



17th BILETA Annual Conference

April 5th - 6th, 2002.
Free University, Amsterdam.

On-line Dispute Resolution: Present Realities and Future Prospects [1]

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Abstract

This paper addresses what the future holds for dispute resolution methodologies when law meets technology. The paper provides an overview of recent developments in the use of technology in the dispute resolution process. It discusses the nature of new technologies, the advantages and disadvantages involved with the use of such technology and the policy and regulatory issues arising from such processes. The paper also presents recent examples of information communication technologies applied in various dispute resolution settings from negotiation to online courts. A concluding section suggests that while e-DR is both a tool and a process its development is still in its infancy. Much more research is required, especially from an interdisciplinary perspective, so that we can develop practices and guidelines that take advantage of the new technologies while avoiding their disadvantages.

Introduction

This paper is about the application of information communication technology (ICT) to the context of dispute resolution. As both a tool and a process developments in this area are in their early stages of development. . It remains to be seen whether and under what circumstances it may help or hinder the dispute resolution process. However, one thing is sure. The application of ICT is evolving as an important means for future resolution of certain types of conflict. It is especially important as part of the infrastructure required if online business and other relationships are to realise their full potential. It is here that we wish to explore the interface between law and technology and how one might characterise the future of electronic dispute resolution (e-DR)

This paper is organised in three sections. The first gives a very broad overview of the nature of e-DR in terms of its 'virtual' aspect as well as the processes involved in the resolution of conflict. Policy and regulatory issues are also canvassed as well as international developments. Section two deals with e-DR in practice and surveys some recent developments. The final section considers how courts can and have responded to the advent of e-DR.

1. Overview

1.1 Nature of the technology

The nature of the technology requires that for cyber-mediation and e-DR to work there are both a delivery mechanism and a medium for discussion and information sharing. At its base this means access to the internet or variants thereof, and to an electronic mail facility both to send and to receive mail and documents. Thus, the technology can involve the internet, intranets, various hybrid technologies such as the mobile phone, video conferencing and satellites. The whole process may be online or only part of it. This technology can be either stand alone or connected with an official body such as a court.[4]

Moreover the technology can be text only or sound or video and text. At the extreme end, a virtual environment involving 3D, taste, sound, touch can be represented. The cost of the technology is coming down dramatically and rental schemes are emerging that makes such a method of resolving conflicts increasingly available.[5]

There are also various group decision-making tools, negotiation software, blind bidding, gaming and other forms of mediation and bargaining. For example, in blind bidding the parties make various demands. The software records the demands, determines the overlap and recommends a settlement figure. For example, Online-Disputes.org uses a fully automated system that allows member businesses to specify automatic dispute handling rules, so that the consumer can get an immediate response from the business tailored to the specific complaint. Also, at the extreme end, artificial intelligence systems may create cyber-judges.[6]

These digital communication media and internet-based systems have therefore added new dimensions and tools to the dispute resolution process. There may now be little or no need for face-to-face meetings in a confidential setting. This new medium has given birth to virtual meetings for dispute resolution and by created in cyberspace a virtual courtroom with mediators or magistrates performing roles equivalent to those they perform in the real-world [7].

1.2 The virtual aspect

As the dispute resolution process is conducted online one of the first real problems is that of identity. The question is: How do you prove virtual identity? This is a difficult issue because people in an online environment do not always act the same as when they are in a face-to-face situation. For example, at the extremes, it has been observed that in virtual chat-rooms, men may assume the role of women, older people pretend they are young and so on. A whole online culture has developed where people assume identities that they do not have in real-life.

Another area where much more research is required is the nature of online communication itself. Clearly, there are differences between online and interpersonal communication where the parties are physically present. There is some evidence emerging that internet communications may be more confrontational and that a more masculine style of communication dominates. It seems to be a more male-dominated medium. At the same time, dealing with another person from a distance, for example though text, may be far less intimidating than being physically present in the same room. There is also some age bias in an online environment, ie, younger people, who have grown up with the technology, are more likely to use it.

These are just a few of the issues that need to be addressed to ensure that online e-DR is both effective and fair. This issue has led governments and other bodies to consider codes of conduct to govern online e-DR. However, this may be difficult to enforce in an online environment with its culture of anarchy. It seems that no one can control the Internet enough to be confident in the medium as a neutral tool for dispute resolution. As will be noted later, there is a wide variety of e-DR services that are now becoming available online and the fear of regulators is whether an ordered regime can be achieved, assuming it is desirable.[8]

1.3 Process of e-DR

There is no uniform process for e-DR. Most forms of e-DR involve similar stages along the lines of the following:

- Initial contact
- Initiation of ADR process, terms of use, introduction to the system
- Assessment and checklists to be used to determine suitability of the dispute for e-DR
- Information exchange in which parties exchange data and information
- Formal lodgement where parties can lodge formal documentation such as pleadings, records, and other material
- Questions and answers by the parties
- Facilitation (usually by shuttle negotiation) through a third party, and
- If there is a third party resolution, a decision is rendered.

1.4 Uptake of online technology

So far the disputes settled online tend to emerge from the online environment itself, for example, domain name disputes, intellectual property disputes, online consumer purchases. One might well ask whether the medium be readily extended to other contexts?

A number of sites (discussed below) have used a rather mechanistic form of online negotiation where parties submit settlement offers that are matched against responses and a settlement reached when the offers are within a prescribed range of agreement.

To date online mediation tends to be a form of 'shuttle diplomacy' with offers and counter offers relayed through the e-mail system. Despite the early promises of e-DR, the uptake (outside of online contexts such as eBay, has been modest. There seems to be a need for more research on the factors that may encourage the greater use of e-DR. Some of the possible reasons for the modest uptake include: preference for face-to-face (other than with video conferencing), distrust in the technology, technical phobia, access problems, unfamiliarity with the technology, mistrust of advisers such as lawyers.

E-DR may be inappropriate where it involves violence, fraud or allegations of illegality or in cases where a legal precedent may be required. It is wholly inappropriate where there may be a gross inequality of bargaining power between the parties. Yet, the linchpin of mediation is the unpacking of the needs and concerns of the parties involved.

As bandwidth improves and audio and video streaming become the norm, one would predict that the use of E-DR will increase. Already we are seeing a significant growth in 'hybrid' models of dispute resolution in which at least part of the process (eg intake information or exchange of communications) is conducted online.

