Relational Justice: Mediation and ODR through the World Wide Web

Pompeu Casanovas, Universitat Autònoma de Barcelona, Institute of Law and Technology, UAB-IDT (Barcelona)
Marta Poblet, ICREA researcher, UAB-IDT (Barcelona)
José Manuel López Cobo, playence KG (Madrid)

ABSTRACT: ODR means “Online Dispute Resolution”. Dialogue, negotiation and mediation are coming back as sources of contemporary law. We introduce in this paper two concepts and two related projects. We define the concepts of “relational law” and “relational justice”. And, at the same time, we describe how to put them in place from a social and technological point of view. Therefore, we introduce two concrete applications: (i) the Catalan White Book on Mediation, a large project to assemble the required social and legal knowledge to draft a general statute on mediation (Catalan Government); (ii) the Ontomedia Project, a semantically-driven platform allowing end-users to negotiate and mediate their conflicts in several domains (family, commerce, environment, health care, administration…). The paper describes the state of the art of ODR services, and proposes some strategies for legal electronic institutions. A middle-out theoretical approach and a mediation core-ontology are briefly described. We situate these two projects within the next generation of Semantic Web services, and the so-called Web 2.0 and Web 3.0 developments.*

1. Relational Justice, ODR and the “Metropolis model”†

We live in an overruled and changing legal world, where the “legal information flood” increases exponentially.¹ However, some of the new trends rely heavily on the ancient forms of dialogue —the subject-matter of dialectical systems.² Mediation and negotiation are becoming legal functionalities that have been incorporated in the daily routine both of large firms or soloist lawyers.³

Technology both fosters and participates actively in this process. Legal drafting, contracting, sentencing and administrative management have been enlarged with all the Online Dispute Resolution (ODR) initiatives and new forms of self-regulation and access to justice.⁴ Besides, the web fosters personalization.⁵ Citizens require a greater

† The table and analysis of the existing ODR services offered in this paper have been extended and updated in the chapter 16 of the Catalan White Book on Mediation (2010). The interested reader is invited to consult and download freely its final results (Llibre Blanc de la Mediación a Catalunya; Libro Blanco de la Mediación en Cataluña, Generalitat de Catalunya, Barcelona, 2010, 1189 pp. Catalan version; 1204 pp., Spanish version) at http://www.llibreblancmediacio.com
participation and faster and more effective ways of facing their legal activities. We will refer to these legal forms as _relational justice_.

In a broad sense, _relational justice_ (RJ) may be defined first as the justice produced through cooperative behavior, agreement, negotiation, or dialogue among natural or artificial actors. The RJ field includes Alternative Dispute Resolution (ADR) and ODR, all forms of mediation (in commerce, labor, family, juvenile and adults’ crimes, victim-offender mediation …), restorative justice, transitional justice, community justice, family conferencing, and peace processes.6

From a technological point of view, RJ may be defined as well as the substantive and formal structure that allows end users, in the most broader sense (as citizens, consumers, customers, clients, managers, officials…), to participate in the making of their own regulation and legal outcomes through all the mixed and plural strategies of what is known as the Semantic Web.7 This implies the coexistence of legal and social norms, rights and duties to be shared by subjects (artificial or natural agents) in a flexible and dynamic structured environment.8

From a theoretical point of view, we assume broadly that relational justice intersects with _relational law_ (RL).9 This concept goes back to the American scholarship tradition. It was coined by Roscoe Pound, and reused by many Law & Society scholars on empirical grounds. It refers to the concrete social and economic bonds among the parties in business, companies, corporations or other organizations.10 Thinking in this way the link between the two concepts (RJ, RL) goes not without problems. But we will not consider them in this paper.

We think that user-centered strategies of the next Semantic Web generation fit into a legal approach in which there are rights to be protected and duties to be put in place. These rights and duties occur in a technological environment. They imply new regulatory forms and belong to a new regulatory framework as well, because the networked information environment has definitively transformed the marketplace. The Internet is evolving towards a network of things (contents), and not only of linked websites. It seems that cooperation, multiple use of mobile phones, _crowdsourcing_11 and services orientation constitute the next step for the World Wide Web.

