Abstract:
Mediation is a process wherein a third party, or mediator, attempts to assist two conflicting parties in dealing with their dispute. Research has identified party trust in the mediator as a key element required for mediator effectiveness. In online video-based mediation, the addition of technology to the mix poses both challenges and opportunities to the capacity of the mediator to build trust with the parties through nonverbal communication. While authors researching the field of Online Dispute Resolution (ODR) have often focused on trust, their work has typically targeted text-based processes. As ODR embraces video-based processes, nonverbal communication becomes more salient. Nonverbal communication research has identified examples of specific actions that can contribute to trust. This paper combines that research with current scholarship on trust in mediation and on nonverbal communication in mediation, to map out the landscape mediators face while seeking to build trust through nonverbal communication in online video-based mediation. Suggestions for future research and implications for practice are noted, holding relevance to researchers and practitioners in any field in which trust, nonverbal communication and technology converge.

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Introduction

Mediation refers to a process for dispute resolution or joint decision making, in which two disputing parties voluntarily request the assistance of an uninvolved third party to help them work through their differences. The mainstream practice of professional mediation in western countries emphasizes two elements: Parties are free to leave the process at any time; and the third party, or mediator, does not have authority to impose a binding decision on them. Any outcome arrived at through the mediation process is that of an agreement reached between the parties themselves.

Given the non-coercive and voluntary nature of the process, it should come as no surprise that studies on mediator effectiveness have demonstrated the significant value assigned - both by mediators and by parties to mediation - to mediators’ capacity to capture the parties’ trust. How is this trust formed? The literature points out many individual elements of party-mediator trust (Ebner, 2012B). This includes the mediator’s reputation and expertise as well as the skills possessed by the mediator. Reviewing the literature, however, leaves one with the sense that this search for a complete understanding of the mechanisms of trust in mediation is a work in progress.

Studies show the critical role nonverbal communication plays in creating trust between individuals. Generally, nonverbal communication has been described as being vital to having a successful interaction with others (Feldman, 1991) while more specifically, body congruence can create trust (Andersen, 2008), and eye contact has been
demonstrated to contribute to a person being perceived as trustworthy (Zeigler-Kratz, 1990; Beebe, 1980) and to creating “liking” (Mehrabian, 1967). Conversely, lack of eye contact, or gaze aversion, has been associated with a person being perceived as not being trustworthy (Andersen, 2008).

Given the potential for nonverbal communication tactics to directly affect trust, we find the relative scarcity of studies on nonverbal communication in mediation somewhat surprising, as we do the dearth of prescription towards specific nonverbal actions in mediation training and literature. The necessity of increased focus on the topic is supported by despite recent data showing that mediators overwhelmingly describe nonverbal communication in regards to mediation being “very important” (Thompson, 2013).

Mediation is currently facing a period of great change – evolution, if you will – as it increasingly embraces online communication. Online mediation offers a wide range of benefits over its face-to-face counterpart, ranging from saved costs, convenience and flexibility (Katsh & Rifkin, 2000, Rule 2002) to environmental protection (Ebner & Getz, 2012). As the feasibility of online dispute resolution gains acceptance in general, a rising number of individual practitioners offer to bring disputing parties together online to resolve their differences through mediation (Ebner, 2012A)

In online mediation processes, trust remains an important mediator attribute. The online environment poses a particularly rough playing ground to a mediator attempting to build trust. The literature on negotiation and dispute resolution, as along with the literature on other aspects of online communication, has noted many specific challenges
to trust - creation and - maintenance in the online environment (Ebner 2007; Ebner 2012B).

However, much of this literature has focused on text-based communication, primarily asynchronous - such as email - based communication – seeing such ‘lean media’ as the most challenging landscape to navigate (e.g., Barsness & Bhappu 2004; Ebner 2007; Ebner et al.; 2009, Exon, 2011). There seems to be an assumption, voiced or not, that in video-based communication the challenges to trust would diminish to their proportions in face-to-face communication. Indeed, while research has found video interactions to be generally more conducive to trust emergence than other media other than face-to-face interactions (Bos, Olson, Gergle, Olson & Wright, 2002), it does not follow that video communication does not pose its own, unique, challenges to trust.