1.5 Advantages

A typology which outlines the advantages and disadvantages of different forms of online dispute resolution has yet to emerge. There are a number of potential advantages in the use of e-DR, though we have much to learn about how to use ITC to maximise the advantages and minimise any possible disadvantages. Some of the possible advantages include: speed, convenience, ease of access, efficiency, cost savings, easy storage of digital data and easily crossed international borders. Each party may dictate when and where to respond to an online dispute resolution procedure.

One advantage is pre-communication and re-framing through which a facilitator can assist the parties in framing the dispute in ways that enhance the other party to comprehend better what is being said. Such re-framing, when done in front of both parties is much more difficult to achieve.

This time-lag in online dispute resolution also allows participants to absorb the materials and documents and reflect on a position. A spatial and temporal separation also permits 'distance mediation' where hostility and rage is reduced and forces each of the parties to focus on the substantive issues at hand. The archive and record keeping component of digital communication is well suited to the drafting of documents and asynchronous reflection on positions. Because the dispute resolution is 'stored' it is also possible to introduce elements of knowledge management and training/mentoring into an online setting so that the process is constantly improved. For example, because everything is recorded, it is possible for reflective practice to occur and language that is particularly effective to be re-used. This same feature permits a mentor to review the dispute resolution process in an unobtrusive way and give feedback. Multi-party disputes may benefit from the archiving and asynchronous nature of the medium to build an ongoing consensus in settings where the issues are complex and parties are numerous.

E-DR gives a party a greater degree control of the proceedings that is usually absent in a face-to-face situation. This enhanced reflection/consideration time allows for honest communication of thoughts and feelings. The mediator or dispute resolution facilitator has the opportunity to redress any power imbalance and to control the emotional temperature. Moreover, in domestic conflicts, for example, the trauma of personal involvement is much reduced. The communication media also is useful for keeping records given that a log of the proceedings is almost always available. Overall, therefore it is cost effective in time, space and resources.

The blind negotiation tools where parties state their positions and a computer matches the areas of agreement can be useful where the dispute is one-dimensional and a distributed outcome is the only one possible.

1.6 Disadvantages

Negotiation and dispute resolution is fundamentally a "people" oriented task. The use of E-DR may miss out on non-verbal clues: body language, touch, smell. It is not as holistic or interactive as face-to-face. The nuances of expression, timing, communication, framing and persuasion often make the difference between success and failure in bargaining and mediation[9]. Some of these shortcomings may be overcome through the use of high bandwidth, but this is not yet readily available. Moreover, the withdrawal of the parties is too easy.

The lack of physical cues, including those of race and gender, pose great challenges to e-DR. To date however, the environment remains uncertain there being no certain fixed or familiar boundaries with which to meet a person's emotional needs. Also this lack of personal relationship diminishes the act of cooperative problem-solving where the mediator or facilitator traditionally builds trust through agenda setting, discussion, enforcing the rules and reacts positively by observing body language and tone and inflection of voice.

While the technology has given a high degree of flexibility of delivery, there are practical problems of process. Legal representation and input, for example, are difficult to build in during the entire mediation or other e-DR process. Moreover, in terms of confidentiality and privacy issues there is no assurance that the material will not be forwarded to other interested parties or copied without authorisation. These matters involve policy and regulatory issues which are discussed below.

1.7 Policy and regulatory issues

Many legal uncertainties

The legal framework for e-commerce and dispute resolution is highly fragmented. Internationally, the legal scene is a mix of international conventions, legal instruments, and local laws governing both substance and/or procedure. Even in the EU, the legal regime is quite diverse with some

countries prohibiting any system that would prevent consumers from taking their disputes to a court. Others would restrict the use of ADR to contexts where the ADR mechanism was notified only after the dispute arose, where consumers had full notice and where consumers are given the same basic procedural rights as from a court. Other problems arise from doubts about the validity of online contracts. For example, in some jurisdictions any clause demanding that a method of dispute resolution or forum selection be made, must be in 'writing'. Some laws in some countries limit the use of encryption or authentication that might undermine security needs in online contracts. There are also legal problems with enforcement. Even in regard to the NY Convention, not all nations have become signatories and others have done so with reservations that might apply. A middle ground might be to offer parties the chance at alternative dispute resolution with courts left as a last resort to work for a solution.

In the EU, Kuner argues there are a number of legal obstacles to the adoption of alternative dispute resolution techniques for B2C disputes.^[10] First, there are a number of Guidelines and Directives that have application. For example the OECD Guidelines which contain provisions about dispute resolution^[11]. The Brussels Convention of 1968 provides various default jurisdictional rules on the enforcement of judgments in civil and commercial matters involving consumers. For example, Article 13 gives consumer the right to bring suit in the Contracting State in which they are domiciled

Similarly, the Convention on the Law Applicable to Contractual Obligations (The Rome Convention) provides default choice-of-law rules for consumer contracts. Article 4 of the Rome Convention provides for application of the law of the country of the consumer's habitual residence and Article 5 says that parties may not derogate from the mandatory rules of law of such country.

The Council Directive 93/13/EEC of 5th April 1993 on Unfair Terms in Consumer Contracts contains further restrictions on the use of ADR in consumer contracts. The Distance Selling Directive also gives consumer non-derogable rights that could limit the provisions of many standard ADR clauses ^[12].

On the positive side, the new E-Commerce Directive^[13] contains Article 17 which is designed to remove obstacles to e-DR. It requires member States to 'encourage bodies, responsible for the out-of-court settlement of, in particular consumer disputes to operate in a way which provides adequate procedural guarantees for the parties concerned' and to 'encourage bodies responsible for out-of-court dispute settlement to inform the Commission of the significant decision they take regarding Information Society services and to transmit any other information on the practices, usages, or customs relating to electronic commerce.' De Zylva analyses the impact of EU's Distance Selling Directive and suggests several reasons why one should attempt to resolve e-commerce disputes online^[14].

Differing regulatory philosophies

We see in the e-DR debate the same philosophical differences between the EU and North America that was noted earlier. Europeans generally are not trusting of private regulation. They are accustomed to more government intervention to get these matters right. In the US and Australia, there is much more faith in and reliance on industry to lead the way and govern itself.

