"New developments in law and legal studies".

In Section 1 of this course you will cover these topics:
' E-Commerce Disputes And The Global Web
' Understanding Online Dispute Resolution
Topic : E-Commerce Disputes And The Global Web

Topic Objective:

At the end of this topic student would be able to:

- Explain the nature of online business relationships.
- Describe the bases for obtaining personal jurisdiction over an online business for the purposes of civil litigation in the United States.
- Identify some specific examples of online disputes.
- Explain the obstacles to bringing an action in court dealing with online activities.
- Explain main methods for limiting potential exposure to lawsuits in foreign courts

Definition/Overview:

Disputes: Disputes are traditionally settled within the physical territory where one or both of the disputants is located.

With an online enterprise, however, customers could be located anywhere in the United States or around the world. How does the enterprise cope with such broad exposure? Verifying the consumer's location is virtually impossible, especially if the customer takes advantage of the many "anonymizer" devices which protect identity in cyberspace.

Key Points:

1. A consumer may even be able to pay for services anonymously using the digital equivalent of cash e.g. eCash (Website) (eCash) or using a service such as PrivateBuy.com (Website) (PrivateBuy.com). Where goods require a physical delivery, an online enterprise can restrict its customer base to those jurisdictions where it is willing to submit to regulation. With digital goods and services that are delivered online, this is almost impossible, and the enterprise may have to rely on the truthfulness of the customer's

information regarding their location. Many e-commerce enterprises, of course, have come online specifically seeking a global market. This segment will look at the efforts to resolve cyberspace's jurisdictional quandary and will consider other methods for resolving disagreements and complaints in a global online marketplace.

2. Despite the dot.com bust, the future of Internet commerce (e-commerce) still looks rosy. According to recent studies, it is now projected that by 2005 one billion people will be on the Internet and at least one third will make online purchases. What is even more remarkable is that this huge, $1.6 trillion business will be based essentially on trust, among sellers and buyers who are unlikely to ever see or speak to each other. Inevitably, some of those e-commerce transactions are bound to turn into disputes. So what happens when a seller in the USA and a buyer in Russiadisagree over a sale transaction worth only a few hundred dollars? What recourse do they have, when litigation, Small Claims court and **arbitration** are obviously not feasible options? More and more online merchants are realizing that, if trust is indeed such a critical factor in e-commerce, having reliable products, clear return/refund policies and a multi-language web site may not be enough. It is far more effective if worldwide customers are reassured that, if they have a disagreement with the seller, they can get it resolved through an independent, neutral and inexpensive dispute resolution process.

3. Ebay has already proven how this can be done. With more than four million auctions daily, eBay is the worlds largest online auction. When sellers and buyers throughout the world have a dispute, they are referred to Square Trade, an independent ODR (Online Dispute Resolution) company based in San Francisco. A Square Trade trained mediator assigned to the case then gets in touch with both parties and helps them negotiate a mutually acceptable settlement. The purpose of mediation is not to determine which party is right or wrong, but to help seller and buyer answer one simple question: How can your case be resolved in a way you can both live with? The entire mediation process takes place by email, and neither the mediator nor the parties need to be online at the same time. Therefore, parties can read and respond to the mediators messages whenever they want: after a few minutes, hours or even days.

Topic : Understanding Online Dispute Resolution

Topic Objective:

At the end of this topic student would be able to:

- Define the concept of online dispute resolution (ODR).
- Describe the differences between ODR and alternative dispute resolution (ADR).
- Outline the types of ODR processes that e-businesses can utilize.
- Recognize the differences between settlement-driven, adjudicatory, and hybrid ODR methods.
- Identify the main advantages and disadvantages of ODR use.
- Determine the overall support of e-commerce groups for ODR use.

Definition/Overview:

Online dispute resolution: Online dispute resolution (ODR) utilizes the Internet as a more efficient medium for parties to resolve their disputes through a variety of ADR methods similar to traditional ADR. Using computer-networking technology, ODR brings disputing parties together "online" to participate in a dialogue about resolving their dispute.

ODR is still a fairly recent industry. Many new ODR providers have arisen while others have stopped operating. ODR providers include private sector companies, public sector agencies and academic institutions. Currently, the majority of ODR providers are private sector companies.

Key Points:

1. Generally, the complainant begins the ODR process by registering the complaint online with an ODR provider. The ODR provider will then contact the other party using the information provided, and invite that other party to participate in the ODR process. If the other party accepts the invitation, he or she will file a response to the complaint. The ODR providers employ one or more of the following dispute resolution techniques or mechanisms:

- **Arbitration**,
- **Mediation**, or
- **Negotiation**

   It may be assisted by software or rules, and includes blind bidding (defined below). Some providers incorporate a technique that has been called "peer pressure" services.

2. Arbitration involves a decision by an arbitrator, which parties have agreed by contract to be binding. Mediation involves facilitation of communication and problem-solving by a mediator. A settlement is reached only if both parties consent. The arbitration and mediation processes utilize email, chat or messaging software, audio-conferencing or video-conferencing software for communication between the arbitrator/mediator and the parties.

3. Online negotiation may involve use of email or messaging, or may utilize heavily automated systems. Blind bidding refers to a system of settlement in which the **ODR** provider's software accepts confidential offers and demands from the parties, and records a settlement if the offer and demand are within a pre-specified range from each other. If there is no settlement, the other party will not know what the submitted bids were. For examples of blind bidding systems. So-called "peer pressures" services involve the use of publicity about the ongoing dispute to create an incentive for the online merchant to resolve the dispute. An example of an ODR provider that utilizes this technique is iLevel (Website) (iLevel).

