
ONLINE DISPUTE RESOLUTION WEBSITES: BRINGING LEGAL TEXTS CLOSER TO ORDINARY CITIZENS?

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Abstract

Alternative Dispute Resolution (ADR), or out-of-court settlement, refers to dispute resolution processes and techniques, such as negotiation, mediation and arbitration, that fall outside traditional judicial processes. ADR is being increasingly conducted online. Online Dispute Resolution (ODR) applies traditional alternative dispute resolution methods to disputes solved online by either relying upon technologies or through procedures taking place entirely online. The analysis of two websites providing ODR will try to highlight, from an intracultural perspective, to what extent the features of obscure and ambiguous legalese shade into plain English expressions and structures, pursuing clarity and understanding, thus producing texts closer to and more intelligible for the layperson. The linguistic study is conducted within the investigation of the websites' general 'architecture' which uncovers how texts, images and symbols synergically convey both verbal and non-verbal communication, along with the several traditional and non-traditional information technology devices employed which relate the several codes to one another in the cyberspace, exploiting those conventions which are peculiar to both the genre of mediation and that of online/electronic texts.

1. Introduction

Alternative Dispute Resolution (ADR) involves dispute resolution processes and techniques other than traditional judicial processes, "methods by which legal conflicts and disputes are resolved privately, without resort to litigation in the public courts" (Di Renzo Villata 2007: 247). These methods include negotiation, mediation and arbitration. Despite a certain distrust towards it, ADR is nowadays widely accepted and employed, mostly due to the increasing overload of courts on the one hand, and its confidential nature, quicker achievement of a solution and lower costs on the other.

When ADR is conducted online, it is referred to as Online Dispute Resolution (ODR), or iDR (Internet Dispute Resolution), eDR (Electronic Dispute Resolution), eADR (Electronic ADR), or oADR (Online ADR), defined as a procedure in which the parties

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no longer travel to meet in courtrooms or in front of arbitrators or mediators. The parties stay behind the computers, communicate by electronic means, and try to resolve their dispute by an agreement reached online, or by submitting their dispute to an online arbitral tribunal or a cybercourt (Schultz, Kaufmann-Kohler, Langer & Bonnet 2001: 13).

The first experiences of ODR originated in the United States and date back to 1996 with the Online Ombuds Office as for online mediation and the Virtual Magistrate with reference to online arbitration. Today, developing types of ADR have emerged, such as *co-mediation*, *co-med-arb*, *med-arb* etc., and ADR-ODR hybrids as, for example, in the case of ADR supported by the use of emails, increasingly useful as an adjunct to face-to-face communication (Marangon 2006: 137; Nelson 2008b).

Some of the most significant advantages of ADR are also present in ODR: efficiency, cost-effectiveness, time-saving, contrast soothing, parties' involvement and participation in reaching a solution and controlling the outcome, along with less formality and more flexibility of the rules and procedures, privacy, and fewer jurisdictional problems. Simplification of both communication between the parties and between them and a neutral, and of the gathering, transmission and storing of information, are peculiar to ODR. The overcoming of distance and logistic barriers (Nelson 2008a) is another characteristic. Speed acquires a very special meaning here, and the issue of quick procedures and of a legally acceptable duration of online proceedings remains controversial (Katsh & Rifkin 2001: 25; Marangon 2006: 134; Bonnet *et al.* 2002: 4). But a traditional court settlement may be too long and costly (Camardi 2006: 44), so ODR providers aim to supply fast telematic contact between the parties involved in the dispute, accessible either within the trading organization site (e.g. eBay), or in specialized ones (Camardi 2006: 3). Online procedures are influenced by ADR methods: arbitration and mediation procedures, in particular, are an adaptation of the offline ones.

Both offline and online negotiation and mediation procedures are non-adjudicative, i.e. the resolution of the dispute is not imperative but it is generally an agreement between the parties involved. In arbitration, instead, the final award is binding. Online negotiation can be automated or assisted. In the first case, the agreement is reached through a blind bidding procedure, as the parties are mediated by a computer which matches the offers within a certain range until an agreement is reached. In the case of assisted negotiation instead, the parties actively communicate with one another through email, tele- and video-conferences (Bonnet *et al.* 2002: 2-3). Technology plays several roles (Camardi 2006: 1). It is deemed as the fourth party which does not replace the third party, but influences it as technological skills and strategies become necessary. The main role of technology is to assist the third party neutral, i.e. arbitrators or mediators (Katsh & Rifkin 2001: 94).

In online mediation, a mediator "helps the parties discuss and try to resolve the dispute" and finds a solution which is mutually acceptable. Their role is very important, above all languagewise, as they must build confidence and trust with and between the parties, be aware of what they are looking for and make sure they understand, most of the time, without the help of voice and tone inflections. Mediation

implies a wide variety of procedures, subsequent sessions and activities (American Bar Association, Section of Dispute Resolution 2006), whose structure and implementation “influence the architecture of online mediation websites” (Schultz *et al.* 2001: 21). In arbitration, instead, the arbitrator decides for the parties after having communicated with both of them, and the award binds the parties just like a court decision.

According to this framework, the Electronic Consumer Dispute Resolution (ECODIR) site offers assisted negotiation and mediation, as well as The Mediation Room, which is one of the services provided by the Claim Room. The ECODIR process starts as a negotiation process and, if the parties fail to find an agreement, a mediation phase follows and, in the case of another failure, the mediator issues a recommendation which is not binding, unless differently stated by the parties. As the website itself recites in the home page “(t)he 3-step process is designed to maximize the chances of parties reaching a quick and mutually beneficial settlement”. In The Mediation Room, the mediator communicates with the parties, who can be assisted by lawyers, either separately or jointly. He/she can also ask an expert for advice and anonymous comments may also be taken into account.

