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## Assessment of e-arbitration

Mr. Nader M. Ibrahim, LL.D.

Chair, The Arab Society for Commercial and Maritime Law  
nader.ibrahim@ascml.org

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Med-Mid III

“What can and should be improved in e-arbitration?”

Sharm El Sheikh International Arbitration Centre (SHIAK)  
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### 1. What is e-arbitration?

- E-arbitration is an arbitration involving the use of electronic communication, usually the internet (*e.g.*, using email in exchanging documents)
  - Not any e-arbitration is an online arbitration:
    - Conducting arbitration through electronic means or interconnected networks (usually via internet) without requirement of the physical presence of the parties
  - Online arbitration procedure is instituted, managed and concluded through the internet
  - Consequently, e-arbitration is a variety of the online arbitration, and a variety of the ODR (= Online Dispute Resolution Arbitration)
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## 2. Is ODR science fiction?

- ODRs available since mid 1990s
- Over 100 ODR sites, mostly in North America
- Four stages of ODR: hobbyist, experimental, entrepreneurial, Institutional (now)
- Available both online and offline
- Most ODR sites use secure web page
- ODRs: caseload from one to over 1.5 million disputes
- Settlement of ODRs rates of 50%-90%
- ODR Funding: from user fees, members to government

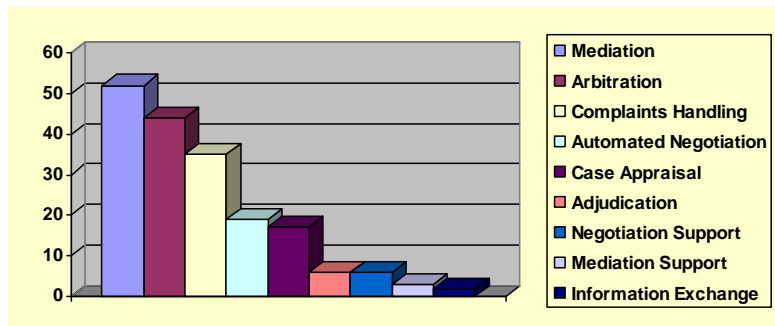
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## 3. Example: earbitration.net

The screenshot shows the Earbitration.net website in a Windows Internet Explorer browser window. The page layout includes a navigation menu at the top, a 'COMPANY'S BRIEF' section, a 'Login' form, and a 'Quick Links' section. The main content area features a 'Login here to file your Case...' button, an 'E-Registry' button, a 'File a Case' button, and a 'Contact Us' button. The footer contains copyright information and a 'About Us' link.

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## 4. E-arbitration among the ODRs

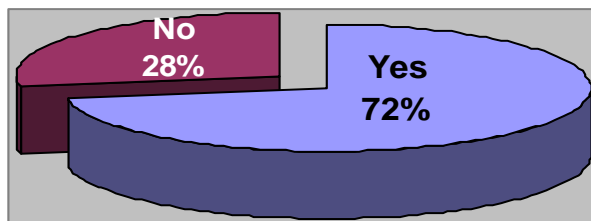


Melissa Conley Tyler (2005), *Recent Developments in Online Dispute Resolution*

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## 5. What does the public say?

### Willing to Consider Online ADR - General Dispute



Conley Tyler, Bretherton & Bastian (2003) *Needs Assessment: Department of Justice Victoria*, cited from Melissa Conley Tyler (2005), *Recent Developments in Online Dispute Resolution*

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## 6. Merits

- Cost-effective
  - Speed of dispute resolution
  - Lower costs
  - Financing of the online-dispute consumer
- Fast and easy communication (*i.e.*, e-mail)
- Short response times
- Electronic file management = all documents pertaining to the case in question are stored electronically in a systematic order
  - Useful especially for complex, large-scale arbitration
  - The software permits individual documents or passages to be easily retrieved, displayed or printed, cross-referenced, compared, annotated and searched for keywords

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## 6. Merits (cont.)

- It reduces the time wasted searching for documents
- It avoids the carrying of large amounts of paper
- Crossreferencing allows the linking of text, *e.g.* in the pleadings, to evidence or law
- It allows for an (almost) paperless hearing
- Note: Electronic file management is already widely used in practice. Commonly the parties exchange the electronic documents on a CD-Rom

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## 7. Demerits

- Technical issues:
  - Technological gap between different groups of society and different countries
  - Expensive virtual hearings (video-conferencing)
  - Some documents cannot be transformed into electronic format (scanned-in)
  - Risk of inaccurate scan
  - Risk of deliberate alterations
  - The Internet is less secure than mail, fax or telephone
  - Potential miscommunications

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## 7. Demerits (cont.)

- Legal issues:
  - Legal problems faced by the arbitrator
    - Gaining authority over the parties
    - Controlling the flow of information
  - Fear of procedural and substantive fairness
    - Procedure fairness: due process
    - Substantive fairness: what *lex causae*?
  - Lois de police and weak parties (*e.g.*, consumers)
  - Problem of determining the seat of e-arbitration
    - Law applicable to the procedure: *lex arbitri*
    - Competence of assisting judge
    - Ensuring lawfulness of an award

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Thanks

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