4. Standards for ODR providers

   Recently, governments around the world, industry groups, consumer advocacy groups and dispute resolution professionals devoted great attention to the development of ODR services and the standards and oversight over these ODR providers. In June 2000, the Federal Trade Commission (U.S.) and the Department of Commerce (U.S.) held a public workshop to explore ADR for online consumer transactions. (FTC).

   In December 2000, the Organization for Economic Co-operation and Development (OECD), Hague Conference on Private International Law (HCPIL), and International Chamber of Commerce (ICC) jointly organized a conference entitled "Building Trust in

the Online Environment: Business-to-Consumer Dispute Resolution" held at the Hague, Netherlands. (OECD)

5. Criteria for Selection of ODR provider

Great attention has been devoted around the world to the standards which ODR processes and providers ought to meet. Different proposals put forward by multi-lateral organizations, industry groups, consumer groups and trustmark accreditation agencies place emphasis on slightly different lists of elements. The following elements have been suggested by one or more of the proposals that have been put forward. Independence/ Neutrality / Impartiality - The ODR provider must be sufficiently independent from both the online merchant and the consumer in order to guarantee the impartiality of its actions.

- **Low cost:** The ODR service should be provided to the consumer free of charge or at a moderate cost, while taking into account the need to avoid frivolous claims. (E.g. the Online Ombuds Office by Center for Information Technology and Dispute Resolution at the University of Massachusetts (UMass) does not charge for its service.
- **Accessibility:** The ODR service should be easily accessible to the consumer.
- **Efficiency:** The ODR process should provide quick decisions or settlements, as the case may be. An inefficient process adds to the total cost of dispute resolution that the online merchant and the consumer would have to bear.
- **Transparency:** ODR mechanisms should function according to published rules of procedure that describe unambiguously all relevant elements necessary to enable customers seeking redress to make fully informed decisions on whether they wish to use the ADR services offered.
- **Adversarial procedure:** The procedure should provide a reasonable opportunity for all parties to present their viewpoints before the ODR professional and to hear the arguments and facts put forward by the other party.
- **Qualifications of personnel:** The dispute resolution professionals employed by the ODR provider should be properly qualified in dispute resolution.
- **Principle of representation:** The process should permit (but not require) representation by third parties.
- **Legality:** ODR providers may reach decisions or settlements based on equitable principles, and/or on the basis of codes of conduct, rather than strict legal rules.

- **Liberty:** Some stakeholders feel that the ODR process should be undertaken on a voluntary basis by the consumer, and that the decision by the ODR provider may be binding only if the parties were informed of its binding nature in advance and specifically accepted this. Other stakeholders feel that mandatory participation in ODR should be permissible.
- **Recourse to courts:** A significant number of stakeholders have taken the view that ODR processes should be without prejudice to the consumers' entitlement to seek redress in the courts.
- **Confidentiality / Publicity:** Some stakeholders want ODR proceedings and results to be confidential, while others want these proceedings, results and statistics to be published, as a means of ensuring public accountability.

   The various stakeholders continue to hold discussions and consultations regarding guidelines for ODR providers, and no agreement on a universally accepted set of criteria has yet been reached.

6. Can/Should ODR be Made Mandatory?

- An online merchant's terms and conditions for its services may require that all disputes arising from the transaction be submitted to binding arbitration.
- An issue which arises is whether a pre-dispute arbitration agreement by a consumer should be enforceable.
- A pre-dispute agreement is contrasted with a post-dispute arbitration agreement, which does not create difficulty.
- A pre-dispute arbitration agreement is also to be distinguished from a pre-dispute agreement by the parties to refer any arising dispute to mediation, which does not raise as significant problems for the consumer, as no binding result can be achieved in that situation without the consumer's consent.

In Section 2 of this course you will cover these topics:
▸ Online Negotiations
▸ Online Mediation

Topic : Online Negotiations

Topic Objective:

At the end of this topic student would be able to:

- Describe the differences between offline and online negotiation.
- Discuss the selection and use of online negotiation rather than other ODR methods.
- Understand the different online technologies utilized in online negotiation including blind-bid, software enhanced and asynchronous communication.
- Identify examples of online negotiation services.

Definition/Overview:

Online negotiations: Online negotiations are similar to auctions. However, participants need to underbid rather than overbid the prices and not everyone can take part. We carefully ensure that all participants meet our technical and commercial prerequisites so that everyone has equal opportunities during the negotiation. You will be informed about the date and precise regulations on time before an online negotiation.

Key Points:

1. Online negotiations will simplify and speed up this negotiation process considerably. And as a supplier, you will especially benefit from enhanced market transparency. This methodology does not replace the Global and Forward Sourcing processes established within the Group. It also does not replace the decision-taking process in the central decision committee. Rather, we have integrated the online negotiation tool in the proven processes - to make something good even better.

Topic : Online Mediation

Topic Objective:

At the end of this topic student would be able to:

- Describe the differences between offline and online mediation.
- Discuss the selection and use of online mediation rather than other ODR methods.
- Understand the different online technologies utilized in online mediation.

