# DOWNLOAD PDF THIRD-PARTY SETTLEMENT OF DISPUTES IN THEORY AND PRACTICE

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Traditional arbitration involved heads of trade guilds or other dominant authorities settling disputes. The modern innovation was to have commercial vendors of arbitrators, often ones with little or no social or political dominance over the parties. The advantage was that such persons are much more readily available. The disadvantage is that it does not involve the community of the parties. When wool contract arbitration was conducted by senior guild officials, the arbitrator combined a seasoned expert on the subject matter with a socially dominant individual whose patronage, good will and opinion were important. Private judges and summary jury trials are cost- and time-saving processes that have had limited penetration due to the alternatives becoming more robust and accepted. Country-specific examples[ edit ] Somalia Somalia has cultural and historic mediation and justice system known as ADR Alternative Dispute Resolution which is informal justice system. Roman Empire[ edit ] Latin has a number of terms for mediator that predate the Roman Empire. Any time there are formal adjudicative processes it appears that there are informal ones as well. It is probably fruitless to attempt to determine which group had mediation first. It ends in tragedy with the unlawful burning of Njal alive in his home, the escape of a friend of the family, a mini-war and the eventual ending of the dispute by the intermarriage of the two strongest survivors. It illustrates that mediation was a powerful process in Iceland. India[ edit ] Alternative dispute resolution in India is not new and it was in existence even under the previous Arbitration Act,  To streamline the Indian legal system the traditional civil law known as Code of Civil Procedure, CPC has also been amended and section 89 has been introduced. Section 89 1 of CPC provides an option for the settlement of disputes outside the court. It provides that where it appears to the court that there exist elements, which may be acceptable to the parties, the court may formulate the terms of a possible settlement and refer the same for arbitration, conciliation, mediation or judicial settlement. Due to extremely slow judicial process, there has been a big thrust on Alternate Dispute Resolution mechanisms in India. A study on commercial dispute resolution in south India has been done by a think tank organization based in Kochi, Centre for Public Policy Research. Further, amongst the three southern states Karnataka, Tamil Nadu, and Kerala , Tamil Nadu is said to have the highest adoption of dispute resolution, Kerala the least. Arbitration[ edit ] The process of arbitration can start only if there exists a valid Arbitration Agreement between the parties prior to the emergence of the dispute. As per Section 7, such an agreement must be in writing. The contract regarding which the dispute exists, must either contain an arbitration clause or must refer to a separate document signed by the parties containing the arbitration agreement. The existence of an arbitration agreement can also be inferred by written correspondence such as letters, telex, or telegrams which provide a record of the agreement. An exchange of statement of claim and defense in which existence of an arbitration agreement is alleged by one party and not denied by other is also considered as valid written arbitration agreement. Any party to the dispute can start the process of appointing arbitrator and if the other party does not cooperate, the party can approach the office of Chief Justice for appointment of an arbitrator. There are only two grounds upon which a party can challenge the appointment of an arbitrator â€" reasonable doubt in the impartiality of the arbitrator and the lack of proper qualification of the arbitrator as required by the arbitration agreement. A sole arbitrator or a panel of arbitrators so appointed constitute the Arbitration Tribunal. Except for some interim measures, there is very little scope for judicial intervention in the arbitration process. The arbitration tribunal has jurisdiction over its own jurisdiction. Thus, if a party wants to challenge the jurisdiction of the arbitration tribunal, it can do so only before the tribunal itself. If the tribunal rejects the request, there is little the party can do except to approach a court after the tribunal makes an award. Section 34 provides certain grounds upon which a party can appeal to the principal civil court of original jurisdiction for setting aside the award. The period for filing an appeal for setting aside

