rules were established, and how emotion was managed.

Simple questions could have made the questionnaire stronger, building on the content already included. For example, the question asking respondents who had taken a course on ODR could have included where it was located and what organization administrated it. Moreover, there was not a question to ask if those who had used video teleconference technology found it helpful or not. Many of the questions allowed people to hide behind an “Neither Agree or Disagree” option. This option may provide some respondents an outlet to hide their true feelings.

Furthermore, this study cannot claim any generalizations about mediation and conflict resolution, Irish practitioners, or participants involved in ODR. While significance and statistical significance was found between some variables, these results cannot be applied to a wider population without additional research and supplementary examination. However, this study does make a step to try in defining and capturing a specific population. It also tries to understand the important questions in ODR. Hopefully, more researchers will continue to pursue this area and some ideas are noted below.

#### *Further Exploration*

ODR is ripe for discovery and closer examination in Ireland and around the world. Building on this scholarship, those people who have used ODR should be interviewed. It would be interesting to gain all perspectives – the designers of the platform, the parties in conflict, and

the third-party. Similarly, others should attempt a national survey of Irish mediators and their experiences around ODR. Ireland is an ecosystem bursting with mediators and conflict interventionists where a national survey is possible.

Another approach to understand the efficiency and satisfaction of ODR is to interview parties who engaged in a conflict resolution process using online tools. Their perspectives would provide powerful insight into making products consumer friendly and its accessible. Researchers may consider observing sessions using ODR and collecting quantitative data, such as settlement rate. However, one of the most important areas of further research is bringing ODR to a controlled laboratory setting.

ODR's effectiveness compared to face-to-face meetings will provide the basic framework for future ODR research. As Lipsky and Avgar suggested, a laboratory test of college students using ODR and others engaged in face-to-face meetings is imperative to examine (2007). Sophisticated experiments would add variations to the ODR component, such as testing the effectiveness of mediation when the parties have never met in person or language barriers. These language barriers would be interesting to examine within the European Union, as there is a wide variety of languages spoken. These studies should also adjust the value of relationships – are long-term relationships more likely to have an adverse impact from ODR? Is ODR more suited for resolving disputes when the parties do not value relationships?

For the European Union, with the new regulations and policies coming in place for member states in 2015 and 2016, countless avenues will arise for research. One of the first questions of the regulations is simple – does it increase the popularity of ODR as a means of resolving cross-border commerce disputes? How are conflict interventionists (especially in

Ireland) responding to this? What are the most common tools consumers and practitioners are using? What platforms do they prefer?

Specifically in Ireland, there may be market for ODR programs and trainings. Very few respondents in the questionnaire had attended a training or professional course on ODR. Further research on how to train people in ODR is worthy of researchers' time. How do generational differences impact the training program? Do younger people need training in ODR as much as older people? Where are training programs being offered? These questions have yet to be answered.

When Katsh and Rifkin called ODR the "fourth party," they believed that information technology would one day replace the third party (2001). At this point, it is hard to imagine removing humans completely from the equation of resolving conflicts. There may never be conflicts that can be resolved without a human intervening. Yet as the future has brought unexpected advances, the author looks forward to rereading this dissertation in 50 years to see how far technology is advancing and shaping the art of conflict resolution.

## NOTES

### CHAPTER ONE

1. Access Modria: [www.modria.com](http://www.modria.com).

### CHAPTER TWO

2. Visiting the Cybersettle website, an observant scholar would notice that it redirects to PayMD. PayMD was launched by the creators of Cybersettle in 2012 following a similar model. For more information, visit:  
<http://www.forbes.com/sites/robertglatter/2013/12/06/paymd-an-online-solution-to-your-settling-your-medical-bills/>.
3. Access Mediation Room: [www.themediationroom.com](http://www.themediationroom.com).



## APPENDIX A

### **2015 Survey Conflict Intervention and Technology Kennedy Institute for Mediation and Conflict Intervention**

#### **Introduction**

This study aims to collect information about the intersection of conflict intervention and technology. This survey focuses on Online Dispute Resolution (ODR). ODR is defined for the purposes of this survey as using Internet technology (real-time technology such as video conferencing and Skype, or asynchronous e-commerce platform or text-based communication such as Modria or Cybersettle) in some capacity to facilitate the parties' conflict. Please complete all fields.

#### **Procedures**

You will be asked a series of questions relating to your experience as a mediator or arbitrator and ODR. Please answer the questions to the best of your ability.

#### **Benefits**

Your answers will contribute to a growing knowledge database on technology used by mediators and arbitrators. Moreover, it will contribute to a Masters student thesis at the Kennedy Institute.

#### **Confidentiality**

All data obtained from participants will be kept confidential and will only be reported in an aggregate format (by reporting only combined results and never reporting individual ones). All questionnaires will be concealed, and no one other than the primary investigator and faculty adviser listed below will have access to them. The data collected will be stored in the HIPPA-compliant, Qualtrics-secure database until it has been deleted by the primary investigator.