- Outline the typical duties of an online mediator.
- Identify examples of online mediation services.

Definition/Overview:

Online Mediation: It is a natural extension of traditional dispute resolution techniques. While face-to-face mediation is usually preferable, a "virtual" meeting of the parties can also achieve the same positive results: resolving disputes.

Online mediation has some advantages over a traditional face-to-face mediation: the parties and the mediator do not have to be in the same location, city or time-zone; the mediation can occur outside of traditional business hours; and the parties can participate from their own office or home.

Key Points:

1. Online dispute resolution (**ODR**) is appropriate for the following types of cases:

- Disputants are geographically distant from each other and/or from the neutral and travel for a traditional mediation is not possible or is cost prohibitive.
- Jurisdictional issues make it unclear as to which jurisdiction should prevail and/or would make enforcement of a court decision difficult.
- None of the parties are seeking to set judicial precedent or to clarify existing laws.
- The dispute itself arose from an Internet-based purchase. In these cases the disputants tend to be geographically separated, have no ongoing relationship, and have regular access to the Internet.
- Scheduling difficulties make it impossible for the parties to attend a traditional mediation session.
- Concerns about violence or intimidation between the parties makes a traditional mediation setting inappropriate, but the parties wish to move forward with mediation.
- For other reasons, a traditional mediation is not feasible, yet the parties want the assistance of a third party neutral to help resolve their dispute.

  2. A dispute should display one or more of these characteristics before online mediation is chosen over traditional mediation. In addition, the following conditions should be met

before mediation can proceed online. You will notice that some of these conditions are identical to those that mediators must ensure for traditional mediation as well.

- The parties must have regular, cost effective access to the Internet. Most public libraries in the United States offer Internet access for free or at a very low rate. Access to the Internet is widespread in North America and Europe, but when working with disputants in other regions it is not necessarily the case.
- The parties, their representatives and the neutral must be able to communicate in writing in a common language or make arrangements for any necessary translation. For example, I mediate in French or English, but refer Spanish speakers to Spanish speaking mediators.
- All disputants, their representatives, and the neutral must have at least minimal computer skills in order to send and receive communications related to the case.
- There must be provisions in place to guarantee the confidentiality and security of communications occurring as part of the mediation process. Password protection or other security systems must be in place to ensure that non-parties do not gain access to mediation communications.
- All disputants must be competent to mediate and to enter into a mediated agreement.
- Ground rules must be created by either the neutral, or by the neutral and the parties together. For ODR, these ground rules should include expectations surrounding the frequency with which all parties and the neutral will check and respond to messages (if mediation is occurring in an email caucus/shuttle diplomacy style, also known as asynchronous). If mediation will occur through simultaneous (synchronous) communications, then the parties and the neutral must agree to a specific schedule for the mediation session(s).
- Some online mediators ask the parties to stop communicating with each other outside of mediation so that the mediator does not fall out of the loop, so to speak.
    - In Section 3 of this course you will cover these topics:
  ▸ Online Arbitration
  ▸ Online Jury Proceedings

Topic : Online Arbitration

Topic Objective:

At the end of this topic student would be able to:

- Describe the differences between offline and online arbitration.
- Discuss the selection and use of online arbitration rather than other ODR methods.

- Understand the different online technologies utilized in online arbitration.
- Outline the typical duties of an online arbitrator.
- Identify examples of online arbitration services.
- Recognize the importance of a written agreement in order to participate in an online arbitration.
- Discuss the potential challenges to the enforcement of the decisions of online arbitrators or arbitral panels in national courts.

Definition/Overview:

Dispute Resolution: **Online**or Offline, Adjudication or ADR; in the event that the dispute is unable to be resolved through the enterprise's internal complaint resolution procedure, third party dispute resolution may be necessary. When disputes do arise, both merchants and their consumers will be more likely to conduct business online if they can rely on a dependable and inexpensive resolution process which can support cross-border disputes.

Key Points:

Traditional dispute resolution processes include court litigation (court adjudication), arbitration, mediation and other alternative dispute resolution (ADR) procedures. All these processes are traditionally conducted offline, i.e. face-to-face in a physical environment.

1. Court Litigation or Alternative Dispute Resolution (ADR)

If a dispute arises, the enterprise will first have to decide whether it would prefer to have the dispute resolved through court litigation, or through ADR methods. Due to the difficult choice of law and jurisdictional problems that arise in cross-jurisdictional transactions, ADR has the advantage of offering quicker and less expensive resolution. If a customer complainant decides to commence court proceedings in his or her home jurisdiction, the enterprise may still reduce the cost of dispute resolution by seeking to resolve the dispute through ADR. In an online business environment, it is advantageous to be able to resolve disputes online as well. Online dispute resolution (ODR) offers the advantage of speed, reduced cost, greater convenience and accessibility. It enables parties to resolve their disputes without the need to physically travel or meet with dispute resolution professionals. ODR

therefore has the potential to significantly reduce the transaction costs arising from a dispute. Over the past few years, numerous ODR forums have arisen.

2. Other Dispute Resolution Methods

Before discussing online dispute resolution in greater detail, it is appropriate at this point to note the various "alternative" dispute resolution methods that are available from the perspective of the customer. These methods include credit card charge back mechanisms, complaint resolution mechanisms established by merchants (described above), consumer complaints to governmental authorities (e.g. state Attorneys-General's offices, Federal Trade Commission), consumer protection agencies (e.g. National Fraud Information Center / Internet Fraud Watch of the National Consumers League), small claims courts, and litigation. Each of these alternatives has its own disadvantages.

