



ELECTRONIC MEDIATION AS AN ALTERNATIVE PATH FOR RESOLVING E-COMMERCE DISPUTES

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Abstract:

In recent years, the landscape of electronic communication technologies has undergone significant transformations, fundamentally altering the mechanics of business transactions and contract formations. The majority of commercial agreements are now seamlessly executed online, allowing parties to bypass the expenses and logistical challenges associated with international and local travel.

Despite the pervasive adoption of these digital transactions, there remains a notable deficiency in comprehensive legal frameworks tailored to their unique nature. This gap in legislation often precipitates disputes that elude definitive resolution by traditional judicial systems, thus catalyzing the adoption of alternative dispute resolution mechanisms. Electronic mediation has emerged as a favored solution due to its capacity to maintain business relationships and mitigate the limitations inherent in conventional dispute resolution strategies.

Keywords: E-commerce, Disputes, Electronic mediation, Electronic settlement centers.

Introduction:

The domain of e-commerce is distinguished by the swift pace at which commercial contracts are established and fulfilled within a purely digital milieu, obviating the need for the physical presence of contracting parties. This shift has necessitated the evolution of dispute resolution methodologies that are congruent with the virtual context of these transactions and are responsive to the demands of the contemporary digital era.

Such modernized approaches offer a stark contrast to the traditional judicial system, which is often encumbered by sluggish procedures, extensive formalities, and significant expenditures.

Electronic mediation, leveraging its inherent digital nature, facilitates the resolution of disputes remotely via advanced communication technologies. This process typically utilizes a variety of internet services, including emails, live chats, video conferencing tools such as Skype, and other contemporary communication platforms—to conduct mediation sessions effectively without requiring the physical attendance of the disputing parties or the mediator.

Having gained considerable traction, particularly within the judicial frameworks of the United States where it is estimated to be employed in approximately 80% of dispute resolutions, electronic mediation represents a paradigm shift in addressing conflicts arising in digital commerce. Although initially met with skepticism in civil law jurisdictions, this method has progressively expanded to address a broad spectrum of electronic disputes.¹

Despite the variety of alternative dispute resolution methods, mediation can be considered one of the most important electronic means for settling disputes in the virtual world.²

To achieve the objectives of the study, we pose the following problem: What does the mechanism of electronic mediation represent as an alternative way to settle e-commerce disputes?

To address this issue, the topic has been divided into two main sections as follows:

¹ Samir Khalifi, *Resolution of Disputes in E-commerce Contracts*, Master's thesis, International Law Branch, Faculty of Law, Mouloud Mammeri University, Tizi Ouzou, 2010, p. 129.

² Linda Boumehra, *Resolution of E-commerce Disputes*, New University House, Alexandria, 2019, p. 488.



- **First Section: Electronic Mediation as a New Concept for Dispute Resolution**
- **Second Section: How Electronic Mediation is Conducted**

First Section: Electronic Mediation as a New Concept for Dispute Resolution

Electronic mediation has rapidly evolved to become a pivotal alternative electronic method for resolving disputes in the realm of e-commerce. This innovative resolution mechanism is now a standard service offered by most electronic settlement centers, serving as a critical tool in managing conflicts within the digital commerce environment.³

To fully appreciate the role and utility of electronic mediation, it is imperative to delve into its precise definition and to explore its fundamental characteristics that make it exceptionally suited for resolving disputes in the e-commerce sector.

First Subsection: Definition and Characteristics of Electronic Mediation

To deliver a precise and comprehensive understanding of electronic mediation, it's crucial to define it both linguistically and in terms of industry-specific jargon. This involves an exploration that begins with traditional mediation and progresses to electronic mediation, examining its distinctive characteristics along the way. The discussion unfolds as follows:

First Sub-subsection: Definition of Electronic Mediation

From a linguistic standpoint, mediation serves as an intervention between two parties or matters, with the mediator acting as the intermediary.⁴ In a more formal context, mediation is recognized as one of the alternative dispute resolution methods that is consensual and voluntarily chosen by the parties involved. This approach avoids the conventional judiciary system and instead involves a neutral third party -a mediator- who possesses specialized expertise and skills.