According to Bonnet *et al.* (2002: 4), in the choice of communication tools, emails seem to prevail over real-time exchanges in assisted negotiation, allowing consecutive, divided and relatively slow steps, and enabling the parties to slow down and properly focus on the content of messages without being stressed by time pressure. In mediation, instead, more tools are exploited, such as emails, telephone calls and teleconferencing, web-based real time conferencing and message posting, video-conferencing, fax, voice mail and, sometimes, even postal mail and hand delivery (Bonnet *et al.* 2002: 4). In arbitration, the choice of the appropriate tool for the quality of justice and the formalities required by such a process are so complex that arbitration is rarely carried out online.

One of the most important issues when talking about ODR is communication: how it is delivered and what devices are used to facilitate communication between the disputants and a third party. As the Plain English movement is not limited to reforming legalese but to making all formal documents more comprehensible in order to modify the *communicative function* of official texts (Williams 2005: 171), the present analysis will try to bring to light to what extent plain English is implemented in two websites providing ODR. The ultimate goal of clarity and comprehensibility can be achieved not only through simplifying written texts in general, avoiding archaic words and passives, nominalization, unnecessary redundant expressions, and reducing sentence length, but also by adopting multimodal tools offered by modern digital communication. In this respect, and in line with Hymes (1986), the present paper will consider communication more as a *genre of events* than as a *genre of texts*. The web page is an example of modern multimodal text (Baldry 2000: 41) in the sense that it combines traditional semiotic resources such as language and layout with more modern resources such as pictures, colours, photographs and videos. Therefore, visual and linguistic meaning-making resources, such as colour, use of spatial disposition of objects and texts, blocks arranged horizontally or vertically, all contribute to the text meaning.

In his analysis of plain language in legislative drafting, Hunt (2002: 6) states that the public readership dimension is absent from legislation: in other words, ordinary citizens do not seem directly concerned with the intricacies of legislation of which the main readers appear to be those who implement, administer and enforce the law itself, such as lawyers, judges, regulators, etc. Therefore, according to this scholar, “the arguments in favour of using plain language seem unconvincing” (*ibid.*). This could be true if applied only to certain legal genres, such as statutes or prescriptive legal texts, law reports, international treaties or even municipal regulations, documents which the layperson could not feel as directly and explicitly affecting his/her private daily life. However, when it comes to private transactions, employment contracts, premarital agreements, wills, and covenants, in which the parties may feel directly and personally involved in searching for a mutually satisfactory solution, when the ‘judge’ or third party is only a facilitator and not a decider, then the discourse used becomes of the utmost significance, since the parties want everything to be clear, understandable and unambiguous.

2. Data and methodology

The data for this investigation are provided by two websites, both in English, offering Online Dispute Resolution processes: a) www.ecodir.org and b) www.themediationroom.com.

The ECODIR project originates from a university initiative supported by the European Commission and the Irish Department of Enterprise, Trade and Employment. Its aim is “to set up a system devoted to the electronic resolution of Internet disputes arising between consumers and merchants”. The Mediation Room, instead, is a service provided by The Claim Room.com Ltd, Liverpool, United Kingdom, which enables “disputes to be resolved at less cost, in less time and with less damage to underlying relationships than by litigation” through a “pioneering software” utilized by “courts, government bodies, leading companies, business associations, law and business schools and mediation companies worldwide”, as the website itself recites in the home page welcoming introduction.

According to Bhatia (1993: 101), legal discourse includes a number of

distinguishable genres depending upon the communicative purposes they tend to fulfil, the settings or contexts in which they are used, the communicative events or activities they are associated with, the social and professional relationship between the participants taking part in such activities or events, the background knowledge that such participants bring to the situation in which that particular event is embedded and a number of other factors.

The present study starts from the assumption that “(a)nalyzing genre means investigating instances of conventionalised or institutionalised textual artefacts in the context of specific institutional and disciplinary practices, procedures and cultures” in order to understand “how members of specific discourse communities construct, interpret and use these genres to achieve their community goals and why they write them the way they do” (Bhatia 2002: 6). The same author underlines that, although

in genre analysis many textual artefacts can be explained in terms of pure genres, mixed or embedded forms exist, designed to achieve a blend of communicative purposes, since

[w]ith the invasion of new media and electronic modes of communication in public life, on the one hand, and the more recent increase in the interdisciplinary nature of academic and professional discourse, appropriation of lexico-grammatical resources and discursual strategies across discourse communities and genres is becoming increasingly common (Bhatia 2002: 10-12).

According to the theoretical applied genre analytical model proposed by Bhatia (2002: 16-18), discourse can be analysed from three different perspectives:

- 1) *discourse as text* which refers to the analysis of language use confined to the surface level properties of discourse, which includes formal and functional aspects of discourse, but excludes any significant analysis of context, placing the emphasis on the construction of the textual product, rather than on the interpretation or use of such a product;
- 2) *discourse as genre* which extends the analysis beyond the textual output to incorporate context, to account not only for the production of texts, but also for their interpretation, use, and exploitation in specific social, institutional and professional contexts to achieve specific goals;
- 3) *discourse as social practice* which sees texts tightly linked to and embedded in specific social contexts and which focuses more on the features of context rather than on the textual output. The focus is on the participants' identities, and, most importantly and especially for our study, on the social or professional structures and relationships the genre is likely to maintain or change, and on the benefits or disadvantages such a genre is likely to bring to a particular set of readers.