- Credit card charge back mechanisms generally take a long period of time and do not involve cooperation between the consumer and the merchant to resolve the complaint. Instead, the process involves a costly investigation by the credit card company, which does not address the relationship between the consumer and the merchant.

- Merchant complaint resolution mechanisms have already been described above, and are an essential component of a successful conflict management system. Such merchant complaint resolution mechanisms are complementary to ODR processes, and disputes may be referred to ODR after attempts at resolving them through the merchants' complaint resolution mechanisms have proved unsuccessful.

- Complaints to governmental authorities and consumer protection agencies have traditionally been a popular method of resolving disputes. However, this method may be less accessible to consumers who are located in another jurisdiction. This method may not be as effective for online disputes unless the governmental agencies and consumer protection agencies provide online complaint submission and have the expertise in resolving e-commerce disputes.

- While small claims courts may provide a simple and low-cost forum for resolution of disputes involving small amounts, the jurisdictional and choice of law problems which arise in traditional litigation.

  Although online adjudicatory mechanisms (such as arbitration and jury proceedings) also merit attention, they pose a unique set of issues (e.g. reaching and enforcing decisions and verdicts) that are beyond the scope of this iBrief.

Topic : Online Jury Proceedings

Topic Objective:

At the end of this topic student would be able to:

- Describe the differences between offline and online jury proceedings.
- Discuss the selection and use of online jury proceedings rather than other ODR methods.
- Understand the different online technologies utilized in online jury proceedings.
- Outline the typical duties of an online jury.
- Identify examples of online jury services.

Definition/Overview:

Mock trials: Mock trials (also: summary jury trials) are an ODR process whereby a jury of peers makes a non-binding determination of the issues via a web-based platform.

The facts and relevant documents are available on a platform which is accessible to Internet users registered for a particular case. Thus the neutral is replaced by a number of volunteers (Internet users) acting as if they were an online jury in a civil trial. All communications take place via the website,

Key Points:

1. The methods of ODR available range from negotiation and mediation to modified arbitration to modified jury proceedings,5 the focus of this iBrief is on negotiation and mediation in the online environment.6 In particular, it examines and evaluates websites that use mediation techniques to help resolve disputes.

2. Online adjudicatory mechanisms (such as arbitration and jury proceedings) also merit attention; they pose a unique set of issues (e.g. reaching and enforcing decisions and verdicts) that are beyond the scope of this iBrief. It may also be argued that more thoughtful, well-crafted contributions result from the ability of the parties to edit messages prior to sending them: "Asynchronous Internet communications have the advantage of being edited 'best' communications in sometimes contrast to 'first' (often impulsive) responses that can take place in real time face-to-face mediation discussions."69 In addition, many of the cyber-mediation mechanisms, such as the fully

automated cyber-mediation websites discussed above, are available all day long, every day of the year.70 Disputants can therefore proceed to negotiate the settlement of disputes immediately, rather than waiting lengthy periods to go to trial

In Section 4 of this course you will cover these topics:
Online Dispute Resolution System Design

Topic : Online Dispute Resolution System Design

Topic Objective:

At the end of this topic student would be able to:

- Identify the main options an e-business has in the adoption of an ODR process.
- Describe the major factors an e-business should address in the development of its ODR policies and system.
- Consider other special considerations, such as important cultural, linguistic, and disability differences, in establishing ODR systems for handling online disputes
- Address the use of third party ODR service providers in developing, designing, and implementing ODR systems.
- Understand the voluntary nature of regulation of ODR service providers.

Definition/Overview:

Online Dispute Resolution System Design: Indubitably, the pace of change of ODR in recent years is indicative of a systemic shift in its conceptualization, design and application in the transformation of disputes. In 2004, I made a presentation that called for an expanded view of ODR - moving away from the resolution of disputes to the transformation of conflict. Much is written on the state of Online Dispute Resolution from a legal perspective. This idea was influenced by my work in fields of ethno-political conflict transformation, far removed from the boardroom scenarios of ADR and commercial ODR.

Key Points:

1. Subsequent papers of the author explored the terrains of ODR in post-conflict zones and in particular the integration of mobile telephony into ODR platforms to a degree more pervasive than existing systems. Calling for a revolution in the way ODR as a theory is

defined, as a concept is envisioned and as an application is designed and implemented, these papers submitted the importance of looking at markets different to those in the lobal North to radically influence the next generation ODR systems.

2. These ideas have not gone unheeded. Much, however, remains to be done. Today, we are at the cusp of a new generation of ideas and technology that allow us the opportunities for even greater strides forward in revolutionizing ODR. This is not to say that ODR is now an ossified beast lumbering towards extinction. The vibrant debates in Cyberweek 2005 (in April and in October) displayed a marked interest in theories and ideas that sought to transform ODR from the realm of geeks and specialists to the domains of citizens who could avail themselves of pervasive architectures, real and virtual, to transform disputes on a wide spectrum of issues.