an award is over, or if such an appeal is rejected, the award is binding on the parties and is considered as a decree of the court. Conciliation[ edit ] Conciliation is a less formal form of arbitration. This process does not require an existence of any prior agreement. Any party can request the other party to appoint a conciliator. One conciliator is preferred but two or three are also allowed. In case of multiple conciliators, all must act jointly. If a party rejects an offer to conciliate, there can be no conciliation. Parties may submit statements to the conciliator describing the general nature of the dispute and the points at issue. Each party sends a copy of the statement to the other. The conciliator may request further details, may ask to meet the parties, or communicate with the parties orally or in writing. Parties may even submit suggestions for the settlement of the dispute to the conciliator. When it appears to the conciliator that elements of settlement exist, he may draw up the terms of settlement and send it to the parties for their acceptance. If both the parties sign the settlement document, it shall be final and binding on both. Note that in the US, this process is similar to mediation. However, in India, mediation is different from conciliation and is a completely informal type of ADR mechanism. India has had a long history of resolving disputes through the mediation of village elders. The current system of Lok Adalats is an improvement on that and is based on Gandhian principles. These are usually presided by retired judge, social activists, or members of legal profession. It does not have jurisdiction on matters related to non-compoundable offences. While in regular suits, the plaintiff is required to pay the prescribed court fee, in Lok Adalat, there is no court fee and no rigid procedural requirement i. Parties can directly interact with the judge, which is not possible in regular courts. Cases that are pending in regular courts can be transferred to a Lok Adalat if both the parties agree. A case can also be transferred to a Lok Adalat if one party applies to the court and the court sees some chance of settlement after giving an opportunity of being heard to the other party. The focus in Lok Adalats is on compromise. When no compromise is reached, the matter goes back to the court. However, if a compromise is reached, an award is made and is binding on the parties. It is enforced as a decree of a civil court. An important aspect is that the award is final and cannot be appealed, not even under Article of the Constitution of India [which empowers the litigants to file Writ Petition before High Courts] because it is a judgement by consent. All proceedings of a Lok Adalat are deemed to be judicial proceedings and every Lok Adalat is deemed to be a Civil Court. Permanent Lok Adalat for public utility services[ edit ] In order to get over the major drawback in the existing scheme of organisation of Lok Adalats under Chapter VI of the Legal Services Authorities Act , in which if the parties do not arrive at any compromise or settlement, the unsettled case is either returned to the back to the court or the parties are advised to seek remedy in a court of law, which causes unnecessary delay in dispensation of justice, Chapter VI A was introduced in the Legal Services Authorities Act, , by Act No. Permanent Lok Adalat for Public Utility Services, Hyderabad, India The Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker. There is no court fee. If the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat. The procedural laws, and the Evidence Act are not strictly followed while assessing the merits of the claim by the Lok Adalat. Main condition of the Lok Adalat is that both parties in dispute should agree for settlement. The decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process. No appeal lies against the order of the Lok Adalat. Lok Adalat is very effective in settlement of money claims. Disputes like partition suits, damages and matrimonial cases can also be easily settled before Lok Adalat as the scope for compromise through an approach of give and take is high in these cases. Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost. Pakistan[ edit ] The relevant laws or parlour provisions dealing with the ADR are summarised as under: Sections â€” of the Local Government Ordinance, Sections 10 and 12 of the Family Courts Act, The Arbitration Act, Indian. Alternative Dispute Resolution Act. In many countries, these traditional mechanisms have been integrated into the official legal system. In Benin , specialised tribunaux de conciliation hear cases on a broad range of civil law matters. Results are then transmitted to the court of first instance where either a successful conciliation is confirmed or jurisdiction is assumed by the higher court. Similar tribunals also operate, in varying modes, in

other francophone African countries. Outside of the regulated areas there are schemes in many sectors which provide schemes for voluntary membership. Two sets of regulations, in March and June , were laid in Parliament to implement the European Directive on alternative dispute resolution in the UK. Coordinate ADR policy and initiatives; Assist activities in securing or creating cost effective ADR techniques or local programs; Promote the use of ADR, and provide training in negotiation and ADR methods; Serve as legal counsel for in-house neutrals used on ADR matters; and, For matters that do not use in-house neutrals, the program assists DON attorneys and other representatives concerning issues in controversy that are amenable to using ADR. The Martin and Laurie Scheinman Institute on Conflict Resolution mission is to educate the next generation of neutrals â€" arbitrators, mediators and facilitators â€" who can help resolve disputes between employers and employees, both unionized and non-unionized. The Institute provides training for undergraduate and graduate students, consultation and evaluation, and conducts research. It also offers courses in two- to five-day sessions designed for professionals who are interested in or practicing in the workplace dispute resolution field. The Alternative Dispute Resolution program at Fordham combines an integrated agenda of teaching, scholarship, and practice in conflict resolution within the national and international communities. High School in New York City. Harvard Program on Negotiation[ edit ] "The [Harvard] Program on Negotiation PON is a university consortium dedicated to developing the theory and practice of negotiation and dispute resolution. As a community of scholars and practitioners, PON serves a unique role in the world negotiation community. World and News Report, and has also remained among the top 10 schools over the last decade. Straus provides education to law and graduate students, as well as mid-career professionals in areas of mediation , negotiation, arbitration, international dispute resolution and peacemaking. The CUNY DRC conducts research and innovative program development, has co-organized countless conferences, sponsored training programs, resolved a wide range of intractable conflicts, published research working papers and a newsletter. Today, the CPR Institute is a nonprofit educational corporation existing under the New York state laws, and is tax exempt pursuant to Section c 3 of the U. It is governed by a board of directors, and its priorities and policies are guided in large part by consultation with an executive advisory committee. Its funding is primarily derived from the annual contributions of its member organizations, and from its mission-related programming. CPR convenes legal and business leadership to develop, and encourage the exchange of, best practices in avoiding, managing and resolving disputes. CPR publishes its own work and that of other like-minded organizations, making resources available to a global community of problem-solvers.