#### **Compensation**

There is no direct compensation.

#### **Participation**

Participation in this research study is completely voluntary. You have the right to withdraw at anytime or refuse to participate. If you desire to withdraw, please close your internet browser and notify the principal investigator at this email: XXXX@XXXX.XXX.

#### **Questions about the Research**

If you have questions regarding this study, you may contact the principal investigator, Simon Boehme at XXX-XX-XXX-XXXX, XXXX@XXXX.XXX. You may also contact the faculty adviser, Dr. Anne Good at XXXXX@XXXX.XXX.

**I have read and understood the above consent form and desire of my own free will to participate in this study. Click one answer.**

Yes

No

**1. Please complete both empty spaces.**

First Name

Last Name

**2. What is your sex? Click one answer.**

Male

Female

**3. What is your age group? Click one answer.**

19-29

30-39

40-49

50-59

60-69

70 or older

**4. What is your ethnicity?**

**5. How many years have you worked as a professional in the field of conflict intervention?**

1-40

**6. In what fields of conflict intervention do you practice? Select all that apply.**

Arbitration

Commercial Mediation

Restorative Practice

Family Mediation

Workplace and Organizational Mediation

Peacemaking

Community mediation

Conflict Resolution in Education

Other

- 7. Have you heard of Online Dispute Resolution (ODR)? ODR is defined for the purposes of this survey as using Internet technology (real-time technology such as video conferencing and Skype, or asynchronous e-commerce platform or text-based communication such as Modria or Cybersettle) in some capacity to facilitate the parties' conflict. Select one option.**

Yes

No

- 8. Have you ever used ODR? Select one option.**

Yes

No

- 9. Have you conducted mediation where the parties are separated by distance? Select one option.**

Yes, and I used ODR

Yes, and I did not use ODR

No

- 10. What ODR tools have you used in the past or currently use? Select all that apply.**

Video conferencing

An online text-based mediation website, such as Modria

Skype or Google Hangout

E-Commerce Platform

Other (Please type below)

None

**11. To what extent do you agree or disagree with the following statement? ODR enhances my effectiveness as a mediator in reaching a resolution.**

Strongly Disagree

Disagree

Neither Agree nor Disagree

Agree

Strongly Agree

**12. To what extent do you agree or disagree with the following statement? If I did use ODR, I believe it would enhance my effectiveness as a mediator in reaching a resolution.**

Strongly Disagree

Disagree

Neither Agree nor Disagree

Agree

Strongly Agree

**13. To what extent do you agree or disagree with the following statement? If I did use ODR, I believe it would inhibit my ability to manage information sharing to the disputing parties.**

Strongly Disagree

Disagree

Neither Agree nor Disagree

Agree

Strongly Agree

**14. To what extent do you agree or disagree with the following statement? ODR inhibited my ability to manage information sharing to the disputing parties.**

Strongly Disagree

Disagree

Neither Agree nor Disagree

Agree

Strongly Agree

**15. To what extent do you agree or disagree with the following statement? From my experience, ODR is more effective than face-to-face conflict intervention.**

Strongly Disagree

Disagree

Neither Agree nor Disagree

Agree

Strongly Agree

**16. To what extent do you agree or disagree with the following statement? I believe ODR would be more effective than face-to-face conflict intervention.**

Strongly Disagree

Disagree

Neither Agree nor Disagree

Agree

Strongly Agree

**17. To what extent do you agree or disagree with the following statement? ODR should be taught to every new mediator entering the field.**

Strongly Disagree

Disagree

Neither Agree nor Disagree

Agree

Strongly Agree

**18. Have you ever conducted a mediation session, either an entire session or part of a mediation session, over video teleconference technology?**

Yes

No

**19. What issues, if any, are most common when you used video conferencing? Select all that apply.**

Lack of trust between parties

Lack of trust between one or multiple parties and the neutral

Difficulty sharing information

Required some or additional face-to-face meetings

Confidentially concerns

Generally impersonal platform

Inaccessible to one or more parties

Other (Please type below)

**20. Please describe your experience and what you did in your video teleconference?**

**21. Have you taken a course, professional development seminar or other educational-related course that focused on ODR? Select one option.**

Yes

No

**22. Do you believe you could adequately assist parties in a dispute if you could only interact over video teleconference? Select one option.**

Yes

No

**23. Have you mediated a conflict when the parties have never met face-to-face? Select one option.**

Yes

No

**24. If the parties never met face-to-face, did you use ODR? What was the outcome of that conflict?**

**25. What are some of the benefits of using ODR?**

**26. What are some of the disadvantages of using ODR?**

**27. If you are not using ODR in your current practice, would you consider using it? Why? If you are using ODR, would you recommend it to other practitioners? Why?**

**28. How could online technology help you assist parties to reach a resolution?**

**29. Additional comments.**

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