3. Mitigating the potential of new endeavours in ODR is, as in any other domain, is the resistance of the ancient regime - early adopters and even early visionaries now unable to grasp the significance of new technologies, mobility, mash-ups and the evolution of the web for ODR in the future. Central to the challenge of revolutionizing ODR is to engage with those who have thus far driven the field into what it is now - a mature theory with mature systems able help in the resolution of complex disputes. This brief topic seeks to explore a few ideas related to ODR that seek to kindle, jar and even anger the imagination to engage with ideas that lie at the heart of ODR systems design and implementation in the years to come. These dialogues in support of shaping next-generation ODR systems is seen as essential to avoid the development of systems that cannot fully grasp and respond to the complexities of social, commercial and political transaction in real and online worlds in the future.

4. Previously disparate technologies such as search engines, geographical information systems (GIS), radio frequency identification systems (RFID), Wi-Fi, wi-max and mesh networks, the increasing affordability and availability of multimedia capable mobile phones, PDA's, instant messaging and presence awareness along with Voice over IP (VoIP) technologies, inter alia, coalesce and fuse to create wonderful new pervasive architectures of availability and access to the web that even two years ago would have been thought as impossible. This revolution commonly referred to as Web 2.0 or mash-ups, is largely alien to ODR, which remains rooted to static websites with a degree of user interaction over text based communication on PC's. In the rare instance, such as Claro

Parlade's ODR system in the Philippines, short-messaging service (SMS) based mobile phone interactions are to a degree integrated within the larger website and PC based framework. Some websites that now allow for limited audio and video based interaction.

5. A study conducted in 2004 reveals 115 ODR sites, 82 of which were still operational. Showing an exponential growth from 2003 - 2004, during which time 28 new sites began operations, the sites operated mainly in English, with limited audio and video, but handled an impressive quantitative and qualitative array of disputes. We can safely assume that the number of ODR sites on the internet has grown since this study two years ago. However, the evolution of new technologies on the web has far outstripped the adoption of such technologies in the promotion and enhancement of ODR services. There are possible reasons for this. One is the embryonic nature of new technologies on the web. Porous, diverse and constantly evolving, broadly accepted industry standards have yet to emerge to govern the adoption of mash-ups. Interestingly, while constituent technologies in mash-ups might themselves be mature and standards based (such as audio, video and voice transport protocols on the internet) their inter-exchange on a single platform and juxtaposition with complementary frameworks such as GIS and mobile telephones create information architectures that are unparalleled in their potential to reach the millions left behind by the PC based internet revolution. The flip side is that this very nature of an experiment in progress is for some a measure of the limited shelf life and suspect reliability of such technologies.

6. There are by no means invalid concerns. However, the skepticism of new technologies should not mitigate the realisation and exploration of their potential for ODR. The central argument in favour of using new technologies now prevalent on the web is the understanding that current avatars of ODR system fall far short of the ways through which they can help communities transform disputes on the ground. Put another way, ODR systems that fail to engage with the specificities of local languages and cultures and are rooted in PC based access architectures fail to realise the potential of the evolution of the web as well as existing architectures of communication that are more pervasive, user friendly and affordable than existing ODR architectures. Every time an SMS, a mobile video or audio clip is sent through multimedia messaging (MMS) or the web is accessed through built-in thin web clients in many mobile phones, an opportunity for the expansion of ODR is lost. Seen this way, the ODR community loses a couple of hundred million

opportunities for the transformation of disputes every single day. Much can be done to grasp the potential of the mobile phone revolution in Asia and Africa to promote ODR systems that piggy-back on such networks.

7. It hard to explain the potential of new web and mobile technologies to those who have spent many years fine tuning ODR systems for the PC. It may well be that this is inevitable since the ubiquity of PC based internet access in the Global North negates the need to look at alternatives modes of ODR delivery and access. However, even in countries such as the US, the importance of looking at ODR systems that incorporate mobile and new technologies is growing. However, envisioning and developing such cutting-edge ODR systems oftentimes runs into resistance. Why this is the case is linked to the roots of ODR. The legal domain is deeply resistant to change. Continuity, tradition, stability and precedence are overarching values of any legal tradition. ODR systems that seek to establish themselves as significant and secure architectures need to reflect strong the real-world legal traditions. This is unfortunate, in that the inherent resistance to new modes of communications and information exchange and the client list interactions of present day ODR systems deter new lay users fully engaging with the potential of the technology to help in the transformation of their disputes. Furthermore, the unimaginative architectures of present day ODR systems stifle the full spectrum of human communication made possible by advances in audio and video via the web, even on very low bandwidth situations. It is not impossible to imagine ways through which ODR systems can be more accessible. From multimedia frameworks that enable more intuitive interactions with users through to accessibility on a range of mobile devices, ODR needs to wean itself from traditional PC based architectures to those that are rooted in the geo-political, cultural and communal contexts.

8. This is by no means a repudiation of the importance of security and stability in ODR. Many mash-ups and Web 2.0 technologies are already well established, standards based and continue to evolve. Furthermore, many web and mobile technologies are built on reliable and secure application programming interfaces (APIs) that allow developers to creatively respond to the needs of key users in ways impossible with traditional webpage designs and technologies. ODR systems that resolve cross-border territorial disputes, commercial disputes based on the location of resources, the availability of trained mediators on the ground and their contact details, adaptive complex systems that use

artificial intelligence to provide human mediators with strategic options for dispute resolution, virtual single text platforms that enable geographically and politically dispersed members collaborate on blueprints for peace agreements, users in the periphery who can access nodal ODR access points to help with localized disputes these and many other complex, reliable, secure and imaginative systems are made possible by technologies already present.