The aim of this article is, therefore, to establish and reinforce the range of techniques for trust building that mediators can bring to the virtual table through the channels provided by nonverbal communication in online video-based mediation. After establishing the role trust plays at the heart of mediators’ efficacy, and the important role of nonverbal communication in engendering or diminishing this trust, we will explore the ways in which these roles play out in the online environment. Through specific examples of non-verbal transmission and reception of cues, we will demonstrate how trust in e-mediation processes – and indeed, the processes themselves - can be derailed or supported by close attention to nonverbal communication. We will then offer recommendations for further explorations the mediation field and the nonverbal communication field need to conduct in order to further develop our understanding of the juxtaposition of trust, the online environment and nonverbal communication. Finally, we
discussion implications of these suggestions for people operating in fields other than e-
mediation, in which building trust is necessary for conducting successful interactions.

**Mediation Explained**

Mediation refers to a spectrum of process in which two disputing parties voluntarily
accept the assistance of an uninvolved third party to help them work through their
differences (for a simplified portrayal of mediation¹, see Figure 1). While there are many
process-shades along this spectrum, two elements remain constant: the disputing parties’
maintain their autonomy and are free to leave the process at any time; and the third party,
or mediator, does not have authority to impose a binding decision on the disputants. Any
outcome arrived at through mediation process is the result of an agreement reached
between the parties themselves.

Figure 1: Mediation Triangle

¹While a great many mediations follow the lines indicated in Figure 1, two other factors
often intervene to make mediation a more complex interaction. First, some professionals strongly
advocate for ‘co-mediation’, in which two mediators team up to work with disputing parties.
Second, disputes often involve multiple parties. As a result, it is not unusual to encounter
mediation processes in which the lines of communication and trust-relationships form a web of
great complexity.
While many schools of thought exist with regards to the purpose of mediation, the scope of issues to be covered in a process and the role of the mediator (Bush & Folger, 1994; Riskin, 1994; Moore, 2003) the limitations on mediator authority implicit in the two commonalities noted above require mediators to ground their ability to assist parties in areas other than in formal authority. Indeed, lacking the authority to impose participation in the process or any final outcome on parties, the fundamental attribute that mediators can bring to the table (or develop at the table) is parties’ trust in them.²

These attributes of mediation are at the root of the transferability of the discussion in this paper to other areas in which professionals cannot dictate results during an interaction, but requires their engagement. Trust is key, and non-verbal communication is at the heart of trust building.

**Trust In Mediation**

² A third trust relationship exists, of course – the trust relationship between the parties themselves. While certainly an important topic with regards to the mediator role, it is not the focus of this paper, which deals solely with affecting the degree of trust parties place in the mediator.
It is well accepted a mediator needs to develop trust with the parties they are helping in a dispute in order for a successful outcome to be possible (Poitras, 2009). In fact, surveys of mediators and of parties to mediation have clearly showed that the ability to gain a party’s trust is held to be the most valuable skill of the effective mediator (Goldberg, 2005, Goldberg & Shaw, 2007). However, the current scholarship offers limited micro-tools a mediator might use with the specific aim of building trust with the parties. Instead, big-picture considerations are discussed in the context of trust; the effects of trust on mediation, rather than the effects of specific actions on trust. One such macro-finding is that parties’ trust in their mediator is an important factor not only in the important question of whether parties actually reach settlement – but also in the preliminary question of whether they agree to participate in mediation at all (Carnevale & Pruitt, 1992).