The mediator's role is to facilitate a series of confidential and constructive negotiations, helping the disputing parties communicate more effectively and bridge their differences. This process aims to achieve a mutually acceptable resolution that both resolves the current conflict and prevents future disputes, thereby reducing the need for state judiciary intervention.⁵

In the realm of electronic mediation, the process is defined as a dispute resolution mechanism where parties aim to settle their disagreements through the aid of a third, neutral, and honest individual. This mediator does not wield judicial power but utilizes modern communication technologies to guide the parties towards an agreement based on legal principles or fairness dictated by the nature of their relationship.⁶

Further clarifying the concept, the UNCITRAL Model Law on International Commercial Conciliation (2002) defines mediation in the context of its application: "For the purposes of this Law, 'conciliation' refers to any process, whether referred to by the expression conciliation, mediation, or another term that similarly implies an amicable resolution process, wherein the parties request a third person or persons (the conciliator) to assist them in reaching an amicable settlement of their dispute arising from or related to a contractual or other legal relationship. The conciliator does not have the authority to impose a solution upon the parties but facilitates the reaching of a voluntary agreement."⁷

However, Article 1, Paragraph 2 of the UNCITRAL Mediation Rules of 2021, issued by the United Nations Commission on International Trade Law, offers a simpler and clearer definition, stating: "For

³ Ibid., p. 492.

⁴ Ahmed Mohamed Fathy El-Khouly, *Electronic Arbitration as a Means for Resolving Civil Disputes*, New University House, Alexandria, 2017, p. 152.

⁵ Rachdan Mahmoud Ali, *Mediation for Settling Disputes between Theory and Application*, Dar Al-Yazouri, Amman, Jordan, 2016, p. 46.

⁶ Op. cit., p. 153.

⁷ Boumehrath, Op. cit, p. 497.



the purposes of these Rules, 'mediation' means a process wherein the parties request another person or persons (the mediator) to assist them in their attempt to reach an amicable settlement of the dispute existing between them, whether referred to by the expression mediation, conciliation, or another expression of similar meaning. The mediator does not have the authority to impose a solution on the parties."⁸

In Algeria, this concept is regulated under Law No. 09-08, which includes the Civil and Administrative Procedures Law⁹, amended and supplemented by Articles 994 to 1005, in Chapter Two of Book Five titled 'In Mediation'. Article 994 designates mediation as a mandatory procedure, highlighted by the use of the term "must", implemented by a judge in all disputes with the exception of family affairs, labor cases, and matters that may impinge upon public order. This law empowers a qualified individual, referred to as the mediator, to resolve the dispute under certain specified conditions.

Thus, mediation is initiated upon the request of the disputing parties who seek the assistance of a third party. This third party, detached from the dispute, leverages their personal and intellectual capabilities to contribute effectively to resolving the conflict. Notably, electronic mediation mirrors traditional mediation in its essence and objectives but is distinctively executed remotely using contemporary communication technologies.

Second Sub-subsection: Characteristics of Electronic Mediation

Electronic mediation is distinguished by several key characteristics that make it an appealing option for disputing parties:

Firstly: Effectiveness of the Tools Used in the Mediation Process

The mediation process is underpinned by the use of effective tools that maintain secure communication channels from the initial referral of the dispute to the finalization of a binding settlement agreement. These tools are crucial for managing the mediation process efficiently, ensuring that all communications between the parties remain confidential and secure throughout their interactions.¹⁰

Secondly: Freedom of the Disputing Parties in Choosing the Mediator

Disputing parties are afforded complete autonomy in selecting their mediator from a roster available on most specialized mediation center websites. These centers not only provide a list of potential mediators but also allow parties to freely choose the procedural rules that best suit their specific needs, further enhancing the tailored nature of the mediation process.

Additionally, these centers ensure that parties have the opportunity to fully review and understand the rights and obligations proposed by the mediator before commencing the mediation.¹¹

Thirdly: Saving Time and Effort for the Disputants

One of the most significant advantages of electronic mediation is its efficiency in time and effort.

Fourthly: Confidentiality

⁸ UNCITRAL Mediation Rules 2021, United Nations, United Nations Commission on International Trade Law, June 2022, published on the website: [UNCITRAL Mediation Rules](#)

⁹ Law No. 08-09 dated February 25, 2008, containing the Civil and Administrative Procedures Law, Official Gazette No. 21 of 2008.