9. Instructive in this regard is the work of InfoShare, which through virtual collaborative spaces, brings together key stakeholders in a peace process in Sri Lanka and Nepal to fashion frameworks in support of sustainable peace talks and a larger peace process. Also noteworthy are the examples of disaster relief systems to resolve disputes between available resources and needs on the ground in traumatic conditions, such as the tsunami, the Kashmiri earthquake and Hurricane Katrina. Many systems in support of humanitarian operations and the mitigation of heightened communal conflict in traumatic conditions used pervasive computing frameworks Thuraya satellite phones, SMS on local mobile networks, mesh networks as well as a range of devices mobiles, PDAs, laptops, two-way radios to resolve persistent and complex demand and supply issues in the relief operations. The scalability of these pioneering initiatives remains is an open question. Much depends on the greater awareness of the target audience as well as the developers that pervasive multimedia communications architecture that helps the transformation of disputes. This is particularly resonant in post-conflict situations, where communities in terrains of violence may not always have the ability to meet in a physical space to talk about the mitigation of the socio-political drivers of conflict. In such instances, ODR systems that are able to best harness voices from communities in support of local, regional and national level dialogues in support of dispute resolution / conflict transformation, can be extremely powerful tools in the long-term peace building measures needed to transform violent conflict.

10. Virtual online dispute resolution

SecondLifeis a 3-D virtual world entirely built and owned by its residents. Since opening to the public in 2003, it has grown explosively and today is inhabited by nearly 100,000 people from around the globe. To date, those who play Second Life are dwarfed by those who dont. The game only works on PCs, requires a good hardware and a broadband internet connection to work best. It is, at the end of the day, a virtual experiment in social

interactivity. But Second Life is much more than this. Second Life has a complex business model, a currency pegged to the US Dollar, vibrant commerce and industry within the game, sophisticated intellectual property rights that govern inventions within the game-world of Second Life, and entire livelihoods that take place in a totally virtual domain. To anyone who hasnt played the game, the complexity of the virtual world is less than that of the physical world. In reality, the complexity is far greater since independent from the laws of gravity, physics and to an extent, morality, religion and social norms, the imagination reigns free within Second Life giving rise to social and commercial transactions that are sometimes far more complex than those in the real world.

11. The separation of the real and the virtual is blurred by games such as this. One example is the outsourcing of level advancement to low-paid full time gamers in countries such as China. High income gamers from around the world pay young Chinese gamers to get through the initial levels of a game by slaying monsters or solving puzzles. The case of Qui Chengwei however is more disturbing. In 2005, Mr. Chengwei stabbed Zhu Caoyuan, a fellow gamer in an online game titled Legend of Mir 3, over a dispute of a virtual / game-world sword. Though this was the first murder induced by a dispute over a virtual artifact, this incident is indicative of a larger number of people taking disputes over virtual artifacts to the courts. On the one hand, this raises the interesting issue as to whether the heading to this section hints at, we need virtual ODR systems set up in the gaming worlds to address disputes between gamers. On the other hand, these examples offer evidence in support of the case that present day ODR are far removed from the Evolution of disputes in virtual / online / real world domain hybrids. Courts and the traditional legal traditions are incapable of handling such online disputes. Mediators who dont understand the dynamics of virtual in-game interactions and their spill-over effect into the real world are ill positioned to advise clients on dispute resolution. Given the nature of such disputes, textual web-based client list ODR systems will fail miserably to adapt to and address the complex interplays of the real and virtual in disputes that involve online worlds.

Ethan Katsh captures this succinctly in the following:

Mediation and arbitration are labor intensive activities but the online versions include new options and, in a sense, have been reconfigured by exploiting the information processing capabilities of the digital environment. The ongoing history of ODR is a

history of the building of an online civic institution and it is, therefore, an example of what might be involved as attempts are made to build other kinds of civic institutions online.

12. The civic institutions that Katsh speaks of are of vital importance in the future of ODR. On the one hand, virtual / online communities such as those which diaspora from various countries use to maintain ties with each other and communities back home, as well as those like Second Life which began as games but evolved into livelihoods, offer a challenge to ODR in that they form the cusp of new definitions of community, ownership, property and trust. For instance, do I trust a real-world friend in an online world more than I would someone I had only met and grown to like through virtual interactions? What are the yardsticks of trust and ownership if a business model constructed in Second Life is used by a single partner to create a profitable business venture in the real world? What if communal violence from the real world spills over into flaming and hate between and within communities in Second Life, or vice-versa? Do I have to pay tax for money earned through profitable ventures in online worlds? What is my social responsibility in a new millennium that is soon erasing the borders between the physical and the virtual?

13. These are questions that form the core of next generation ODR systems. Beyond online, ODR needs to go virtual. Put another way, ODR websites need to evolve to reflect the increasing complexity of real world actors and factors, ranging from the complexity of multi-party international trade dispute to the transformation of protracted ethno-political conflict. On the other hand, and this idea is quite new, ODR needs to go beyond an online mechanisms that help resolve real world disputes and instead address disputes within in-game worlds as well such as those which resulted in the murder of the Chinese gamer. Even more so, the future of ODR will lie in its ability to bridge the online, virtual and real world in avatars of the same system that exist on the web and within in-game environments.

