

# Ethical Principles for Online Dispute Resolution

## A GPS Device for the Field

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### Abstract

*The disruptive force of technology has led to innovative dispute resolution practices that increase access to justice and also raise new ethical considerations. In response, there have been assertions about the importance of applying to online dispute resolution (ODR) the shared values already enshrined within alternative dispute resolution (ADR) as well as calls to more carefully assess ways they may be insufficient or need refining to adequately address the new ethical challenges emerging in ODR. As ODR is increasingly incorporated into legislation, regulation and a wide variety of sectors in society, it is timely to explore the importance of ethical principles specifically for ODR. In the hope of contributing to these efforts, this article examines the benefits and challenges of articulating a set of ethical principles to guide the development and implementation of ODR systems, technology and processes.*

**Keywords:** ODR, ethics, alternative dispute resolution, technology.

## 1 Introduction

With the infusion of information and communication technology (ICT) into virtually every form of dispute intervention process, and with the rapidly growing adoption of online dispute resolution (ODR) systems into a number of sectors throughout society, it is timely to produce a set of ethical principles integral to the design and implementation of online dispute resolution. There are many pathways that can prove useful for mapping the field of ODR, and defining relevant ethical principles can, hopefully, result in a valuable Global Positioning Sys-

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tem (GPS)<sup>1</sup> device for this journey. The Ethical Principles for Online Dispute Resolution (ODR)<sup>2</sup> are designed to enhance the quality, effectiveness and scope of dispute resolution processes that employ technology.<sup>3</sup> Taken together, it is hoped that they can provide a guide for best practices, standards, rules, qualifications, and certification efforts in dispute resolution and related fields that address dispute resolution processes and practices. These Ethical Principles for Online Dispute Resolution<sup>4</sup> build on previous work on principles and standards of practice by the National Center for Technology and Dispute Resolution, as well as the growing body of literature and the standards of numerous professional, governmental and commercial bodies concerning ODR and dispute resolution more generally.

Not surprisingly, as online dispute resolution begins its third decade, there have been increasing calls for attention to the ethical and regulatory dimensions

- 1 The choice of GPS as a metaphor is employed to encourage viewing the 'ethical principles' as a guide that (1) reminds us where we are (our shared values) on a map used across multiple jurisdictions (giving cohesion to the overarching journey); (2) provides guidance for where we want to go (illustrating not only a recommended path but also the distance between where we are and where we want to go when developing and implementing ODR processes); (3) reminds us that we are connected to other places and people (whether that be across temporal or geographical distances – the history and knowledge of ADR and those in other jurisdictions and cultures who are also stakeholders in ODR, for example); (4) demonstrates that there is more than one route to get where we are going (thus allowing for a variety of interpretations as relevant by culture, legal jurisdiction, sector of society, etc.) and (5) is continually responsive to a changing terrain (whether that be technological innovations, new legislation, discovery of new ethical dilemmas or cultural limitations of the ethical principles) and adjusting to provide the best guidance for our way forward.
- 2 The ethical principles for online dispute resolution (ODR) presented in this article are: accessibility, accountability, competence, confidentiality, empowerment, equality, fairness, honesty, impartiality, informed participation, innovation, integration, legal obligation, neutrality, protection from harm, security and transparency. *See also* L. Wing, 'Ethics and ODR: Ethical Principles for Online Dispute Resolution', National Center for Technology and Dispute Resolution, 2016, available at: <<http://odr.info/ethics-and-odr/>> (accessed 23 May 2016).
- 3 Online Dispute Resolution is framed as inclusive of any process or intervention used to handle disputes that employ information and communication technologies.
- 4 These principles were designed under the auspices of the National Center for Technology and Dispute Resolution (NCTDR), specifically building on the knowledge and expertise of the Fellows of the NCTDR and the 2009 NCTDR Advisory Board's statement on ethical principles and standards for ODR. Special thanks go to Vikki Rogers, Assistant Dean for Online Programs at The Elisabeth Haub School of Law at Pace University, for her feedback on this article.

of ODR.<sup>5</sup> When reflecting on the impact of the infusion of technology into the way that disputing is managed, the field is uncovering a plethora of questions and challenges that directly relate to ethics: some of them newer<sup>6</sup> and some versions of old ones we in the broad alternative dispute resolution (ADR) field have yet