Since these three perspectives are “not mutually exclusive, but essentially complementary to each other” (Bhatia 2002: 18) this study will try to apply them to the analysis of the particular genre of ODR website language. The analysis of the two websites, the ECODIR Project and The Mediation Room, will therefore focus on their general ‘architecture’, considering the many different aspects which contribute to building an online legal procedure supported by technological tools that the target consumer may initially approach with a degree of scepticism and unease. This is due to the fact that the layperson normally lacks both the legal and the technological knowledge. Our investigation will deal with the general website framework and its different textual and discursive features in: home page layout, site map, explanation of the ODR process, rules and procedures, instructions on how to file a case, training for would-be mediators or educational materials for law schools, fees and even Frequently Asked Questions (FAQs). The multimodal analysis will highlight the intertwining of the different texts, images, symbols and other technological devices (e.g. videos, chats, video-conferencing and e-mails), which synergically and complementarily convey communication throughout the ODR websites. We will also attempt to evaluate the language user-friendliness and plainness which enable ordinary citizens to understand and use ODR procedures.

3. ODR communicative purpose(s)

Each website – the ECODIR Project and The Mediation Room – aims to introduce and guide the visitor through the website itself, before and during the dispute resolution process. Planning a site also means organizing information according to the time/money a consumer is willing to spend, hesitating among certain links and pages, or trying to quickly reach the precise information sought. This type of organization of the Web and the free access users have to most sites do not affect economic and personal freedom, but reduce the range and reach of application of the law (Camardi 2006: 20-21).

Normally, when a text is designed, the genre reflects those structures and communicative purposes shared by the specialist members of a discourse community. In analysing the two websites, one of the aims is to highlight the relationship between the online legal texts and an external audience, which has the opportunity to react “to the product of the expert originators” and to “influence them to modify their texts so that these become more user-friendly” (Trosborg 2001: 27-28).

Therefore, some of the main communicative functions exploited by the websites are to present the ODR procedures, introduce and guide visitors, provide background knowledge on the content matter, and allow visitors to understand how the process works step by step, making them aware of everything they must know before filing a case. The addressees of ECODIR processes are consumers and businesses, while The Mediation Room initially directs a more specialist audience, i.e. legal actors, businesses and business associations, law and business schools, but also includes “the public at large” in the *Welcome* message in the home page. Children and minors are not eligible to use the services offered by the ODR provider (ECODIR, *Privacy Policy* section). Both websites are meant for ordinary private citizens, but also for law school students and would-be mediators who wish to learn the practice of mediating online. In this respect, both sites mention how to become a mediator, and The Mediation Room even offers training courses in the specific section *For Law Schools*.

Thus, ODR websites use particular linguistic strategies, but also other digital means which aim at facilitating the comprehension of the texts and the procedures for the ordinary readership. Textual and non-textual features must be not only clear and unambiguous, but also all-inclusive, taking into account the various possible circumstances and diverse target readers/visitors. In addition, when dealing with all modes (texts, movies, images, sounds) of Internet discourse, legal professionals find themselves interpreting signals and languages that often differ from those existing in modern legal language. Of course, this influences the way problems arise and how they are interpreted and solved (Camardi 2006: 9-11). For example, the action of clicking to accept a contract is increasingly being considered the same as the real acceptance of a contract followed by a signature. This means that online linguistic conventions are becoming easily recognizable and are acquiring legal validity (Camardi 2006: 11-12). However, according to some scholars, the reconsideration and reinterpretation of the language of the Web into a non-technological one and the compres-

sion of legal documents and processes are leading to the pauperization of legal language and trial procedures (Camardi 2006: 45-49).

4. ODR websites: a *mixed genre*

ODR practice can be considered a mixed or embedded genre of legal language, since it includes characteristics of both ADR and online negotiations by using information technology devices, practices and procedures, along with advertising and marketing practices. The typical features of both practices are co-constructed, intermingling textual aspects with visual or text-external factors, leading to an integration of different discursive and professional practices, complementing each other (Bhatia 2008: 161-162) and aiming at a common final goal.

ODR allows us to look closely at interdiscursivity, which can be “viewed as appropriation of semiotic resources across genres, professional practices and disciplinary cultures” (Bhatia 2008: 162). The analysis of the two websites gives the opportunity to conduct a multi-dimensional genre investigation, going from text to context and vice versa, to unravel the specific discursive practices ODR employs to achieve its objectives. According to Bhatia (2008: 163), “different professional discourses have their own specific characteristics that constrain their use and interpretation”. Legal language, for example, is notorious for its obscurity making it hard for ordinary citizens to understand. Notwithstanding the difficulty to understand such legal texts, interdiscursivity – thus the importation and appropriation of some features from other types of discourse – helps to enhance comprehensibility: some typical resources of a particular professional practice or specific discourse (such as the language of technology or the language of advertising and marketing) can fill some of the shortcomings of another specific discourse, such as legal discourse. Interdiscursivity thus becomes important and functional as it acquires a pragmatic role, providing those missing features needed to fulfil, shape and improve the communicative purposes of a particular practice.

Plain language alone is surely not going to ensure that legal texts and dispute resolution texts in general and ODR practices, in particular, will really be closer to ordinary citizens. Nevertheless, we are convinced that all the non-textual elements, or text-external factors, in ODR websites can help make texts and procedures more understandable to non-experts through the use of alternative channels and modes of communication, each exploiting different resources, though all aiming at reaching a solution to the legal issue under examination.

We will now try to identify both textual and non-textual elements in the websites which, in our view, allow ordinary citizens to have some detailed background knowledge of ODR processes and a thorough understanding of the various practices and procedures. Moreover, since “users must be able to follow the process [...] the underlying support architecture must correspond to established configurations and standards” (Bonnet *et al.* 2002: 10), meeting a certain quality of the system, of the user interface, and of conventions for user interactions.