Philosophical differences about e-DR

Also, consumers are understandably reluctant to give up many of the rights to courts that have been won after a century of reform. A complaint mechanism or customer service centre or industry code will not give the same level of assurance as an impartial and publicly funded institution like a court.

Cultural differences

An online system going across national borders is also likely to encounter significant cultural differences that must somehow be negotiated and taken into account.

Languages differences

Another major issue is the different languages that may be used. While technology is rapidly improving so that real-time online translation may soon be available, we are not there yet.

Practical issues

Other practical issues involve concerns about proof of consent, use of personal data, privacy, inadequate self-regulation, inappropriate industry codes that are not trusted by consumers, and intellectual property ownership of data.

International ADR as a cross-border solution?

Business groups generally hold out great hope for e-DR as a way to overcome the problem of having to negotiate so many different legal systems that may apply to an online transaction.

OECD-EU cooperation

There is also great promise in international cooperation. For example, the EU and Canada have agreed to support the establishment of minimum requirements for a range of e-commerce issues, mutual recognition of certificates and certification authorities procedures for the use of electronic signatures across borders and consumer protection for alternative dispute resolution mechanisms [15].

Access. On the one hand, e-DR may enhance the access to isolated areas and to those who are home-bound. But, at the same time, there is a concern about an emerging digital divide between those who have access to e-DR and those who do not. Barriers may be financial, educational, language, cultural, age, physical disability or simply a phobia in using information technology.

Fairness. The online medium may require further thought about input processes, assessment of suitability, need for counselling about dispute resolution processes, problems of unfamiliarity and imbalances in IT literacy. It is important that organisations work together with stakeholders to ensure that online processes are fair and impartial. While Courts are usually perceived as impartial, when a firm such as eBay offers an online dispute resolution service, it is likely to be perceived differently. Another element of fairness is transparency. The rules of operation and nature of the ADR process should be explained to the parties so that they know what to expect and those expectations are met. Some feel that transparency also requires an up-front and public disclosure of the ADR provider's track record.

Security. In part this is a standards and IT problem. Digital data can be manipulated and hard to verify. Records are stored automatically and people are not aware of its storage. The speed of transmission is such that widespread damage (for example, fraud) can be done before people realise what is happening. Electronic records are easily recovered, even if the files have been deleted. It is also a management issue. How can we ensure that the online environment is sufficiently secure so that there will be sufficient trust to use the system on a wide scale.

Confidentiality. How is this ensured in an online environment?

Privacy. In the US alone there are over 40 different laws dealing with privacy. Australia also has many laws relevant to privacy as well as a whole new regime that will soon apply to much of the private sector. Yet, notwithstanding these laws, the record of online privacy protection is not good.

Most sites do not comply with basic privacy standards.

Need for standards. What are the ethics that should govern this new environment? Is self regulation the answer or must government play a role? How do you deal with the international dimension and the need to cater for the diversity of e-DR contexts.[16]

Need for training. A major obstacle to the full realisation of the benefits of e-DR is the paucity of training in its use. There is a pressing need for training mediators, negotiators, lawyers, judges, counsellors and all those involved in the use of online dispute resolution.

Education. Even if e-DR receives the support of providers, this will mean little if people do not take it up. It is important that businesses, consumers, the community promote knowledge and understanding of alternative dispute resolution processes generally and e-DR processes in particular.

Cooperation. Organisations need to cooperate with each other. In the case of fraud and criminal conduct, there must be cooperation with law enforcement bodies. There is also the need for international cooperation, given the borderless nature of e-DR.

Jurisdiction. While the `net' and cyberspace are magical places to be in, there are jurisdictional problems to contend with especially if one does not possess the right `mantras'. In this arcane world of legal systems with different laws, different conceptions of public policy and residing in different political conflicts arise advertently or otherwise. In the virtual world of dispute resolution there can be no specific jurisdiction. This environment is able to provide fast, accessible resolution to disputes submitted online and provided by neutral arbiters[17]. E-DR appears to be a viable proposition where the parties in dispute are geographically separated. Moreover, disputes may be accepted and decided upon without the need to resolve complex conflict of law issues as there may be no legal precedent or governing law acceptable to both parties. On the internet such problems as cyber-squatting, domain name conflicts with trade mark holders and so on have arisen as demonstrated below.

- Cybersquatting *Panavision International v Toepfen et al* 141 F.3d 1316 (9th Cir. 1998)
- Companies with identical name one with a registered trade mark and the other with a registered domain name *Cybersell Inc v Cybersell Inc* 130 F.3d 414 (9th Cir. 1997)
- Domain name registrant against a federally registered trade mark owner *Maritz Inc v Cybergold Inc* 947 F.Supp 1328 (E.D. Mo. 1996)
- Personal jurisdiction *Inset Systems Inc v Instruction Set Inc* 937 F.Supp 161 (D.Conn. 1996)

1.8 Government versus Private Regulation

Another issue that must be resolved in the growth and development of e-DR are the relative role of government versus private regulation of this new environment. Self-regulation is typically based on three principles: 1) free access to consumers; 2) right of advertisers to challenge complaints; and 3) an enforcement mechanism based on national codes or guidelines within the framework of the law.

In Australia, the National Alternative Dispute Resolution Advisory Council NADRAC is turning its attention to the growing popularity of e-DR[18]. This includes the use of IT to resolve disputes, including video conferencing, email, artificial intelligence systems, and the internet. It also includes the use of IT to resolve disputes in such areas as domain names, intellectual property, e-commerce and ISP services. Some of the issues raised by e-DR include:

- confidentiality, privacy, security, record keeping, storage of information
- access issues such as concerns about the growing digital divide between the IT haves and IT have-nots
- appropriateness of e-DR for particular types of disputes

- training and IT requirements to make it work, that is, the development of standards, and
- development of ethical codes of practice[19].

The International Chamber of Commerce (ICC) has several codes of practice relevant to the advertising of B2C disputes. These include the International Code of Advertising Practice, the International Code of Sales Promotion and the ICC International Code of Practice on Direct Marketing. Many countries without their own self-regulatory systems will look to the ICC in relation to setting standards and self-regulation guidelines.

