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ETHICAL PRINCIPLES FOR ONLINE DISPUTE RESOLUTION[1]

[Español (http://odr.info/files/principios.pdf)]

PREAMBLE

The Ethical Principles for Online Dispute Resolution (ODR)[2] 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 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.

PRINCIPLES

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.

Accountability

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

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.

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.

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.

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.

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.

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.

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 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.

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.

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.

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.

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.

Neutrality

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

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.

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.

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.

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[1] Developed under the auspices of The National Center for Technology and Dispute Resolution; Leah Wing, lead author, 2016.

[2] Online Dispute Resolution is framed here as inclusive of any process or intervention used to handle disputes that employ electronic communications and other information and communication technologies.

For more information on ODR Ethical Principles, contact Leah Wing (http://odr.info/leah-wing/)

See also, Wing, L. "Ethical Principles for Online Dispute Resolution: A GPS Device for the Field." *International Journal of Online Dispute Resolution*, Vol. 3, No. 1, 2016, 12-29. (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2973278)

For more information on ODR standards, see the International Council for Online Dispute Resolution (https://icodr.org/index.php/standards/) employing the Ethical Principles for ODR for the creation of ODR Standards.

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January 2019 (https://odr.info/2019/01/)
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UMass Amherst