Successful websites exploit some of the following features: usefulness of informa-

tion, ease of surfing, readability, originality and friendly layout, all of them showing expertise in web design and in the creative use of technology, digital art, photography, and also knowledge of the content matter (in this case ODR processes), along with security and copyright policies. Convenience, trust and expertise are the qualities needed for a successful ODR process (Katsh & Rifkin 2001: 93).

5. Multimodal analysis of The Mediation Room website

The first section to be analysed in both websites is the home page in order to find out how informative it is, and to what extent it sets the proper context for visitors willing to engage in the ODR process. The two home pages display rather different layouts.

The Mediation Room home page (Fig. 1) displays a tool bar at the top of the page, with the above website heading and three functional tools such as the *Search* button, *Click for file access*, and the *Submit* button, giving the possibility to insert one's own e-mail address to sign up for mediation news and events. Looking at the home page horizontally, three very distinct parts can be identified: the blue background displaying blurred white clouds in the top bar ends abruptly to leave room for a white cloudy background which, again with a sudden cut-off, becomes a green expanse in the bottom end of the page, showing fields or more simply regular tufts of grass. The three-part background very much resembles the essential setting of children's drawings, with sky at the top and green earth at the bottom of the page with the key elements in the centre: this disposition of elements confers a sense of simplicity, ease and tranquillity. The whiteness of the clouds transmits lightness, cleanliness, and even plainness from a metaphorical point of view, juxtaposed to the dense fog of difficult concepts to be understood and assimilated by ordinary citizens when dealing with most legal matters. The image thus conveyed plays with the slogan *See you out of court* written in blue, with the emphasis on the words *out of* in white, supporting the idea of being outside and, thus, of an extrajudicial solution.

The central body in the page, which develops vertically downward, beyond the framework of a computer screen, again displays sparse white clouds, not heavy or thick, but delicate and almost transparent, showing the blue sky behind them. In this central body, the various content elements are distributed in a very orderly way. Two horizontal bars, the first with labels or section headers, and the second carrying the utterance *See you out of court*, are followed by six square boxes stretching vertically in the page. Three of them contain white written text against a blue background, such as the *Welcome* message, *Latest news* and information on *Some of our clients*. The box beside the *Welcome* message displays some fading pictures showing shaking hands, a pen signing a legal document, hands typing on a keyboard, people talking and shaking hands in front of a laptop, a pen gently resting on a keyboard. All these images convey the ideas of professionalism, seriousness and reliability making visitors feel at ease, guided by experts and protected in terms of their own interests and rights.

The linguistic analysis of the *Welcome* message emphasizes the use of an infor-



Figure 1. The Mediation Room home page

mal but highly persuasive register: the addresser refers to the reader/visitor directly, both personally and all-inclusively, using the second person pronoun *you* and then listing the various counterparts in possible disputes, as a way to single out the right target audience, though, at the same time, not excluding anyone but taking account of ‘the public at large’.

Here you will learn about mediation, and other alternative ways to resolve disputes, whether such are with suppliers, customers, employees, business partners, co-directors, regulatory and public bodies or the public at large.

The Mediation Room offers its expertise in applying technology to the resolution of disputes, “at less cost, in less time and with less damage to underlying relationships than by litigation”: the employment of a three-part list, a rhetorical device often used in spoken communication, has a strong persuasive character, stating things in a categorical manner, once and for all, in a complete structure, one as perfect as the number three. The persuasive character is even stronger since The Mediation Room takes into account and attaches great value to “underlying relationships” between parties that are protected from damage much more than in traditional litigation. The so-called “pioneering software”, whose services can be applied partly or wholly online but also in-person, utilizes “tailored systems”, a term which emphasizes the customized and ‘bespoke’ character of the process, making the visitor/client feel at the centre of the procedure and individually assisted. Typical structures of advertising discourse single out the right category of consumer, accord-

ing to the *If X, then Y* formula (Leech 1966: 107), or the problem/solution formula widely used in ads.

If you are a mediator or arbitrator, or an organisation offering such services, we can help you offer your skills to cases otherwise not capable of being dealt with in-person [...].

The remaining boxes in the home page take on a very important role in this context. One of them is a “short movie explaining a little about mediation”, as the instruction button recites. A man, G. Ross, the founder of The Mediation Room, in the five-minute video, sitting on a sofa in what seems to be a comfortable and relaxed sitting room with family pictures and table lamp in the background, after introducing himself, warmly invites visitors to try mediation before getting involved in litigation or in a court action. According to Kress & van Leeuwen (1996: 21) “pictures, like language, can realise not only representations, but also interactions”. The choice of a warm familiar environment and atmosphere rather than a cold and unfriendly professional office is determined by the fact that the “image wants something from the viewer, appeals to the viewer to form a pseudosocial bond of a particular kind with the represented participant(s)” (Kress & van Leeuwen 1996: 27). The image on the video has a frontal point of view conveying involvement. As Kress & van Leeuwen explain (1996: 36), the horizontal angle, or frontal angle, indicates equality, and “encodes whether or not the image maker (and hence, willy-nilly, the viewer) is ‘involved’ with the represented participants or not”. The viewer is induced into producing a social response (Kress & van Leeuwen 1996: 124). The man in the video is thus located within the social world of the viewer and vice versa: “camera angle is a highly significant meaning-making resource when reflecting social attitudes” (Baldry 2000: 70). A close shot (showing speaker’s head and shoulders) expresses intimacy and personality: it allows the viewer “to relate to the person in the text as an individual whereas distance depersonalises and objectifies” (Baldry 2000: 55).