In the USA, the American Bar Association E-commerce and Alternative Dispute Resolution Task Force is studying standards for resolving disputes arising from e-commerce[20]. In the absence of readily available international courts to decide private disputes and given the high costs of litigation, most private international disputes are resolved by negotiation, mediation or arbitration. The American Arbitration Association (AAA), one of the largest such organisations in the world, announced in 2001 a dispute resolution protocol for e-commerce B2B disputes. According to the new protocol, companies should follow five principles in developing on-line techniques for handling disputes in a B2B setting:

- fairness, that provides access to neutral dispute resolution providers
- continuity of business, so that disputes are resolved with minimal disruption to business activity
- a range of options, that includes a variety of dispute methods to resolve disputes as early as possible
- a commitment to technology that will aid the swift and economical management of disputes.

The AAA model provides a technological platform that will address each of the principles and offer tools designed to manage disputes and provide mediation and arbitration online and via traditional means. The AAA model and supporting principles were developed in consultation with industry and a number of major companies have signed on, including Microsoft Corp, AT&T and other.

The Better Business Bureau (BBB) system also provides consumer and industry with some dispute resolution services in relation to Business to Consumer (B2C) matters.. This usually involves an investigation, and if it is found that the advertisement is misleading, a request to correct the advertisement and publication of the results. The National Advertising Division of the BBB may also refer a case to appropriate law enforcement agencies.

In South America the Interamerican Society of Freedom of Commercial Speech (SILEC) is dedicated to promotion of self-regulation and a commitment to truthfulness, honesty, integrity and responsibility (www.silecinternacional.com).

In Japan the Direct Marketing Association and Japan Chamber of Commerce and Industry have developed the 'Online Shopping Trustmark' to provide information about reliable online marketers. The scheme also includes a complaint handling program.

In Europe there is self regulation at both national and pan-European levels. National rules, principles and guidelines governing advertising exist in every country and there is a pan-European alliance (www.easa-alliance.org/home.html).

1.9 The Future[21]?

- A range of dispute resolution programs and initiatives is emerging. This is desirable because it means that people are working out the best ways to use IT and find ways of resolving disputes that best fit the needs of particular groups, whether they be business, consumer or government. There is thus an element of mass-customisation.

- These online dispute resolution developments are also providing answers to groups who are worried about the cost, inconvenience, language and cultural barriers and the risk of being subjected to jurisdiction faced by those who are engaged in e-business.
- E-DR seems especially suited for global consumer disputes where the amount in controversy is small and jurisdiction and conflict of laws questions are prevalent. Such systems play a vital role in giving greater confidence in e-business.
- An important component in all of this is the need for consumer and business education about programs, codes, and the benefits as well as the limits of e-DR.
- There is a common interest of all groups to cooperate with law enforcement and other regulatory agencies to combat fraudulent and deceptive practices.
- As courts go online, perhaps there is greater scope, too, for courts to be better connected to the network of various dispute resolution mechanisms and players involved.
- While it is recognised that some government regulation is probably necessary and desirable, this should not come at the expense of impeding innovation. At the appropriate level, government had a role to play in ensuring fairness, low cost, transparency, efficiency and impartiality of various ADR systems.
- One area in which there is little agreement is the extent to which various e-DR processes should be binding or mandatory.
- Disputes arise in a legal context and here there is a great need for harmony. There is an urgent need to look at telecommunications legislation, Privacy Act, contract law, law regarding confidentiality and privilege, enforceability issues, consumer law protection, use of digital signatures, proof of informed consent, insurance, risk management and so on.
- The prospect of dispute resolution across national borders poses even greater problems. However, some recent developments are moving in the right direction. *OECD Guidelines for Consumer Protection in the Context of Electronic Commerce*, were adopted on 9th December 1999 by 29 OECD members[22]. These guidelines apply only to business to consumer (B2C) contexts and provide a blueprint for government as they formulate and implement consumer protection for e-commerce. The guidelines provide a blueprint for the private sector as it develops self-regulatory codes and best practice regimes. It is hoped that these guidelines will assist consumers to determine what fair business practices they should expect. Article VI of the Guidelines say that consideration should be given to whether existing dispute resolution frameworks should be modified or applied differently to ensure effective and transparent consumer protection in an e-commerce context[23].

OECD Guidelines for Consumer Protection[24]

- Transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce
- Fair business, advertising and marketing practices--business should 'pay due regard' to consumers' interests and act accordingly,
- Online disclosures that provide enough information to allow consumers to make informed choices - including information about online businesses, their goods and services, and the terms and conditions of sale
- Clear processes for confirming transactions
- Secure payment mechanisms
- Timely and affordable dispute resolution and redress processes - consideration should be given to whether existing dispute resolution frameworks for applicable law and jurisdiction should be modified or applied differently to ensure effective and transparent consumer protection in the context of the continued growth of e-commerce
- Privacy protection according to recognised privacy principles that are appropriate and effective protection for consumers
- Consumer and business education should be emphasised to foster informed decision making by consumers and to increase business and consumer awareness of the consumer protection framework applicable to online activities.

The *Hague Conference on Private International Law (HCPIL)* recommended the development of a dispute resolution mechanism for a world-wide context. It called for one system, operating within an independent control authority set up by public authorities, either directly or by delegation from representatives from industry, consumers and public authorities. It also recommends a system to accredit different regimes that meet the overall guidelines and principles. The principles of transparency, independence, reliability and legality should be at a minimum. The proposal is for one system with three arms made up of the following:

1. a preventive method whereby sites would be labelled through a system of seals or trust marks;
2. an ADR to which sites would give prior consent through the label, enabling rapid resolution at lower cost of any disputes that arise and which could not be resolved by preventive means; and
3. a default rule of jurisdictional competence for any case in which the first two arms of the system have been unable to provide satisfaction, or for residual cases which cannot be brought within the first two arms.

The development of procedural rules, including uniform conflict of law rules are already in place[25].

2. e-DR in Practice

2.1. Recent Australian developments

Courts in Australia have for some time been active in their use of technology. One of the most recent developments is Australia's first permanent privately hosted electronic arbitration room located in Sydney, but able to be connected to everywhere. A joint venture between Auscript and Counsel's Chambers, this is a fully networked room with facilities for electronic evidence, document imaging, video conferencing, webcasting, chat facilities, real time transcription and point-to-point data lines to access external services[26].

