

IMI ODR TASK FORCE : THE JOURNEY TO E-MEDIATION STANDARDS

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IN 2014... AT THE 13TH ANNUAL
INTERNATIONAL ODR FORUM
@STANFORD LAW SCHOOL

I finished my presentation about the
Kick-off of the ODR taskforce like this..

MORE NEWS NEXT
YEAR!

Thank you for listening

AGENDA

- IMI at a glance
- How certification works at IMI
- The ODR Taskforce charter
- Why the ODR Taskforce focused on E-Mediation
- What E-mediation is and its challenges
- ODR Taskforce E-mediation Competencies and Skills
- Next steps

INTERNATIONAL MEDIATION INSTITUTE



- **VISION : “Professional Mediation Worldwide: Promoting Consensus and Access to Justice”**

- **MISSION**

- 1. SET AND ACHIEVE HIGH MEDIATION STANDARDS**

IMI via its Independent Standards Commission and associated Task Forces collaborate to create standards for mediation worldwide. IMI then certifies 'Qualifying Assessment Programs', which in turn certify Mediators and Mediation Advocates against these established standards, enhancing the practice of mediation and thereby improving consensus and access to justice.

- 2. CONVENE STAKEHOLDERS AND PARTIES**

Through initiatives such as the Global Pound Conference Series and ongoing Global Pound Conversation, IMI has gathered data generated by stakeholders and parties which is being used to improve mediation practice and implementation around the globe.

- 3. PROMOTE UNDERSTANDING AND ADOPTION OF MEDIATION**

IMI works together with national and international bodies to promote understanding of and adoption of mediation.

- 4. DISSEMINATE SKILLS FOR PARTIES, COUNSEL AND MEDIATORS**

Members of IMI's working Board provide ad hoc skills training for mediation stakeholders. IMI's Training and Assessment Task Force has established standards for skills training in this area.

IMI GOVERNANCE



Board of Directors

Sets the overall direction of the IMI public service activities and ensures efficient operation and appropriate financial control.

Co-Chairs

Deborah Masucci

Kimberly Taylor

Cyril Dumoulin

Michael McIlwrath

Kehinde Aina

Andrea Carlevaris

Harold Coleman

Alexander G. Fessas

Karl Hennessee

Pierrick Le Goff

George Lim

László Molnár



Advisory Council

The Advisory Council has a review, advisory and enabling function to help guide the IMI mission.

The Rt Hon Lord Woolf

Sheikha Haya Rashed Al-Khalifa

Professor Tommy Koh



Independent Standards Commission

Establishes the criteria, standards and related materials for IMI Certification.

Co-Chairs

• Judy Meyer (Mediator) (US)

• Constantin-Adi Gavrilă (RO)

Appraisals

Vice Chairs

• Margaret Halsmith (AU)
Implementation

Standards &

• Jeremy Lack (CH)

Taskforces

• Ellen Waldman (US)

Ethics

• Ana Maria Maia Goncalves (MY)
Online Dispute Resolution

Online Dispute Resolution

• James South (UK)
Assessment

Training and

• Mark Appel (MT)

Investor State

• + 70 Thought Leaders from > 30 countries - Mediators, Users, Judiciary, Providers, Trainers, Educators



IMI ISC Committees and Task Forces

IMI Team

IMI Supporting Organisations

ROLE OF THE IMI INDEPENDENT STANDARDS COMMISSION (ISC)

- The ISC establishes the criteria, standards and related materials for IMI Certification.
- The ISC has been convened by IMI for several governance purposes
 - Providing advanced thought leadership
 - **Setting high competency standards for mediators and mediation advocates/advisors**
 - **Reviewing and approving programmes to qualify mediators and mediation advocates/advisors for IMI Certification**
 - Ensuring continuing quality control of approved programmes
 - Monitoring the IMI Code of Professional Conduct
 - Appointing assessors to review Code of Professional Conduct complaints
 - Proposing and approving enhancements to IMI's Vision and Mission.
- Members of the IMI Independent Standards Commission bring their expertise together into ISC Committees and Task-forces to work on with IMI.

APPROVING PROGRAMMES TO QUALIFY MEDIATORS & MEDIATION ADVOCATES/ADVISORS FOR IMI CERTIFICATION

- IMI Certification is available only to experienced mediators and mediation advocates/advisors who certified by IMI.
- IMI certifications (mediator and mediation advocates/advisors) are done via Assessment provided by Qualifying Assessment Programs (QAP). To become IMI Certified, a Mediator must prove its competencies **via assessment**, under a QAP.
- Qualifying Assessment Programs (QAP) are delivered by leading institutions, after application approved by ISC of IMI.