This has been recently referred as to the Metropolis model: “businesses are shifting from a ‘goods-dominant’ view, in which tangible output and discrete transactions are central, to a service dominant view, in which intangibility, exchange processes, and relationships are central”.12 In the Metropolis model, service-dominant logic views customers not as passive but as proactive agents, _prosumers_, “as co-creators of value”.13

This new landscape is the social environment of the relational justice field, where scenarios and contexts are shaped from a hybrid use of different technologies by a multitude of different users (citizens, customers, officers, agents or MAS, Multi-Agent Systems). However, we contend too that, at the local level, this kind of technological developments must be strongly grounded in a wide social knowledge on the nature of
conflicts and disputes to be managed. Not all conflicts can be solved; and not all disputes fit into the requirements of an ODR management framework.

In the following sections, we will situate the Ontomedia Project among ODR developments. First, in the next section, we will address the issue of how ODR fits into Web 2.0. Section 3 outlines the Catalan White Book on Mediation (CWBM) and the architecture, functionalities and ontology of Ontomedia. Finally, to end up this article, it will follow in section 4 a discussion of some implications for the theory of justice and some assumptions on rationality.

2. ODR and Web 2.0

For some years now, ODR has gained a solid reputation in a number of online and offline domains. The ICANN Uniform Domain-Name Dispute-Resolution Policy has, since 2000, managed the resolution of over 20,000 domain name disputes. Representatives at eBay claim to be handling over 40 million disputes annually. In Israel, the online arbitration service Benoam is dealing with the vast majority of subrogation claims over property disputes, then “becoming the authority charged with addressing lacunae through the generation of new norms”. These are only well known examples of how ODR is the most preferred forum to deal with specific types of disputes, both at the global and at the local level.

Generally, the current platforms that populate the ODR market have in common some basic features: proprietary software, stable versions, PC-based, and predetermined roles (i.e. the services provider, the mediator, the parties, etc.). Beyond these common traits, ODR services differ in scope (either addressed to specific domains or open to any type of dispute), techniques offered (assisted negotiation, mediation, conciliation, recommendation, arbitration, etc.), degree of sophistication (from facilitating online forms and procedures to case management, assignment of online mediators, or professional training), communication channels (synchronic, asynchronic, or both) and business models. Recently, some fifteen ODR service providers have been reviewed by the CEN in order to facilitate interoperability schemes (CEN 2009) Table 1 below summarizes basic features of twenty ODR providers from our own research.
### Table 1. Basic features of ODR service providers

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*Generic domains: e-T electronic Transactions (B2C, B2B, C2C), 2 Side domain names, 31st Internet related rights (privacy, access, copyright), 4th Digital specific transactions, 5th Electric appliances guarantees*

Source: CWBM, Poblet, Noriega and López (2009)
Interestingly enough, ODR services do not only provide the framework, the tools, and the procedures to deal with disputes, but also create their own “soft law”, precedents, and even enforcement mechanisms: in eBay, buyers and sellers may submit their dispute to the Paypal Resolution Center, which will be able to block the money transfers until a consensual decision is reached or the Center delivers a final decision; in the Wikipedia, where mediation is normally used for disputes about article content and arbitration mostly applies to disputes about user conduct, editors can temporarily or indefinitely blocked depending on the seriousness of the case.\textsuperscript{18}

The Wikipedia dispute resolution system is perhaps one of the few hallmarks of ODR 2.0: processes are highly flexible, interactive, and collaborative. But, how may other ODR initiatives benefit from both the trends and opportunities of Web 2.0? Colin Rule predicted in 2006 that “ODR will be one of the biggest beneficiaries of these new technologies, because they are squarely aimed at ODR’s core functionality areas: communication, collaboration, and interactivity”.\textsuperscript{19} However, he also warned that “too many ODR providers rely on outdated platforms and technology because they are reluctant to make the investments in time and resources needed to bring their platforms up to Web 2.0 standards”.\textsuperscript{20} Sanjanah Hattotuwa went a step further anticipating unwanted consequences of ODR lagging behind the curve of Web 2.0,

