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Dispute Resolution On-Line

I. Introduction

In France during 1996, the average lead time from the moment proceedings are initiated before a court of appeals to the date it renders its decision was more than fifteen months.¹ In fact, if a party were to file an appeal in the Paris court this year, the judge would probably not hear the case before the year 2000. Although courts of appeal are the most congested courts in France, lower courts have, in general, comparable protracted-time problems. The European Court of Human Rights regularly condemns France under article 6.1 of the European Human Rights Convention² because of the long delays in proceedings.³ It is, however, fair to say that this problem is not specific to France. Many other European countries face the same difficulties. Access to justice is now considered one of the most fundamental human rights, and society is becoming more and more contentious. The budget of the Ministry of Justice, instead of increasing to face this new demand on the judicial system, is either decreasing or, at best, stable. Recruitment of judges is insufficient, increasing their ever heavier burden and their inability to render as many judgments as would be necessary.

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1. Figures for 1997 are not available; they will probably not be better than those of 1996.

2. Article 6.1 of the Human Rights Convention reads as follows: "[i]n the determination of his civil rights and obligations . . . everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. . . ." Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 221, 228 (entered into force Sept. 3, 1953) [hereinafter European Human Rights Convention].

3. This is true not only for civil and commercial proceedings but also for administrative proceedings.

It is thus natural to turn to this new revolutionary communication tool, the Internet, to explore new and efficient means to improve the administration of justice. Notably, the Internet aids by increasing the speed of document transmission, case management, and more generally, dispute resolution. By doing so, the hope is that the costs involved in dispute resolution will also decrease.

But while the Internet is thought of as a tool for a better administration of the judicial system, one must recognize that the Internet itself creates new causes for dispute. Indeed, the Internet, by its international essence, has generated new risks. A new breed of contracts has emerged whereby parties enter into agreements and perform them without ever meeting, and without ever exchanging a single piece of paper. One thinks, for instance, of contracts for services performed entirely on-line, including payment made by electronic means. Consumers may enter into contractual relationships with parties at the other end of the planet without even knowing that their contractual partner is in a far away country. One thinks of on-line banks opening accounts with customers regardless of their place of residence. The market is also virtually unlimited on the Internet. The smallest operators are now being offered access to worldwide markets where the Internet may serve as a channel to disseminate their products.

It follows that parties contracting over the Internet will be faced, more than ever before, with rather uncomfortable situations: they will be sued in a foreign jurisdiction, or several jurisdictions, simultaneously; they will be exposed to a foreign law; and they will also have to bring suit in a foreign jurisdiction to enforce their rights, or to bring suit simultaneously before several jurisdictions. Indeed, if the Internet globalizes the market, it also increases the number of places where damages can be incurred. There is thus a risk that an individual or a corporation, particularly a small or medium-sized corporation, faced with such complexity, may decide not to enforce its rights.

The growing entanglement of disputes, combined with the congestion of some national courts, has led states to favorably consider alternative dispute resolution and, more specifically, arbitration. Although there is yet little written material, and even fewer past experiences, to rely on, groups are currently exploring whether the communication channels made available by the Internet would offer more efficient solutions, or at least improve those currently in place. Two approaches may be distinguished. The first, a more radical approach, would be to envisage the actual settlement of disputes on-line. This would involve very little or no physical presence of litigants and judges or arbitrators. Those who advocate this mode of on-line dispute resolution consider that, at least for disputes arising out of the Internet, a completely new mode of dispute resolution is required.⁴

4. See Gabrielle Kaufmann-Köhler, Presentation at the ICCA Conference in Paris (May 1998) and at the UNCITRAL Internet Conference Day in New York (June 1998); R. Hill, *Will Cyberspace use Cybercourts?* INT'L COM. LITIG., Oct. 1997, at 33; *On Line Arbitration: Issues and Solutions*, ARB. INT'L (forthcoming 1998).

We will see that pure on-line dispute resolution encounters obstacles. It is clear that all projects launched two years ago have not met the expectation of their promoters. In reality, it is possible that the solutions lie in a more intermediate approach.

II. The Radical Approach: Resolving Disputes On-line

Few institutions are currently developing procedures to conduct proceedings on-line. As of today, only private dispute resolution fora are considering administering this alternative. It follows that on-line dispute resolution is only available where the parties to a dispute have agreed to solve their dispute through mediation or through arbitration. The competence of those institutions is generally, by their terms, limited to disputes involving technology-based disputes, such as disputes arising in the field of telecommunications, trademarks, and Internet domain names.

