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ODR enthusiasts from around the globe-- picture taken at the 2008 Forum on Online Dispute Resolution.

“Getting to Yes” on ODR Technology A Smartsettle White Paper

By Paul Miniato

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Progress towards the widespread use of ODR technology to resolve disputes and build agreement seems slow at times. As a relative newcomer to the field I had hoped that new ways of doing things might receive faster acceptance. But it’s not an easy problem.

As a long-time technologist, I’ve learned that the successful application of technology requires a complex negotiation process between developers and users. This negotiation starts well before any “sale”, and continues long afterwards.

All too often – and I fault my fellow technology suppliers as often as those who need solutions – we fail to follow our own models of interest-based negotiation. We arrive with our entrenched positions: the technologists “know” what the user needs; the users “know” what the technologists should provide. When it doesn’t match, we blame each other. “The user is too narrow-minded to see what we can do for them.” “The supplier doesn’t understand the soft skills that are essential in this field.”

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Separate the PEOPLE from the problem; Focus on INTERESTS not positions; Invent OPTIONS for mutual



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gain; Insist on using Objective CRITERIA.

May this reminder also be useful to technology providers in this ODR negotiation process, and to others besides.

Separate the PEOPLE from the problem

There is a long-term relationship at stake in this discussion. Launching a global ODR infrastructure will only be the beginning of that relationship. We will be working together for many years.

Like most parties to a negotiation, users and technologists tend to see the world from their own points of view. When we run into roadblocks, we forget that we are looking at the same problem from different perspectives. We forget to be curious. We take rejection personally instead of remembering to ask why, ... and then listening with the intention to grow.

From my years in the technology industry, I know that we systems designers can sometimes fail to be good listeners. We need to learn each other’s languages. The life experience of technologists and those on the frontlines of dispute resolution are different – but neither one is the Truth.

We need to spend time walking in each other’s shoes. We cannot really

work together if the technologist has no understanding of daily life on the front line, and if the technology user has no understanding of the challenges of creating and deploying new solutions.

Technology providers may do this via the Product Marketing function and call it market research or Marketing Investment. To quote hi-tech marketing consultant, [Ralph E. Grabowski](#), this Marketing Investment is “the upstream process that occurs before the product is ready; perhaps even before the product is committed to engineering.” It excludes the traditional activities of promoting and selling. “Marketing Investment means designing your product or service to deliver benefits, and only those benefits, that customers are willing to spend money to receive; thus guiding engineering to design the right products.” It’s made up of listening activities, such as understanding the potential customer or user, modeling the customer’s business, calculating customer payback, quantifying user needs, questioning and surveying the user, and analyzing user data.

At the same time, users and user representatives need to continue to learn about the various technologies. This can include technology surveys, requests for information (RFIs), and technology trials – again listening activities inquiring into



Water

iCan Systems Inc. is working toward the introduction of Smartsettle ODR solutions for water disputes.

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the abilities, limits, direction, and potential of the products technologists are building. What problems are they trying to solve? Why do they think they will be successful?

Realize that we are all in a “negotiation” together – a collaborative effort to find a solution to huge problems. How can we get better at providing peace, justice and security in an increasingly connected world? If we can do that well, we’ll all benefit.

Focus on INTERESTS, Not Positions

I’ve lost count of how many discussions on technology have foundered on entrenched and hardened positions. “This is what the system should do, and how.” “No, it needs to be built this way!”

Like people everywhere, we tend to arrive at negotiations with our positions, masquerading as solutions. Often these are based in our past investments. When technologists have invested years in developing something, they become attached to it. When users have invested their career in learning how to do it the “old way”, they too become attached to it.

Technologists and users will often focus on each other’s positions – their suggested solutions – without taking the time to understand the interests behind them. Sometimes those interests overlap; sometimes they diverge.