The sparse discussion of micro-tools might be connected to a challenge of macro-definition. Without knowing what one is trying to achieve in a general sense, it is hard to point concrete steps he or she should take. Simply, trust is a tricky thing to define. It is often pointed out that there is no one universal way to define it, and that all suggestions made on this count are affected by the particular perspective of the definer (Boyd, 2003; Koehn, 2003; Wang & Emurian, 2005). Ebner has suggested, as a working definition of trust in the context of dispute resolution, that it is “an expectation that one’s cooperation will be reciprocated, in a situation where one stands to lose if the other chooses not to cooperate” (Ebner, 2007, p. 141). In other words, the act of trusting someone involves accepting an element of risk, of betting on an unguaranteed occurrence. Applying this to
party-mediator dynamics within the relation process, Ebner explains how mediators depend on parties to accept risk and, in essence, bet on the mediator:

“As mediators, we also ask parties to trust us and to trust the mediation process, despite the risk and uncertainty involved and despite the fact that their expectations cannot, ultimately, be fully satisfied by us, but rather by the other party. We ask them to desist, delay, or act in parallel to other alternative processes for solving their problems, while at the same time explaining that there is no certainty regarding the outcome of the mediation process. We invite them to divulge information to us, to explore their interests with us, and to reconsider their assessments and offers – even when they are uncomfortable doing this together with the other party – and their agreeing to do so is predicated on their trust in the mediator.” (Ebner, 2012B: 206)

Such a working definition might make it easier to address trust in an empirical and practical sense, rather than philosophic discussion. Indeed, it provides a lens through which mediators can address what may be their most important question: With so much riding on the mediator successfully engendering trust in parties, what, practically speaking, should a mediator do in order to develop this trust? How does trust ‘happen’, and how can it be nurtured? Or, simply what mediator actions might make parties more likely to bet on the mediator?

Formation of trust can be related to different elements inherent in a particular mediation process. Some of these elements might be structural or social in their nature:
mediators often rely on their reputation or on their status in a particular community or network (Moore, 2003). Other elements relate to the mediator’s personal in-the-room skill-set: in addition to their general competence at process-management, parties have reported that effective mediators are those with good communication abilities, who are skilled at forming rapport with each party and who are able to engender trust in parties (Goldberg, 2005).

With regards to those last traits of communication, trust and rapport, we must ask: What, precisely, is it that good mediators do? ‘Engendering trust’, for example, is a very general concept. How does a mediator go about doing this in practice? Given the complex and hostile atmosphere mediation often provides, what can mediators do to form bonds of trust and rapport and how can their actions be applied to other professionals who need to build trust to be effective?

In order to draw together findings on trust building in mediation, one must cast a net wide enough to draw in other related notions and terms. The literature on mediation often relates to trust obliquely, or spotlights traits and dynamics that are closely connected to trust. Most notable is the term rapport. The ability of a mediator to form rapport with parties has been found to be the most important ability or skill a mediator can possess (Goldberg 2005; Goldberg & Shaw, 2007); a primary element of this rapport, as the term was used in this study, was parties’ trust in the mediator, also discussed as the mediator gaining the confidence of the parties. Their negative counterparts support these findings: a lack of integrity (including trust-breaking behavior) has been found to be widely viewed as a cause of mediator failure (Goldberg 2005).
Reading the above though, one might remain frustrated by the generalities. Rapport, good communication and trust are all clearly interrelated and of critical importance for mediation, yet how does one go about creating and improving them?

Indeed, despite the clear links established between rapport-building and trust (see Nadler, 2004; Braeutigam, 2006; Poitras, 2009), and rapport’s stated importance to being an effective mediator (Noone, 1997), one finds very little advice as to specific actions a mediator might take with the goal of developing it. This might be due to the mediation literature’s tendency to focus primarily on verbal communication. However, as we shall see, nonverbal communication plays a major role in a mediator’s ability to navigate these complex webs and help parties in their endeavor to work out their differences out – and the field of nonverbal communication contains specific and implementable findings related to improving communication, increasing rapport and building trust. We will focus on this in the next two sections.