The private sector, too, has been innovative in its use of e-DR. A good example is Settlement Online Systems, www.settlementonlinesystems.com.au, an interactive online service, which provides double blind, confidential, password protected and automated dispute resolution. The service allows parties to a dispute to have secure access 24 hours a day / 7 days a week to a real time settlement procedure, and provides parties with a quick "without prejudice" settlement negotiating tool. The steps involved include:

- Registration. a party to a dispute logs on to the site, or rings a call center, and completes the user registration form. This form contains all the necessary information about each party and the dispute. then contacts the other party and invites them to participate in the process.
- Verification: Once the parties are verified, they can submit their demands or offers in turns. Offers and demands are made on the secure site and being "double blind" are strictly confidential and never seen by or disclosed to the other party.
- Ongoing Communication. At every stage of the process the parties are kept informed on the progress of their case and how to proceed next, either through email if they are using the online facility, or by their case manager if they are running a case off line. For example, after each round the parties are advised the outcome of that round and if it is unsuccessful they are invited to submit an offer or demand for the next round within 5 business days. Parties may also contact Settlement nline Systems directly for assistance at any time by sending an e-mail or phoning.
- Each series of the process allows the parties up to three rounds of offers and demands. Each

party has up to 5 business days in which to respond to an offer or demand. If there is no response within the required time, then that negotiation is terminated. So one entire series can take up to a maximum of a month to complete, or can be finalised in minutes.

- Settlement is defined as when an offer equals two thirds or more of a demand the "zone of settlement" is reached and the average, or mean, of the offer and demand is calculated and this is the settlement amount. Successful settlements are legally binding on both parties; however, if a settlement is not reached the parties retain all their legal rights.
- If a case is not settled in the first series of up to three rounds of offers/demands, or is terminated through non response by one of the parties, the parties may: go into another series of up to three "double blind" offer and demand rounds by re-registering; or go to mediateonline at: www.mediateonline.com.au where the dispute can be resolved through the mediation process.

2.2 Singapore online mediation program

The Singapore Judiciary in late 2000 claimed to be the first in the world to introduce an online mediation facility, enabling commercial and internet-related disputes to be settled online and without the need of the parties to go to court. This development is consistent with Singapore's intention to be an e-commerce hub called [e@dr\[27\]](#).

The system works this way:

- Complainant goes to the web site
- Fills in the particulars, including contact details of respondent and proposes a solution to the problem; submits form
- Complainant get an acknowledgment of receipt and case number
- Moderator gets the request and e-mails the respondent
- Respondent can either accept or reject use of e-dr
- After moderator hears from respondent, moderator decides on proper court, for example, small claims
- Moderator refers the case there and informs the mediator
- Moderator informs claimant and respondent of arrangements
- Mediator contacts both parties
- Online mediation process begins
- Parties do not need to have links with Singapore to use this process--they need only submit to Singapore's jurisdiction[28].

2.3 Private sector initiatives

Numerous groups are devising ways to use new technologies to resolve disputes, especially those that occur in an e-business context.

WebMediate

Provides the full range of dispute resolution services--direct negotiation, mediation and binding arbitration to businesses in conflict. Their clients include insurance companies, Fortune 500 Companies. It is proving popular because it is faster, easier and less expensive and avoids face-to-face conflict. The services are also used by insurance companies in settling claims and business-to-business (B2B) e-commerce disputes.

ClickNSettle is operated by the National Arbitration and Mediation Corporation, a US-listed company which has developed an interactive, online negotiation and mediation system[29]. Through a complex system of escalating payments on each offer or demand entered parties can 'up the ante' to the point where both may be unwilling to go any further. This puts a cap on the amount parties may

be willing to pay and thus settle on the basis of what the parties perceive to be reasonable. Here the cost of the case is distributed almost equally between the parties.

Online Resolution is a US company and a subsidiary of a national body named mediate.com[30]. The company offers online evaluators, mediators and arbitrators for any form of dispute. Any value of dispute is catered for. The claimant may select the form of dispute resolution. Upon submission of the case, online resolution contacts the other party to ascertain whether they are willing to participate. If they are, charges calculated on the value of the claim are payable by both parties.

An innovative aspect of this service is the availability to the mediator of an online resolution 'room'. This virtual room is hosted on a secure server designed for use by the mediator as a private caucus room with the parties. In this way it appears to mimic real-world mediation and thereby 'humanises' the online mediation process.

SquareTrade is a US company providing dispute resolution services for online auctions. Squaretrade assigns a mediator who helps to resolve any dispute of any value. The principal feature of the system is that no charge is made to the claimant to enter the dispute resolution system. The service is quick and easily available to consumers. Squaretrade has been engaged by eBay to serve as its mediator in buyer-seller disputes[31]. eBay has about 13 million users and 2 million transactions per week. SquareTrade mediated over 30,000 disputes between March and December of 2000. For the moment, the service is free to eBay users with transactions of more than US\$100 in dispute.

InternetNeutral. This site operates mostly for businesses[32]. Trained mediators are involved. The fee is US\$250 for filing, two hours of mediation and two hours of preparation. If the case can be handled entirely by email the cost ranges from US\$1 to US\$6 per minute for the mediation, depending upon the amount of the dispute.

WEBdispute caters primarily to businesses in dispute[33]. Fees range from US\$100 to US\$900.

Mediation and Information Resource Centre through online.mediators focuses on B2B disputes with a charge of between US\$50 to US\$100 per hour depending upon the amount involved[34].

Electronic Commerce and Consumer Protection Group (ECCPG) released guidelines for Merchant-to-Consumer Transactions[35]. The purpose of the guide is to establish a global framework. The guidelines argue that dispute resolution mechanisms for consumers should be fair, timely, affordable, transparent and independent.

Other prominent eADR programs include:

CyberSolve: <http://www.consensus.uk.com/cyberrsolve.html>

CyberSettle: <http://www.cybersettle.com>

Disputes.org: <http://www.disputes.org>

ICourthouse: <http://www.i-courthouse.com>

Online Mediators: <http://www.onlinemediators.com>

One Accord: <http://www.oneaccordinc.com>

Resolution Forum, Inc: <http://www.resolutionforum.org>

SettlementNow: <http://www.settlementnow.com>

SettleSmart.com: <http://www.settlesmart.com>

Virtual Mediator: <http://www.keylaw.com>

Cybersettle, CyberSolve, Clincknsettle and SettlementNow similarly allow voluntary participants to submit financial offers of settlement without the offer being revealed to the other party. Software calculates whether the offers are within a designated range. When the offers are too far apart, the offers are kept secret and the negotiations continue without any of the offers being shared. Such systems are simple and entirely in the control of the parties. However, they are not as flexible as dispute resolution provided by live mediators. They are most suitable for single variable conflicts where money is the only thing at stake.

