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SYMPOSIUM ON ENHANCING WORLDWIDE UNDERSTANDING THROUGH ONLINE DISPUTE RESOLUTION

Walking Along in the Mission:
Benjamin G. Davis

Keynote Address
Daniel Rainey

ARTICLES

Ten Years of Online Dispute Resolution (ODR):
Looking at the Past and Constructing the Future
Ethan Katsh and Leah Wing

Online Mediation: Where We Have Been, Where We
Are Now, and Where We Should Be
Sarah Rudolph Cole and Kristen M. Blankley

Online Dispute Resolution Through the Lens of
Bargaining and Negotiation Theory: Toward an
Integrated Model
David B. Lipsky and Ariel C. Avgar

Technology Mediated Dispute Resolution (TMDR):
Opportunities and Dangers
David Allen Larson

Some Economic Musings on Cybersettle
Russell Weiss

Cyberjuries: A New Role as Online Mock Juries
Nancy S. Marder

What I Hear You Writing Is... Issues in ODR: Building
Trust and Rapport in the Text-Based Environment
Andrea M. Braeutigam

Resolution of Cross-Border E-Business Disputes by
Arbitration Tribunals on the Basis of Transnational
Substantive Rules of Law and E-Business Usages:
The Emergence of the *Lex Informatica*
Antonis Patrikios

Dogmas of Online Dispute Resolution
Nicole Gabrielle Kravec

The Use of Jurisdictional Arbitrage to Support the
Strategic Interest of the Firm
Robert Ware III (posthumously)

Digital Identity and the Lawyer's Role in Furthering
Trusted Online Communities
Jeffrey Aresty

Charting the Future of Online Dispute Resolution:
An Analysis of the Constitutional and Jurisdictional
Quandary
Saby Ghoshray

The Regulatory Framework for Online Dispute
Resolution: A Critical View
Rafal Morek

PROCEEDINGS

Online Dispute Resolution and the Need for More than
Virtu(e)al Professionalism
Llewellyn Joseph Gibbons

ODR at the AAA: Online Dispute Resolution in
Practice
Debi Miller-Moore

Hope: The Unexpected Outcome of an Online Dispute
Resolution Competition
Lynn M. Malley

Domain Name Dispute Resolution Within the Asian
Region
Yeo Yee Ling

The Fourth Party Rises: Evolving Environments of
Online Dispute Resolution
Alan Gaitenby

Netcase: Keep Going Where Progress Leads You
Mirèze Philippe

ICODR: Preparing for a Virtual Practice Grounded in
Real World Moot Competitions
Elizabeth Lai Featherman

Enhancing Worldwide Understanding Through ODR:
Designing Effective Protocols For Online
Communications
*Frank G. Evans, Bruce Wettman, Lewis Shadoff,
and Rebekah Birdwell*

COMMENTS

Can a Feminist Approach to Corporate Social
Responsibility Break Down the Barriers of the
Shareholder Primacy Doctrine?
Cheri A. Budzynski

Foreign Felons—Firearms and Beyond: The
Implications of *Small v. United States* and the Proposed
Amendments to 18 U.S.C. § 922(g)(1)
Kathryn L. Munger

NETCASE: KEEP GOING WHERE PROGRESS LEADS YOU

*Mirèze Philippe**

I. INTRODUCTION

IN 1989, the former Chairman of the ICC International Court, Alain Plantey, decided to equip the Secretariat of the Court with a computer program for managing arbitration cases. Professor Davis, who was then counsel at the Secretariat, rose to the challenge. Together with some computer engineers and members of the Secretariat, including me, Davis devised the Secretariat's first computerized case management system. Although his colleagues thought he was a dreamer, Davis knew that it was the future—and he was right. Thanks to his perseverance and enthusiasm, the case management system has become essential to the Secretariat of the ICC Court.