The speaker’s explanation in The Mediation Room video is both didactic and informal, almost colloquial: he establishes eye contact with the viewer and addresses him/her directly and almost personally, using the second person pronoun *you*. Hinting at “confidential discussions” and frank talks, he shows the differences between very narrow and limited decisions by judges, aiming at applying what are “the rights and wrongs about the matter”, juxtaposed to mediation which is much more careful in keeping the underlying personal relationships between people or parties. The “mediation pragmatic approach to disputes” is reached through the maintenance and preservation of relationships between the parties beyond the dispute. Specific legal terminology is used sparingly: terms such as *negotiation* and *conciliation* are named merely to explain the functions and procedures of the third type of ADR on which the website focuses, i.e. mediation. Neutrality of the mediator and confidentiality are explained through examples from the business world, in seller/customer transactions. This is important as neutrality, i.e. the relationship between mediator and disputants, and impartiality, i.e. the absence of bias between negotiators, are potentially uncomfortable issues.

Next to the box containing the video, the light blue box on the right displays a



Figure 2. The Mediation Room Movie Demo

short slide movie to demonstrate the basic operations of the collaborative online mediation software. The Mediation Room Movie Demo (Fig. 2) lasts 2.40 minutes and shows how a person can make use of the application.

The layperson is firstly introduced to the software through a brief explanation of how the different elements are distributed in the screen to make the visitor familiar with the platform. Then, a role play of a dispute between a person renovating an old house, Ms Barbara Green, and the builder, Mr George Lowry, is presented. The setting of a would-be case places the visitor inside the situation, providing actual people and elements of discussion in the scenery. Ms Mary Madden is the mediator who logs in through username and password to enter the mediation discussion area, or *Open discussions* area, clicking on the *Mediator-All parties* button through which she can talk to both parties together. Additionally, the mediator can enter an area of *Private discussions* where she can exchange messages privately with Party 1 or Party 2 alternatively. An *Anonymous Postings* area also exists where any person, which can include any representatives, provided they are registered on the case, or mediators themselves, can post their personal suggestions on the case solution, without being identified. Mediators can also resort to a *Joint Expert Advisor* for advice. After logging in, the parties can talk to their lawyers and each of them can have a platform configured to their own choice. The last slide in the demo provides the e-mail address to contact to obtain further information about the software and how it can be used by trainers for role playing.

6. Multimodal analysis of the ECODIR project website

As for the ECODIR project home page (Fig. 3) the whole layout is manifestly simpler and less endowed with technological devices than that of The Mediation Room.

The background is white and the only touch of colour is given by the use of red to highlight all the main subsections identified under the sections in the side bar on the left and on the bottom of the screen. Emphasis is also carried out through the light and fuzzy grey line at the top of the page, where on the right darker grey *HOME*, *SITE MAP*, *CONTACT US*, and *VERSION FRANÇAISE* are clickable. The same aim is achieved by the grey button *LOGIN* and the only picture present: that of a chip, represented through different shades of blue and green, fading in the back and crossed over by a white stripe with the words *ELECTRONIC CONSUMER DISPUTE RESOLUTION*, which already restricts and identifies the domain, and repeats the site name. The picture of the chip produces an imaginary relation between technology and the reader being addressed (Kress & van Leeuwen 1996: 122). The logo of the Thawte security system, displaying a lock (with the updated date underneath), and the flag of the European Union add extra colour but, most importantly, confer a feeling of protection and security with respect to the site content and procedures.

The following pages also use red for their main headings and for clickable words within the text, and the image of the chip is replaced by colour patterns which

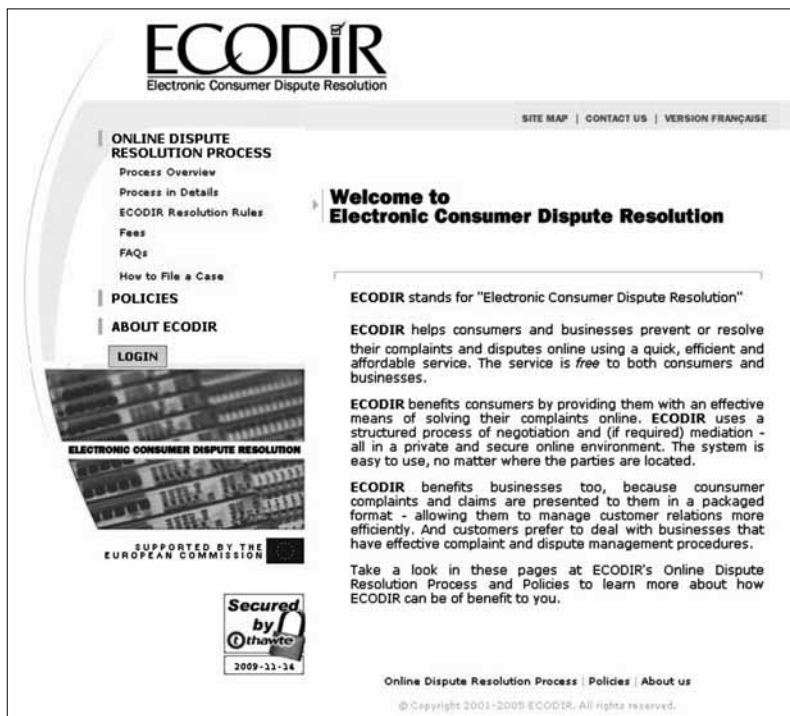


Figure 3. The ECODIR project home page

change according to the section. The other visual devices employed are mainly the size of letters and their font: capital, bold or italics, used to emphasize the importance of certain concepts or qualities. In addition, when the cursor stops on a grey link, this becomes darker. The reader's attention is firstly captured by the biggest capital letters used to write ECODIR in the top left page in black. A thin red line underlines it and a small red tick on a box substitutes the *i* top dot. The tick symbolizes the right choice for this site and its procedures. The simplicity of the layout and the bare presence of colours are designed to convey clarity and reality to the content. Headings inform and instruct the reader on how to proceed. The *Welcome* message explains who can benefit from the site and how, and the online procedure's main advantages, highlighting that "The service is free to both consumers and businesses". As well as in The Mediation Room, the quickness, efficiency and affordability of the process is unmistakably declared.