- 5 See Wing, 2016; Advisory Committee, National Center for Technology and Dispute Resolution, *Online Dispute Resolution Standards of Practice*, 2009, available at: <[www.icann.org/en/system/files/files/odr-standards-of-practice-en.pdf](http://www.icann.org/en/system/files/files/odr-standards-of-practice-en.pdf)> (accessed 23 May 2016); A. Barsky, 'The Ethics of App-Assisted Family Mediation', *Conflict Resolution Quarterly*, Vol. 34, No. 1, Fall 2016, pp. 31-42; P. Casanovas & J. Zeleznikow, 'Online Dispute Resolution and Models of Relational Law and Justice: A Table of Ethical Principles', in P. Casanovas et al. (Eds.), *AICOL IV/V 2013*, LNAI 8929, Springer-Verlag, Berlin, Heidelberg, 2014, pp. 54-68; J. de Werra, 'ADR in Cyberspace: The Need to Adopt Global Alternative Dispute Resolution Mechanisms for Addressing the Challenges of Massive Online Micro-Justice', *Swiss Review of International & European Law*, forthcoming; N. Ebner & J. Zeleznikow, 'No Sheriff in Town: Governance for the ODR Field', *Negotiation Journal*, Vol. 32, No. 4, 2016, pp. 297-323; The European Parliament and the Council of the European Union, 'Regulation of the European Parliament and of the Council on Online Dispute Resolution for Consumer Disputes and Amending (EC) No. 2006/2004 and Directive 2009/22/EC (Regulation on Consumer ODR) ODR Regulation (EU) 524/2013', *Official Journal of the European Union*, 2013, L 165/63; S. Jani & C. Getz, *Mediating from a Distance: Suggested Practice Guidelines for Family Mediators* (2nd ed.), Mediate BC Society, Vancouver, 2012, available at: <[www.mediatebc.com/PDFs/1-14-Family-Mediation---FAQs/Guidelines\\_Mediating-from-a-Distance-\(Second-edition\).aspx](http://www.mediatebc.com/PDFs/1-14-Family-Mediation---FAQs/Guidelines_Mediating-from-a-Distance-(Second-edition).aspx)> (accessed 6 October 2016); K.C. Liyanage, 'The Regulation of Online Dispute Resolution: Effectiveness of Online Consumer Protection Guidelines', *Deakin Law Review*, Vol. 17, No. 2, 2012, pp. 251-282; J. DeMars et al., 'Virtual Virtues: Ethical Considerations for an Online Dispute Resolution Practice', *Dispute Resolution Magazine*, Vol. 17, No. 1, 2010, pp. 6-10; R. Morek, 'The Regulatory Framework for Online Dispute Resolution: A Critical View', *Toledo Law Review*, Vol. 38, No. 1, 2006, pp. 163-192; D. Rainey, 'Third-Party Ethics in the Age of the Fourth Party', *International Journal of Online Dispute Resolution*, Vol. 1, No. 1, 2014, pp. 37-56; S.J. Shackelford & A.H. Raymond, 'Building the Virtual Courthouse: Ethical Considerations for Design, Implementation, and Regulation in the World of ODR', *Wisconsin Law Review*, Vol. 3, 2014, pp. 614-657; A.H. Raymond & S.J. Shackelford, 'Technology, Ethics, and Access to Justice: Should an Algorithm Be Deciding Your Case?', Vol. 35, Spring 2014, pp. 485-524; C. Rule, *Online Dispute Resolution for Business: B2B, Ecommerce, Consumer, Employment, Insurance, and Other Commercial Conflicts*, Jossey-Bass, San Francisco, 2002; M.E. Sole, 'E-mediation: A New Stage of Ethics', 2015, available at: <[www.mediate.com/articles/SoleME4.cfm](http://www.mediate.com/articles/SoleME4.cfm)> (accessed 6 October 2016); UNCITRAL, *Online Working Group III: Online Dispute Resolution*, 2016, <[www.uncitral.org/uncitral/commission/working\\_groups/3Online\\_Dispute\\_Resolution.html](http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html)> (accessed 22 August 2016); N. Welsh, 'ODR: A Time for Celebration and the Embrace of Procedural Safeguards', Conference presentation at the International Forum for Online Dispute Resolution, The Hague, May 2016, available at: <[www.adrhub.com/profiles/blogs/procedural-justice-in-odr](http://www.adrhub.com/profiles/blogs/procedural-justice-in-odr)> (accessed 7 October 2016); and A. Wiener, 'Regulations and Standards for Online Dispute Resolution: A Primer for Policymakers and Stakeholders', 2001, available at: <[www.mediate.com/articles/awiener2.cfm](http://www.mediate.com/articles/awiener2.cfm)> (accessed 22 August 2016).
- 6 For a discussion of the ethical role of algorithms in dispute prevention, management and resolution, see de Werra, forthcoming and Morek, 2006. Exploration of some of the ethical challenges for ensuring confidentiality, privacy and security with the use of technology are examined by Barsky, Fall 2016 and UNCITRAL, 2016.

to address successfully<sup>7</sup> – ones that technology also has the capability to assist with.<sup>8</sup> In this way, by exploring ethical issues regarding technology and dispute resolution, we are also uncovering opportunities to better serve stakeholders and enhance trust in the quality of what the field can deliver. If we hope to have as ethical a set of tools and processes as we can, it is incumbent upon us to explore the ethics of technology-assisted management of data and communication as part of dispute handling processes.<sup>9</sup> And it would behoove us to consider them across a range of professions and sectors of society, not only in the arena of traditional ADR fora, given that ODR is being harnessed in a wider variety of settings than ever before. For example, ethical concerns arise with managing complaints over reputational reviews for e-commerce and concerns regarding electronic health records, in designing dispute management systems for businesses and government agencies, as well as when employing email, electronic calendars, brainstorming software and video conferencing for arbitration and mediation.

The infusion of technology in all facets of our lives – work, commerce, politics, education, relationships and leisure – has resulted in its ubiquitous use as part of managing conflict in each of them, as well. This has propelled discussions in the field as to how it has changed dispute resolution practices and raises

- 7 These include whether and how a conflict intervenor should attempt to address power imbalances (see D. Kolb *et al.*, *When Talk Works: Profiles of Mediators*, Jossey-Bass Publishers, San Francisco, 1994; and L. Susskind & J. Cruikshank, *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*, Basic Books, New York, 1987); whether and how to account for cultural differences between disputing parties (see R. Cohen, *Negotiating Across Cultures*, U.S. Institute of Peace Press, Washington, 1991, and M.A. Trujillo *et al.* (Eds.), *Re-Centering Culture and Knowledge in Conflict Resolution Practice*, Syracuse University Press, Syracuse, 2008); how institutionalization of dispute resolution into existing systems such as court and schools increases access to justice or undermines it and for which groups (see R. Delgado *et al.*, 'Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution', *Wisconsin Law Review*, 1985, pp. 1359-1404; T.S. Jones & D. Kmita (Eds.), *Does It Work? The Case for Conflict Resolution Education in our Nation's Schools*, CREnet, Washington, 2000; and N.A. Welsh, 'The Thinning Vision of Self-Determination in Court-Connected Mediation: The Inevitable Price of Institutionalization?', *Harvard Negotiation Law Review*, Vol. 6, 2001, pp. 1-96).
- 8 For a discussion of some of the ways that technology may be able to assist with ongoing dilemmas in ADR such as power imbalances, see Barsky, Fall 2016; de Werra, forthcoming; Morek, 2006; and Rainey, 2014.
- 9 See the following for further discussion on this topic: Barsky, Fall 2016; Rainey, 2014; DeMars *et al.*, 2010; C. Menkel-Meadow, 'Are There Systemic Ethics Issues in Dispute System Design? and What We Should [Not] Do About It: Lessons from International and Domestic Fronts', *Harvard Negotiation Law Review*, Vol. 14, Winter 2009, pp. 195-231; Casanovas & Zeleznikow, 2014. And for a discussion on the relationship between ODR and computational and informational ethics, see P. Casanovas *et al.* (Eds.): AICOL IV/V 2013, LNAI 8929, Springer-Verlag, Berlin, Heidelberg, 2014, pp. 54-68; R. Devanesan & J. Aresty, 'ODR and Justice – An Evaluation of Online Dispute Resolution's Interplay with Traditional Theories of Justice', in M.S. Abdel Wahab, E. Katsh, & D. Rainey (Eds.), *Online Dispute Resolution: Theory and Practice, A Treatise On Technology and Dispute Resolution*, Eleven International Publishing, The Hague, 2012, pp. 251-293; and Morek, 2006.

important ethical considerations.<sup>10</sup> In response, there has been growing interest both in continuing these conversations and in taking action to address the implications of technology's impact. And within these discussions, there is a frequent assertion of the importance of applying a common set of shared values already enshrined within the field of ADR in the form of standards, best practices, norms and principles.<sup>11</sup> These efforts have helped to create a momentum for additional contemplation and action to address the consequences of the application of technology to dispute resolution. To further these efforts, this article explores the benefits and challenges of articulating broadly shared values within a framework of ethical principles<sup>12</sup> that is specifically designed to guide the ethical development and implementation of ODR systems, technology and activities.