¹⁰ Samir Khalifi, *Electronic Mediation: An Alternative Solution for E-commerce Contract Disputes*, Arab Journal for Research and Studies in the Humanities and Social Sciences, Akli Mohand Oulhadj University, Bouira, Volume 13, Issue 4, 2021, p. 324.

¹¹ Hanan Atik, *Electronic Mediation as a Mechanism for Resolving Disputes in E-commerce Contracts*, Al-Maarif Journal, Faculty of Law and Political Sciences, University of Bouira, Algeria, Volume 18, Issue 2, 2023, p. 25.



An essential element of electronic mediation is maintaining confidentiality throughout the process.¹² This ensures that any data shared with the mediator by the disputing parties is kept confidential, safeguarding the integrity and privacy of the mediation proceedings.

As stipulated by Article 6 of the UNCITRAL Mediation Rules of 2021, all participants in the mediation are obligated to preserve the confidentiality of all information disclosed during the process, including the settlement agreement, except where disclosure is mandated by law or as specified in paragraph 4 of Article 8.¹³

Fifthly: Flexibility of Rules and Procedures

The electronic mediation process is characterized by its flexibility, allowing parties to select procedures and rules that align with their needs in a manner that is both impartial and transparent. This adaptability extends to the scheduling of mediation sessions, with electronic notifications regularly sent to the parties to keep them informed of upcoming dates and times.¹⁴

Sixthly: Neutrality and Competence of the Mediator

A crucial aspect of electronic mediation is the neutrality and competence of the mediator. Mediators are expected to facilitate the reconciliation of differing viewpoints with fairness and expertise, drawing on their extensive training and experience.¹⁵

Unlike judges in traditional judicial processes, mediators are often specialists in the subject matter of the dispute, which significantly enhances the mediation's relevance and effectiveness.¹⁶

If a mediator feels unqualified to handle a particular dispute, ethical practice requires them to decline or withdraw from the process. Furthermore, mediators must maintain transparency throughout the mediation, clearly communicating all stages of the process, including fees, expenses, and any potential technical or procedural challenges.¹⁷

Second Subsection: Forms of Electronic Mediation

Electronic mediation can manifest in various forms, each tailored to specific types of disputes and party needs:¹⁸

- **Simple Mediation:** This basic form involves a mediator who works to reconcile the positions of the disputing parties. It may also take the form of symbolic adjudication, where a collective body, chaired by the mediator and including representatives from the disputing parties, works collaboratively towards a resolution.
- **Multi-Stage Mediation:** An example of this is the ECODIR system, established in October 2001 in Brussels with funding from the European Union. This system facilitates a tiered approach to dispute resolution, involving negotiation, mediation, and recommendation stages, all

¹² Mohamed Ibrahim Abu Al-Haija, *Alternative Means of Dispute Resolution: Mediation, Conciliation, Arbitration, and Direct Negotiations*, First Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2019, p. 30.

¹³ Article 8, paragraph 4 specifies that by signing the settlement agreement, the parties agree that it can be used as evidence proving that the settlement resulted from mediation and may be relied upon to seek remedial measures under the applicable law.


¹⁴ *Ibid.*, pp. 29-30.

¹⁵ Samir Khalifi, *Electronic Mediation "An Alternative Solution for E-commerce Contract Disputes"*, *Op. cit.*, p. 327.

¹⁶ *Ibid.*, p. 32.

¹⁷ *Ibid.*, p. 34.

¹⁸ Ahmed Mohamed Fathy El-Khouly, *Electronic Arbitration as a Means for Resolving Civil Disputes*, *Op. cit.*, pp. 154-155.



conducted electronically. This structured, phased approach allows for gradual escalation and more nuanced handling of consumer disputes.

- **Judicial Mediation:** Commonly found in Anglo-Saxon legal systems, this form of mediation is proposed by courts as a preliminary step before formal judicial proceedings commence. It serves as a means to potentially resolve disputes without the need for a more formal and often costly court process.¹⁹

Second Section: How Electronic Mediation is Conducted

Electronic mediation, due to its structured legal frameworks and availability to all, holds significant importance and is executed under the auspices of specialized entities associated with various centers, often accessible via their websites. This section explores some of the foremost mediation centers and delves into the procedural aspects of electronic mediation as practiced within these entities.