Systems such as Online Mediators and Resolution Forum use case development and e-mail processes to handle more complex disputes. The addition of audio and video capacity streamed online will no doubt see an increase in this type of service. These organisations use intake forms, questionnaires to take the parties through the stages of process agreement, initial presentations, rebuttal, consideration, decision and agreement.

2.4 Other organisations and countries

The *World Intellectual Property Organisation* (WIPO) mediation rules of its Arbitration Centre may also be initiated by the election of the right holder. In the electronic environment, domain name disputes are heard online and challenges and decisions made public on the internet. Already, over two thousand complaints have been handled using this procedure. To further this mode of mediation WIPO is working on technical infrastructure to provide real-time communications, audio and tele-video capabilities as well as putting in place legal structures[36].

Novafourm is a Canadian company that provides a range of live internet collaboration methods that makes the online dispute resolution process both effective and efficient. Business and clients log into a personalised part of the website and view all of the current and historical information on their case. Novaforum focuses on IT disputes and either mediates or arbitrates the dispute. Novaforum employs NetMeeting, video conferencing and digital wireless connectivity in the settlement process[37].

Word&Bond is an arbitration system that provides its own loyalty standard for interactive sales by combining a universally applicable set of best practice principles known as Word&Bond Promises with an impartial arbitration procedure[38]. The promises in relation to sale of goods and services produce the following effect:

- the purchaser can be sure that what is bought
- whatever was bought is delivered on time; and
- if the trader does not meet these obligations, it agrees to refer a dispute to the interactive arbitration system rules and abides by any decision of the i-arbitrator.

This combination of principles allows traders to represent that their word is their bond in the virtual marketplace. The e-arbitration system is easy to use and relatively quick. The complainant can have an award in hand within 22 days of filing an interactive claim. A claimant pays a small filing fee to being arbitration in proportion to the amount claimed. Filing fees start at £40 (AUD\$1200) where less than £500 (AUD\$1500) is being claimed.

The trader, the licensee, pays the remainder of the cost of the arbitration. Even though both parties benefit from having access to the system, it seems right that traders should underwrite the majority of the cost of the arbitration, as they derive the greatest cost benefit from it. There is also the incentive for traders to provide the best goods and service in order to have to undergo this process of dispute resolution. The time saving in dealing with disputes and the fact that goodwill is maintained

between the trader and the customer is paramount in this virtual marketplace.

This site allows a claimant to file any type of claim, except for claims involving consequential loss. In the explanations in the claim form, the broad nature of the remedies available are set out: money back or the difference between what was delivered and what was expected. These are mechanisms which are becoming standard practice both in Europe and elsewhere.

It is to be noted that all of the site's i-arbitrators are qualified legal persons. The cost of a Word&Bond licence to traders depends on their annual revenue and starts from £200 (AUD\$600) a year.

3. Courts

The use of traditional courts to resolve disputes arising online is considered as a forum of last resort, that is, when all else fails. But, even here enough IT has crept into the courtroom that there is no reason not to include the court as an additional extension to the mediation process. However, we are at an early stage of such developments and there may be a need for more research in this area in which the courts may work in tandem with e-DR to provide everyone with sufficient alternatives to aid resolution of conflicts of any kind.

3.1 Adoption of e-DR by Courts

Australia is one of the leading nations in the use of IT by its court system. For example, most courts now have video links. In criminal custody and sentencing matters, the matter can be heard via direct link without the inmate having to leave prison. Video testimony by witnesses is also now common. Digital recording systems have replaced cassette tapes. Sensitive microphones now track a speaker automatically. This use of technology has also brought with it new rules for evidence and procedure.

An exciting international application IT by the courts is the WA/Singapore Co-mediation program in which a WA judge and a Singapore judge mediate and provide an early neutral evaluation of the strengths and weaknesses of each party's case.

In NSW, the NSW Law Society predicts that online chatrooms may replace pre-trial hearings in many Courtrooms within two years. This would save a lot of congestion and waiting around and substantially reduce the costs[39].

Indeed, just as different arbitration systems have competed against each other for international dispute resolution business it is likely that we will see court systems offering their services to a global market place. This would be a natural extension of Australian legal services - a major export growth area for Australia[40].

In the US, Michigan[41] has agreed to set up a real cyber court, an online tribunal to handle business disputes. It is designed so that parties can settle disputes in convenient manner and still be before a court. Both parties must consent to the online court. The amount in dispute will be limited to \$US 25,000. The cyber court will be able to exercise jurisdiction over matters both consumer and business matters, including

- a. matters involving information technology, software or website development, maintenance or hosting
- b. those involving internal organisation of business entities and the rights and obligations of shareholders, partners, members, owners, officers, directors or managers
- c. matters arising out of contractual agreements or other business dealings including licensing, trade

secret, non-compete agreements, non-solicitation and confidentiality agreements

d. matters arising out of commercial transactions, including commercial bank transactions and issues arising out of business or commercial insurance policies

e. matters involving commercial real property, other than landlord/tenant disputes

Specifically excluded from the new court's jurisdiction are torts, landlord tenant matters, employment, criminal and administrative agency matters, tax, zoning and other appeals. The new court will not have authority to entertain actions to enforce judgements, including its own. Where appropriate and technologically feasible and at the discretion of the judge, all proceedings will be broadcast on the Internet. Decisions of the Cyber court may be appealed to the State Court of Appeals

The Michigan State bar association is developing rules for the court the Draft rules are available at <http://www.michbar.org>

For example, the proposed rules would permit service of process by e-mail and submission of pleadings and all other documents electronically twenty-four hours a day, seven days a week. Judges in the Cyber Court may conduct hearings at any time as required by the needs of the litigants and witnesses. Judges assigned to the Cyber Court will take judicial education leave to attend technological training provided by the Michigan Judicial Institute of at least two weeks in the first year of appointment and a further one week minimum in each subsequent year. Payment of fees or other funds may be made by electronic transfer of funds, credit card or debit card authorised by the court or any other electronic method approved by the Cyber Court.