[T]he most obvious being that ODR itself may cease to exist. With the ubiquity of broadband wired and wireless connectivity, the ability to roll-out dispute resolution service online is possibly going to be seen as a normal service provision of Alternative Dispute Resolution (ADR) service providers, just like automated online tech support is now part and parcel of customer support mechanisms of many large software companies.\textsuperscript{21}

The Ontomedia project is an attempt to incorporate state-of-the-art Web technologies to offer, use, and organize IT supported mediation services online. The main aim of Ontomedia is to provide a domain independent platform for both mediation services and users flexible enough to adapt to multiple mediation sub-domains, procedures, and cases. With Ontomedia we expect to comply with the Web 2.0 gold rule that “it gets better the more people uses it”. This Project is linked to a broader one, the Catalan White Book on Mediation (CWBM).

3. The Catalan White Book on Mediation and Ontomedia: connective and collective intelligence

The CWBM\textsuperscript{22} is a large research project aiming at the implementation of mediation as defined by the EU Directive 52/2008.\textsuperscript{23} There are good reasons for this. One of the preliminary findings is that a range between 16% and 18% of the population in Catalonia (over 8 million people) has pending cases in the Courtrooms. Heavy caseloads and chronic shortage of judges and magistrates, on the one side, and increasing
social problems on the other (especially large immigration rates and the emergence of all kind of violence in families, schools, hospitals and institutions) have fostered the need to draw a map of dispute resolution techniques in the country, before drafting a general statute.24 The main idea is conceiving mediation not only as an Alternative Dispute Resolution (ADR) device, but as a set of tools operating near the communities, Courts and Administrations, and well adapted to the nature of conflicts arising within the different environments.

How to apply technology to the different settings is one of the issues. A twofold strategy leading to two separate models is being followed: (i) building up mediation as a Legal Electronic Institution (LEI)25; and (ii) building up a general platform for citizens, administrations, institutions and professionals. The first strategy (LEI) models the performative structure of procedural rules. The second one (Ontomedia) allows users and professional mediators to meet in a community-driven Web portal (in which contents are provided by users and annotated by the ODR web platform).26

The sections of Ontomedia are tailored on the domains previously identified within the CWBM: commercial and business disputes, consumer complaints, labor conflicts, family, restorative justice (adult and juvenile mediation in criminal issues), community problems, local administration, health care, environmental management, and education (See Fig.1).
Let’s go into it. The Ontomedia project combines multiple technologies. One of them, as we said before, is the Semantic Web. According to Spivack, “there is in fact a natural and very beneficial fit between the technologies of the Semantic Web and what Tim O’Reilly defines Web 2.0 to be about (essentially collective intelligence)”. From these cross-roads between Web 2.0 and the Semantic Web emerges what is being known as Web 3.0. Web 3.0 is about bringing the connective intelligence against the already established collective intelligence brought by the Web 2.0. So, Web 3.0 is, in words of Spivack “about connecting data, concepts, applications and ultimately people”. The use of semantic technologies is what allows that connectivity through devices, multimedia elements, text and any other Web resource by means of the hyperdata.

From the Ontomedia standpoint, we believe that Web 3.0 can make significant advances into the ODR field, helping professionals in gathering valuable resources that are relevant to the mediation services they are providing, and helping users as well to share and contribute to harness the connective intelligence about ODR that can be found on the Web.

As Web 2.0 implied the massive contribution of content from people, in Web 3.0 people will still be contributing with content, but this content will be automatically annotated to its further use by software agents, connecting one resource to another as the expression of a relationship described in a formal model, known as ontology.