First, however, we will note the few suggestions that have been made in the literature to operationalize trust, by pinning it down to specific phases of mediation, as well as to particular mediator actions and moves.

A mediator’s positive reputation can garner him or her some measure of trust before parties even enter the room (Goldberg, 2005), as can displaying or detailing their credentials at the beginning of the process (Exon, 2011). A mediator being observant, showing the parties respect and identifying the issues of central importance to them (Yiu, 2009) have also been described as facilitating trust-development.

Trust has been described as developing at particular points throughout the course of mediation. In other words, temporally speaking, trust fluctuates; some stages in the
process are particularly important for trust development. For example, some mediators pinpoint the opening stages of a mediation – the mediator’s greeting of the parties, and his or her introduction of the mediation process itself – as being critical moments for trust development. Others pinpoint mediator’s private sessions with parties, or caucuses, to be laden with potential for trust building.

In one survey, mediators suggested that trust was most effectively built through the mediator’s empathic listening, and to a lesser extent by the mediator displaying honesty and adherence to ethical considerations (Goldberg, 2005). Parties to mediation surveyed on this same question stressed other mechanisms and traits as affecting the degree of trust that mediators evoked in parties, highlighting mediators’ friendliness, likability, integrity, neutrality, maintaining of confidentiality and level of preparedness for the process (Goldberg & Shaw, 2007).

One way or another, these findings close a circle of trust, or as Ebner (2012B, p. 210) put it: “…not only do many mediator moves depend on trust… many (or most) mediator moves affect trust as well.”

However, this is only the tip of the iceberg, in terms of actions a mediator can take in order to affect trust-dynamics. In moving from generalities to specific actions, the role of nonverbal communication in mediation must be revisited. This revisiting is particularly important, in light of the trend, discussed below, towards video-based mediation - in which nonverbal communication plays an important role.

**Nonverbal Communication in Mediation**

In this paper, our exploration of nonverbal communication in e-mediation will relate to a wide range of cues (or actions) and elements (such as clothing or the
environment) divided into five categories as part of the METTA (Movement, Environment, Touch, Tone, and Appearance) model (Thompson, 2011). The METTA model was designed to raise awareness of each of the nonverbal elements potentially present in a mediation session by separating nonverbal elements and cues into five categories as described in the table below. Identifying each of the potential nonverbal elements and cues through METTA helps ensure that each is not overlooked. Additionally, it allows for mapping out each attribute in relation to all of the others. This is particularly important when exploring a macro trait such as trust. Trust is created through a cluster of nonverbal cues and elements that contribute to it being established in a gestalt-like manner in contrast to a single action. Another example of such a cluster-formed element is rapport building, which, as already discussed, is closely linked with trust.

Table 1: METTA Model of Nonverbal Communication

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Movement</td>
<td>Gestures, posture, body orientation, eyes, facial expressions, and head nodding</td>
</tr>
<tr>
<td>Environment</td>
<td>Location, distance between people, time, and layout of the room</td>
</tr>
<tr>
<td>Touch</td>
<td>Hand shaking, adaptors, and object adaptors</td>
</tr>
<tr>
<td>Tone</td>
<td>Clarity, pauses, “ums”, and “ahs”</td>
</tr>
<tr>
<td>Appearance</td>
<td>Clothing, accessories, and adornments</td>
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When compared to verbal communication, nonverbal communication can have a greater impact on social interactions (Patterson, 2011) and when incongruence exists between the two, it is the nonverbal cues people will rely on as being more truthful (Guerrero & Hecht, 2008; Burgoon, Guerrero, & Floyd, 2010).