IMI does not offer any mediation services or training programs to the market – its role is to establish standards, benchmarks and criteria for IMI Certification.

IMI PROCESS UNTIL DEFINITION OF CERTIFICATION STANDARDS TO BE USED BY QAP

- Definition of a Taskforce and Terms of reference
- Approval by the ISC
- The taskforce work
 - Definition of a sets of competencies and skills
 - Publication of standards
 - Definition of the QAP process for organizations that want to apply to be QAP for certification (of mediators, of mediation advocates and in 2019 of e-mediators)
- Approval by ISC for posting the competency criteria on the IMI website for public consultation
- Public Consultation – 6 months
- Pilots
- Approval of QAP and publication on IMI website
 - Definition of QAP approval committee

IMI TASKFORCES

- Inter-Cultural Competencies
- Investor-State Mediation
- Mediation Advocacy
- Mixed Mode
- Online Dispute Resolution
- Training and Competency

ONLINE DISPUTE RESOLUTION TASKFORCE

- Co-chairs
 - Ana Maria Maia Gonçalves
 - Daniel Rainey
- + 30 Members thought-leaders and ODR professionals from > 8 countries
- Kick-off in June 2014 at the 13th Annual International Online Dispute Resolution Forum @Stanford Law School
- Publication of competencies – September 2017
- Launch - November 2018 at ODR Forum 2018
- Implementation of QAP - 2019

TERMS OF REFERENCE FOR THE ODR TASK FORCE

“To define online dispute resolution (ODR) and to assess and make recommendations on how to develop high level standards for the provision of ODR services, having regard to:

- A. the current development of mediation and other ADR tools in this field
- B. the importance of ODR as a mechanism for all forms of dispute resolution
- C. the emergence of legislation impacting upon ODR.”

TERMS OF REFERENCE FOR THE ODR TASK FORCE

- In particular, to study and make recommendations in relation to the following key areas, which have a long-term impact on the ODR sector:
- 1. Examine the need and extent to which ODR practice should be self-regulated through an independent international credentialing scheme and how such self-regulation can be most effectively implemented, including:
 - 1.1. **COMPETENCY**
 - 1.1.1. **competency criteria** (knowledge, skills and experience) that individual **ODR practitioners should possess to practice in ODR**;
 - 1.1.2. best practice and competency criteria (knowledge, skills and experience) for those advising or representing parties engaged in ODR;
 - 1.2. **STANDARDS**
 - 1.2.1. standards that need to be met by **ODR service providers, ISPs, hosts, platforms and software** to fully address the needs and protect the interests of users^[1];
 - 1.2.2. standards of **trainings and codes of professional conduct**.
 - 1.3. **COMPLIANCE**
 - 1.3.1. how compliance with such criteria can be effectively and economically assessed and monitored on a self-regulatory basis; and
 - 1.3.2. the need to develop a **Code of Conduct and Disciplinary Process for ODR**.
- 2. Having regard to the growing use of ODR in cross-border dispute resolution and existing and planned government regulation in this field, **identify the infrastructure needed to develop ODR standards on both national and international levels**; assess the relevance of inter-operability, data import/export/migration and language translation.
- 3. Propose other measures or initiatives to support the development of quality ODR.

[1] Consider security, privacy and data protection requirements alongside the need for record-keeping and data storage and the application of law and practice regarding confidentiality and formal/court systems of document discovery that may be relevant to electronically 'shared' confidential documents, and propose how each of these matters can be addressed.

ODR TASKFORCE SUBGROUPS

- Group 1: Define ODR
- Group 2: Tools
- Group 3: ODR Practitioners (standard competencies)
- Group 4: Advising and Representing Parties
- Group 5: ODR Service Providers
- Group 6: Trainings and Code of Professional Conduct
- Group 7: Assessment

ODR TASK FORCE AND COMPETENCIES

- Starting point : *“Competency criteria (knowledge, skills and experience) that individual ODR practitioners should possess to practice in ODR”*
- Final focus
 - E-Mediation Competencies
 - E-Mediation Skills
 - General Requirements for e-mediation QAPs

E-MEDIATION



“The application of any ICT to the process of mediation online or via any other technology”

ICT – Information and communication technology - All technologies that, combined, allow people and organizations to interact in the digital world

THE QUESTION WHILE DEVELOPING THESE STANDARDS

- How can I, as a user in dispute...Have **trust** in the **competency** of technology+human? Have **trust** in the **transparency** of the process?
- What does research says to us about “The application of any ICT to the process of mediation online or via any other technology”?