A. A LIMITED NUMBER OF AVAILABLE SERVICES

A few attempts have been made to propose on-line dispute resolution mechanisms. Very early, the Geneva Chamber of Industry and Commerce established a group to prepare rules for an on-line arbitration mechanism. The latest information we received from that group shows that the Chamber decided to postpone launching this project. In the United States, the American Arbitration Association (AAA), together with the Cyberspace Law Institute, the Center for Information Law and Policy, and the National Center for Automated Information Research (NCAIR), have created the Virtual Magistrate.⁵ This project is described more fully below. An On-line Ombuds Office is also offered on the web.⁶ It essentially deals with mediation, as does Internet Neutral Mediation Services.⁷ A Cyber Tribunal was created by the *Centre de recherche en droit public* of the Law Faculty of Montréal University in Québec⁸ with the goal of favoring dialogue between users of the Internet and prevention of disputes.⁹ Finally, the World Intellectual Property Organization (WIPO) has now finalized its on-line dispute

5. See *Virtual Magistrate* (visited Sept. 2, 1998) <<http://vmag.law.vill.edu>>.

6. This service was established in June 1996 with a grant from NCAIR (the same organization that funded the Virtual Magistrate). In June 1997, the Hewlett Foundation provided an award to establish the Center for Information Technology and Dispute Resolution at the University of Massachusetts. The Online Ombuds Office is the dispute resolution arm of the Center, working to employ and develop on-line dispute resolution resources.

7. See *Internet Neutral* (visited Sept. 2, 1998) <<http://www.internetneutral.com>>.

8. See *Cyber Tribunal* (visited Sept. 2, 1998) <<http://www.cybertribunal.org>>.

9. According to our last connection when finalizing this paper on August 21, 1998, the site was still not entirely completed. For example, access to the list of arbitrators was not possible. However, the Cyber Tribunal has developed an interesting idea. It proposes that each site master obtain the Cyber Tribunal logo and post it on its site. Doing so will mean that the site master undertakes to resolve disputes through mediation or arbitration instead of going to court.

resolution for domain names and other disputes related to the Internet and telecommunications. This will also be described below as the second example.¹⁰ One general remark is necessary at this stage: all current information seems to indicate that on-line dispute resolution has not had the success that some predicted. In the following paragraphs, we will try to identify some of the underlying reasons.

1. *An Illustration: The Virtual Magistrate*

One of the best-known efforts to provide actual settlement of disputes on-line is the Virtual Magistrate. The Virtual Magistrate project is still in an experimental stage. It was created through a joint venture between the Cyberspace Law Institute which directs policy, the AAA, which administers all cases submitted to the Virtual Magistrate, the Center for Information Law and Policy of Villanova University, which operates the service, and NCAIR, which provides the necessary funding.

The Virtual Magistrate is limited to disputes involving on-line services and activities,¹¹ with the exception of questions relating to billing or financial obligations between users and system operators. Virtual magistrates are selected jointly by the AAA and the Cyberspace Law Institute.

Complaints are accepted through electronic mail from network users, system operators, and others affected by network messages, postings, and files. After receiving a complaint, the virtual magistrate decides whether to accept it and then notifies the parties. Upon agreement by the parties to participate in the proceedings, the virtual magistrate attempts to reach a decision, if possible, within seventy-two hours.

A virtual magistrate is assigned to each complaint; virtual magistrates have both experience in the law, and in the use of computer networks. Proceedings take place through electronic mail. A newsgroup is established for each case, and participants post messages thereto. The decision of the virtual magistrate is also sent to the parties via e-mail.

Electronic case administration is handled through the AAA's Syracuse regional office. There are no specific procedural rules, except that "the magistrate will conduct fair and appropriate proceedings to reach a decision in the time available."¹² Procedural matters not addressed by the Virtual Magistrate rules are to be resolved in accordance with the AAA's Commercial Arbitration Rules and "general principle[s] of fairness." This shows that the system has been conceived

10. We are not certain that other projects are not being prepared. However, our research through several search engines has not revealed any. By itself, the limited number of such projects may also reveal the difficulties in actually proposing a mechanism which is satisfactory considering the legal environment of today.

11. This is also true for all the projects which were launched in the United States and Canada. We are of the opinion, however, that a good on-line dispute resolution service could very well serve for all kinds of disputes and not solely for disputes arising from on-line activities.