Both websites are audience-oriented, as the information is designed and specifically organized for their multiple categories of audiences. The main difference lies in the choice of tools: video in the Mediation Room and text supported by graphs in the ECODIR site. Graphs are an impersonal visual device and offer objective knowledge, lacking emotional involvement and subjectivity, unlike the images and videos of the other site (Kress & van Leeuwen 1996: 124). The ECODIR diagram of the *Process Overview* has a frontal or perpendicular top-down angle meaning action, maximum involvement, a relationship of power and knowledge. Bearing in mind Kress & van Leeuwen's (1996) narrative processes and conceptual patterns, the graph shows stages arranged on horizontal and vertical lines, both on topographical (showing spatial relations) and topological (representing logical relations) lines, also connected by vectors (oblique lines), which represent transportation and transformation, transitory spatial arrangements. Vectors have the same role in images as action verbs in language: they represent processes, movement, transport or transformation. The accompanying text in the *Process Overview* page supports this visual representation explaining the procedures through an overview first and a more thorough detailed description afterwards. The texts are characterized by the use of clear and brief paragraphs, with mostly short sentences, including two-part lists as in "The process is confidential and voluntary" but mainly more effective three-part lists, e.g. "The system is designed to resolve disputes in an easy, swift and inexpensive manner". Paragraphs

not only reflect a conceptual unit within the text but also perform a special pragmatic function. The physical layout itself on the page replicates the conceptual-pragmatic dimension, favouring the identification of separate text parts and highlighting their functions and interactions: this improves comprehension of textual organisation and makes the meaning easier to decode (Gotti 2005: 114).

In the process, the three steps between the dispute and the resolution are: negotiation, mediation, if the former fails, and recommendation, if an agreement has not been found yet. The choice of the word *recommendation*, "based on the principles of honesty and justice", perfectly marries the ultimate goal and spirit of the ECODIR process: finding a consensual solution between the parties.

As for the relationship between the addresser and the receiver, in the home page the third personal pronoun, singular or plural, is always used together with the nouns *businesses*, *consumers* and *customers*, sometimes in capital letters to emphasize the importance they hold for the site. However, this implies a certain distance between the provider and the user. The only example of the second person pronoun *you* which bears a closer involvement is found in the last sentence, where also an imperative form is used, as a closer connection is sought to persuade the reader to try to find out more about ECODIR: “Take a look in these pages at ECODIR’s On-line Dispute Resolution Process and Policies to learn more about how ECODIR can be of benefit to you”.

In the following pages, the Parties, the mediator, the respondent, etc., are often referred to and the third singular or plural pronoun is employed. Only in the section *How to File a Case* and *Policies* are the imperative tense and *you* found again. The distance between participants is also enhanced by the use of passive forms, typical of legal English.

The whole procedure is very clearly explained: the *Process Overview* section gives a first general description of the steps; the *Process in Detail* further divides the three phases into other stages, also giving time reference; *ECODIR Resolution Rules*, divided into articles, set forth the application of the rules, the definition of the most frequent and significant words and expressions, and additional clarifications about the three-phase sequence. *Preparation*, *Registration* and *Technical Note* illustrate how to create an account, to log in and log out, and the technical requirements of the platform. A French version is also available, expanding the targeted audience, even if in the FAQs we read that “the language of the proceedings in each case will be the common language of the parties”. The overall clarity of the site layout, textual organization and register make it highly intelligible and user-friendly for the layperson.

7. Plain language vs legalese: easification or just simplification?

A large part of our study has been devoted to analysing text content and the language used to convey it. We have tried to find out which linguistic features in the texts allow us to speak of the presence of plain language rather than of legalese. We have considered websites not only as descriptive and informative texts but also as types of discourse bearing some legal-discourse qualities since, without doubt, they do offer a legal service. Additionally, the procedures on these websites represent a sort of simplification of ordinary ADR procedures and, before that, of court trials. Therefore, bearing in mind the specific character of the participants taking part in the communicative event in an ODR website (clients, disputants, parties, mediators, lawyers, counsels), the technological devices utilized to apply the procedure, the means used to convey precise information on that procedure, and, last but perhaps more importantly, the specific purposes of the said procedure, we expected some use of legalese together with a slightly more formal register, reflecting or, at least, resembling the typical jargon of law professionals dealing with ordinary citizens but

still operating within their specific professional setting. Moreover, we wanted to investigate which linguistic strategies are used to come closer to non-experts.

The issue of simplification of legal documents for wider reader accessibility and usability has been investigated by many scholars. Bhatia (1993: 209) distinguishes between the process of easification to make legislation more easily accessible to a larger specialist audience “without neutralizing the generic integrity of legislative statements” and the process of creating “popular versions of these documents in plain language for a lay audience” that can be used for information and education.

Examples of the different techniques used in searching for the plainest possible approach include textual and lexical features. As regards textual features, the *site map*, present in both websites, can be helpful to better understand the site organization, and find out to what extent the site is organized in an intuitive and intelligible way. However, both site maps list section headings without elucidating the content groupings and their logical distribution in the websites. Therefore, we decided to graphically represent them to have a better picture of their structure (Fig. 4 and Fig. 5).