First Subsection: Electronic Mediation Centers

The digital age has seen the emergence of numerous bodies dedicated to resolving disputes through electronic mediation. Among these:

First Sub-subsection: Online Ombuds Office

Inaugurated in June 1996 with support from the National Center for Automated Information Research (NCAIR), this initiative led to the establishment of the Center for Information Technology and Dispute Resolution at the University of Massachusetts in July 1997. Initially focused solely on disputes related to website content, its scope has since broadened to encompass a wide range of disputes.

The process begins when a claimant submits a form detailing the nature of the dispute and their demands, along with their email address²⁰. A mediator is then appointed who contacts the claimant for further details and reaches out to the opposing party to gauge their willingness to engage in mediation. If mediation is accepted, it typically proceeds with discussions held via video conference.

The first case handled by this office involved a dispute between a newspaper and an individual who had created a website summarizing local news articles from the newspaper. Documents were submitted by the individual, and the mediator reported that approximately 175 defendants were associated with the site, with over 80 percent agreeing to mediation and more than 50 percent of the disputes being successfully resolved. The General Manager of the Center has expressed optimism about the continued success and expansion of this service.²¹

Second Sub-subsection: WIPO Arbitration and Mediation Center²²

Another key player in the realm of electronic mediation is the WIPO Arbitration and Mediation Center. This center is administratively part of the World Intellectual Property Organization and is headquartered in Geneva, Switzerland, with an additional office in Singapore.

¹⁹ Noting that the Algerian Civil and Administrative Procedures Law No. 22-13 dated July 12, 2022, amending Law 08-09, has followed the same approach regarding commercial jurisdiction, by mandating parties to compulsorily present disputes to mediation as a preliminary mandatory measure under penalty of the claim being rejected in form for disputes presented to the commercial section, whereas specialized commercial courts do not consider mediation a mandatory route since the legislator has mandated conciliation as a mandatory procedure at this level, or else the claim is rejected. Law 22-13, Official Gazette No. 32 issued on May 14, 2022.

²⁰ Mohamed Majed Mahmoud Ahmed, *Electronic Arbitration in an Electronic Environment, Comparative Study*, First Edition, Egyptian General Book Authority, Cairo, 2018, p. 35.

²¹ *Ibid.*, p. 36. For more details, visit the website: [Ombuds.org](https://ombuds.org)

²² [WIPO Arbitration and Mediation Center Background](#)



Established in 1994, the center specializes in providing alternative dispute resolution (ADR) services, notably arbitration and mediation, to address international commercial disputes involving parties ranging from individuals to private corporations.

The procedures adopted by this center are crafted by leading experts in international dispute resolution and are particularly well-suited for handling conflicts related to technology, the performing arts, and other intellectual property matters. Since 2010, the center has also operated from Maxwell Chambers in Singapore, expanding its geographic reach and enhancing its global accessibility.

These centers exemplify the diverse approaches and specialized services available in the field of electronic mediation, illustrating the adaptability and international reach of these modern dispute resolution mechanisms. Each center's unique procedural framework is designed to effectively address the specific needs of disputants in a digital context, underscoring the growing importance and efficacy of electronic mediation in resolving contemporary conflicts.

The WIPO Arbitration and Mediation Center experiences a high volume of mediation requests, notably from disputes involving parties across various jurisdictions including Germany, Austria, China, Spain, the United States, France, Hungary, India, Ireland, Italy, Japan, Panama, the Netherlands, Switzerland, and the United Kingdom.

The center provides a detailed overview on its website, displaying the breadth of dispute resolution procedures it administers, complemented by examples of both mediation and arbitration proceedings. This transparency not only fosters trust but also guides potential clients in understanding the scope and effectiveness of the services offered.

The efficacy of the center's dispute resolution procedures is largely dependent on the caliber and dedication of its arbitrators and mediators. To this end, the center facilitates the selection of mediators through a comprehensive database, housing over 2000 neutral experts who possess vast experience in dispute resolution and specialized knowledge in intellectual property. This resource is invaluable for parties seeking expert mediation that aligns with the specific nature of their disputes.