We have described elsewhere the functionalities of Ontomedia (information, repository, training, communication, management) and its core-ontology. Fig. 2 shows a fragment of it (phases of mediation):

![Figure 2, Fragment of the ontology: successive stages.](image_url)

There are other interesting features:
(a) Access to justice

Ontomedia facilitates a faster and cheaper citizens’ access to justice. Any kind of devices may be used to access the portal (computers, mobiles), and in any format suitable for their purposes (text, speech, video, pictures).

(b) Metadata

All types of metadata will be automatically extracted, secured, and stored to be further used within the mediation process.

(d) Social communities

Ontomedia encourages users to exploit the advantages of sharing information and experiences with others. In this way, users will be able to tag and store content that are useful or interesting to them, and to find similar cases. In doing so, they will be able to create social communities of people with common interests.

(iv) Multimedia analysis

The multimedia analysis is devoted to enhancing the information a mediator possesses during a mediation session, capturing mood changes of the parties and any other psychological information that can be useful for mediators, just as if they were in a room with the users of the mediation service.

4. Discussion and further work: enhancing relational justice

We have been describing so far some changes in the WWW environment, and the structure and features of ODR tools. However, stemming from legal philosophy, perhaps several of the most interesting issues rely on the theoretical assumptions on rationality and argumentation underlying relational justice.

Relational justice focuses on the interaction and emerging properties that comes out from human behavior. This is the reason why procedural rules alone are not enough to regulate the whole legal process through the Web. Pragmatics, flexibility of heuristics, and visual computing are also required. The architecture of the platform and the according processing devices must reflect and fulfill these requirements. One side effect of this user-centered approach is the discussion of the current argumentation theories, because we could use models able to take into account the pragmatic content of the interaction.

Toulmin’s model of the structure of the argumentation and Alexy’s procedural approach are the two preferred strategies in AI and Law to model argumentation and
dialogue. Walton’s perspective on “argumentation schemes” and Lodder’s modelization of dialogue follow the same way of focusing on the rationale of the argumentation process. Dialogic properties of a rational interchange are set out as required conditions to achieve an outcome, and to evaluate it according with standard procedures (avoiding fallacies).

This rational trend has been enriched in the field of multi-agents systems (MAS), where progress is being achieved by incorporating human capabilities to the interactive behavior of agents.

LEIs, as an ODR device, model an iterative cycle—negotiation, conciliation, mediation, arbitration—that fits into the procedural rule-bound patterns of the interaction, helping users through the dispute resolution process. Lodder & Zeleznikow describe a three-step ODR model as well, matching dialogical tools with the structuring of the information disputants may have at hand.

All these strategies are negotiation or mediatee-centered, taking into account the interests of the parties, giving them some tools to reach a rational end, or setting up a structured environment. To do so, they need to mirror human behavior. In contrast, Ontomedia offers a complementary view: it is a mediator-centered platform as well, setting up a safe meeting space where mediators may conduct the mediation process online and on real time bases. Instead of rationality or reasoning—acknowledging their value—we work out the social interactive process.

Managing mediation is far from easy. Empathy, emotions, culture and professional practice matter. It has been much discussed recently whether computer-mediated communication alters face-to-face interactions. We think that, cognitively, it situates and intensifies the strength and the content of the communicative flow.

A virtual space of agreement is a space of disagreement as well, and it is important to know “how to disagree”, following Paul Graham’s suggestion of a disagreement pyramid. This is not new. A pragmatic reconstruction of a disagreement space had already been explicitly proposed by Sally Jackson, Scott Jacobs and Mark Aakhus, focusing both on the everyday practices of mediators and on the “collaborative design” of the mediated dialogue.

What we are building up in Ontomedia, then, are some devices to visualize emotions through facial reading, and some ways to reconstruct the visual abduction of narratives. In this way, the mediator may have some additional non-intuitive information about the distance of the agreement and the feelings of the participants.