## 2 Motivation and Inspiration for ODR Ethical Principles

Discussions in the literature offer valuable insights into these important questions, and this article seeks to contribute to that conversation. As others have also argued, there are a number of reasons why timing is right for further addressing the call, and they include key arguments that (1) public articulation of principles and standards can contribute to increasing trust for the use of ODR;<sup>13</sup> (2) if the ODR field does not effectively accomplish this, then others external to it will do so, or, even worse, they will construct regulations for ODR that do not reflect the shared values of our field;<sup>14</sup> (3) those constructing and using ODR platforms and processes are already routinely facing ethical dilemmas<sup>15</sup> in which those with less access and power are particularly vulnerable;<sup>16</sup> and (4) there is already a wealth of expertise among ODR intervenors, scholars and those running organizations and agencies that offer ODR services,<sup>17</sup> which includes a fairly consistently articulated set of shared values that provide a strong foundation from which to work. Therefore, with a growing refrain within the field of ODR, the need to provide ethical, high-quality ODR services, and, importantly, with others

10 See, for example, Advisory Committee, National Center for Technology and Dispute Resolution, 2009; Ebner & Zeleznikow, 2016; Internet Corporation for Assigned Names and Numbers (ICANN), *ICANN Ombudsman ODR Standards of Practice*, available at: <[www.icann.org/resources/pages/odr-standards-of-practice-2012-02-25-en](http://www.icann.org/resources/pages/odr-standards-of-practice-2012-02-25-en)> (accessed 22 August 2016); DeMars *et al.*, 2010; Morek, 2006; Rainey, 2014; Shackelford & Raymond, 2014; Raymond & Shackelford, Spring 2014; Rule, 2002; Wing, 2016; and work by the Ethics Working Group of the International Mediation Institute, <<https://imimmediation.org/>> (accessed 5 October 2016).

11 *Id.*

12 This article does not undertake to address the question of regulation; rather, it examines the benefits of articulating non-rules-based shared principles upon which field governance, regulation and other modes of accountability could be further constructed.

13 See Ebner & Zeleznikow, 2016; Liyanage, 2012; and Morek, 2006.

14 See Ebner & Zeleznikow, 2016.

15 See Barsky, Fall 2016.

16 See de Werra, forthcoming; Morek, 2006; and Welsh, May 2016.

17 Arguably, the vast literature and experience in the field of ADR has a wealth of scholarship, expertise and standards that require careful consideration for determining what to apply wholesale or alter to be relevant to ODR. For a related discussion, see Rainey, 2014.

external to our field already creating legislation and administrative regulations for ODR,<sup>18</sup> we would do well to amplify our attention to ethics and ODR, and consider ways of broadcasting how we are integrating them within our own practices as well as within the other systems into which ODR is becoming imbedded. Towards that end, a set of ethical principles is presented here as part of the effort to contribute to outlining and supporting effective ethical practices of the field. Whereas a more robust and broad-ranging discussion about standards could also be welcome at this time, the ethical principles presented here are *not* offered as standards or codes of conduct but rather as an articulation of *shared values*. As such, they will hopefully contribute to forming a basis for further work on other mechanisms to govern the field.

In undertaking this work, we face “the tension of universality or generality”,<sup>19</sup> a central dilemma for the enterprise of creating ethical principles in an area where there are a multitude of dispute resolution fora, types of entities involved, intersecting fields and stakeholders. These ethical principles need to be general enough to be applicable in different settings, cultures and jurisdictions, while also reflecting an overarching cohesion and offering durability over time.<sup>20</sup> Unavoidable tensions must be considered as we contemplate articulating a broad set of ethical principles for the field and also examine the ramifications of not doing so. This challenge cannot be underestimated – calls for universally shared values have often been utilized to frame the values of the centre to be imposed on the periphery and ignore the realities of cultural differences and the impact of power imbalances. How can we effectively seek to avoid replicating these patterns and ensure a sustainable transnational project that is meaningful and not exclusionary? While this project has been built upon the thoughtful work of scholars and practitioners, representatives of government, business and consumers, as well as many other stakeholders from around the world, it requires vigilance in continuing to ask this question and have it inform our ongoing efforts. Simultaneously, how do we undertake this endeavour in a timely and effective fashion, given that

18 See Wiener, 2001; The European Parliament and the Council of the European Union, ‘Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes and Amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on Consumer ADR)’, *Official Journal of the European Union*, 2013, L 165/1-12; The European Parliament and the Council of the European Union, 2013; and UNCITRAL, 2016.

19 See a discussion of this tension regarding the creation of ethical principles to be used as standards of accountability for ADR dispute system design in Menkel-Meadow, Winter 2009, p. 212.