Since 1998, I have been in charge of the system upgrades that are necessary to keep pace with the constant and rapid evolution of modern technology. These upgrades led to the creation of the ICC's current International Court of Arbitration database, IcaBase. While IcaBase has been vital to our internal operations, the growing use of electronic tools by the business community made the need for a similar environment to serve our clients indispensable. Thus, IcaBase became the basis for the development of NetCase, the ICC's online arbitration database.¹

The purpose of this symposium is to examine the role online dispute resolution ("ODR") can play in enhancing worldwide understanding. Thus, this article explores that role and describes the ICC's latest contribution to the development of ODR—the NetCase system.

II. ODR'S ROLE IN ENHANCING WORLDWIDE UNDERSTANDING

Because ODR facilitates communication by bringing people from different countries and cultures together, it can enhance worldwide understanding in several ways. First, ODR helps level the playing field by bringing people together without requiring them to appear before a court or travel for a hearing. ODR processes presuppose that all participants have access to technology, which

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1. ICC-The World Business Organization, Introducing NetCase, A New Tool for Arbitration (Nov. 22, 2005), <http://www.iccwbo.org/iccfaja/index.html?cookies=no>. Access to NetCase is available at www.iccnetcase.org.

means they have the same opportunity to access to the same information at the same time. This eliminates the financial burden incurred in attending hearings, offers the participants equal and simultaneous access to the information, and prevents parties from being advantaged or disadvantaged by their temporal proximity to a court.

A second way that ODR enhances worldwide understanding is by enhancing the participants' comfort level. This is especially true for unrepresented parties who may feel more at ease making their submissions online because it gives them time to think and write, instead of having to answer on the spot. Also, some people may feel more comfortable expressing themselves in writing than in speech.

A third aspect that can enhance worldwide understanding is online posting of domain name disputes. Sharing information on the outcome of each case would establish precedent for future disputants and arbitrators to follow, and open the world to greater understanding.

One ODR tool that can be considered among the tools that enhance such worldwide understanding is the ICC's NetCase platform,² which brings people together by offering users instantaneous access to information in a standard environment.

III. THE NETCASE PLATFORM

A. *The Purpose and History of the NetCase Project*

Today, managing information in a world of rapid progress and developing efficient information systems are critical to continuing success. Users must be able to retrieve information instantaneously and transmit it easily. At the ICC, we found that the best way to achieve these goals was to use internal expertise for the knowledge management and external technological expertise. In doing so, we created our state-of-the-art computerized case management system, IcaBase, which is specifically adapted to our needs and the way our organization functions. Based on the success and reliability of the IcaBase system, and mindful of the need for developing new tools to serve our arbitration users, we decided to implement NetCase to offer our users the ability to conduct their proceedings online.³

B. *The NetCase System*

NetCase is an interactive web-based platform that allows users to monitor the progress of pending arbitration cases efficiently and in real time. NetCase functions as a typical offline ICC arbitration procedure, but uses information

2. The NetCase icon was chosen to reflect the bringing of people together. It represents a community of people linked together and heading towards the resolution of a dispute.

3. For more information, see Mirèze Philippe, *NETCASE: A New ICC Arbitration Facility, in Using Technology to Resolve Business Disputes*, ICC INT'L CT. ARB. BULL. (SPECIAL SUPP.) 53 (ICC Pub. No. 667, 2004).

technology facilities. It is a tool for facilitating information and document exchange between parties, arbitrators, and the ICC, rapidly, in a private, secure, and user-friendly environment.

Because NetCase was devised using IcaBase resources, it is much more than a mere intranet for exchanging documents. Rather, NetCase links up and displays information from both IcaBase and an electronic document management system ("EDM").

Although NetCase offers real-time access to arbitration documents, it should not be thought of as an online arbitration procedure. It does not imply that the case will be conducted exclusively online, nor does it rule out hearings or the transmission of documents offline. For instance, because there is no international instrument that recognizes awards transmitted online,⁴ awards are made available on NetCase after the parties are notified in hard copy.⁵

C. What NetCase Offers

NetCase offers users several advantages without added costs or special hardware or software requirements.⁶ First, NetCase offers round-the-clock access to the system from anywhere in the world. Thus, it is no longer necessary to wait for office hours to call and find out whether a party has paid its share of the advance on costs or filed its submission, or whether the expenses or fees have been paid to the arbitrators. This saves time for both the staff and the participants.