12. *Virtual Magistrate*, *supra* note 5.

as purely American when on-line activities are very often international by nature. It could have been interesting to provide for the application of AAA's international rules, which currently exist and have proven to work well.¹³

The first (and, so far, only) case decided through Virtual Magistrate was brought by an America Online subscriber who complained about an advertisement posted on the provider's system. The author of the ad did not respond to the virtual magistrate's repeated requests to participate in the case. But since America Online voluntarily participated in the proceedings, the virtual magistrate proceeded with the case. Although the decision is an interesting breakthrough, its enforcement will be severely impaired by the absence of agreement on the part of the defendant to participate in the case. Thus, new thoughts should be put together to see how enforcement through the Web can be obtained even if the defendant does not voluntarily participate in the case.

Another shortcoming of the service is developing the law that will be applied in each case. After acknowledging that "the Net environment is unlike any other, [because] [p]eople all over the world interact in real time and take actions that affect the rights, interests and feelings of others,"¹⁴ the promoters of the Virtual Magistrate do not explain how they will develop the applicable law to cases. Indeed, in response to one of the frequently asked questions (FAQ) appearing on the Virtual Magistrate's home page, "Can I be a magistrate?,"¹⁵ the answer simply states: "Maybe. Magistrates must be familiar with online systems and with relevant legal principles."¹⁶ Which principles? The home page is silent. Where does one find these principles? Again, the answer is missing. Is the applicable law decided by the Virtual Magistrate as any AAA arbitrator does in international cases? Perhaps. But nothing on the home page gives the answer to that question. This could be considered as a missed opportunity. Indeed, this is an unprecedented possibility for on-line operators and users to develop their *lex cybernetis*. How does one come to that conclusion? We should probably start compiling the basic principles that were at the origin of the Web and start making them available through the Web so that each Internet user will be able to refer to them and have them enforced.

1. *Intellectual Property Organization's On-line Internet-based System for Administering Commercial Disputes Involving Internet Domain Names*

Internet domain names are expected to give rise to an increasing number of disputes as the Internet becomes an even more commercial environment. To

13. Having conducted arbitration proceedings in Paris under AAA's international rules, Professor Kessedjian can testify that they work well and efficiently. Thus, they can be easily adapted for on-line dispute resolution.

14. See *The Virtual Magistrate Project: Frequently Asked Questions* (last modified July 24, 1996) <<http://vmag.vcilp.org/docs/vmagfaq.html>>.

15. *Id.*

16. *Id.*

understand the potential growth of Internet domain name disputes, one must understand the purpose of Internet domain names. Each Internet computer is identified on the Internet by a series of numbers separated by dots that serve as routing addresses on the Internet. These numbers are known as Internet Protocol numbers. To make this numerical environment more user friendly, each block of numbers is replaced by letters, which are ordered following a pyramid-shaped hierarchy.

At the top of the pyramid are Top Level Domain Names (TLDs) that are divided into two categories: geographic and nongeographic, or generic. Geographic TLDs indicate the country of registration; for example, <<.us>> for the United States, and <<.fr>> for France. Generic TLDs do not carry any national identifier, but denote the intended function of that portion of the domain space. A few examples of generic TLDs are <<.edu>> for educational institutions, <<.org>> for nonprofit organizations, <<.net>> for Internet networking facilitators, and <<.com>> for business activities.

At a lower level of the hierarchy are second level domain names, which may be any sequence of up to twenty characters, either letters, numbers, or hyphens.

Any Internet server who intends to connect to the Internet must obtain an address from one of the regulatory bodies administering domain names. Since access to domain names determines the visibility of an enterprise on the Internet, the management of the names and their domains is becoming of the highest commercial, even strategic, interest.¹⁷

Disputes relating to Internet domain names are usually of two forms: disputes may arise over conflicting use of domain names, and disputes may arise between domain names and registered trademarks. For instance, if a trademark is wrongfully used as a domain name, consumers may be misled as to the source of the product or service offered on the Internet. Disputes pertaining to this second category remain rare, considering the high number of registrations. Network Solution Inc. (NSI), which registers generic TLDs in the United States, reports that only a minute fraction of registrations have been challenged by trademark users. The low figures, however, do not mean that the numbers of infringements suffered by trademark owners are equally minute. Those low figures are partly due to the difficulties encountered when litigating over domain names. First, transparency is not always assured by registrars, and it may be difficult to locate the computer using the infringing domain name. Second, trademark owners have expressed concern that domain name registrants in remote locations may be able