20 For exploration of challenges on the related topic of regulating dispute resolution systems and practices across multiple fields, sectors of society and across jurisdictions, see Menkel-Meadow, Winter 2009; C. Menkel-Meadow, ‘Ethics Issues in Arbitration and Related Dispute Resolution Processes: What’s Happening and What’s Not’, 56 *U. Miami L. Rev.* 949, 2002; Ebner & Zeleznikow, 2016. For a related discussion, see K. Bagshaw, ‘Principles v Rules’, *accountancymagazine.com* December 2006, p. xxx, available at: <[www.icaew.com/-/media/corporate/files/technical/ethics/principles-vs-rules.ashx?la=en](http://www.icaew.com/-/media/corporate/files/technical/ethics/principles-vs-rules.ashx?la=en)> (accessed 30 September 2016). For a discussion about the challenges of developing and regulating ethics across legal jurisdictions and within the multidisciplinary field of ADR, see C. Menkel-Meadow, ‘Ethics in ADR: The Many “Cs” of Professional Responsibility and Dispute Resolution’, *Fordham Urban Law Journal*, Vol. 28, 2001, pp. 979-990.

there are already ODR platforms and related laws and regulations governing their use at various levels of consideration or implementation,<sup>21</sup> along with demands for ODR-related standards and rules with a number of efforts underway to create and enforce them?<sup>22</sup> Therefore, despite the daunting nature of the endeavour, let us first consider what may be lost if the field does not attempt to craft and function according to some explicitly stated, shared ethical principles. For example, Shackelford and Raymond<sup>23</sup> and Welsh<sup>24</sup> remind us of the abuse that has and can occur in ODR and ADR, respectively, when there is a lack of enforcement of procedural justice in a field that does not have safeguards to prevent privileging repeat players, among others.<sup>25</sup> And Ebner and Zeleznikow<sup>26</sup> encourage us, as noted above, to be aware that, if we do not create clear norms and mechanisms for governing ODR, others external to the field will continue to do so, given their investments in the outcomes it can generate. And they remind us of the overlapping nature of ODR with other public and private systems that have their own

- 21 See, for example, the Government of Canada's integration of ODR into its justice system: Government of Canada, Department of Justice, Dispute Resolution Reference Guide, Online Dispute Resolution, <[www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/10.html](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/10.html)> (accessed 2 October 2016), particularly the small claims (<[www.smallclaimsbcc.ca/how-it-works](http://www.smallclaimsbcc.ca/how-it-works)>) and consumer protection processes handled online (<[www.consumerprotectionbc.ca/odr](http://www.consumerprotectionbc.ca/odr)>). See also the directive and regulation by the European Parliament and the Council of the European Union on ODR: European Parliament and the Council of the European Union, 'Directive on Consumer ADR', 2013; the European Parliament and the Council of the European Union, 'Regulation on Consumer Disputes', 2013. In addition, see Lord Justice Briggs, *Civil Courts Structure Review: Final Report*. Judiciary of England and Wales, July 2016 and Justice, *Delivering Justice in an Age of Disparity: A Report by Justice*, 2015.
- 22 Consider the recent discussion by ICANN, S. Bachollet, 'CCWG—Accountability Work Stream 2: ICANN Ombuds, Meeting #3, 22 August 2016', ICANN, available at: <[www.icann.org/search/#/!//?searchText=ombuds](http://www.icann.org/search/#/!//?searchText=ombuds)> (accessed 22 August 2016); the multiyear effort by the United Nations Commission on International Trade Law, Working Group III (Online Dispute Resolution), 'Online Dispute Resolution for Cross-Border Electronic Commerce Transactions: Technical Notes on Online Dispute Resolution, Note by the Secretariat', V.16-02129 €, A/CN.9/888, 11 April 2016, to create ODR rules; the ongoing work by the International Mediation Institute (IMI) <<https://imimediation.org/>> (accessed 26 October 2016); suggestions outlined in Rainey, 2002; the call for ODR standards in Rainey, 2014; the role of regulation outlined by Morek, 2006, and Liyanage, 2012; as well as groups that have already crafted, endorsed, considered or urged the development of ODR-related standards and rules: the National Center for Technology and Dispute Resolution (NCTDR), Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, the European Parliament and the Council of the European Union, the Internet Corporation for Assigned Names and Numbers (ICANN) and "the US Federal Trade Commission, The Canadian Working Group on Electronic Commerce and Consumers, The Australian National Alternative Dispute Resolution Advisory Council, The Alliance for Global Business, The Global Business Dialogue on Electronic Commerce, The Transatlantic Consumer Dialogue, Consumers International, The European Consumers' Organisation, The International Chamber of Commerce, and The American Bar Association" (Advisory Committee, National Center for Technology and Dispute Resolution, 2009, p. 1). For a list of a number of related initiatives regarding ODR within the ADR field, see also Wiener, 2001.
- 23 Shackelford & Raymond, 2014.
- 24 Welsh, May 2016.
- 25 For suggestions to the ODR field to prevent and ameliorate such conditions, see Welsh, May 2016.
- 26 Ebner & Zeleznikow, 2016.

regulation mandates that may not always function in concert with the goals and values of ODR.

In taking heed of the concern about access to justice, we can see that there are multiple forces that can perpetuate or ignore barriers to it within ADR and ODR, whether or not these efforts are intentional in this regard. For example, consider the fact that private businesses are utilizing and, increasingly, governments are mandating the use of ODR processes in which the most vulnerable and marginalized can either have these positionalities reinforced or altered positively by the way that an ODR system is structured and implemented.<sup>27</sup> And yet the related concerns that have been raised over the past 40 years regarding ADR have yet to be effectively addressed within ADR and ODR systems. Challenges remain about how ADR can inadvertently facilitate or, at least, not attend to the realities of power imbalances and marginalization;<sup>28</sup> how it “de-contextualizes, de-historicizes, as well as individuates conflicts (Auerbach, 1983; Chene, 2008; Grillo, 1991; Gunning, 1995), thereby creating a homogenized discourse while colluding to reinforce patterns of social inequalities (Abel, 1982; Auerbach, 1983; Delgado, 1997; Delgado, Dunn, Brown, Lee, & Hubbert, 1985; Fiss, 1984; and Harrington, 1985);<sup>29</sup> and how the lack of public oversight in privatized cases results in spaces in which third-party biases can more easily flourish.<sup>30</sup> These issues of inequality have not been fully or adequately addressed by face-to-face ADR; and, while they also remain unaddressed in ODR, attempts to do so come up against the additional challenge that “participants in the field are dispersed geographically and are operating in different systems and jurisdictions – causing any organization or overall oversight to be more challenging”<sup>31</sup> in ODR.

It seems incumbent on the ODR field to demand of ourselves that we attempt to address these long-standing critiques that continue to have real-world consequences. The creation of a set of ethical principles could serve as a mechanism that directs attention to concerns about access to justice, power imbalances, cul-

27 For a positive example describing how ODR could increase access to justice for marginalized immigrant populations in Canada, see S. Parker-Toulson, *Online Dispute Resolution (ODR) and New Immigrants*, British Columbia, Ministry of Labour, Citizens' Services and Open Government, 2010.