While often mentioned in passing, nonverbal communication is rarely explored in-depth in the context of negotiation and dispute resolution. Most discussions in the
literature on the subject of communication in mediation have focused on verbal elements of communication. In instances when nonverbal communication is described, it is often limited to macro-level explanations. This includes rapport being described as contributing to generating understanding and mutually beneficial solutions (Goldberg and Shaw, 2007; Goldberg, 2005; Harmon, 2006) yet specific micro examples are not provided (New York Peace Institute Manual, 2008; Slocum and van Langenhove, 2003; Louis, 2008).

When nonverbal micro cues are spotlighted, they have often been linked with examples that seem to be accepted as common knowledge even though they have not been validated by research (as noted by Remland, 2009). Some works do reference the importance of nonverbal communication (e.g. Kolb, 1997) and others specifically explore the role of nonverbal communication in negotiation however the examples provided in the interpretation and application section is not specific to conflict resolution limiting its potential for guidance (Wheeler, 2009).

Wheeler (2009), Kestner and Ray (2002), Mondonik (2001), and Kolb’s (1997) work do offer examples and tips that can be beneficial to mediators but also can be viewed as either introductory or limited in data pinpointing nonverbal actions that have been validated. What few validated suggestions have been made tend to focus on recommendations for incorporating nonverbal communication elements in the use of active listening as a communication tool (Macfarlane, 2003). While each of these works offers a contribution to a greater understanding of nonverbal communication and its application in conflict resolution, there is obviously yet much to be uncovered in this area.
That fact notwithstanding, a few recent studies have offered initial substantiated findings in this area. Poitra’s (2009) study, offers seven macro traits wherein specific mediator actions can be attributed with trust building by the mediators. The seven traits are: impartiality, mastery, explanation of the process, warmth and consideration, understanding, settlement focus, advice, and legal expertise. When reviewing the list provided by Poitras, multiple traits have clear nonverbal communication aspects to them. For example, mediator warmth is most likely not only an outcome of the mediator’s verbal words but also a result of the nonverbal aspects of the mediator’s actions.

Thompson’s (2013) research expands on Poitras and Goldberg’s work by specifically exploring nonverbal communication and mediators. His work provides quantitative and qualitative data of micro and macro nonverbal cues used by mediators specific to trust and rapport building.

The tendency to focus on verbal rather than nonverbal communication is reflected in the content of mediation training courses, which serve, for many professionals, as the mediation field’s entry-level qualification. The communicative skills stressed tend towards verbal communication: listening, using questions, reframing messages and so on. Non-verbal communication exploration is usually limited to very perfunctory discussions of body language or facial expressions. While other issues we categorize as nonverbal communication sometimes also receive mention (such as the question of how to design a mediation room, or arrange seating at a table), they are not usually discussed through the lens of communication.

**Nonverbal communication elements of trust**
The role of a mediator is to guide and assist the parties during the mediation session (Harmon, 2006). Overt aspects of this guidance might include, for example, the mediator utilizing skills to directly help parties explore options and evaluate possible solutions. However, an underlying layer of guidance exists in the mediator’s ability to demonstrate positive and productive actions that each party might pick up on, and use, during the mediation session. Therefore, key mediator skills have their roots in nonverbal communication - developing rapport, immediacy, mirroring, and mimicry. These skills are all related to party-mediator trust.

Research on rapport, which has been identified as being directly connected with mediators building trust with the parties (Thompson, 2011; Harmon, 2006; Poitras, 2009) is defined as containing three elements between interactants: positivity, coordination, and mutual attention (Tickle-Degnen & Rosenthal, 1990). Specific micro examples of rapport are linked with nonverbal actions (Nadler, 2004). This includes smiling, directional gaze, head nodding, forward trunk, postural mirroring, direct body orientation, uncrossed arms, and uncrossed legs (Tickle-Degnen & Rosenthal, 1990). Through intentional manipulation of the frequency and intensity of these cues, mediators can directly influence the degree of rapport with parties. And, with rapport comes trust.