The Internet will serve as the virtual courthouse door. Members of the public will be able to visit the Cyber court at all hours, review the docket and 'attend' any proceedings under way. Lawyers will be able to check on the status of their cases, view documents and make filings at any time.

The Cyber Court is also empowered to use the full range of dispute resolution services. The Workgroup drafting the rules subscribes to the 'simple principle that the court's technological resources should be liberally used for alternative dispute services, and that whenever possible the parties should drive the alternative dispute techniques applicable to their cases.'

3.2 Virtual Magistrate and Online Ombudsman's Office

The Virtual Magistrate and Online Ombudsman are examples of consensual online arbitration and mediation projects. The Virtual Magistrate project is a joint venture of the National Centre for Automated Information Research, the Cyberspace Law Institute, The American Arbitration Association and Villanova Centre for Information Law and Policy. This project was initiated in 1996 [42].

The Virtual Magistrate provides an online mediation service to regulate online disputes in diverse subject areas including intellectual property infringements through to defamation, fraud and deceptive trade practices. The Virtual Magistrate offers a more formal 'purpose' in dispute resolution and is often seen as an interim resolution to a judicial decision.

Established also in 1996 at the University of Massachusetts Centre for Information Technology and Dispute Resolution, the Online Ombudsman offers a dispute resolution service but on a more informal and flexible basis than the Virtual Magistrate. Mediation is conducted online at no cost to the user. This is presumably because the scheme is being developed by an educational institution. There are no set procedures for mediation and the determinations are neither final nor authoritative. Disputes heard here are usually those between members of news groups, list servers, cyberspace

competitors, internet service providers, domain name disputes, spamming[43] allegations and copyright disputes[44].

3.3 Courts of the future

Several universities have established projects that showcase and conduct research related to courtrooms of the future. One of the earliest and best known of these is Courtroom 21, a project involving the Center for State Courts and the College of William & Mary (W&M). In 2001, the University of Canberra in Australia's National Capital participated with W&M and Leeds University in conducting a mock trial with a scenario involving a terrorist bombing of a US military plane which in turn impacted on a fully laden passenger aircraft which then crashed into central London. The Barrister from the UK questioned our defendant in Australia, with the testimony simultaneously relayed to the high tech courtroom at W& M. An added complexity was that the action was laden with every added complication which could be thought of, with the intention of testing/demonstrating technology to the limit. Other high tech courtrooms of the future have been established in Las Vegas, Tucson and Brisbane.

The University of Canberra has opted to look at the full range of e-DR processes and is putting into place a multi-purpose cyber venue that will link a high tech courtroom to computer labs, satellite dish, broadband and ISDN connections and a series of interconnected simulation suites with video conferencing and an observation desk that allows proceedings to be recorded and monitored without intruding. A number of research projects are presently under way, including a study of bench accessible data, of listings processes, a comparative jury study, a National colloquium on the architecture of courts to be hosted in conjunction with the High Court of Australia, a courtroom design/evaluation project for the Government and inclusion in a planned international online dispute resolution project under the leadership of the University of Arizona at Tucson[45].

Also in Australia, the State of Victoria conducted a major study into the future of courts, The report, *Technology and the Law*[46], was tabled before the Victorian Government in May 1999. Among the recommendations are:

- The establishment of a centralised government entity to coordinate and implement a centralised approach to the introduction of technology across government
- The amalgamation of the administration and registry functions of all Victorian courts and tribunals
- The establishment of a law and technology clearinghouse that collaborates internationally to promote best practice uses of new technologies
- Comprehensive training for judges and court administrators on the use of technologies
- The development of protocols and standards for justice information systems adopting world's best practice[47].

The Report recommends that courts be proactive in using technology to enhance the access to justice by providing multi-lingual services, services to remote areas and enhanced services to the disabled [48]. The Report also calls on the legal profession to be more proactive in adopting technology to gain efficiencies, more international in scope and more competitive[49].

Conclusion

This paper has canvassed the benefits and otherwise of e-DR and how such a medium may develop further in future especially where the disputes both arise in the electronic media and are resolved there as well. Increasing cyberspace will take centre stage where people in conflict or in a dispute require easy, quick and fair resolution. While aniline dispute resolution minimises the face to face 'combat' e-DR also offers solution without raising the temperature of either party in the conflict. Along the way e-DR may have taken dispute resolution processes to a new level but has introduced

more complexity both from the point of view of legal questions and conflict of laws as well as the issue of jurisdiction. It is to be hoped that in time many of the problems will disappear once practitioners in this field gain more experience in managing the technology and the processes.

On a practical level, some of the implications for E-DR developers and policy makers might include the following:

1. For governments and other policy makers

- We see emerging a range of dispute resolution programs and initiatives. This is good because it means that people are working out the best ways to use IT and find ways of resolving disputes that best fit the needs of particular groups, whether they be business, consumer, government, etc. There is thus an element of mass-customisation.
- These e-DR developments are also providing answers to groups who are worried about the cost, inconvenience, language and cultural barriers, risk of being subjected to jurisdiction, etc faced by those who are engaged in e-business.
- Online e-DR seems especially suited for global consumer disputes where the amount in controversy is small and jurisdiction and conflict of laws questions are prevalent. Such systems play a vital role in giving greater confidence in e-business.
- An important component in all of this is the need for consumer and business education about programs, codes, and the benefits as well as the limits of e-DR.
- There is a common interest of all groups to cooperate with law enforcement and other regulatory agencies to combat fraudulent and deceptive practices.
- As courts come online, perhaps there is greater scope, too, for courts to be better connected to the network of various dispute resolution mechanisms and parties involved.
- While it is recognised that some government regulation is probably necessary and desirable, this should not come at the expense of impeding innovation. At the appropriate level, government had a role to play in ensuring fairness, low cost, transparency, efficiency and impartiality of various e-DR systems.
- One area in which there is little agreement is the extent to which various e-DR processes should be binding or mandatory.
- Disputes arise in a legal context. Need to look at telecommunications legislation, privacy laws, contract law, law regarding confidentiality and privilege, enforceability issues, consumer protection laws, legality of digital signatures, proof of informed consent, insurance, risk management and so on.
- Governments should consider their regulatory role and seek to encourage the development of effective trustmark programs standards and dispute resolution processes. Governments should also consider an accreditation process to ensure that policy goals and consumer protection are achieved. Governments should work towards international cooperation and the development of international standards and codes of best practice.
- Business and government should work together to identify and pursue e-businesses engaging in fraud
- Need research into how the judicial system might become more viable online and how key groups, such as the legal profession and industry, might achieve greater involvement with online consumer redress issues.[\[50\]](#)