28 See the following for further discussion on power imbalances in ADR, particularly with regard to repeat players and access to resources: Consumer Financial Protection Bureau, Arbitration Study: Report to Congress, pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act 1028(a), March 2015; Consumer Financial Protection Bureau, CFPB Considers Proposal to Ban Arbitration Clauses that Allow Companies to Avoid Accountability to Their Customers, <[www.consumerfinance.gov/newsroom/cfpb-considers-proposal-to-ban-arbitration-clauses-that-allow-companies-to-avoid-accountability-to-their-customers/](http://www.consumerfinance.gov/newsroom/cfpb-considers-proposal-to-ban-arbitration-clauses-that-allow-companies-to-avoid-accountability-to-their-customers/)> (accessed 6 June 2016); Welsh, May 2016; S.A. Taleh, 'Forward: Why Marc Galanter's "Haves" Article Is One of the Most Influential Pieces of Legal Scholarship Ever Written', in M. Galanter (Ed.), *Why the Haves Come Out Ahead: The Classic Essay and New Observations*, Quid Pro Books, New Orleans 2014, pp. iii-xii; and Shackelford & Raymond, 2014.

29 L. Wing, 'Intersectionality and Conflict Resolution Pedagogy', in S. Pliner & C. Banks (Eds.), *Teaching, Learning, and Intersecting Identities in Higher Education*, Peter Lang Publishers, New York, 2012, p. 49.

30 Delgado *et al.*, 1985.

31 See Ebner & Zeleznikow, 2016.

tural differences, marginalization and inclusion in the decision making that takes place during ODR systems design and implementation. Therefore, it is worth envisioning how we might use the insights into ADR's shortcomings – despite its tremendous accomplishments as well – and also carefully consider how we might seek not to replicate them as we endeavour to prevent, manage and resolve the explosion of disputes online. The mere effort of searching for common ground in creating ethical principles for ODR has great value, although, arguably, it is insufficient in the face of the need for more ethically responsive dispute resolution practices, particularly regarding power imbalances and access to justice. It is imperative, then, that ethical principles designed for ODR are included in the thinking behind the development of ODR systems design and practices, standards and legislation.

The ethical principles outlined in this article are part of the ongoing attempts to contribute to this enterprise. They include, for example, explicit reference to cultural difference and issues of power and potential privileging of some players in ODR processes. Whereas ethical principles framed as values and not as rules cannot prevent or solve all of these problems, using them to guide in the development of ODR platforms, algorithms, processes, practices and standards can, hopefully, reduce the chances of marginalization and cultural relevance being overlooked and help to normalize attending to them in the structure, strategies and spirit of our field. In constructing these principles, attention was paid to the challenges outlined above, as well as seeking to ground them in the strong norms and shared values that already exist in ADR<sup>32</sup> and that have been applied to the expectations for ODR.<sup>33</sup> And they also respond to the running commentary on the need to articulate the ways in which ODR is both similar to and different from ADR,<sup>34</sup> thus bringing these shared values up to date into the time and geog-

- 32 See, e.g., American Arbitration Association, American Bar Association, and Association for Conflict Resolution, *Model Standards of Conduct for Mediators*, 2005; CPR-Georgetown Commission on Ethics and Standards in ADR, *Principles for ADR Provider Organizations* in Menkel-Meadow, 2002; L. Boule & H.H. Teh, *Mediation: Principles, Process, Practice*, Butterworths Asia, Singapore, 2000; JAMS, 'Arbitrators Ethics Guidelines', available at: <[www.jamsadr.com/arbitrators-ethics/](http://www.jamsadr.com/arbitrators-ethics/)> (accessed 6 October 2016); JAMS, 'Mediators Ethics Guidelines', available at: <[www.jamsadr.com/mediators-ethics/](http://www.jamsadr.com/mediators-ethics/)> (accessed 6 October 2016); Parker-Toulson, 2010; Association for Conflict Resolution, *Recommended Standards for School-Based Peer Mediation Programs 2007*, Association for Conflict Resolution, Washington, 2007; and B. Warters *et al.*, *Institutional and Program Level Guidelines for Conflict Management in Higher Education*, Campus Conflict Management, Detroit, 2003; Society of Professionals in Dispute Resolution (SPIDR) Commission on Qualifications, *Ensuring Competence and Quality in Dispute Resolution Practice* (Draft Report), 1994.
- 33 See, e.g., Committee on Legal Affairs and Human Rights and J. Xuclà, Rapporteur, *Resolution on Access to Justice and the Internet: Potential and Challenges*, Parliamentary Assembly, Council of Europe, Doc. 13918, 10 November 2015; The European Parliament and the Council of the European Union, 2013; Government of Canada, Department of Justice, *Dispute Resolution Reference Guide, Online Dispute Resolution*; Advisory Committee, National Center for Technology and Dispute Resolution, 2009; Parker-Toulson, 2010; Jani & Getz, 2012; Rainey, 2014; DeMars *et al.*, 2010; Morek, 2006; Rule, 2002; and Sole, 2015.
- 34 See for example, Barsky, Fall 2016; Rainey, 2014; M.S. Abdel Wahab, E. Katsh & D. Rainey (Eds.), 2006; and E. Katsh & L. Wing, 'Online Dispute Resolution in the Last Decade and the Future', *Toledo Law Review*, Vol. 38, 2006, pp. 101-126.

raphy of 21st century dispute resolution in which technology not only plays a central role as a tool and partner but provides terrain in which it is undertaken.

The field seems well poised to further explore common ground across jurisdictions, cultures and sectors; and it is in the spirit of that that these Ethical Principles for Online Dispute Resolution are offered to contribute to the development of a useful GPS device for the field. It is hoped that they provide direction clear enough to guide ethical decision making on a myriad of dilemmas and choices across a wide range of circumstances, are flexible enough to be relevant across multiple terrains, and are responsive in the face of new topography that will inevitably come into sight. These may be technological – as we ‘terra-form’ new digital landscapes, they may be legal – as new laws and regulations are enacted, and they may be cultural – as we discover ways in which the Principles require recalibration to reflect the realities of our global journey.

