Online Mediation in E–Commerce Matters

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INTRODUCTION

Conflict is not an exceptional fact in human being's life but an ordinary phenomenon in relationships between parties who have different points of view and different positions. Society cannot be based in a permanent conflict situation. Therefore, legal systems have standardized some mechanisms which have been designed to solve different sort of disputes between or among individuals or organizations or between or among the firsts and seconds. Some of these systems are hetero-compositives (trial, arbitration) and some of them are auto-compositives (mediation, conciliation, negotiation, etc.).

Mediation is one of the auto-compositives mechanisms created to resolve differences between disputants and it is included in the so-called Alternative Dispute Resolution (ADR), that is to say, it allows an out-of-court solution. This system, which is getting more and more significant, consist of a way in which the parties negotiate by themselves to get an agreement with the help of a third, the mediator, who is impartial and neutral. In mediation table the parties defend their own positions and the mediator tries to emerge the true interests of the parties as only with the base of the interests, the amicable settlement will be possible and effective. As Fisher, Ury and Patton (2012) have pointed in their *Getting to yes. Negotiating an agreement without giving in*, "for a wise solution reconcile interests, not positions" (p. 42).

An important issue should be taken into account: in this way of problem solving, one of the negotiators could be more influential or more powerful than the others. Therefore, the mediator should assume the role of a professional who is called to balance the leverage between or among negotiators. This is one of the biggest advantages of mediation with regard to traditional negotiation.

Alternative Dispute Resolution (ADR), in general, and mediation, in particular, have been gradually evolving through years to be adapted to the new times. Thus, they became into Online Dispute Resolution (ODR) and online mediation. Online mediation is one of the Online Dispute Resolution (ODR), that is, one of the Alternative Dispute Resolution (ADR) which uses Information and Communications Technology (ICT) as a key element in resolving process. The emergence of ADR as legal resources to problem solving and their effectiveness, motivate to use them when circumstances allow it. Mediation, which is having more and more acceptance, can be carried out by using electronic instruments without losing its essence.

One of the fields where online mediation could display all its charm is e-commerce. E-commerce has some virtues that transform it in a very useful way for market. It uses the Internet to do business. World Wide Web and mobile apps became the protagonist of this new reality. Consequently, consumers and users more easily access the market while companies improve their business.

E-commerce has increased its importance in the last years because of its usefulness in business world. Information and Communications Technology (ICT) is an unquestionable reality and, because of that, online relationships should be developed in an agile, certain and peaceful way. Consequently, obviously it should be considered that if e-commerce allows the development of online relationships, conflicts arising from these relationships also must be resolved online. The

reason is that it would not be logical to approve the e-commerce relational virtues and break them from the moment the conflict arise.

In short, it is clear that online mediation has some important advantages (lower-cost, faster, etc.). However, on the other hand, despite the virtues of online mediation, it could also reveal some disadvantages (difficulties in the use of ICT by some citizen, Internet connection problems, etc.). Therefore, these risks should be taken into account.

The aim of this chapter is to describe why online mediation is an appropriate instrument for conflict solving in e-commerce field and what are some of the advantages and disadvantages of this ODR not only for citizens but also for organizations.

BACKGROUND

The early moments of e-commerce could be found in the late years of 20th century but it was in 21th century when this kind of trade became into a revolution thanks to the improvement of technology and telecommunications. ICT and our social system are closely connected, which makes it impossible to understand one without the other (Garriga Domínguez, 2012, 67).

However, cyberspace is not always a peaceful space. Where information and communication operate in a high, fast and agile level and where contracts can be concluded at the click of a mouse, frequently appear the misunderstandings, the interest clashes and, definitely, the differences between and among the e-commerce users. Misunderstandings, delays, mistakes, late payment and non-payment are some of the conflicts that can arise in e-commerce transactions.

Conflicts are often solved in a judicial process. However, when it is possible, an amicable settlement could be the best option in order to get an effective solution. Especially in the complex area of ICT. Thus, online mediation was born as a system that is adapted to the new times.

In such a context, it could be considered that face-to-face mediation could be more appropriate due to possible communication difficulties and possible problems in information exchanges in online option. Traditional mediation is very virtuous because of the personal meetings. This personal interaction allows the mediator to guide conversations and to build an environment for good communication trying to moderate discussions and helping the parties to approximate their interests. However, the task could be more difficult in online mediation because the absence of personal meeting that could work as a barrier for a good communication. On the contrary, some have thought that online mediation has useful virtues. For instance, it has been argued that online mediation has more similarities than differences with respect to face-to-face mediation (Alzate Sáez de Heredia, 2008, p. 8). It could be very useful when the parties are separated geographically or, even, when communication between them is especially difficult. Furthermore, it has been said that as well as cyberspace provides an environment to observe new sources and patterns of conflict, technology provides the opportunity to consider new approaches to conflict resolution (Katsh, 2001, p. 812).

In opinion of Cortés (2011), "there are some misconceptions about ODR, such as the idea that ODR is only valid for small claims, or that ODR exclusively relies on automated technology, or that ODR can only deal with online disputes" (p. 2).

In any case, the reality is that online mediation is working properly. To that effect, it could be developed by different instruments such as e-mail, video conference or even a virtual platform that the mediator uses to that task; definitely, resources for reproducing sound, images and texts. In fact, written exchanges are not strange in online mediation. If the mediator decides to use a special platform, this instrument should be used not only for video conference but also for upload and download data and documents. Besides, it should have a schedule for mediation program-

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