In Section 5 of this course you will cover these topics:
' The Future Of Odr

Topic : The Future Of Odr

Topic Objective:

At the end of this topic student would be able to:

- Understand the potential future regulatory schemes for ODR.
- Identify the role of the courts in the ODR field.
- Discuss any model codes of conduct for handling online disputes
- Review the main ethical concerns in ODR that need to be addressed.
- Consider the major issues for resolution to strengthen ODR use.
- Review the role an e-business plays in educating the public about ODR.
- Determine the nature of future experimentation in ODR technologies.

Definition/Overview:

ODR: These ideas have not gone unheeded. Much, however, remains to be done. Today, we are at the cusp of a new generation of ideas and technology that allow us the opportunities for even greater strides forward in revolutionizing ODR. This is not to say that ODR is now an ossified beast lumbering towards extinction. The vibrant debates in Cyberweek 2005 (in April and in October) displayed a marked interest in theories and ideas that sought to transform ODR from the realm of geeks and specialists to the domains of citizens who could avail themselves of pervasive architectures, real and virtual, to transform disputes on a wide spectrum of issues.

Key Points:

1. Mitigating the potential of new endeavours in ODR is, as in any other domain, is the resistance of the *ancient regime* - early adopters and even early visionaries now unable to grasp the significance of new technologies, mobility, mash-ups and the evolution of the web for ODR in the future. Central to the challenge of revolutionizing ODR is to engage with those who have thus far driven the field into what it is now - a mature theory with mature systems able help in the resolution of complex disputes. This brief topic seeks to explore a few ideas related to ODR that seek to kindle, jar and even anger the imagination to engage with ideas that lie at the heart of ODR systems design and implementation in the years to come. These dialogues in support of shaping next-generation ODR systems is

seen as essential to avoid the development of systems that cannot fully grasp and respond to the complexities of social, commercial and political transaction in real and online worlds in the future.

2. Previously disparate technologies such as search engines, geographical information systems (GIS), radio frequency identification systems (RFID), wi-fi, wi-max and mesh networks, the increasing affordability and availability of multimedia capable mobile phones, PDA's, instant messaging and presence awareness along with Voice over IP (VoIP) technologies, *inter alia*, coalesce and fuse to create wonderful new pervasive architectures of availability and access to the web that even two years ago would have been thought as impossible.This revolution commonly referred to as Web 2.0 or mash-ups, is largely alien to ODR, which remains rooted to static websites with a degree of user interaction over text based communication on PC's. In the rare instance, such as Claro Parlade's ODR system in the Philippines, short-messaging service (SMS) based mobile phone interactions are to a degree integrated within the larger website and PC based framework. Some websites that now allow for limited audio and video based interaction.

3. A study conducted in 2004 reveals 115 ODR sites, 82 of which were still operational.

Showing an exponential growth from 2003 - 2004, during which time 28 new sites began operations, the sites operated mainly in English, with limited audio and video, but handled an impressive quantitative and qualitative array of disputes. We can safely assume that the number of ODR sites on the internet has grown since this study two years ago. However, the evolution of new technologies on the web has far outstripped the adoption of such technologies in the promotion and enhancement of ODR services.There are possible reasons for this. One is the embryonic nature of new technologies on the web. Porous, diverse and constantly evolving, broadly accepted industry standards have yet to emerge to govern the adoption of mash-ups. Interestingly, while constituent technologies in mash-ups might themselves be mature and standards based (such as audio, video and voice transport protocols on the internet) their inter-exchange on a single platform and juxtaposition with complementary frameworks such as GIS and mobile telephones create information architectures that are unparalleled in their potential to reach the millions left behind by the PC based internet revolution. The flip side is that this very nature of an experiment in progress is for some a measure of the limited shelf life and suspect reliability of such technologies.

4. There are by no means invalid concerns. However, the skepticism of new technologies should not mitigate the realisation and exploration of their potential for ODR. The central argument in favour of using new technologies now prevalent on the web is the understanding that current avatars of ODR system fall far short of the ways through which they can help communities transform disputes on the ground. Put another way, ODR systems that fail to engage with the specificities of local languages and cultures and are rooted in PC based access architectures fail to realise the potential of the evolution of the web as well as existing architectures of communication that are more pervasive, user-friendly and affordable than existing ODR architectures. Every time an SMS, a mobile video or audio clip is sent through multimedia messaging (MMS) or the web is accessed through built-in thin web clients in many mobile phones, an opportunity for the expansion of ODR is lost. Seen this way, the ODR community loses a couple of hundred million opportunities for the transformation of disputes every single day. Much can be done to grasp the potential of the mobile phone revolution in Asia and Africato promote ODR systems that piggy-back on such networks. As the author notes in a topic on mobiles and ODR3, the integration of mobile phones in ODR systems can have many different applications:

5. Data gathering

- Plotting the GIS coordinates of the disputed territory, including details of the location, resources and details of adjacent territory
- Details of disputants, including audio and video testimonies, multimedia footage and documentation of case details
- The in-field mediator or contact person can make his or her own notes and add them to the case file - through text, multiple answer questions via SMS, audio notes or video recordings
- Rapid entry of key case details, which the mediator can then go back and expand

6. Real time ODR

- System generated messages can be handed out to disputants to follow up with a voice message system that gives them the status of the case in the vernacular
- Mediators can be informed of similar cases in real time using intelligent comparisons of data and disputes