17. There is not enough space in this article to tackle the difficult problem of who, in the very near future, will administer domain name attribution. Indeed, the U.S. government has announced that it will not renew the license it granted years ago to the Internet Assigned Numbers Authority (IANA) who, consequently, sees the end of its monopoly. Discussions over the new entity, its legal form, and its powers were ongoing at the time this article was written and it is clear that dispute resolution mechanisms take a great part in those discussions.

to infringe their rights with no convenient jurisdiction available in which the trademark owner could file suit to protect those rights.

In an attempt to remedy those obstacles, the Internet Ad Hoc Committee has developed dispute resolution mechanisms in the context of domain names, involving the Arbitration and Mediation Center of the WIPO. The dispute resolution procedures established in collaboration with the WIPO Center have been adopted by the domain name registration system proposed by the Memorandum of Understanding on the Generic Top Level Domain Name Space of the Internet Domain Name System (gTLD-MoU) dated May 1, 1997. Two categories of dispute resolution mechanisms that involve considerable use of on-line services are provided by the WIPO Center in conjunction with domain names registered under the gTLD-MoU system. The first category involves mediation and arbitration. Under the system, any third parties who believe that the registration of a second-level domain name infringes their intellectual property rights can apply to the WIPO Center to initiate on-line mediation. Under the agreement located in the registration application, the domain name holder agrees that they will participate in that mediation. If the mediation is not successfully completed within thirty days, the third party challenger has the option to request that the mediation be converted into arbitration. When registering their domain name, the domain name holder has the option to check an opt-out clause in the domain name application. If the domain holder does not do so, then they are bound to submit to arbitration.

The second category of dispute resolution mechanisms provided by the WIPO Center is referred to as Administrative Domain Name Challenge Panels. The panel does not have jurisdiction over persons or over the interpretation and enforcement of national or regional intellectual property laws. It serves an administrative function that evaluates the conformance of domain names with the policy established under the gTLD-MoU.

The system developed by the WIPO Center under both categories is Internet-based. Users may access the procedures through the Internet site of the WIPO Center. The site includes such functions as forms for filing cases, automatic notifications, an electronic fee system, and secure facilities for the on-line exchange of documents.

The Center anticipates that on-line services will be extended from domain name disputes to other types of intellectual property disputes and, perhaps, other business disputes of a more general nature. As a matter of fact, in a demonstration given at INET 98,¹⁸ it was clear that WIPO had moved from a specific to a general on-line dispute service to provide on-line arbitration whenever the parties to a dispute need it.

18. INET is the annual meeting of the Internet Society. INET '98 took place in Geneva where a panel discussed dispute resolution mechanisms. In this panel, WIPO representatives made a live demonstration of the on-line service that was expected to come into force on September 1, 1998.

3. *U.S. Department of Commerce Proposal to Improve Technical Management of Internet Names*

Parallel to the WIPO project, the U.S. administration, under the auspices of the White House and the Department of Commerce, has developed guidelines concerning the resolution of disputes over Internet domain names. These guidelines are expressed in the form of a Green Paper for the improvement of the technical management of Internet names and addresses. The paper recognizes that enforcement of trademark owners' rights may be impaired by the costs involved in litigating to protect their rights. The paper concludes that mechanisms that allow for on-line dispute resolution could provide an inexpensive and efficient alternative to such litigation. The paper, however, does not propose specific procedures for on-line dispute resolution.

The Council for the European Commission criticized the Green Paper for making no reference to the dispute resolution procedure established within the framework of the WIPO. The paper actually envisages a separate dispute resolution procedure for each of the Internet registries. The resolution of disputes can only be efficient if it is the result of an international cooperation on global communications policy. Thus, it is obvious that the procedures established by WIPO will only represent a successful solution if they are widely adopted by Internet users.

B. OBSTACLES TO THE ACTUAL SETTLEMENT OF DISPUTES ON THE INTERNET

Although we are convinced that on-line dispute resolution will someday have an important role to play in dispute resolution arising out of the use of Internet and other transnational relations, at present, conducting legal proceedings on-line raises a number of legal issues that need to be addressed by any entity proposing on-line dispute resolution mechanisms.

