

RisoltiOnline: Online Mediation from a Very Practical Point of View

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Abstract. This paper consists of a summary of the lessons learned from seven years of experience in online mediation and set future trends.

Keywords. Online Dispute Resolution, ODR, mediation, practice

1. How it all started

RisoltiOnline.com appeared on the web site of the Chamber of Arbitration of Milan at the very end of 2001. The Chamber of Arbitration of Milan is a branch of the Milan Chamber of Commerce, founded in 1985, specialised in providing alternative dispute resolution (arbitration and mediation) for commercial matters involving businesses and consumers.

At that time the excitement for a new environment (online) was at the top. E-commerce was spreading all over the world mostly in a wild way and pre-existing rules of law and remedies were useless. In such a scenario the Chamber of Commerce of Milan (the institutional point of reference for business as well as for consumers) started to try to set a pattern for the phenomenon, by exerting one of its most traditional activities, that is, analysing as much contractual terms published online as possible in order to monitor the custom as arising out of online transactions and abusive clauses in online contracts. At the same time, the Chamber of Arbitration of Milan, which was already providing Alternative Dispute Resolution services for the traditional market such as arbitration and mediation, began to design the first Italian ADR service to be provided ONLINE.

RisoltiOnline comes out from the attempt to translate the experience and the model of the Chamber's face-to-face mediation in an online system.

In 2002 we managed 38 commercial cases; unfortunately in the same year the same number of online mediation requests could not be handled by the service because related to non-commercial matters. In the following years the number of submissions noticeably decreased until 2007 when, on the contrary, it reared up to 117 requests for online mediation.

2. RisoltiOnline up to May 2008

From 2001 to May 2008, the system consisted in a bi-lingual online request form linked to a database and a text-based chat-room. Though we built for the users a very simple, "google-style" chat, users asked us, right from the start, to mediate via e-mail.

We guess that this favour for e-mail communication is partly related to the costs of the Internet connection (an online meeting in chat could last for hours) and the higher familiarity in handling e-mail instead of chat; but we also think that there might be an important conclusion to be drawn: in online negotiations (assisted or not) people do prefer to take their time in order to think better about the proposals' exchange.

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A-synchronous² better than synchronous? Since the online environment lacks of important reassuring clues (such as the “look” of the opposing party or the tone of voice, etc.), it pushes the disputing parties to “move on” very carefully in a negotiation.

The process in itself was very straightforward:

1. An online mediation request is sent via form on the web site;
2. The Secretariat handles the request and contacts the opposing party inviting he/her to participate in an online mediation process (by filling in an online form);
3. If the opposing party agrees in participating, a mediator is appointed for the case;
4. The mediator contacts the parties through e-mail and guide the discussion;
5. If an agreement is reached, the mediator put it into writing and circulates the draft among the parties to the dispute. The last version of the agreement is printed by the parties, signed, and sent to the Secretariat, which will cross the agreement signed by one party to the other and viceversa.

In 2001 we decided to keep the system as simple as possible, so the users were not required to use the e-signature to sign the agreement. In 2008 we still think that asking the parties to sign electronically the agreement would be an obstacle in the choice for online mediation.

At a national level the e-signature is having a very slow uptake. In order to spread the use of e-signature the businesses have been compelled by the law to deposit their financial balance to their Chamber of commerce using e-signature, but as far as the author know, this produced a misuse of the smart card that lies in the safe of the company accountant waiting for the next deposit. In Italy professionals and private citizens seem to suffer from some sort of allergy to e-signature and ICT in general. This is maybe one of the reasons of the slow uptake of online mediation too (together with a poor promotion of the tool).

From January 2002 to December 2006 we managed 136 requests, 13 online mediation processes and closed (positively) out-of-mediation 29 cases. Out-of-mediation means that the simple contact of the other party by the Secretariat generated a re-start in the (private) negotiations between the disputing parties who reached a positive result. Here are two more important clues:

- Businesses hardly agree to enter in our online mediation process but in general they do not know/trust Alternative Dispute Resolution in general and all the more so they do not trust online ADR;
- The Secretariat alone resolved a large amount of cases without entering in a mediation procedure, simply contacting the opposing party.

The great majority of our online mediators belong to the legal profession. Until 2008 we had a panel of 11 mediators: half of them were trained (in different ways and level) in traditional mediation techniques, the other half was not specifically trained in mediation. We wanted to know if and how the training in traditional mediation techniques would have affected the management of an online mediation.

We noticed that in general the trained mediators had fewer difficulties in impasse phases and their online meetings ended with creative agreements but we also found out that not necessarily a good traditional mediator fits the online text-based environment. We also discovered “natural born online mediators” in the non-trained half of our list. All of them put into effect a wide range of strategies in order to carry out their task in the best way, and faced new challenges. Clue number 4:

- A specific training on mediation helps, but it’s not enough.

2007 appeared to be a sort of turning point for RisolviOnline. The Secretariat managed 117 online mediation requests, 8 opposing parties accepted to enter the online procedure and 37 cases were

² A-synchronous: the communication between the parties is not occurring in real time (e.g. e-mail exchange, discussion forum); synchronous: the communication between the parties is in real time (e.g. chat)

positively closed by the sole intervention of the Secretariat. And more: one of the parties was non Italian in 61 cases out of 117. We therefore tried to ride the wave and take the risk.

3. RisolviOnline European Network

In early 2008 we decided consequently to improve the service considered the number of international cases we managed in 2007 and in the perspective of the possible spin-off of the new directive “*on certain aspects of mediation in civil and commercial matters*”³.