### 3 Scope

Thus, a broad, flexible and robust set of ethical principles seems like a useful place to start, and framing it as a GPS device intended to be updated as new challenges are discovered and its limits are made more clear is a requirement in the face of technology’s rapid pace of innovation. The scope of this effort builds upon work that has illustrated how technology has already altered dispute resolution and is impacting ethical considerations<sup>35</sup> and seeks to foster the strengthening and application of ethical principles to best serve the stakeholders of dispute resolution. It is hoped that they will serve as guidance for the dispute resolution ecosystem: its standards, systems, processes and practices. As previously noted, these principles are framed as shared values and *not as a set of rules*. Rather, ADR rules, standards and qualifications that already exist can be interpreted and revised and new ones written with careful reflection on ethical principles for ODR. As discussed earlier, there have been not only calls to revise standards for ADR in light of technological infusion, but also a number of legislative and regulatory steps have been undertaken in that regard. Throughout these efforts, there has been a consistent re-articulation of and reliance on shared values from the field of ADR as attempts are made to address ways technology can impact, for example, accessibility, confidentiality, equality, fairness, impartiality, neutrality, representation, self-determination, transparency, voluntariness and avoidance of conflicts of

35 For illustrative examples, see Barsky, Fall 2016; Jani & Getz, 2012; DeMars *et al.*, 2010; Morek, 2006; and Rainey, 2014. See also United Nations Commission on International Trade Law, Working Group III (Online Dispute Resolution): Online Dispute Resolution for Cross-Border Electronic Commerce Transactions: Technical Notes on Online Dispute Resolution, Note by the Secretariat, 11 April 2016.

interest.<sup>36</sup> This continuity with ADR reinforces the continued relevance of such shared values within a set of ethical principles for ODR.

Simultaneously with maintaining continuity with shared norms and values from ADR, the disruptive force of technology demands attention to new challenges and therefore ethical principles for ODR must reflect these conditions. For example, technology has significantly increased the blurring of boundaries between disciplines and professions that are involved in the use and management of dispute resolution processes.<sup>37</sup> Whereas this affects dispute systems' design and delivery, not all disciplines and professions are responding by providing new standards or expectations for their practitioners and stakeholders to attend to this reality.<sup>38</sup> With technology breaking down boundaries, possibilities are opened up for important new opportunities to not only redesign how disputes are prevented and managed, resolved and harnessed but also to reconfigure how and with whom we are working to accomplish these activities. As communication has been altered by technology, it has created more porous boundaries between institutions in business, the law, journalism, entertainment and other parts of our social worlds. Therefore, the application of technology to courts, commerce and social media platforms actually involves the application of ODR whether or not those who are designing and running these systems view them as such. This creates areas for new partnerships and increases opportunities for dispute resolution expertise to be utilized. It also requires that dispute resolution systems design is more responsive to and reflective of the conditions of a constantly changing constellation of stakeholders – most of whom may not be aware of dispute resolution traditions and standards and instead carry the lens and standards and, potentially, sets of ethical principles and practices grounded in other disciplines and professions. This is both challenging and exciting: how will we work effectively across previously more rigid boundaries? How might we learn from other disciplines' ethical principles or model rules? How might ours impact others'? For example, consider serving as a mediator in an e-commerce, family or workplace case across legal jurisdictions and national boundaries. Whose standards should apply? And what if social workers or other professionals are involved in the case and are held to different standards? Or what if their professions' ethical standards are silent about the application of technology to their practices? How might having overarching ethical principles for ODR that could be shared with clients,

36 Advisory Committee, National Center for Technology and Dispute Resolution, 2009; Committee on Legal Affairs and Human Rights and J. Xuclà, Rapporteur, 10 November 2015; The European Parliament and the Council of the European Union, 'Regulation on Consumer ODR', 2013; Government of Canada, Department of Justice, Dispute Resolution Reference Guide, Online Dispute Resolution; Internet Corporation for Assigned Names and Numbers (ICANN), *ICANN Ombudsman ODR Standards of Practice*, 2012; DeMars *et al.*, 2010; and Rule, 2002.

37 See O. Rabinovoch-Einy & E. Katsh, 'Digital Justice: Reshaping Boundaries in an Online Dispute Resolution Environment', *International Journal of Online Dispute Resolution*, Vol. 1, No. 1, 2014, pp. 5-36.

38 For example, medical administration professionals responsible for managing electronic health records are rarely trained in ODR, although the systems they select and manage have some dispute prevention, management and resolution capabilities (and likely could have more if an ODR lens was utilized).

customers and colleagues make it easier to engage in conversations and preparations for the process? How might they help to leverage other disciplines' adoption of them within their own standards or for designing best practices across disciplines, professions and institutions, particularly when they are becoming increasingly integrated and overlapping in the arena of dispute handling?

The impact of technology on dispute resolution – both inside and outside the field – offers increased risks and opportunities, depending on how people and institutions are positioned in the landscape. Those with greater access to decision making power and resources can find ways to use technology to enhance their personal and institutional goals in relation to conflict and its resolution or continuance. Therefore, it is all the more critical that whoever is harnessing technology as part of dispute prevention and resolution activities consider the ethical implications of their system's design and implementation in practice. Hopefully, the principles articulated here will prove to be useful for further contemplation, discussion and, importantly, application.

#### 4 The Benefits of Non-Rules-Based Ethical Principles

The value of ethical principles and ethical standards has been debated across the disciplines and a wide range of professional organizations, illuminating useful roles that non-rules-based principles can play, specifically because they provide the opportunity to be flexible while still being robust.<sup>39</sup> Such a set of ethical principles

- provides guidance that can be applied to the infinite variations in circumstances that arise in practice
- can cope with rapid changes of the modern [...] environment
- prevents the development of a mechanistic, 'box-ticking' approach to decision making and the use of legalistic loopholes to avoid compliance with guidance
- focuses on the spirit of the guidance and encourage[s] responsibility and the exercise of professional judgement, which are key elements of professions.<sup>40</sup>

Principles can set a higher level framework than rules may set, articulating expectations in broader language and allowing for responsiveness to specific contexts. Rules and standards can play invaluable roles in enforcement and accountability to assist in providing ethical and high-quality systems and services. However, they may work well in tandem with higher level ethical principles, since "even when a specific circumstance is addressed by a rule, compliance is often with the letter of the rule, not its spirit. What is needed is a principles-based approach to decision-making, which encourages deliberation, judgement and

39 This is a useful turn of phrase employed by the International Federation of Accountants that uses a non-rules-based approach to principles in their code of ethics. International Federation of Accountants Code of Ethics, <[www.icaew.com/en/technical/ethics/ethics-in-business/general-ethics/principles-versus-rules-debate](http://www.icaew.com/en/technical/ethics/ethics-in-business/general-ethics/principles-versus-rules-debate)> (accessed 30 September 2016).