There is probably not study that focuses totally on the impact of the diverse online technologies on mediation.

This study done in 2008 is about the influence of media richness on two behaviours that are critical in mediation and negotiation, defection and deception

THE INFLUENCE OF MEDIA RICHNESS ON DEFECTION AND DECEPTION

- **Media richness** is the ability of a communication medium to transmit different types of information from sender to receiver.
- **Defection** occurs when cooperation has been agreed to, yet, because of uncertainty in the environment or willingness to take advantage of others, an individual chooses not to cooperate.
- **Deception** is the willful attempt to mislead others through information that is known to be untrue.

Source: Rockmann, K. W. & Northcraft, G. B. To be or not to be trusted: The influence of media richness on defection and deception. Organ. Behav. Hum. Decis. Process. 107, 106–122 (2008).

THE INFLUENCE OF MEDIA RICHNESS ON DEFECTION AND DECEPTION

- **Trust** is one's expectations, assumptions, or beliefs about the likelihood that another's future actions will be beneficial, favorable, or at least not detrimental to one's interests
- **Cognitive-based trust** is indicated by beliefs in an other's **ability, reliability, and comprehension of the situation**
- **Affective-based trust** reflects the emotional bonds between members and is indicated by one's confidence that others' will act in my best interest **because of the bond we have between US**

Source: Rockmann, K. W. & Northcraft, G. B. To be or not to be trusted: The influence of media richness on defection and deception. Organ. Behav. Hum. Decis. Process. 107, 106–122 (2008).

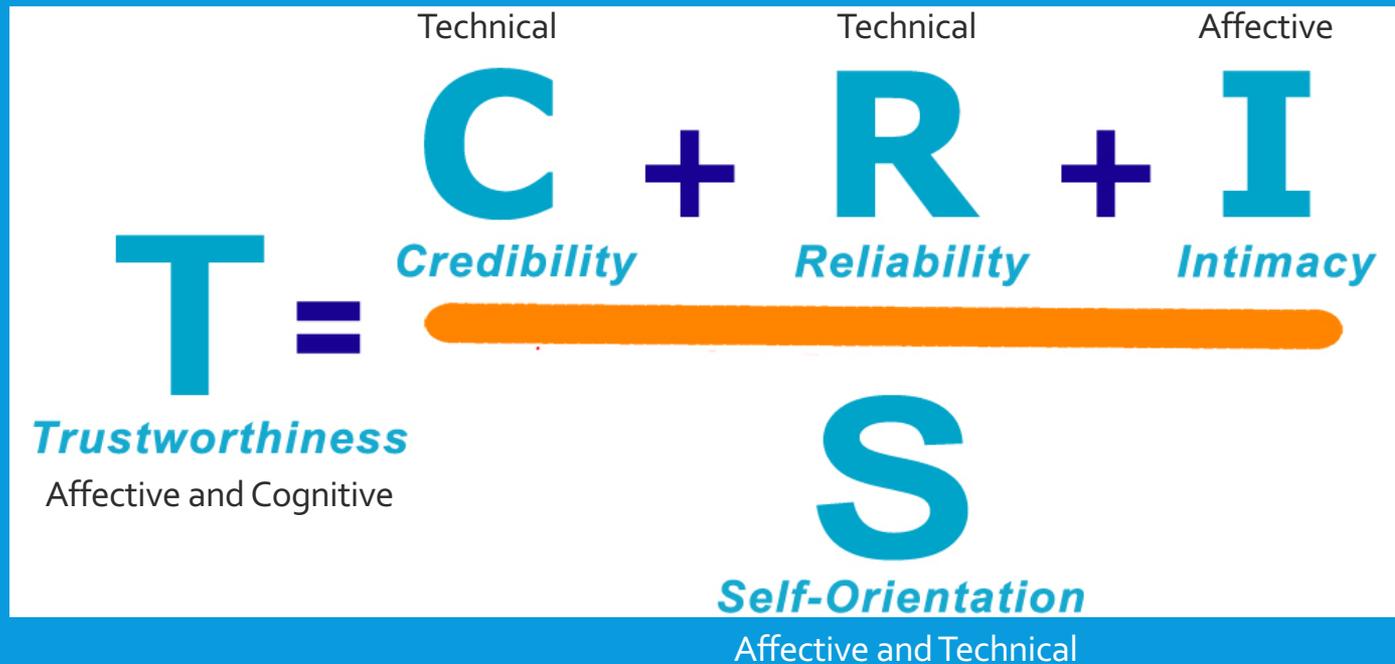
THE INFLUENCE OF MEDIA RICHNESS ON DEFECTION AND DECEPTION

- Defection and deception are **more likely to occur the leaner the communication medium** used by a group
- **Affective-based and cognitive-based trust** are weaker for individuals in groups using a leaner medium
- **Affective-based trust mediates the relationship between media richness and deception**
- **Cognitive-based trust mediates the relationship between media richness and defection**