1. *'Floating' Arbitration*¹⁹

We do not wish to engage here in the lively controversy between those who believe that international arbitration should be free from any territorial interference and those who think that we still need a place for arbitration.²⁰ We think that it is important to determine the physical place of arbitration. It carries crucial consequences such as the public policy to be followed, the possible review and enforcement of the award, the default procedural rules to be applied in case the

19. We do not deal here with virtual courts since all projects presently existing favor alternative dispute resolution mechanisms. However, as will be shown below in part II, there are some important developments which can be expected by the use of the Internet for court proceedings, and similar legal issues will have to be resolved.

20. For an account of this debate, see Catherine Kessedjian, *State Judges' Decisions as Regards Enforcement of Arbitration Agreements and Awards*, paper presented at the ABA, Toronto (August 1998).

parties cannot agree on specific rules, and the jurisdiction of the courts providing legal support to the arbitration. If the arbitration is conducted on-line, should we then decide that there is no place of arbitration or should we consider that the arbitration is conducted at several locations, i.e., that of each arbitrator and that of the parties to the dispute?

The answer is probably neither one nor the other. The place of arbitration, since we do need one, could be deemed to be at the location of the presiding or sole arbitrator. One major inconvenience with this solution is that the place of arbitration would be unknown until the time when the arbitral tribunal is formed. The other alternative would be to locate the arbitration at the place of the arbitral institution. But this solution is, however, unworkable for ad hoc arbitration. It would also run squarely against the tradition of certain institutions that emphasize the truly international nature of their proceedings. These traditions allow for arbitration to be conducted in many different places although they are all conducted under the auspices of the same institution.

Until the existing rules have been adapted or, if that is not possible, until new rules have been developed, parties to a contract would be advised to decide on a place of arbitration and provide further that this place may only be agreed upon for legal purposes of conducting the arbitration on-line.

2. *Confidentiality and Security*²¹

Confidentiality is often what attracts parties to alternative dispute resolution mechanisms. But the Internet is not a secured medium. Hackers who break into a computer network can not only consult the information circulating on such network, but can also modify it.

The risks entailed by the use of the Internet are reflected in the analysis conducted by U.S. state bars as to whether attorneys violate their ethical obligations to protect client confidences when communicating with a client through unencrypted e-mail. The South Carolina Ethics Committee analogizes the use of electronic mail to the use of cellular telephones, and requires that prior consent of the client be obtained before using e-mail for client communication. In Iowa, e-mail communications with clients are allowed, but attorneys still need written acknowledgment by the client of the risks posed by the use of e-mail. The Paris Bar considers that communications through the Internet are not safe. It is striving to organize an Internet for the needs of communication among attorneys and with the courts.

Encryption is the ultimate means of securing e-mail communications. But it may not always be available, as several countries have posed strict limitations

21. A controversy is presently ongoing in the Internet world. Some think that, because messages are truncated and transferred at random until their final destination where they are reassembled, the security problem is a false one since the chances are limited that somebody can access the content of a message. We will not take a side in this controversy; we simply wish to emphasize the risks of a break of confidentiality for dispute resolution mechanisms.

on the use of encryption for confidentiality. France has been known for many years as the country that most strictly prohibits encryption for private use.

3. *The Human Factor*

Another obstacle to the actual settlement of disputes on-line is the suppression of face-to-face confrontation. It is important in all dispute resolution mechanisms, particularly in arbitration, to build up confidence. Eye contact between the attorneys and the judges, the arbitrators, or the mediators, is often crucial to a better understanding of the arguments pleaded. It is not fortuitous, in that context, that the English tradition makes orality a compulsory component of the judicial process.

Fact finding that involves witnesses will have to be conducted very differently on-line than in the physical presence of all the actors. Indeed, on-line dispute resolution in that respect changes very little for systems that rely on written submissions by the witnesses. To the contrary, for systems that favor examination and cross-examination of witnesses, it would probably have far less value if conducted on-line.

4. *Enforcement of Decisions*

The recognition and enforcement of arbitral awards²² are conditioned by the guarantee that the fundamental rights of defendants have been sufficiently secured. Those rights include the right to proper notice, the impartiality of the tribunal, and the principle of contradictory proceedings. The fact that an arbitral award is rendered through on-line proceedings is not per se an obstacle to its enforcement. But it may be difficult in such cases to prove that the fundamental rights of defendants have been sufficiently secured.