2. For Developers of e-DR Systems:

- if you are setting up an e-DR service, check out the laws of the particular jurisdiction
- ensure that the parties using the service understand what they are getting into. Need to educate consumer and business about e-DR
- there are particular sensitivities in B2C contracts where legislation may mandate particular substantive and procedural rules and provisions in relation to consumer contracts.
- make sure consumers give an informed choice, that they understand all their options, that they

know who they are dealing with and fully understand the terms and conditions of the e-DR service

- make sure you comply with all consumer and other regulations, including professional practice and ethical requirements.
 - make sure information is confidential and privacy is protected
 - tailor the service to account for cultural sensitivities and language
 - regularly track legal developments in this area
 - regularly evaluate the system and monitor research on best communications practice and new technological advancements that will improve the service
 - seek legal advice
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[1] This paper draws on one presented by the authors to the American Bar Association TechShow 2002 in Chicago, Illinois March 13-16, 2002

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[4] See National Alternative Dispute Resolution Advisory Council (Nadrac), *Dispute resolution and information technologies: Principles for Good Practice (Draft)*, <http://www.nadrac.gov.au/aghome/advisory/nadrac/nadrac.htm>

[5] Nadrac, supra, p. 3.

[6] See Katsh, e and Rifkin, J (2001) *Online Dispute Resolution: Conflict Resolution in Cyberspace*, SF, Jossey-Bass.

[7] Widdison, R (1997) 'Electronic law practice: An exercise in legal futurology' *Modern Law Review*, 60(2), p. 144.

[8] See, (2001) *Dispute Resolution in Electronic Commerce: Discussion Paper*, Consumer Affairs Division, The Treasury, Canberra, AGPs.; also available at: <http://www.treasury.gov.au>

[9] Perritt, HH (1996) 'Electronic dispute resolution' NCAIR Conference; <http://www.law.vill.edu/ncair/disres/perritt.htm>

[10] Kuner, C (2000), 'Legal Obstacles to ADR in European Business to Consumer Electronic Commerce' *Electronic Commerce & Law Report*, ISSN 1098-5190, Vol 5, No 28, July 19, p. 773.

[11] See <http://www.oecd.org//dsti/sti/it/consumer/prod/guidelines.htm>

[12] Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 (The Distance Selling Directive).

- [13] See http://europa.eu.int/eur-lex/en/dat/2000/c_128/c_12820000508en00320050.pdf.
- [14] de Zylva, MO (2001) 'Why resolve e-commerce disputes online', *International Internet Law Review*, pp. 37 - 42.
- [15] Organisation for Economic Cooperation and Development. <http://www.oecd.org>.
- [16] See eg, National Alternative Dispute Resolution Advisory Council (2001), *A Framework for ADR Standards*, Attorney-General's Department, Commonwealth of Australia
- [17] Donahey, MS (1998) 'Dispute resolution in cyberspace', *Journal of International Arbitration*, 15(4) p. 127.
- [18] <http://www.nadrac.gov.au>
- [19] See the NADRAC 'On-line ADR Background Paper', January 2001.
- [20] See, ABA (2001) 'American Bar Association Task Force on E-commerce & Alternative Dispute Resolution: Draft preliminary report and concept paper, <http://www.law.washington.edu/aba-eadr>
- [21] <http://ftc.gov/bcp/altdresolution/summary.htm>. See also Menkel-Medow, C (ed) (2000) *Mediation*, Dartmouth Publishing.
- [22] <http://www.oecd.org>
- [23] <http://www.oecd.org/dsti/sti/it/index.htm>
- [24] <http://www.oecd.org/dsti/sti/it/index.htm>
- [25] See Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial matters adopted by the Hague Conference on Private international law (HCPIIL) on 30 October 1999 <http://www.hcch.net/e/conventions/draft36e.html>
- [26] See Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial matters adopted by the Hague Conference on Private international law (HCPIIL) on 30 October 1999 <http://www.hcch.net/e/conventions/draft36e.html>
- [27] <http://www.e-DR.org.sg>
- [28] Wong, K, (2000) 'Judiciary launches online mediation', *The Sunday Times*, September 17, p. 3.
- [29] <http://www.clicknsettle.com>
- [30] <http://www.onlineresolution.com>
- [31] <http://www.squaretrade.com>
- [32] <http://www.internetneutral.com>
- [33] <http://www.WEBdispute.com>
- [34] <http://www.onlinemediators.com>

[35] <http://www.ecommercegroup.org/guidelines.htm>

[36] <http://www.wipo.int>

[37] <http://www.novaforum.com>

[38] <http://www.wordandbond.com>

[39] Johanson, S (2001), 'Net challenges the high cost of justice' *Age Online*, Jan 4, 15:58.

[40] Blaxell, Judge Peter (2000), 'The Future Role of Australian Courts on Resolving International Disputes' *Reform*, Issue 76, Autumn, p. 12.

[41] Michigan.Cybercourt.net, <http://www.michigancybercourt.net>

[42] See Friedman, G (1996) 'Virtual Magistrate established for the Internet - Voluntary dispute resolution for network conflicts' at URL <http://vmag.vcilp.org/docs/press/press.960304.html>

[43] Spamming occurs when a site broadcasts to everyone on their mailing list advertising and other material. Often these materials are unsolicited and has the effect of cluttering up the recipient's electronic mail box.

[44] <http://www.ombuds.org>

[45] See <http://www.lawreform.org.au/tech>

[46] See <http://www.lawreform.org.au/tech>

[47] Raman, P (2000), 'Towards a 21st Century Legal System', *Reform*, Issue 76, Autumn, p. 19, at 20.

[48] *ibid* at 20-23.

[49] *ibid* at 21-22.

[50] See Federal Trade Commission, Summary of Public Workshop on Alternative Dispute Resolution in the Electronic Marketplace, <http://www.ftc.gov/bcp/altdresolution/summary.htm>

See also, See, (2001) *Dispute Resolution in Electronic Commerce: Discussion Paper*, Consumer Affairs Division, The Treasury, Canberra, AGPS; also available at: <http://www.treasury.gov.au>