40 International Federation of Accountants Code of Ethics, para. 2, (accessed 30 September 2016).

responsibility.”<sup>41</sup> Shared principles do not negate the need for rules and standards by which processes, platforms, practitioners and their practices can be held accountable. In fact, the latter are strongest when they are also tied to the former – principles that can set out the shared expectations upon which rules or standards can be built. It is in the spirit of contributing to the contours of those developments that the National Center for Technology and Dispute Resolution, its Fellows and many others in the field have, for over a decade and a half, been discussing ODR and ethics through scholarship and in a variety of venues such as the annual International ODR Forums, the annual Cyberweek online public discussion fora and webinars, and other international conferences. At the most recent ODR Forum in September 2016 it was agreed: “The time is ripe for the articulation of, and the commitment to, a set of ethical principles specifically designed for developing and conducting ODR. The adoption of principles would further increase trust in ODR and the e-commerce setting and ensure the delivery of high quality ODR processes.”<sup>42</sup>

## 5 Ethical Principles for Online Dispute Resolution<sup>43</sup>

### 5.1 Preamble

The Ethical Principles for Online Dispute Resolution (ODR) are designed to enhance the quality, effectiveness and scope of dispute resolution processes with technological components. Taken together, they can provide a touchstone for best practices, standards, rules, qualifications and certification efforts in dispute resolution and related fields that address dispute resolution processes and practices. This document builds on previous work by the National Center for Technology and Dispute Resolution on principles and standards of practice, as well as the growing body of literature and the standards of numerous professional, governmental and commercial bodies concerning ODR and dispute resolution more generally. There is no priority to be implied by the sequence of the principles that are list alphabetically. They are meant to be taken as a framework that is interlocking and interdependent.

With the rapidly growing adoption of ODR in a number of sectors, it is timely to produce a living document of ethical principles integral to the design, structure, practices and implementation of online dispute resolution systems. Therefore, while debate will likely continue over time about the definition and scope of ODR and what practices and standards should be formalized, if any, it is hoped that the creation of these Ethical Principles for Online Dispute Resolution can

41 Institute of Chartered Accountants of England and Wales, ‘Professional and Business Ethics: An Effective Approach’, ICAEW, 2008, <[www.icaew.com/-/media/corporate/files/technical/ethics/icaew-ethics-effective-approach.ashx?la=en](http://www.icaew.com/-/media/corporate/files/technical/ethics/icaew-ethics-effective-approach.ashx?la=en)> (accessed 30 September 2016).

42 National Center for Technology and Dispute Resolution and the Shenzhen Institute, University of International Business and Economics, *Beijing Consensus*, ODR Forum 2016 Beijing, Beijing, China, September 20, 2016, <<http://odr.info/odr-forum-2016-beijing-consensus-reached-on-value-of-odr/>> (accessed 23 September 2016), para. 3.

43 See Wing, 2016, paras. 1-22.

provide a benchmark for these discussions and for systems development, usage and the integration of ODR into existing institutions.

With the knowledge that there is a diversity of perspectives and practices, and that there will be a constant innovation of new technologies impacting the ways we use, foster and transform conflict, it is worthwhile to formulate and continue to revisit ethical principles to inform, guide and inspire best practices. Articulating a set of principles shared across jurisdictions simultaneously requires a recognition that their manifestation will also be necessarily grounded in legal jurisdictional requirements and in sectorally and culturally specific ways.

It is intended that the Ethical Principles for Online Dispute Resolution will find a wide audience, instilling further confidence in the integration of ODR into systems and institutions as the stakeholders in systems of ODR become more expansive and inclusive.

They are designed to guide and foster ethical ODR systems and practice in both the public and private spheres. It is likely that more specific or additional principles may be articulated in the future from within particular sectors and jurisdictions. These, instead, are offered as core, shared values and as a *living document* that can respond to new conditions, technologies, stakeholders and knowledge – to prove sustainable to those relying on it.

### 5.2 *Accessibility*

The design and implementation of efficient and effective processes provide for their usage, not only to the broadest range and number of people, but also by accounting for the reality of cultural differences within and between jurisdictions, as well as differential access to resources and experiences of marginalization that can hinder access to dispute resolution and justice processes, whether formal or informal. ODR systems and processes effectively facilitate and do not limit the right to representation for parties in processes of dispute resolution.

### 5.3 *Accountability*

The development and implementation of ODR systems, processes and practices are accountable to the institutions, legal frameworks and communities that they serve.

### 5.4 *Competence*

ODR systems, processes and practitioners will be competent in or provide access to relevant technological or human competency required for the effective implementation of the dispute resolution process that they undertake to assist with. This includes but is not limited to relevant dispute resolution, legal, and technical knowledge; languages; and culture.

### 5.5 *Confidentiality*

The development and implementation of ODR systems, processes and practitioners maintain confidentiality in accordance with all legal obligations and in a manner that is consistent, in particular, with the principles of Legal Obligation, Informed Participation, Security and Transparency.

### *5.6 Empowerment*

ODR systems and processes are designed and implemented in ways that seek to enable growth and positive change for individuals, relationships, systems and society, thereby increasing access to justice and enhancement of choices and effective decision making opportunities.

### *5.7 Equality*

ODR processes are designed and implemented in ways that treat all participants with respect and human dignity; that system design and processes enable silenced or marginalized voices to be heard and actively seek to ensure that privileges and disadvantages are not replicated in the experience of participation; that no participant is placed at a higher risk than others; and, therefore, that ODR processes are designed to respond effectively to the reality that some contexts may put some at more risk than others.

### *5.8 Fairness*

ODR processes are designed and implemented to facilitate and uphold due process, without bias or benefits for or against individuals or groups, including those based on algorithms. They are responsive to and reflective of the communities and stakeholders they serve.

### *5.9 Honesty*

ODR processes are designed and implemented with the intention that data is gathered, managed and presented in ways to ensure it is not misrepresented or presented out of context.

### *5.10 Impartiality*

ODR processes are designed and implemented, and practitioners function with commitment to reducing bias in the delivery of the process. This includes accounting for technological and other conditions that could structure patterns of privilege in process and outcome for repeat players with particular attention to the principles of Accessibility, Fairness and Transparency.