Thus, the enforcement and recognition of decisions rendered through on-line proceedings depend on the establishment of a strict protocol guarantying the rights of the defendants. The protocol must be agreed by the parties. This can be done either by an explicit provision in the arbitration agreement or by an agreement that the arbitration be administered by an institution that has already incorporated such a protocol in its rules.²³

If we turn now to court decisions, jurisdiction is one of the pillars of the recognition and enforcement process. Unless the virtual court was agreed upon by both parties, the present status of private international law rules concerning international jurisdiction does not allow for a virtual court to be seized of a matter. Thus, the requested court, that is, the court requested to recognize and enforce the virtual decision, would refuse to give such decision a binding effect. Finally, most countries' rules for recognition and enforcement of foreign court decisions

22. Obviously, this is also the case for court decisions.

23. We have not been able to verify whether the Virtual Magistrate project provides such a protocol.

and the New York Convention for the Enforcement of Arbitral Awards oblige the presentation, by the party applying for enforcement of the award, of a duly authenticated original decision or award or a duly certified copy thereof. Parties to on-line dispute resolution will have to obtain a hard copy of the award to comply with these requirements. The certification, however, does not need to go through a different process than the one we know now.

The unresolved obstacles involved in the present settlement of disputes on-line seem to lead to favoring a more moderate approach, that is, introducing the improvements brought by the Information Superhighway into the existing proceedings. Time is generally of the essence in disputes, and one of the major advantages of the Internet is the speed at which information travels on the Information Superhighway.

III. A More Realistic Approach: Introducing Information Technology in Conventional Fora

A. INTERNET AS A MEANS TO ADMINISTER PROCEDURAL ACTS

Electronic communication appears to be an ideal tool to increase the speed of proceedings.

1. *The French Experiments*

In France, the use of the Internet by the administration has only recently emerged. There is a strong move by the French administration towards offering access to material through newly created sites. For instance, it is now possible to obtain tax forms on-line, and to consult grey literature on-line. Grey literature consists of reports and notes emanating from the administration. But the use of the Internet in proceedings has not yet reached national courts. Electronic communication, however, has been, for several years, at the center of projects in the form of Electronic Data Interchange (EDI).

In 1994, the Ministry of Justice initiated the project EDIJUSTICE that is designed to create interactive and electronic administration of cases. The goal of this project was to organize the circulation of EDI messages between courts to improve the communication between attorneys, bailiffs, and judges without modifying the existing procedural rules. The circulation of messages would be regulated by an EDI agreement establishing the probative value and authentication of such messages. This ambitious project has never seen the light, but so far as our information goes, it has not yet been abandoned.

Other more isolated initiatives are worth noting. Judges of the courts of appeal, and attorneys who handle the procedural phase at the level of appellate courts, known as *Avoués*, have worked together in putting a channel of electronic communication in place. Since 1984, this channel has operated through three servers linked by modem. The system is still in a first generation stage: procedural acts are sent via the server of the Chamber of *Avoués* to its server, located at the

appellate court, which itself transmits such acts to the server of the appellate court. The Chamber of *Avoués* and the Paris Court of Appeals are considering adopting the recognized international EDI norm, EDIFACT. In the absence of such norm, the Chamber and the Court have not yet solved the problem of electronic signature. Writs of appeal are still transmitted from the Chamber to the court both in electronic medium and in paper form. It is noteworthy that only one reason has dictated the fact that no individual *Avoués* is directly linked to the Court's servers: avoiding professional liability. Obviously, once the system is clearly and definitively established, this reason will disappear.

The national Chamber of Bailiffs has put in place a comparable system to communicate with attorneys and courts. The system, however, is more advanced; it already uses the EDIFACT norm and offers a link to the Internet.

All these efforts must be compared to the more advanced systems already in place in many jurisdictions in the United States and elsewhere. One example is fairly striking. A London-based firm was authorized by an English judge to notify summons at an e-mail address whose owner had sent defamatory messages to its office concerning one of its clients.²⁴ It is indeed necessary when the person using the Internet cannot be otherwise identified to allow such notification.²⁵ However, in order to be valid, notification must be done in such a way to receive a confirmation that the message was indeed delivered, whether it was read or not. Thus, in order to be used for notification purposes, e-mail must be accompanied by a system of return receipt. The return receipt must not come from the server, but from the person who is served or her representatives. Technical solutions must be found to achieve this goal.