Creating trust online is critical for E-mediators (even more than offline).

Source: Rockmann, K. W. & Northcraft, G. B. To be or not to be trusted: The influence of media richness on defection and deception. Organ. Behav. Hum. Decis. Process. 107, 106–122 (2008).

THE TRUST EQUATION



Source: <https://trustedadvisor.com/>

THE E-MEDIATOR MUST DEVELOP AND PROJECT

- **Credibility and Reliability**
 - Self-confidence about technology and mediation abilities (techniques and process)
 - Supporting confidence in technology from the parties
 - Situational awareness
 - Managing technical pitfalls with effectiveness and mindfulness
 - Ethical behavior
- **High Social and Emotional Intelligence to develop Intimacy**
 - “Other” (vs. Self) Orientation with all parties in spite of low media richness

The E-Mediator must be an “online trust role model and creator”

STANDARDS

- E-Mediation core competences
 - Knowledge elements
 - Practical skills

E-MEDIATION CORE COMPETENCIES: KNOWLEDGE ELEMENTS

SITUATIONAL AWARENESS

- Is online environment suitable to this mediation process?
- Is ODR approach going to **add value to the process**?
- What do I know about ICT, ODR schemes, ODR platforms, and general issues related to ODR?
- Am I knowledgeable about the impact that ICT has in the practice of mediation?

BASIC KNOWLEDGE OF E-MEDIATION

- Principles of **text based, video based audio based communication**
- Role of mediator, and adaptability to online environment
- Ethical standards
- Online negotiation
- Laws affecting mediation practice in ICT (enforcement of mediation agreements, confidentiality and privilege, across jurisdictions)

PLATFORM/TECHNOLOGY

- Selection of the ICT platform that meets the needs of the parties
- Which features of ICT platform to use in a mediation (functions, security, access, complexity, others)
- Knowledge in Technology hardware and software
- Knowledge about possible technology issues and breakdown



PROCESS/IMPACT

- **Understanding the emotional, social and cognitive advantages and disadvantages of using ICT in a conflict resolution process**
- **Ability to move between different communication channels based on the nature of the relationship and task at hand**
- Understanding of biases related to ICT use and impact on parties and third parties' performance in mediation
- Knowing how to use relevant procedures and techniques for facilitating online communication including (i) management of asynchronous communication, (ii) balancing limitations of each ICT towards the needs of each party
- Familiarity with the impact of the online environment in techniques like listening, questioning, paraphrasing, summarizing and concurrent caucusing.

COMMUNICATION WITH PARTIES

- **Understanding and explaining to the parties policies, procedures and protocols relevant to conduct the mediation using ICT.** Including but not limited to:
- **Ethical and legal issues** (i) Consent, privacy, confidentiality, security (ii) Limitations of technology;
- **Documentation** (i) Scheduling and follow-up (ii) Accountability /responsibility; (iii) enforceability;
- Understanding of **technological challenges** and **ability to identify them for each participant**, including but not limited to literacy, acceptance, and compatibility;
- Knowing how to use techniques for adequately supporting technologically challenged participants and **address possible imbalances between parties**;
- Knowledge of **cultural bias** related to the use of technologies in mediation practice.

E-MEDIATION CORE COMPETENCIES: PRACTICAL SKILLS

GENERAL MEDIATION SKILLS

- include but are not limited to ethical obligations, neutrality, awareness of potential biases (conscious and unconscious), and confidentiality.