## Chapter 2 : Alternative dispute resolution - Wikipedia

*Get this from a library! Third-party settlement of disputes in theory and practice,. [Lillian L Randolph] -- The same principles behind arbitration of industrial and other disputes might also be applied to disputes between nations.*

Some third parties simply maintain a list of approved individuals, while others train mediators. Lists may be "open" any person willing and suitably qualified can join or a "closed" panel invitation only. Alternatively, private panels co-exist and compete for appointments e. For example, a mediator could be liable for misleading the parties or for even inadvertently breaching confidentiality. Despite such risks, follow-on court action is quite uncommon. Only one case reached that stage in Australia as of  Damage awards are generally compensatory in nature. Liability in Contract arises if a mediator breaches written or verbal contract with one or more parties. The two forms of breach are failure to perform and anticipatory breach. Limitations on liability include the requirement to show actual causation. Liability in Tort arises if a mediator influences a party in any way compromising the integrity of the decision , defames a party, breaches confidentiality, or most commonly, is negligent. Liability for Breach of Fiduciary Obligations can occur if parties misconceive their relationship with a mediator as something other than neutrality. Since such liability relies on a misconception, court action is unlikely to succeed. The case involved two sisters who settled an estate via mediation. Only one sister attended the mediation in person: An agreement was executed. At the time it was orally expressed that before the final settlement, taxation advice should be sought as such a large transfer of property would trigger capital gains taxes. One year later, when Tapoohi realized that taxes were owed, she sued her sister, lawyers and the mediator based on the fact that the agreement was subject to further taxation advice. The original agreement was verbal, without any formal agreement. Tapoohi, a lawyer herself, alleged that the mediator breached his contractual duty, given the lack of any formal agreement; and further alleged tortious breaches of his duty of care. Although the court dismissed the summary judgment request, the case established that mediators owe a duty of care to parties and that parties can hold them liable for breaching that duty of care. Habersberger J held it "not beyond argument" that the mediator could be in breach of contractual and tortious duties. Such claims were required to be assessed at a trial court hearing. United States[ edit ] Within the United States, the laws governing mediation vary by state. Some states have clear expectations for certification, ethical standards and confidentiality. However, such laws only cover activity within the court system. Community and commercial mediators practising outside the court system may not have such legal protections. State laws regarding lawyers may differ widely from those that cover mediators. Professional mediators often consider the option of liability insurance. Evaluative mediation[ edit ] Evaluative mediation is focused on providing the parties with an evaluation of their case and directing them toward settlement. During an evaluative mediation process, when the parties agree that the mediator should do so, the mediator will express a view on what might be a fair or reasonable settlement. Facilitative and transformative mediators do not evaluate arguments or direct the parties to a particular settlement. In Germany, due to national regulation "evaluative mediation" is seen as an oxymoron and not allowed by the German mediation Act. Therefore, in Germany mediation is purly facilitative. Instead, the Facilitative mediator facilitates the conversation. These mediators act as guardian of the process, not the content or the outcome. During a facilitative mediation session the parties in dispute control both what will be discussed and how their issues will be resolved. Unlike the transformative mediator, the facilitative mediator is focused on helping the parties find a resolution to their dispute and to that end, the facilitative mediator provides a structure and agenda for the discussion. Transformative mediation Transformative mediation looks at conflict as a crisis in communication. Success is not measured by settlement but by the parties shifts toward a personal strength, b interpersonal responsiveness, c constructive interaction, d new understandings of themselves and their situation, e critically examining the possibilities, f feeling better about each other, and g making their own decisions. Those decisions can include settlement agreements or not. Transformative mediation practice is focused on supporting empowerment and