2. *On-line Procedure—the New International Chamber of Commerce Arbitration Rules, and the Geneva Chamber of Commerce Project*

Other institutions have combined the use of EDI and on-line communication. For instance, the Geneva Chamber of Commerce and Industry is in the process of reviewing its rules to allow for electronic communication of submissions. The envisaged rules provide that the use of electronic means requires the express consent of the parties. Similarly, the Revised Rules of the International Chamber of Commerce, which became effective on January 1, 1998, expressly authorize transmission by "any means of telecommunications that provides a record of the sending thereof."²⁶

24. This case is reported in V. SEDALLIAN, *DROIT DE L'INTERNET* 249 (Collection AVI, 1996).

25. It is questionable, however, whether such notification (or a notification to a website), would conform with internationally recognized principles for notification.

26. International Chamber of Commerce (ICC) Publication No. 851.

B. INTERNET AS A MEANS TO FACILITATE INTERNATIONAL COOPERATION/ COMMUNICATION

1. *International Judicial Cooperation*

The good administration of justice may require a close cooperation between judges of different countries. For instance, the Convention of October 25, 1980 on the Civil Aspects of International Child Abduction organizes the cooperation between the competent authorities of contracting states to secure the prompt return of abducted children. Cooperation between authorities must be as rapid as possible, and information must be disseminated at the fastest speed. The Internet may provide an efficient solution in this respect.

Also, a new thinking is emerging for judicial cooperation in at least three instances: provisional and protective measures, *lis alibi pendens*, and forum non conveniens. When each of these issues arises in international litigation, it is now proposed that judges from different countries consult with one another and try to decide who is best placed to decide the matter.²⁷ Because that dialogue must respect the principle of contradictory proceedings, it is possible that the Internet will facilitate it with an on-line hearing being organized among all judges concerned and the parties involved in the dispute.

2. *Access to Legal Information on Foreign Law*

Judges are often required to apply foreign law. In such cases, civil law judges must normally be able to verify the parties' submissions. However, it is very difficult for them to do so, and they are usually forced to rely solely on the parties' presentation or, rather, on their interpretation of foreign law. Thus, the Internet could serve as an alternate source of information. In this respect, one could envision, for instance, offering judges access to comparative law institutes, such as the Max Planck Institute in Germany.

Judges, however, would be faced with the risk that the information retrieved on the Internet is inaccurate. In the process of establishing its own website, the Hague Conference of International Law has conducted a survey of existing websites conveying information on the conference. A year ago, at least 300 websites provided information pertaining to the conference. The Hague Conference then selected twenty websites to conduct a test on the accuracy of the information posted on such sites. The survey showed that none of the twenty selected websites contained fully accurate information on the Hague Conventions; either the number

27. See, e.g., Catherine Kessedjian, *Judicial Regulation of Improper Forum Selections*, in INTERNATIONAL DISPUTE RESOLUTION—THE REGULATION OF FORUM SELECTION 272, 272-94 (Jack L. Goldsmith ed., 1997). See also International Law Association, *Helsinki Principles*, in REPORT OF THE SIXTY-SEVENTH CONFERENCE 202-04 (1996) (provisional and protective measures adopted in August 1996).

of contracting states was incorrect or the dates of ratification or accession, or the reservations, etc., were inaccurate.

The Internet is thus still far from being a fully reliable source of information. In this respect, we should bear in mind that a convention, which unfortunately remains almost unknown, may offer judges an efficient tool in their search for information on foreign law. This convention is the Convention of the European Council of June 7, 1968,²⁸ on information on foreign law. It enables any judiciary authority, when an instance has been introduced, to request information from determined national entities. In France, for instance, such requests must be addressed to the Ministry of Justice. Unfortunately, in one instance, it took up to seven months to obtain information through such means. Again, the solution may lie in the use of the Internet in the procedures established by the convention. The Internet would certainly facilitate and enhance the transmissions of information according to that convention.

IV. Conclusion

It is probably safe to say that the Internet has the potential to provide a useful tool for enhanced administration of dispute resolution. In order to achieve this goal, we must look for an optimized use of the Internet, that is, a fair acknowledgment of its advantages and its limits. A group of Internet specialists and lawyers should get together and explore, for each step of the proceedings, how the Internet can be used effectively. Once this is done, a fair and reliable system can be proposed for adoption by parties and/or courts and arbitration tribunals. The time has come to act in that direction.

28. Décret n°72.947 du 11 octobre 1972, JO du 20/10/72, p. 11005, rev. crit. 1972.758.