One of the pivotal tools provided by the center is the WIPO electronic case management system. This system offers secure online file management functionalities that are essential for parties, arbitrators, mediators, and experts involved in the proceedings.

The electronic dispute resolution mechanism within this system enables swift access to essential dispute data, including procedure summaries, deadlines, contact details for all parties involved, and financial information, ensuring that the process remains transparent and efficiently managed.

Moreover, the center has invested significant resources into developing a robust legal operational framework tailored to manage internet and e-commerce related disputes effectively. It is now recognized as a leading authority in resolving disputes associated with the registration and misuse of internet domain names, among other specialized dispute resolution services.

Additionally, the emergence of the Public Law Research Center at the University of Montreal Law School in Canada, which integrates the Cyberjustice System, highlights the growing trend towards using electronic mediation and arbitration to address disputes stemming from electronic transactions. This initiative represents a progressive step in adapting legal practices to the demands of the digital age, providing a model for future developments in the field of cyberjustice.²³

Third Subsection: Square Trade and Others

Square Trade is a prominent center specializing in electronic mediation for disputes that arise within online auction markets. It stands as the first American platform dedicated to public auctions and the resolution of associated disputes, whether between buyers or sellers. This specialization

²³ Samir Khalifi, *Electronic Mediation "An Alternative Solution for E-commerce Contract Disputes"*, Op. cit., p. 329.



has made Square Trade a crucial player in maintaining the integrity and fairness of online market transactions.²⁴

In Europe, the field of electronic mediation has expanded with several key players, such as ConsensusMediation.com in the United Kingdom. This site focuses on resolving disputes that arise from direct internet transactions, acting as an electronic mediator to facilitate fair outcomes for all parties involved.

In France, an organization known as *Imagin un Réseau Plus Solidaire (IRIS)* has been established, focusing on resolving disputes related to small and medium-value commercial transactions over the international internet network. IRIS strives to offer a solidarity network that supports fair dispute resolution, emphasizing the importance of accessible mediation services for smaller-scale commercial interactions.²⁵

Second Subsection: The Process of Electronic Mediation

Generally, the electronic mediation procedures adopted by mediation centers involve:

First Sub-subsection: Initiating the Dispute at the Mediation Center

The initiation of a dispute in electronic mediation is designed to be straightforward and accessible. The concerned individual initiates the process by completing a mediation request form available on the mediation center's website. This form typically requires the individual to provide personal details such as name, profession, phone number, and email, along with a concise summary of the dispute and contact information for the opposing party.²⁶

Once the form is submitted, the center confirms receipt to the applicant and proceeds to inform the other party of the mediation proposal, inviting them to participate in the mediation process. Should the other party decline, the center may attempt to highlight the benefits of mediation to persuade them otherwise. If refusal persists, the mediation process is halted, and the applicant is notified that mediation is not feasible.²⁷

²⁴ Souad Gasaa, *Electronic Mediation as an Alternative Means for Resolving E-commerce Disputes*, Sharia and Economics Journal, Faculty of Sharia and Law, Prince Abdul Qader University for Islamic Sciences, Constantine, Algeria, Volume 9, Issue 18, 2020, p. 22.

²⁵ Ahmed Mohamed Fathy El-Khouly, *Electronic Arbitration as a Means for Resolving Civil Disputes*, Op. cit., pp. 158-159.

²⁶ It should be noted that electronic mediation is not without cost, and parties are required to pay mediation fees, with the initiation of proceedings depending on the parties paying these fees. As this latter process is conducted remotely using modern means, specialized mediation centers have set special methods or systems for fees. For instance:

- _ Square Trade Mediation Center charges a fee of (20) dollars when submitting a mediation request, and mediation fees are calculated based on the amount in dispute: if the disputed amount is 1000 dollars, the fee is 50 dollars; if more than 1000 dollars, the fee is (40x5 percent) of the dispute value, not exceeding 2500 dollars. The center also provides a discount on the above fee for transactions with registered companies, for example:
- _ Elance Sales Center: the center charges (20) dollars as mediation fees if the disputed amount does not exceed (1000) dollars and adds 1 percent as an additional fee if it exceeds, not to exceed (2500) dollars in fees, with the applicant being exempt from paying registration fee overruns.
- _ Electronics Sales Center: exempt from paying any fees, as they are paid later. See Mohamed Ibrahim Abu Al-Haija, Op. cit., pp. 38-39.