Second, NetCase allows lawyers and arbitrators to post documents online at any time, and automatically sends e-mail notifications of all new postings to all users associated with the case.⁷ Posted messages and documents are immediately available and stored in a case-specific, searchable intranet that allows new and existing users easy access. The storage of all exchanges of documents and messages in one single place for everyone is another aspect of this special feature. Lawyers and arbitrators can access submissions any time and from any computer. This allows users to travel or to participate in hearings without having to carry the case documents or photocopy the case files when new counsel or arbitrators join the case.

4. UNITED NATIONS COMMISSION ON TRADE LAW, WORKING GROUP II (ARBITRATION), A/CN.9/WG.II/WP.139 (Jan. 23-27, 2006), http://www.uncitral.org/uncitral/en/commission/working_groups/2Arbitration.html (only recognition of the validity of an electronic arbitration agreement was addressed and not issues arising in respect to online arbitrations or transmission of awards online).

5. However, encryption is sufficiently safe to avoid security concerns in transmitting documents online.

6. The only software required to use the NetCase system is a web browser.

7. It is recommended to post documents in PDF and TIFF files because those formats are the most universal, widely used, and easily downloaded, and their use would facilitate the efficient retrieval and storage of documents.

Third, NetCase combines speed, security, and confidentiality. Access is restricted to users with login names and passwords,⁸ and the system has private forums where arbitration participants can converse in a secured environment, rather than via e-mail. While the transfer speed equals that of e-mail, the NetCase transmissions are encrypted, which makes it impossible for the information to be read during transfer and ensures that it travels to the user's browser in a secured space. Also, the system scans all posted documents for viruses and rejects any that may be harmful.

The fourth and possibly most important value NetCase provides the ICC arbitration users is the centralized system and standardization. Though lawyers and arbitrators have their own electronic system to manage cases and communicate with clients, each one is organized differently. NetCase offers a uniform system of organization for all players to see the same material, in the same environment, at the same time. The standard presentation also simplifies its use and information searches, and allows users to become familiar with the platform quickly. Using a single, Internet-based space eliminates the need for separate extranets and provides tracking and management functionalities in all matters in which users are involved.

The fifth advantage of NetCase is that it is extremely user-friendly. Any user can browse easily through the platform, regardless of his or her IT literacy. It also allows users to monitor pending cases and travel swiftly from one case to another, without moving or handling files. And, because NetCase is so fast and efficient, it is a great tool for facilitating practitioners' work.

Finally, the NetCase system offers two sets of user-friendly guidelines: the NetCase Guidelines, which are instructions for NetCase use; and the Guidelines on IT in arbitration, which includes three parts: (1) "Issues to be considered when using IT in international arbitration"; (2) "Operating standards for using IT in international arbitration"; and (3) "Explanatory notes on the standards."⁹ These guidelines are intended to assist arbitration users in organizing procedures whenever they use IT facilities, by anticipating possible problems and issues users should consider. They concern practical issues, such as IT capabilities of each person involved, and organizational issues, such as coherent file naming. But they do not address, and are not meant to address, substantive or procedural arbitration issues.

IV. CONCLUSION

It has been remarked in a paper published by Information Security Solutions Europe that "the one thing about IT that never changes is that it is in a constant state of change."¹⁰ NetCase will be no exception, because like any new development, it will need constant adaptation and improvements as practice goes

8. Use of NetCase requires lawyers and arbitrators to sign a "Statement of Acceptance of the Conditions of Access and Use of NetCase" before they can be issued a login name and password.

9. Philippe, *supra* note 3, at 59.

10. Information Security Solutions Europe, ISSE 2003 Conference Report 2 (held Oct. 7th-9th, 2003) (available through author). *See generally* ISSE website, <http://www.eema.org/isse>.

along. However, the feedback we have received from parties and arbitrators using NetCase is very encouraging for new users. Several lawyers have said that NetCase works well and that they did not expect to see such an advanced system. Some of the improvements they suggested, such as a full text search, and many others, are currently in the works. Overall, the tremendous progress that has been achieved during the last ten years in the IT field is a cause for optimism and for confidence in the expansion of IT in arbitration.