Still, empowering professional mediators’ skills is not an easy task, and we have no evidence yet about whether or not these tools will be useful and used. Moreover, this attempt is not free of ethical issues and concerns about privacy, neutrality and impartiality.

However, even in this exploratory stage, we think that this is the kind of knowledge that is needed to enhance relational justice through the web.
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3 BATNA (Best Alternative to a Negotiated Agreement) is perhaps the most well-known model among lawyers. On the Harvard model of mediation, see Fisher R and Ury W, Getting to Yes. Negotiating Agreement Without Giving in, Penguin Books, New York, 1981; Fisher R and Shapiro D, Random House Books, New York, 2006. BATNA is defined as the result that it can be obtained without negotiating.
Ontema


9 Ibid. section 5. We assumed in there that relational justice is a subset of relational law. However, this would imply that all forms of RJ are legal, or an extension of law to all regulatory forms. This kind of implications should be avoided.


11 Crowdsourcing: “Technological advances in everything from product design software to digital video cameras are breaking down the cost barriers that once separated amateurs from professionals. Hobbyists, part-timers, and dabblers suddenly have a market for their efforts, as smart companies in industries as disparate as pharmaceuticals and television discover ways to tap the latent talent of the crowd. The labor isn’t always free, but it costs a lot less than paying traditional employees. It’s not outsourcing; it’s crowdsourcing.” Jeff Howe, ‘The Rise of Crowdsourcing’, Wired (2006) 14 http://www.wired.com/wired/archive/14.06/crowds.html. See also: http://www.crowdsourcing.com/ (accessed January 15th 2010).


13 Ibid. 77


The process goes as follows: (i) negotiation (request for comment, third opinion, ‘Wikiquette’ alerts), (ii) first step: informal mediation (volunteer Wikipedians providing unofficial, informal mediation), (iii) second step: formal mediation (Mediation Committee), (iv) third step: arbitration (Arbitration Committee). An advocate may be requested at any time, although according to the Wikipedia policies, it is better to consider this option in the later stages of the dispute resolution. There is a group of advocates-users (the Association of Members Advocates, AMA) who have offered to solve disputes.


Ibid.


Art. 3.a. ‘Mediation’ means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator’; art. 3.b. ‘Mediator’ means any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation.” It is worth to mention R. (9): ‘This Directive should not be in any way prevent the use of modern communication technologies in the mediation process.’

Electronic Institutions (EIs) organize interactions by establishing a restricted environment where all interactions take place (e.g. e-commerce, e-learning, or ODR). They create a virtual environment where interactions among agents in the real world correspond with illocutions exchanged by agents within this restricted environment. When an EI is entitled to perform legal acts, or at the end of successive steps may produce a result with legal value, or an agreement that can be alleged in Court or before other appropriate ruling institutions, we face a Legal Electronic Institution (LEI). See Noriega O, ‘Regulating Virtual Interactions’, in Casanovas P, Noriega P et al. above n 17.


Hyperdata is about data that links to other data, as opposed to hypertext which is text linking to other text. Metadata are data referring to other object-data.

An ontology is a shared, machine-readable and reusable formal specification of a conceptualization: ‘a 4-tuple (C,R,I,A), where C is a set of concepts, R a set of relations, I a set of instances, and A a set of...


35 See above n 2


39 See above n. 25


42 Graham identifies seven layers of disagreement in computer mediated communication before reaching the core of it: (i) name-calling (‘you are a …’), (ii) ad hominem arguments (attacking the writer), (iii) responding to tone (criticisms to the tone of the writing), (iv), (iv) contradiction (stating of the opposing case, with little or no supporting evidence), (v) counterargument (contradiction and backing with supporting evidence), (vi) refutation (explanation of a mistake, using quotes), (vii) refuting the central point. See http://www.paulgraham.com/disagree.html (march 2008).


45 Gracia C and Binefa X, ‘Emotional Speech Analysis in the Mediation and Court Environments’, in Casanovas et al., above n 26

Reference?
Names and addresses of authors?