²⁷ Achraf Mohamed Rizk Fayed, *Consumer Disputes Related to Contracts Made on the Internet*, First Edition, Arab Studies Center for Publishing and Distribution, Egypt, 2017, p. 136.



If the other party expresses readiness to engage in mediation, the process officially begins. Both parties are provided with a list of qualified mediators, enabling them to select someone they believe is well-suited to help resolve their dispute. They then coordinate with the chosen mediator to establish communication methods and schedule mediation sessions.²⁸

The timeframe for the other party to accept or decline participation in the mediation, as outlined by Article 2, Paragraph 2 of the UNCITRAL Mediation Rules, is set at 30 days from the issuance of the mediation invitation, unless a different period is specified.²⁹

Second Subsection: Starting the Mediation Process

During the mediation process, the core issues and points of contention that sparked the dispute are thoroughly explored. The parties are encouraged to provide any relevant information, documents, or additional details they consider necessary for resolving the conflict at any stage of the mediation. It is crucial for the mediator to maintain confidentiality regarding the information received, unless explicitly released from this obligation by the disclosing party.³⁰

Third Sub-subsection: Conclusion of the Mediation

When mediation progresses to a resolution, the mediator drafts a final settlement agreement which is then presented to the parties for their signatures. This agreement serves a dual purpose: first, as incontrovertible proof that the dispute was settled through mediation; and second, as a legal document that can be referred to if future enforcement or legal remedies are required under the applicable law.³¹

Signing the settlement agreement marks the successful conclusion of the mediation process, solidifying the commitments agreed upon by both parties.

Mediation ends either by:

- The mediation process is formally concluded upon the signing of the settlement agreement by all parties involved. The definitive end date is either the date on which the agreement is officially executed or another date mutually agreed upon within the settlement agreement itself.
- Alternatively, the mediation can be terminated by a declaration issued to the mediator by all parties, signaling their collective decision to end the mediation. The official termination date is the date on which this declaration is issued.
- In cases where an individual party chooses to withdraw from the mediation process, they must issue a declaration to the other parties and the mediator, if appointed, stating their decision to discontinue the mediation. The process is then deemed concluded on the date this declaration is made.
- The mediator may also determine that further mediation is unwarranted after consultation with all involved parties. In such instances, the mediator will issue a declaration stating that continuing the mediation is unjustified, with the process concluding on the date the declaration is issued.
- Furthermore, mediation can be terminated by the mediator after consultations if the parties fail to meet financial obligations, such as depositing the required amounts. Under these circumstances, a declaration will be issued to formally end the mediation.
- Finally, the mediation process may conclude upon the expiration of any predetermined mandatory period set for its resolution.³²

²⁸ Ibid., p. 136.

²⁹ See UNCITRAL Mediation Rules 2021, Op. cit., p. 1.

³⁰ See Articles 5 and 6 of the UNCITRAL Mediation Rules.

³¹ See Article 8, Paragraph 4 of the UNCITRAL Mediation Rules.

³² See Article 9 of the UNCITRAL Mediation Rules 2021.



Conclusion:

Electronic mediation represents a pivotal and highly effective method for amicably resolving disputes in electronic transactions. Its growing global adoption underscores its practical relevance and efficiency. This method, rooted in dialogue and discussion among disputants, offers significant advantages over traditional court processes by harnessing electronic means.

Notably, electronic mediation is becoming the preferred choice for resolving e-commerce disputes due to its ability to save time and costs, leverage the expertise of specialized mediators proficient in dispute resolution, and offer procedural flexibility and simplicity. Moreover, this approach aids in maintaining amicable relations between parties.

It is therefore essential to promote greater awareness about the vital role that electronic mediation centers play in encouraging parties to opt for this alternative dispute resolution mechanism. Such initiatives can significantly alleviate the burden on traditional judicial systems and maximize the inherent benefits of electronic mediation. Additionally, it is imperative for countries to integrate specific legal provisions into their national legislations to effectively regulate and support electronic mediation practices.

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