### *5.11 Informed Participation*

In the development and implementation of ODR systems and processes active effort is made to ensure (1) explicit disclosure to participants of all information about risks and benefits of the process, (2) the competency of participants to evaluate the information about participation in the process, (3) understanding by participants of the information, (4) whenever possible, the voluntary acceptance by the participants of the risks of participating; and whenever voluntary consent is not possible due to the mandatory nature of participation than that is made transparent.

### *5.12 Innovation*

Online dispute resolution continues to innovate to improve the delivery of dispute resolution services and benefits more fairly, effectively and efficiently in ways that increase peace, trust and access to justice.

### *5.13 Integration*

ODR processes are effectively integrated both internally within a system and externally with other systems, networks and entities. Technology serves the dispute resolution process as seamlessly as possible. The application of technology and of dispute resolution is designed and implemented in the context of their linkages with other existing systems and networks and of knowledge that new ones will emerge. This is implemented with special attention to the integration with public entities to enhance inclusiveness and access to justice.

### *5.14 Legal Obligation*

The design and implementation of ODR systems and processes uphold the laws of relevant jurisdictions and ensure that relevant laws are known and followed in the context of the principles of Accessibility, Informed Participation and Transparency.

### *5.15 Neutrality*

ODR systems and practitioners function with independence from the disputing parties, and any conflicts of interest are made transparent.

### *5.16 Protection from Harm*

ODR design and implementation seek to prevent and minimize harm and risk for those involved in dispute resolution processes, with particular attention to those most marginalized and with least access to justice.

### *5.17 Security*

All reasonable efforts are made to ensure that the data and communication between the parties and other entities linked to ODR processes are secure to the fullest extent of the law, making transparent any known limitations.

### *5.18 Transparency*

All reasonable efforts are taken to make transparent the true purposes, risks and legal obligations inclusive of but not limited to: the form and legal jurisdiction of dispute resolution processes; the identities, affiliations, obligations and conflicts of interest of the parties, entities and systems; and the data security, confidentiality and privacy policies and systems involved.

## **6 Conclusion**

Ethical principles for online dispute resolution, serving as a GPS device, can assist us in seeing where we are as a field and where we want to travel, providing a guide

for that journey. There are many ways to cross the terrain, and there are modes of travel yet to be invented. However, with articulation of our shared values, it can assist us to navigate both the expected and the unexpected dilemmas we will face. As noted earlier, there are a number of challenges that both ADR and ODR have faced for more than a generation, including unequal access to resources, power imbalances, privileging of repeat players and other access to justice issues. Employing ethical principles may assist in finding strategies for tackling some of these concerns, especially with the help of technology. The principle of Impartiality, for example, could point platform designers towards considerations of how algorithms could be used to prevent gaming the system for repeat players. The ethical principles could serve as a resource for the development of best practices for practitioners regarding vulnerable populations who could be more at risk online. For example, the Protection from Harm principle could stimulate guidelines on the selection of apps to use with disputants who have risks regarding stalking and domestic violence or who are negotiating in the context of other conditions in the shadow of violence.<sup>44</sup> The ethical principles of Competency, Integration and Legal Obligation could highlight the need for contextualization. As a result, ODR systems designers and providers might develop a set of protocols relevant to their particular sector, client base and form of dispute resolution that can be used to consider important issues of contextualization before employing a technological feature or commissioning its development; this could include a multilingual tool or a particularized training for parties who are unfamiliar with certain technologies.

A benefit of framing a set of ethical principles as interlocking and interdependent is that they mutually support one another. For example, consider the principles of Accessibility, Equality and Informed Participation: they each address different aspects of fostering increased access to a fair process, and together they reinforce other principles such as Empowerment and Transparency. Another example also demonstrates how the interdependency of the principles can provide for a more ethical practice. Consider an ODR practitioner who reflects on her process through the lens of each of these principles. The Informed Participation principle can prompt her to re-examine each step in the process where disputants are communicating or submitting data. Are the risk levels different at different phases of the process or depending on the types of technological features she may ask parties to employ (*i.e.*, video conferencing, chat features, email, document uploads to a cloud, utilization of an app with location features, etc.)?<sup>45</sup> The Accessibility principle can prompt an examination of whether all parties will know how to use each technological feature she may use during the process. The Equality principle encourages her to consider whether the risks are higher for some disputants based on their backgrounds, experiences, resources and relationship with those with whom they are disputing (*i.e.*, based on domestic violence, finances or repeat player status). Seeking to address the important issues regarding Informed Participation, Accessibility and Equality can also lead to responding to concerns

44 See insights and examples that inspired this discussion in Barsky, Fall 2016, p. 34.

45 *Id.*

that would be raised by Confidentiality. However, the reverse is not necessarily the case. For example, if the ODR intervenor had used only the Confidentiality principle when reflecting on her practice, she may have outlined at the outset of the case the general perimeters of confidentiality and required a disputant to agree with one click at that time; however, this may not be sufficient to meet the ethical issues that actually exist in a case as raised by the questions outlined above. The disputant might only have anticipated the use of email and document exchange when agreeing to the process but, later, when video conferencing is proposed he could have concerns that the other party could tape the encounter for use elsewhere. The principle of Informed Participation could help the conflict intervenor to consider this possibility more clearly in advance and provide the necessary information about the technological tools to be used as part of informed consent for participation in the dispute resolution process. These examples illustrate some of the benefits of viewing the principles as interdependent while engaging each of them to foster ethical best practices for ODR.<sup>46</sup>

The efforts to construct ethical principles applicable specifically to ODR is a continuous work in progress, one necessary to sustain a healthy ecosystem of dispute resolution processes across a spectrum of fields and professions. Further scholarship, reflective practice and ongoing engagement with an ever-increasing number of stakeholders as well as the explicit *use* of them is required to enhance their relevance and applicability. As Ethical Principles for Online Dispute Resolution are put to use, as the field continues to grow, and as technology changes, our ongoing engagement is vital to enhance and strengthen them to ensure that they provide an effective GPS for moving forward on our journey.

46 This can also result in a more reflective practitioner/systems designer-oriented field. For a discussion of the value of reflective practice for the field of mediation, see K. Kressel, 'Practice-Relevant Research in Mediation: Toward a Reflective Research Paradigm', *Negotiation Journal*, April 1997, pp. 143-160.