Additionally, content groupings were looked at to find out if the materials and content are grouped and collected in a logical and understandable way. As for textual organization, titles and headings are important as section titles can aid understanding. Titles should include words which are informative or ease indexing, therefore headings should be accurate in order for the crucial words to mean exactly what is intended. Both sites respect this clarity requirement: the labels are direct and straightforward, leading the visitors to what they are looking for. Section titles can be also presented as questions. This feature is used in The Mediation Room website: the three subsection titles, *What is mediation?*, *Why mediate?*, and *Why Online?*

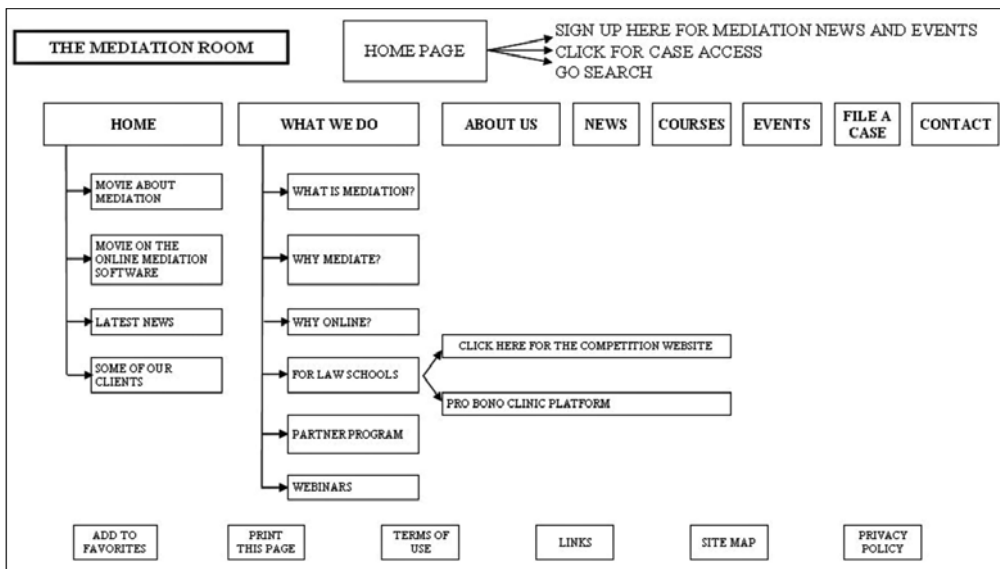


Figure 4. The Mediation Room site map

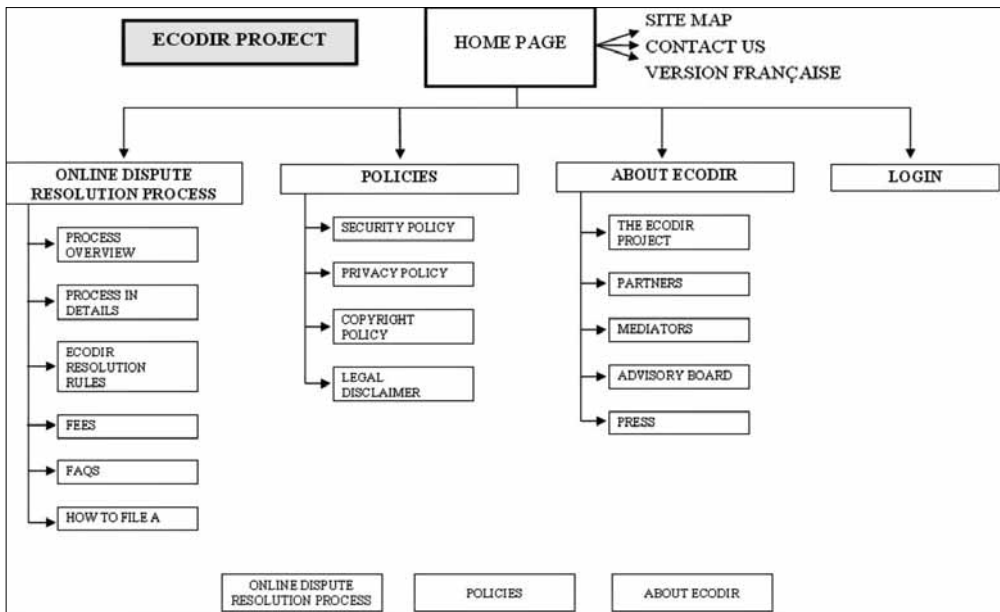


Figure 5. The ECODIR project site map

present the various topics through questions, resembling face-to-face interaction, in an almost colloquial way, again didactically leading the readers in their understanding and interpretation of the message. The same function is held by ECODIR's FAQs section which seems to complete the comprehensibility of the procedures. What else may the reader need to know?

As for the lexical features, the analysis focused on aspects such as technical terms and legal jargon, archaic and Latin words, formal words and expressions juxtaposed to common words, colloquialisms. Some of the technical terms, specific to computer studies, in both websites include *user access/read/write privileges*, *audio-visual teleconferencing*, *desktop sharing*, *blind bidding facilities*, *psychometric profiling*, *e-commerce*, *to log in/out*, *webfile*, *software*, and *casefiles*. One of the terms found in The Mediation Room site is *webinars*, a blending coming from *WEB-based semINAR*, meaning a workshop or lecture delivered over the Web. Webinars imply interaction between the audience and the presenters. The term *webinars* is specific to the computer science field and especially to the e-learning field, but it is easily understood since it is used in the video, pronounced and explained by the founder Mr G. Ross, and it appears again in the section dedicated to explaining how this kind of "live online and fully interactive seminars and workshops" is conducted. Some of the legal terms present include *dispute*, *settlement*, *non-judgmental*, *legally binding agreement*, *express consent*, *litigants*, *denial of costs*, *pledge*, *case pleading*, *casefiles*, *case scenario*, *Claimant*, *Defendant*, *Mediator*, *Parties*, *in-person clinic*, *to commence*, *commencement*, *to abide by*, *deemed*. Some of these are explained, gener-

ally after their first occurrence. As already mentioned, ECODIR even has a section where some definitions of specialized words are given.