It’s important not to assume we know what interests users and technologists have. We each need to take the time and the trouble to understand all of the respective interests in this collaboration, and not just as a prerequisite to immediately switch into selling or buying mode.

Sometimes it helps to move the conversation away from arguing about this feature or that, about this protocol or another, and return to a mutual exploration of the specific interests we are trying to satisfy by means of those protocols or features.

I’m dismayed at how often huge investments in technology failed to pay off because the supplier failed to understand the real interests they were trying to satisfy.

Technologists like to play with their toys. They’ve been known to fall in love with their inventions, and sometimes forget the interests they are trying to serve. What percentage of our resources do we spend on listening? Do we even know?

We could all try a little harder to get curious. Some ‘why’ questions are a good place to start. Why

did you build it that way? Why do you want it that way? Why can’t you use what we have built? Why should we do it like that?

Invent OPTIONS for Mutual Gain

This global discussion about the future of ODR is not about trying to sell a product to someone who doesn’t really need it. Or trying to acquire a solution for zero cost. Or trying to get the jump on the competition.

If we do this right, we will all gain: technology providers, consumers, businesses, negotiators, disputants, and all of their representatives and agents.

In developing a new solution, one model I’ve seen work well is a strategic alliance between a user or users and one or more technology suppliers, to develop a tailored solution for those specific users – but also one which promises to have a wider application. This can provide a good concrete framework to what otherwise might be endless abstract debates.

Like many negotiations, the technology discussion so often gets bogged down in premature judgment, or searching for a single answer. The process can benefit from good interest-based principles:

- Separate inventing from deciding. Let’s start by getting all the ideas on the whiteboard.

- Broaden the options on the table rather than look for a single answer. In the end, there will be many ODR successes. There will be many approaches and many players. We must allow for them.

- Search for that mutual gain. Can an individual supplier envision a future where a rising tide lifts all boats, even that of their competitors? Can the user imagine that suppliers may prosper financially while serving their interests?

- Invent ways of making the other party’s decisions easy. Much of this is about education. Technologists need to get better at educating users about what they can do and how it can benefit them. Users need to get better at educating technologists about what they really need and why. This is not something that can be done in the hallway – it takes a considerable investment.

Inventing options for mutual gain takes effort. And it sometimes goes against the grain.

Insist on Using Objective Criteria

In the discussions about the future of ODR, we still need to do much work on developing objective criteria for success. I believe this is one area where we can work productively over the coming year. That work isn't over until we are in general agreement about what criteria to use.

Can we all agree on how to measure "success" in rolling out an ODR solution for global commerce? What performance metrics will we use? If we focus on disputes resolved, or speed of resolution, or satisfaction, or cost, or profits, how can we include such intangibles as disputes avoided, or increased consumer confidence, or higher levels of trust, or a more peaceful planet?

Do we have criteria for the design of rules, infrastructure, and protocols? How can we agree whether an ODR rule is doing its job? Can we agree upon objective standards for connecting to the ODR infrastructure? Are we sure important options won't be excluded arbitrarily?

When we are looking at new ways of resolving disputes, the old criteria may not always apply. Can we design objective criteria that allow enough flexibility for untried and even unknown solutions?

Can we agree on the criteria once we've designed them?

Conclusion

As before, history will be our judge. What will its judgment be? How do we imagine the ODR landscape will look to the next generation? I like to think that the "mantra" we have at [Smartsettle](#) will characterize that future. "Resolving conflict in a more peaceful, collaborative, and intelligent way throughout the world."

Bio

Paul Miniato is Senior Systems Analyst at iCan Systems Inc., the creator of [Smartsettle](#). He has had more than three decades of successful experience in the software industry, in applications from banking to music to geophysics, using everything from embedded microprocessors to mainframes. Before joining iCan Systems, Mr. Miniato was a partner in an Internet consulting company supplying development and operations experience to high-performance Internet applications such as global job boards. He is currently also pursuing a Certificate in practical face-to-face mediation. He likes to listen.