Rapport builds trust and confidence in the mediator and has been described as being achieved when the mediator is “connected” with the parties (Honeyman, 2004). Connectedness occurs when the mediator is “one of us” with the parties. That rapport must be built skillfully, in order to co-exist with authority, another source of party trust. Authority is engendered when the sensation that the mediator is “one of us” does not limit the sense that the mediator is also “beyond being one of us”, by virtue of his or her
being experienced and professional in working in conflict. This tricky juggling act is supported largely by nonverbal communication.

Immediacy – messages that signal warmth, closeness, and involvement - is another concept closely linked with trust. Immediacy has been shown to increase credibility, competence, and trustworthiness (Andersen, 2008). When looking at the research on the nonverbal actions that create immediacy (see Andersen, 2008, p. 221) one might not be surprised to see actions similar to those that have been listed as contributing to rapport and trust as well (including, e.g., direct body orientation, smiling, nodding, direct eye contact, and facially expressive). Robinson (2008) cautions us that with immediacy, as with trust building cues, it is a *cluster* of nonverbal actions that *collectively* contribute to creating immediacy; thus looking solely at one specific action, in isolation, is unlikely to give a dependable assessment of immediacy.

Mirroring and mimicry are actions, both verbal and nonverbal, that are described as being congruent between persons (Thompson, 2011). Congruent nonverbal movements, even when purposely acted out, result in that person being perceived as being more competent, trustworthy, and sociable (Woodhall & Burgoon, 1981).

Unconscious mimicry, or the repeating another’s nonverbal behavior (Knapp, Hall, & Horgan, 2012), is more likely to occur when there is a mutual goal (Lakin & Chartrand, 2003). Mimicry has also been linked with politeness (Trees & Manusov, 1998) and is described as being able to increase rapport with people (Tickle-Degnen, 2006).

Postural mirroring has been linked to creating rapport (Tickle-Degnen & Rosenthal, 1990; Hall, 2008), empathy (Curhan,) and immediacy. Therefore, it would
wise for a mediator to incorporate mirroring and mimicry, into their ongoing mediator moves such as re-framing and summarizing parties’ statements. Remland (2009) offers a note of caution, however, stating that engaging intentionally in mimicry in a manner that is perceived as disingenuous may have a detrimental effect on your attempts at building rapport.

Each of these attributes is a basic building block of parties’ trust in their mediator. As a guide, the parties look to the mediator, often subconsciously, for examples of how to act during their negotiation. This opens the door for the mediator to continually prime parties. “Priming”, in this regard, involves one person engaging in subtle nonverbal actions performed with the intention of influencing the actions of others (Thaler & Sunstein, 2008).

In our context, mediators can prime parties towards initiating or responding to rapport building with the mediator or with each other, through the power inherent in their own nonverbal actions to change the thoughts, feelings, and behaviors of others (Patterson, 2012). In this context, we note parties’ capacity to build rapport with each other, given that this occurring not only creates a generally more trust-conducive atmosphere; it also validates and reinforces the trust the party initially placed in the mediator-guide, which led the party to implement the rapport-building strategy in the first place.³

³The examples and research noted in this paper with regards to nonverbal communication are primarily grounded in findings referencing western-based culture. Some elements of nonverbal communication have been shown to transcend cultures and trigger universal understanding, such as seven basic facial expressions (Matsumoto, Frank, & Hwang, 2013). However, culture certainly has an impact on the use and understanding of nonverbal communication (See, e.g., Semnani-Azad & Adair’s (2011) study exploring different nonverbal expressions of dominance
Taking mediation into the digital age:

Returning to mediation, with the aim applying the findings above to video-based mediation, we must first understand the roots of mediation’s transition to the online venue.