In accordance with plain language principles, archaic words are avoided: therefore, words such as *herein*, *thereinafter*, *thereto*, etc., never appear in the two websites, apart from an instance of *therefor* in the *Recommendation Phase, Article 3* of the *ECODIR Resolution Rules*, or an instance of *thereof* in the *Legal Disclaimer*, under *Trademarks*. These sections are also characterized by an overall less plain legal language, using, for example, a higher number of legal terms, the modal verb *shall*, and longer sentences. Some Latin words or expressions are also found on different occasions in The Mediation Room website: some of them are Latin expressions which have become naturalized, such as *ad hoc*, thus not creating any difficulty in understanding. In The Mediation Room site the expression *pro bono clinic* deserves particular attention: the first Latin part refers to legal services provided at no cost, while *clinic* is a specific term belonging to legal discourse meaning a session or meeting in a particular activity but also a group of students. The expression is made clear by the sentence “[...] Pro Bono clinics that give 2nd and 3rd year students early experience of advising real clients [...]” along with the further explanations provided in the section devoted to *Law Schools*. Some of the specific legal words are frequently used and repeated in the *For Law Schools* section, since that page on the site is likely to be visited more often by specialized and expert readers, such as would-be lawyers and mediators. Nevertheless, to counterbalance the formality of expressions such as “The supervising solicitor can privately advise the students online” and “The students can be mentored on the cases by their tutors as cases progress”, some colloquialisms are used such as in “Roleplay files can be opened to help students ‘cut their teeth’ without risk of real damage”.

Colloquialisms are one of the features which make texts more intelligible to non-experts, especially because they lighten some paragraphs which otherwise would be loaded with too much information. In the following sentences taken from The Mediation Room

when the ‘face to face’ part of the mediation commences, the mediator will be able to ‘hit the ground running’ to improve the prospects of a successful solution

and

[...] efforts to try to resolve the dispute can commence almost immediately the mediator has been appointed. This may help ‘take the heat’ out of a dispute pending the mediation meetings

formality, or even the apparent complexity or obscurity, including the verb *commence*, considered as very formal and almost ceremonial (instead of *start* or *begin*, used in common language), is counterbalanced by the use of two colloquialisms such as *hit the ground running* and *take the heat out* which make the text more informal.

When we consider websites, hyperlinks cannot be disregarded. Links to other website pages, to lower page levels, and to other levels of information in the same web page could be seen as a characteristic of this genre, accounting for the development of the page from a static, printed medium to a dynamic ‘multiple dimension’.

but also as a way to simplify the language for the purpose of reader accessibility. Hyperlinks can surely be considered as textual-mapping devices (Bhatia 1993: 141) in this kind of genre. They are discursive strategies which have a text-cohering function in that they relate one aspect of the text to another text, sometimes in another page of the website, sometimes in the same page, but at a lower level in the ideal tree-diagram structure of the website. Links, as textual-mapping devices, help the drafter to reduce the information load at a particular point in the website. Thus, instead of unfolding in a single syntactically complex, long and obscure text, the content is fragmented and spatially and visually distributed into various levels in the same page or in different pages, through a cross-referencing system, in order to provide textual links among the various pieces of information and to avoid the high density of information in particular points of the site. For example, in the ECODIR site, under *Process in Detail, Step 1.1*, in the sentence “Having checked that the dispute comes within ECODIR dispute resolution rules, the First Party logs in and creates a new user account” *rules* and *logs in* are links to *ECODIR Resolution Rules* the former and *How to File a Case* the latter. In this way, they keep the paragraph concise and straightforward.

8. Conclusions and perspectives for further research

The two websites considered in our investigation show an effort on the part of the companies towards greater clarity, and on improving and simplifying legal language to make texts as intelligible as possible for non-experts (Wagner & Cacciaguidi-Fahy 2006: 19). As Bhatia underlines (1993: 218-231), much of the Plain English movement has been directed to reforming the language for the benefit of ordinary citizens, even redrafting some documents for wider accessibility. He explains how many researchers have worked on alternatives to prose to express complex concepts and processes, underlining how “written information does not always have to be flowing prose”. Non-linear alternatives could be logical trees and flow charts, lists and captions; to these we would add slides, videos, pictures and step-by-step explanations, very common in websites, which cognitively engage readers and consumers, since “perceptual, attentional, memory, response and decision processes” (Bhatia 1993: 229-230) are involved to render those texts and procedures easy to access and to use.

The present investigation has not focused on other types of possible user such as attorneys and other legal professionals, governments, and municipalities. As Bhatia himself explains, these ‘non-linear alternative forms’ have been and still are “rejected by the professional legal community as ineffective, inefficient, imprecise and devoid of legal content” (1993: 231). More work needs to be done in order to fully clarify to what extent the language in websites providing ODR can really address wider audiences, meeting experts’ and professionals’ expectations as well.

The density, richness and non-textual features shown in each website deserve further investigation. Our effort, therefore, should only be considered as the starting point for research in this field.

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