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CONSTRUCTING GOOD ODR SYSTEMS

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CONSTRUCTING GOOD ODR SYSTEMS

OCTOBER 10, 2021 | JOHN LANDE | 1 COMMENT

ODR is likely to be an increasingly important part of legal and dispute resolution processes in the future, with potential benefits and risks. It particularly has great potential to help self-represented litigants (SRLs, aka “pro se” parties).

So I was interested to read an article by my colleague, Amy Schmitz, and John Zeleznikow, *Intelligent Legal Tech to Empower Self-Represented Litigants*, published in the Columbia Science and Technology Law Review.

From my limited exposure to ODR, I have had a sense that current ODR systems often haven't fulfilled parties' needs, especially SRLs. Amy and John's article helps explain the problem by developing a typology of six functions that various ODR systems perform: case management, triaging, advisory, communication, decision support, and drafting. Their article includes a great appendix listing ODR systems and which of these functions they perform, noting that some systems perform multiple functions. The article shows that the identified systems include the following functions (with the number of systems identified in parentheses): communication (55), case management (46), advice (21), decision support (8), drafting (8), and triaging (6).

As people design ODR systems, they should consider which functions to include. Systems designed primarily for SRLs presumably should include more of these functions than other systems. As ODR develops, the set of functions may expand and/or evolve.

Here's the abstract:

Legal technologies, or “legal tech,” are disrupting the practice of law and providing efficiencies for businesses around the globe. Indeed, legal tech often conjures up notions around billion-dollar businesses and highly sophisticated parties. However, one branch of legal tech that holds particular promise for less sophisticated parties is expanding access to justice (A2J) through the use of online dispute resolution (ODR). This is because ODR uses technology to allow for online claim diagnosis, negotiation, and mediation without the time, money, and stress of traditional court processes.

Indeed, courts are now moving traffic ticket, condominium, landlord/tenant, personal injury, debt collection, and even divorce claims online. The hope is that legal tech such as online triage and dispute resolution systems will provide means for obtaining remedies for self-represented litigants (SRLs) and those who cannot otherwise afford traditional litigation. Meanwhile, the Covid-19 pandemic has accelerated the growth of online processes, including court and administrative processes that traditionally occurred in person. Nonetheless, these online processes seem focused on mainly case management and communication, neglecting the need for more imaginative and innovative uses of technology. Accordingly, this Article proposes a six-module process framework for ODR programs and identify gaps in development – where new technologies are needed to advance A2J. Indeed, there is great room for development of Artificial Intelligence (AI) and data analytics to assist SRLs and others in pursuit of remedies, and justice.

Here's the conclusion:

This Article sets forth background on key legal technologies used in dispute prevention and resolution, often referred to as ODR. Furthermore, it considers particular ODR technologies that go beyond the facilitation of communication to use data analytics and/or algorithms to empower SRLs and explains why such use of technology can expand A2J. Building on this background, the Article proposes that six processes should be made available to truly capitalize on innovation that advances user-centric system design – namely, case management, triaging, advisory, communication, decision support, and drafting tools.

At the same time, this Article provided an analysis of fifty-nine current ODR systems, revealing gaps in current ODR provider offerings. Indeed, this unique analysis shows that there is room for further development of triaging, advisory, decision support, and drafting tools. However, such development must abide by ethical guidelines, including vigilance regarding the use of AI and algorithms to ensure that SRLs are not left with “second class” justice. Moreover, optionality and choice remain core to any further development of intelligent ODR systems. Indeed, it is time to reimagine A2J through the innovative use of technology, not simply to advance efficiency and corporate savings, but to empower SRLs in an often one-sided legal market.

Take a look.

◀ DID YOU HEAR ABOUT? ◀ ONLINE DISPUTE RESOLUTION ◀ TECHNOLOGY

ONE THOUGHT ON “CONSTRUCTING GOOD ODR SYSTEMS”

★ John Lande

OCTOBER 17, 2021 AT 3:52 PM

Our dang blog app is finicky and wouldn't let Amy Schmitz post her comment, so I'm posting it for her:

Thanks for the shout-out, John!

I realize that the draft article may be a bit overly rosy on legal tech, but the capacity is building for it to be used as means for empowerment – and I remain hopeful.

Nonetheless, there are certainly dangers of digitizing due process. Moreover, data analytics bring many challenges and the time is now to develop best practices that at least help advance ethical use of technology in the law.

Here is a [talk that I recently gave on the promise and pitfalls of data analytics](#) in the courts that points out challenges and ideas for best practices.

I would welcome any comments on the paper. [Here's my address where you can email me.](#)

AJS

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