recognition shifts, by allowing and encouraging deliberation, decision-making, and perspective-taking. Narrative mediation[ edit ] The narrative approach to mediation shares with narrative therapy an emphasis on constructing stories as a basic human activity in understanding our lives and conflict. In objectifying the conflict narrative, participants become less attached to the problem and more creative in seeking solutions. The process begins as a standard mediation, but if mediation fails, the mediator becomes an arbiter. This process is more appropriate in civil matters where rules of evidence or jurisdiction are not in dispute. The parties awareness that the mediator might later act in the role of judge could distort the process. Using a different individual as the arbiter addresses this concern. Online dispute resolution Online mediation employs online technology to provide disputants access to mediators and each other despite geographic distance, disability or other barriers to direct meeting. Online approaches also facilitate mediation when the value of the dispute does not justify the cost of face-to-face contact. Biased mediation[ edit ] Neutral mediators enter into a conflict with the main intention in ending a conflict. This goal tends to hasten a mediator to reach a conclusion. Biased mediators enter into a conflict with specific biases in favor of one party or another. Biased mediators look to protect their parties interest thus leading to a better, more lasting resolution. It differs from adversarial resolution processes by virtue of its simplicity, informality, flexibility, and economy. Mediation provides the opportunity for parties to agree terms and resolve issues by themselves, without the need for legal representation or court hearings. Success is unlikely unless: All or no parties have legal representation. Mediation includes no right to legal counsel. All parties are of legal age although see peer mediation and are legally competent to make decisions. Conciliation[ edit ] Conciliation sometimes serves as an umbrella-term that covers mediation and facilitative and advisory dispute-resolution processes. For example, both processes involve a neutral third-party who has no enforcing powers. One significant difference between conciliation and mediation lies in the fact that conciliators possess expert knowledge of the domain in which they conciliate. The conciliator can make suggestions for settlement terms and can give advice on the subject-matter. Conciliators may also use their role to actively encourage the parties to come to a resolution. In certain types of dispute the conciliator has a duty to provide legal information. This helps ensure that agreements comply with relevant statutory frameworks. Therefore, conciliation may include an advisory aspect. Mediation is purely facilitative: Instead, a mediator seeks to help parties to develop a shared understanding of the conflict and to work toward building a practical and lasting resolution. They both offer relatively flexible processes. Any settlement reached generally must have the agreement of all parties. This contrasts with litigation , which normally settles the dispute in favour of the party with the strongest legal argument. In-between the two operates collaborative law , which uses a facilitative process where each party has counsel. Counselling[ edit ] A counsellor generally uses therapeutic techniques. Someâ€”such as a particular line of questioningâ€”may be useful in mediation. But the role of the counsellor differs from the role of the mediator. The list below is not exhaustive but it gives an indication of important distinctions: A mediator aims for clear agreement between the participants as to how they will deal with specific issues. A counsellor is more concerned with the parties gaining a better self-understanding of their individual behaviour. A counsellor is fundamentally concerned about how people feel about a range of relevant experiences. A counsellor may find it necessary to explore the past in detail to expose the origins and patterns of beliefs and behaviour. A mediator controls the process but does not overtly try to influence the participants or the actual outcome. A counsellor often takes an intentional role in the process, seeking to influence the parties to move in a particular direction or consider specific issues. A mediator relies on all parties being present to negotiate, usually face-to-face. A counsellor does not necessarily see all parties at the same time. A mediator is required to be neutral. A counsellor may play a more supportive role, where appropriate. Mediation requires both parties to be willing to negotiate. Counselling may work with one party even if the other is not ready or willing to participate. Mediation is a structured process that typically completes in one or a few sessions. Early neutral evaluation[ edit ].

## Chapter 3 : Mediation - Wikipedia

*Third-party settlement of disputes in theory and practice. 1. Third-party settlement of disputes in theory and practice. 6.*