USAGE OF TECHNOLOGY (11)

- Basic computer skills and basic mobile computing skills;
- Working with ICT platform **set-up, operation, and trouble-shooting**;
- Ability to manage efficiently any technology challenges;
- Ability to use the technical equipment and environment (e.g. lighting, sounds, distractions) in order to deliver a high-quality experience to participants of the respective e-Mediation;
- **Ability to convey clear and effective messages in verbal and non-verbal communication synchronously and asynchronously**;
- Ability to use the ICT platform in such a way **that the platform does not take away the focus from the content of the conversation with/among the parties**;
- Ability to show confidence and critical self-awareness in working with technology to address parties' issues;
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PROCESS – GENERAL (5)

- Determining **which approaches are likely to add value to e-Mediation**;
- Determining and explaining to the parties the impact of the use of ICT in terms of process and potential impact on the outcome of mediation;
- Dealing with the different levels of readiness of the parties to accept the implication of using ICT in the mediation process, **evaluating and securing equal access to ICTs for all parties involved**.
- Determining special costs or fees associated with the use of ICT in e-Mediation.

PROCESS – AGREEMENT & AFTER (4)

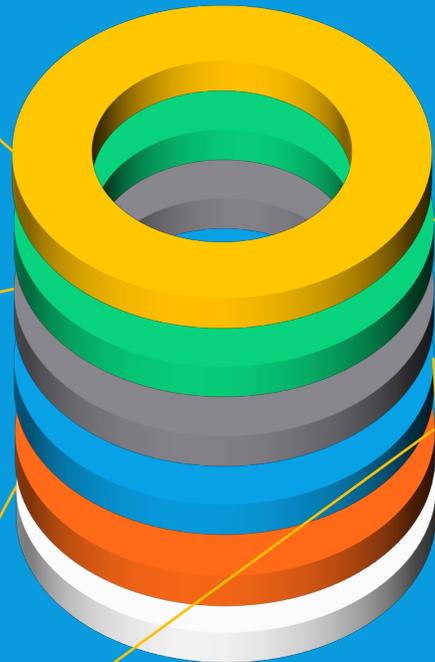
- Ensuring parties have given their **informed consent**;
- Ensuring that agreement addresses issues, interests and rights as identified throughout the process.
- Encouraging parties to provide feedback on their experience in e-Mediation;
- Conducting follow-up when needed.

PROCESS – PREPARATION (15)

- Considering parties' knowledge of mediation process and impact of ICT;
- **Understanding the level of technical knowledge of the parties and their capacity to communicate effectively using ICT platforms**;
- Guiding parties and all participants through the ICT (the process and information management);
- Identifying possible outcomes, risks and consequences associated with e-Mediation;
- Identifying and explaining to the parties (in common-language) the **potential risks in relation to privacy and confidentiality while using online or computer-based platforms or applications**;
- Identifying and communicating **common technical issues, problems or questions** that may arise during an e-Mediation process and providing parties with possible protocols to address them;
-

PROCESS – DURING (18)

- Effectively using technology and outside assistance if needed;
- Conducting a high-quality process within the online environment;
- **Deciding on the best online process that meets the needs of the parties despite personal preferences or bias in favour or against the use of ICT**;
- Monitoring of the parties' perceptions and attitudes towards the e-Mediation and adjusting the process respectfully;
- Being aware of the different **features of the ICT platform**, their corresponding advantages and constraints to be able to discern which feature to use in which context;
- Understanding and dealing with technology impact in power imbalances (e.g. typing capabilities of the parties, imbalance due to computer power and internet speed, others)
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QAP APPLICATION TO QUALIFY PROFESSIONALS FOR IMI CERTIFICATION

- **General Requirements**
 - Methodology - clearly explain how these competences are verified.
 - Transparency
 - Integrity - (i.e. that their assessors are independent from the training faculty of the applicant and have no conflict of interest with the QAP in regards to the outcome of the assessment).
 - Ongoing Monitoring of Program
 - Diversity
- **Substantive Criteria for e-Mediators**
 - Experience of the e-Mediation
 - Knowledge of e-mediation
 - Practical e-mediation skills

NEXT STEPS

- Publication of the QAP program application
- Definition of the QAP assessment mode
- Launch of IMI online mediator (e-mediator) certification
- Panel of online mediators (e-mediators) on IMI Website

COURTS AND COMPETENCIES OF E-MEDIATOR

- Courts that are implementing ODR are interested in the work of the taskforce. (Brazil and Portugal)
- Need to define for the court the competency criteria for knowledge and skills of e-mediators working online.
- Need to implement a training program adapted to the specific program and to the level of the team in place (often people working in other parts of the court and now moving to this position).
- Need to implement assessment based criteria
- Keen to implement certification criteria for the court e-mediators.
- Need to have a set of criteria to indicate on their *requests for proposals* when they choose to outsource

THANK YOU

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