Basics still are that RisolviOnline is a public and institutional service provided for businesses and consumers and it deals with commercial disputes only worldwide regardless of the economic value of the dispute. It is text-based and it origins on the traditional concept/notion of mediation that is: it’s voluntary, the mediator is impartial and neutral, the mediator assists the parties in reaching an agreement. The agreement, once signed, has a contractual nature. The whole process is confidential.

The mediator is a professional. The officer of the service does not act as a mediator and he cannot provide legal advice to the parties who eventually ask for it (and it happens very often). In a word, the officer must keep a neutral and independent position towards the parties to a dispute.

To this “traditional core” we added to the rules of the service the possibility, if all the parties involved agree so, to ask the mediator for one or more settlement’s proposals, which are not binding for anyone so to comply with the pillars of mediation.

We decided to create a stand-alone web site, containing the crucial information about the service (how does it work, rules, fees, code of conduct for the online mediator) translated in 23 languages. We have an official list of Italian online mediators and a pilot list of online mediators coming from all over Europe.

Figure 1. RisolviOnline homepage



The official list of RisolviOnline includes a very well trained panel of mediators partially matching with the one used by the offline Mediation Service. The mediators attended advanced training courses and practiced in the field of commercial mediation. To be part of our offline panel they passed a

³ Directive 2008/52/EC at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:136:0003:0008:EN:PDF>> see 8th «Whereas»: The provisions of this Directive should apply only to mediation in cross-border disputes...» and Whereas no. 9 «This Directive should not in any way prevent the use of modern communication technologies in the mediation process.»

structured selection consisting in written and oral tests on mediation and role plays. This is the first selection procedure for mediators in Italy. It has been conceived by the Chamber of Arbitration of Milan which needed an effective way to select skilled mediators for its panel.

Besides the official panel, RisolviOnline has a pilot list of skilled mediators coming from all over Europe because one of the main goals of the project is to foster a multilingual approach to online mediation. We gathered issues related to international cases/disputes and one of the most sensitive problem was the language of the negotiation. Certainly, it is not only a matter of language only, but of culture in general. We hope that relationship between our mediators coming from different countries may enrich the mediation culture of all the participants in the project.

For this reason the Chamber of Arbitration of Milan is going to schedule at least one meeting a year in order to facilitate the team spirit, the cultural exchange and to provide some specific online mediation training to our online mediators.

We organised two workshops in the last 3 years exclusively dedicated to our online mediators. We asked Dr. Susan Summers Raines,⁴ Associate Professor in conflict management at Kennesaw State University (Georgia – USA) and mediator (offline and online), to create specific training for our mediators.

From a technical point of view we replaced the e-mail exchange with another asynchronous communication tool, in order to protect the confidentiality of the discussion which can be at risk using e-mails: the discussion forum.

Another important point is the development of specific online mediation techniques. We strongly believe that the development of such techniques and the training of the online mediators is the crucial point of online mediation (as conceived by the Chamber of Arbitration of Milan). Systems and platforms play a strong role in facilitating the activity of the third neutral or even a greater role in automated negotiation but as far as our ODR scheme is concerned, the leading role in the proceedings is played by the online mediator (as well as the parties). This is the reason why the Chamber is thinking of developing a project focused on online mediation techniques involving different academic departments (law, psychology, sociology, communications, etc.) in order to find out and develop such techniques and train our mediators.

4. ODR and the Italian Chambers of Commerce

After RisolviOnline, a number of other online mediation services have been created by the Italian Chambers and their technical partners such as Concilia-online⁵ (used by a number of Chambers such as the Chambers of Tuscany and Piedmont and many others), WebCuria⁶ (Treviso) and others. Systems are often modular (they offer various levels of complexity to its users, starting from a simple chat until a web conference). We have direct notice for the Chambers of Piedmont and Treviso which do not report any case of online mediation, while we do not have any figures by the other online services.

5. Conclusions

In seven years of activity, it seems that the main points/findings for an online dispute resolution service shaped on traditional mediation are:

- Businesses are reluctant to take part in a mediation proceedings, and they are far more reluctant to enter an online mediation (but the Directive: 52/2008 might improve their attitude towards ADR);
- Parties of an online mediation proceedings privilege a-synchronous communication tools;
- The Secretariat has a crucial role in processing the online mediation requests and also in helping the parties in re-opening private negotiations;

⁴ See Dr. Raines' CV at <http://www.kennesaw.edu/pols/mscm/raines_cv.pdf>

⁵ www.conciliaonline.net

⁶ www.curiamercatorum.com

- The training on mediation techniques may be the starting point but it's not enough to handle the cases in the proper way, therefore it is vital to find out and develop specific online mediation techniques;
- It is important to develop multilingual systems because though it may be quite easy and common to conclude online transactions in English, it could be much more difficult to take part in an online negotiation if the party is not an English native speaker.

The author is perfectly aware that these points are more “suggestions” since they are poorly supported by statistics,⁷ but the Chamber of Arbitration of Milan is still going ahead with the project thinking that there will be a positive change in the situation soon. We think that the international vocation of the service will be appreciated especially when Directive 52/2008 will be enforced by each Member State.

⁷ Only in 31 cases (out of a total number of 380 online mediation requests) there have been a real online mediation proceedings (5 are still going on, in 16 cases the mediation has been successful, in 10 it failed), 83 cases were solved by the intervention of the Secretariat. Statistics in detail at www.risolvionline.com