This article has been viewed times. This article been downloaded 0 times. Dit artikel wordt geciteerd in 1. The first question was simple: He then asked a series of follow-up questions: More recently, the author posed similar questions to another group involved in the law and alternative dispute resolution ADR. First, ICT has become an integral part of the practice of conflict engagement in all its forms, just as it has become integral to social interaction generally. Second, most practitioners of ADR in all its forms seem not to have overtly faced the ethical changes and challenges brought with the increased use of ICT. There is more awareness now than there was just a few years ago. It does, however, mean that each of the ethical considerations common to third-party work must be reinterpreted in light of the impact of technology. The adjustment in ethical standards will be evolutionary, not revolutionary, and will be accomplished over time through dialogue with practitioners who are facing the new demands, restrictions and freedoms brought to third-party practice by technology. The goal of this article is not to rewrite all of the ethical guidelines, or even to address all of the possible ethical issues raised by the use of ICT. The goal of this article is to point out some concrete instances in which technology affects ethical considerations, and to add to the evolutionary transformation from the assumption of face-to-face processes to the common use of processes integrating ICT. The international, or a-national, nature of communication and interaction produced in the online world confronts practitioners of all kinds with challenges that are new. One important practical effect of globalization [fueled by the use of ICT] is that clients regularly expect [practitioners] to handle matters that involve multiple jurisdictions, domestic and international. The borderless nature of virtual interactions guarantees that those involved in conflict engagement will encounter work that involves customs, cultures, expectations and demands that are heterogenous in nature. Some people perhaps a half a billion of us seem to think that social media has made a change in the way we interact. It is common to hear the argument that technology isolates us and drives us apart. But an equally, if not more, persuasive argument is that technology brings us together in different ways. Lee Rainie and Barry Wellman argue that, like earlier communications technology the telephone, television, etc. They sound just like those who worried generations ago that TV or automobiles would kill sociability, or sixteenth-century fears that the printing press would lead to information overload. People are not hooked on gadgets â€" they are hooked on each other. In the mids, some ADR practitioners realized that the emerging online communication channels were having an impact, mostly in the commercial arena. The classic definition of ODR comes from those early days of e-commerce. National Science Foundation NSF lifted the ban on commerce online in , there quickly began to appear disputes unlike disputes we had created before: Into this new conflict environment came a number of ODR tools designed to handle the high volume of disputes with as little human intervention as possible. Rifkin, Online Dispute Resolution: The fourth party as an active participant in the dispute resolution process is still very much alive and kicking, as witnessed by the eBay and AAA statistics cited above. As time has passed and ICT has burrowed its way into the fabric of society far beyond e-commerce, another more contemporary and nuanced definition of ODR and of the fourth party has emerged. That definition of ODR, the one used throughout this article, is that ODR is simply the intelligent application of ICT to any of the processes that make up the universe of conflict engagement practice. Why has ICT become a routine element of conflict engagement practice? At least in part, it is because some of the basic functions or activities of conflict engagement practitioners are basic functions or capabilities at the core of ICT. Conflict engagement requires that we: If three of the core functions of conflict engagement are also three of the core innovations of ICT, how could dispute resolution not be changed by the ubiquitous nature of ICT in the contemporary world? The fourth-party influence can rightly be seen any time a third party uses technology to communicate with or share information with the parties. And every time technology, the fourth party, enters the process, there are ethical issues either raised or altered. If one takes as a starting point the idea