- GIS boundaries of land can be plotted and sent to regional centres which can print out the maps and hand them over to the disputants to visually aid the process of mediation
- Case details can be semantically linked to provide mediators with expert systems that are able to generate options to help with decision making
- F2F synchronous and asynchronous mediation using mobile video conferring Technologies

7. Offline ODR

- Indexed case histories can feed into knowledge repositories that can be accessed offline, in print or as audio files to help train and build mediation capacities of ADR mediators
- Anecdotal input by mediators can be indexed to create expert system that examine semantic linkages within and between such input to influence options generation - for instance, the family history of a particular disputant, the structural underpinnings to a land dispute which may be linked to loss of face and other observations
- Ability to access thematic or issue based case studies over a given period of time, or examine a particular case against possible options and the probability for resolution based on historical data, or access to case histories in a particular context, region or identity group (ethnic, religious or gender).
- A central repository of information on past and on-going ADR and ODR processes, grouped by issue, region, ethnicity, mode of settlement, mediator etc

8. Settlement process

- Disputants get vernacular SMS notification of settlement. Those who cannot read also get a voice mail with relevant details. Simple disputes can be resolved on the spot with expert systems that help in options generation for the dispute.
- Video conferencing via mobile phones can aid where disputants are far removed from ADR centres. Mediated voice conferences can aid in settlement processes along with asynchronous video, wherein parties get to see and hear each other's viewpoints.
- Mobile systems can complement and strengthen traditional face-to-face (F2F) meetings but reducing the need for physical meetings, reserving F2F meetings for the most intractable disputes, facilitating virtual F2F meetings between active disputants and those that have successfully resolved similar disputes in the past in the same region or on the same issue, enable mediators themselves to interact with each other to discuss, transfer knowledge and share information between each other.

- Low cost of access, explosive growth, ubiquity - these and many other factors strengthen the argument that ODR systems that use mobile phones and are better ideally placed to placed to help communities transform disputes and aid in long term peace building.

9. The future potential

- It hard to explain the potential of new web and mobile technologies to those who have spent many years fine tuning ODR systems for the PC. It may well be that this is inevitable - since the ubiquity of PC based internet access in the Global North negates the need to look at alternatives modes of ODR delivery and access. However, even in countries such as the US, the importance of looking at ODR systems that incorporate mobile and new technologies is growing. However, envisioning and developing such cutting-edge ODR systems oftentimes runs into resistance. Why this is the case is linked to the roots of ODR. The legal domain is deeply resistant to change. Continuity, tradition, stability and precedence are overarching values of any legal tradition. ODR systems that seek to establish themselves as significant and secure architectures need to reflect strong the real-world legal traditions.

- This is unfortunate, in that the inherent resistance to new modes of communications and information exchange and the clienteles interactions of present day ODR systems deter new lay users fully engaging with the potential of the technology to help in the transformation of their disputes. Furthermore, the unimaginative architectures of present day ODR systems stifle the full spectrum of human communication made possible by advances in audio and video via the web, even on very low bandwidth situations. It is not impossible to imagine ways through which ODR systems can be more accessible. From multimedia frameworks that enable more intuitive interactions with users through to accessibility on a range of mobile devices, ODR needs to wean itself from traditional PC based architectures to those that are rooted in the geo-political, cultural and communal contexts. This is by no means a repudiation of the importance of security and stability in ODR.

- Many mash-ups and Web 2.0 technologies are already well established, standards based and continue to evolve. Furthermore, many web and mobile technologies are built on reliable and secure application programming interfaces (API's) that allow developers to creatively respond to the needs of key users in ways impossible with traditional webpage designs and technologies. ODR systems that resolve cross-border territorial disputes, commercial disputes based on the location of resources, the availability of trained mediators on the ground and their contact details, adaptive complex systems that use artificial intelligence to provide

human mediators with strategic options for dispute resolution, virtual single text platforms that enable geographically and politically dispersed members collaborate on blueprints for peace agreements, users in the periphery who can access nodal ODR access points to help with localized disputes - these and many other complex, reliable, secure and imaginative systems are made possible by technologies already present.

- Instructive in this regard is the work of InfoShare4, which through virtual collaborative spaces, brings together key stakeholders in a peace process in Sri Lanka and Nepal to fashion frameworks in support of sustainable peace talks and a larger peace process. Also noteworthy are the examples of disaster relief systems to resolve disputes between available resources and needs on the ground in traumatic conditions, such as the tsunami, the Kashmiri earthquake and Hurricane Katrina. Many systems in support of humanitarian operations and the mitigation of heightened communal conflict in traumatic conditions used pervasive computing frameworks -Thuraya satellite phones, SMS on local mobile networks, mesh networks - as well as a range of devices - mobiles, PDA's, laptops, two-way radios - to resolve persistent and complex demand and supply issues in the relief operations.

- The scalability of these pioneering initiatives remains is an open question. Much depends on the greater awareness of the target audience as well as the developers that pervasive multimedia communications architecture that helps the transformation of disputes. This is particularly resonant in post-conflict situations, where communities in terrains of violence may not always have the ability to meet in a physical space to talk about the mitigation of the socio-political drivers of conflict. In such instances, ODR systems that are able to best harness voices from communities in support of local, regional and national level dialogues in support of dispute resolution / conflict transformation, can be extremely powerful tools in the long-term peace building measures needed to transform violent conflict.