that technology has been integrated into the entire range of practice in ADR, it would seem reasonable to argue that any of the ethical standards that apply to the practice of conflict engagement must be interpreted in the light of the impact of technology â€" to account, in other words, for the fourth party. There are many ongoing discussions of ethics as they relate generally to the practice of conflict engagement. For purposes of this article, standards of practice and ethical guidelines created for mediation will serve as the basis for discussion of ethical considerations generally. It is convenient, and perhaps necessary, to use mediation as a focus for at least two reasons. First, mediation offers a base of theory and practice that is reflected in many other conflict engagement venues. At all levels and in all venues, practitioners engage with human beings interacting in stressful and, perhaps, dangerous situations. Ellen Waldman offers three core values that drive mediation ethics: At the most general level, these values would probably be accepted by practitioners in most venues. Second, much has been written about mediator ethics. The range of ethical statements or standards of practice for mediation make up a large part of the literature on ethics and third-party practice. Some compare standards of practice, assessing similarities and differences. The continuing friction between mediator ethics and legal ethics is an ongoing subject. The ABA standards can be found at: The JAMS standards can be found at: The Virginia standards can be found at: The Texas standards can be found at: The Standards and their Relationship to Technology As a note to start this discussion of the impact of technology on standards of practice, all of the traditional requirements expressed by the various statements remain untouched by the use of technology. For example, the need to be and remain free from favouritism, bias or prejudice remains just as essential for an all-online ODR process, or a mixed ODR and face-to-face process as it does for an all-face-to-face process. Essentially, the mediator, or any third party in any intervention venue, faces the same problems, the same choices and the same requirements for practice whether or not technology is introduced. Put another way, the questions facing third parties remain the same, although the answers may change a bit on the basis of the additional elements added by the use of technology. Available for download at: Part of the evolutionary progress of technology involves the development of technology that is specifically designed for use in the practice of conflict engagement. Up to the present, much if not most, of the work done using technology has employed applications and platforms designed for more general communication or information-handling purposes. For example, commercial products like WebEx or Central Desktop were developed to enhance group work and communication across geographically dispersed groups in synchronous and asynchronous modes. These platforms are easily adapted to conflict engagement work. National Mediation Board has used WebEx to conduct online arbitration and online mediation synchronously, and Central Desktop to provide asynchronous platforms for complex collective bargaining. There have been platforms designed specifically for conflict engagement work, but they have either tended to be proprietary in nature e. This article will focus specifically on a few of the ethical imperatives that, through conversations with a wide range of conflict engagement practitioners, seem to be most obviously and immediately affected by technology. The actual right to maintain confidentiality is expressed, on the basis of venue, by state statutes and guidelines,18xSee, e. The JAMS confidentiality standard states: It is crucial that the mediator and all parties have a clear understanding as to confidentiality before the mediation begins. The requirement for the mediator to know, understand and communicate the elements of confidentiality and information safety online exists when technology becomes part of the process. We have a hard enough time in the face-to-face world explaining under what conditions mediators can assert confidentiality, but adding technology does not really change any of the conditions of confidentiality. To date, this argument has not surfaced, but because it is theoretically possible to make the argument, it and other arguments related to the special nature of discourse online will probably be made by someone at some point. Outside the actions of the parties themselves, and the third party who has made the promise of confidentiality, there are fourth-party considerations that loom large. There is reasonably long-standing guidance regarding the use of offline paper and electronic information storage managed by contractors. There is a growing body of guidance related to online storage of information. The New York State Bar says that: An attorney may use an online storage system, provided the attorney

exercises reasonable care to ensure that confidential information will remain secure. The problem for third parties, once again, is that translating guidance for offline systems to guidance for online systems is not automatic. While it may be clear what constitutes reasonable care in the context of traditional third party storage, these same practices do not seamlessly transfer to online storage. The second set of questions has to do with the safety of information passed through online channels, regardless of whether the information was offered publicly e. The answer is complicated. Before the public revelation of the extent of digital surveillance conducted by the United States and other countries, the common answer would have been that your information could be considered fairly secure. The revelations of and the notoriety gained by Edward Snowden, and the extent of the government surveillance he exposed, have made it more difficult for the general public to believe in the privacy of information exchanged online. Following close on the heels of the Snowden information, the publicity surrounding the compromised personal information contained on the U. From an ethical viewpoint, the third party is faced with two responsibilities: It may be, in fact, highly unlikely that information exchanged during conflict engagement work online will be compromised, but the devil really is in the details, and is linked to the type of online system being used. Basically, no mediator or party should use it for anything they would not be willing to see on the front page of the local newspaper. Some are encrypted, some are not. Some are well protected, some are not. Generally, email systems are more vulnerable than data storage applications and are among the first targets of those trying to break into online systems. But you can password-protect your information, and you can control who sees it, and organizations like Google have a built-in incentive to make sure your information is not misused or stolen. Of course, anyone at Google with Admin rights can get to information on their servers, but, again, they have a built-in incentive to be very careful with that ability. At one point, the fact that information moved to and from Google servers was encrypted was a comfort to users. The revelation that the National Security Agency NSA had found a way to grab information between encryption processes brought a reasonable level of concern to even the safety of encryption. The information put into a bounded cloud is on servers used only by paying customers, and is generally SSL-encrypted in addition to being password-protected. Still, the administrators of the bounded cloud systems have access to the data, and are constrained by the same business incentives as any administrators working in systems reliant on the trust of their customer base. So how does the third party reasonably describe the online world in terms of data security and client confidentiality? First, it is incumbent upon every mediator who wants to use online tools to educate himself or herself about the realistic risks that parties take when they work online. As a matter of ethics, mediators should understand how the technology works on at least a basic level, and should make choices about what technology they recommend for use on the basis of that knowledge. Second, mediators should carefully consider how to describe the risks to the parties. There are always some risks, even with paper documents, and parties will always have to make choices about what venues and channels they are willing to use.