Given the ever-increasing trend of people transferring of their activities online, and the growth of business and transactions at a distance, it should perhaps come as no surprise that Internet-based communication spurred the development of a subfield of the alternative dispute resolution (ADR) field focused on conducting dispute resolution processes online; this area of inquiry and mode of practice has been dubbed Online Dispute Resolution (ODR). ODR’s origins begin in the mid-1990s as an area of exploration for academics and a challenging area for hobbyists. Successes in applying ODR to eBay’s large-volume commercial caseload (Abernathy, 2003), as well as The Internet Corporation for Assigned Names and Numbers’ decision to institutionalize ODR for resolving domain name disputes (ICAAN 1999; ICANN 2003), fueled ODR’s growth, and ODR evolved through an entrepreneurial stage in which dozens of service providers offered a variety of models and processes for profit (for more on ODR’s evolution and scope, see Katsh and Rifkin (2000); Rule (2001); Ebner, 2008; for a recent discussion of ODR development, see Farkas, (2012)).

The number and spread of ODR providers has fluctuated over the past fifteen years (for general global surveys, see Conley Tyler & Bretherton, 2003; Conley Tyler,
2004; Suquet, Poblet, Noriega & Gabarró, 2010; for recent regional surveys see Pearlstein, Hanson & Ebner, 2012 (North America); Abdel Wahab 2012 (Africa); Yun, Zhe, Li & Nagarajan, 2012 (Asia); Szlak (2012) (Latin America); Poblet & Ross, 2012 (Europe). However, ODR is clearly on the rise, and is making headways in multiple arenas: private sector, government, court systems and more (see Abdel Wahab, Katsh and Rainey, 2012).

Perhaps the best conceptualization of the potential of ODR for improving dispute resolution service delivery lies in Ethan Katsh and Janet Rifkin’s (2001) dubbing of technology as “The Fourth Party”, which can be utilized in many ways by third-party neutrals to help them with dispute resolution. The Fourth Party can facilitate performance of a wide variety of tasks, as demonstrated in Figure 2 below.

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4 In truth, probably no fully accurate and comprehensive count of ODR services, sites and providers has been conducted, despite researcher’s best intentions. This is due to differences in the definition of what constitutes an ODR-related site, as well as to the natures of internet-based ventures and Internet searches. Some studies provided very specific discussion regarding their definitional approach and search parameters, e.g., Pearlstein, Hanson & Ebner, 2012; other studies, less so. In this sense, ODR’s spread and growth is somewhat of a moving target.
In the case of e-mediation (mediation conducted online through a medium provided by information technology) which is the most commonly offered ODR service (at least in the US; see Pearlstein, Hanson and Ebner 2012), the human third party mediator can view the technological fourth party as an ally, assistant and partner. The fourth party can perform some mediation-related tasks on its own, simplify others and help human mediators perform still others in a more structured, organized and timely manner.
manner. In this paper we focus on technology’s role in providing communication channels – and the challenges deriving from this.

In e-mediation, two current trends call the role of nonverbal communication to center stage. First, the primary model of tech-savvy companies with proprietary software branding themselves as e-mediation service providers seems to be in decline – giving way, instead, to a model in which individual practitioners of face-to-face mediation expand their market by offering their services online, relying on low- or no-cost technology. Another converging trend regards a developing shift in communications media. Most ODR service providers have, thus far, focused their efforts on text-based processes, with few service providers utilizing real-time video conferencing for resolving disputes. It would seem, however, that improvements in technology, changes in the nature and identity of ODR providers, and shifts in the public’s comfort with technological platforms are on the cusp of reversing this tendency towards text (Ebner, 2012A). Indeed, we note that most of the new individual practitioners noted above do so using common videoconferencing platforms such as Adobe Connect or Skype. Given that video-conferencing has become a familiar and comfortable mode of communication for many in their business and personal life, we suggest that increasingly, more mediators

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5 Recent data on the usage of such platforms leads us to believe this trend continues to grow. For example, one common platform, Skype has recently reached 250 million monthly users (Murph, 2012). Another, Google Hangouts is a part of Google+, a wide suite of communication and networking tools, which has more than 400 million users (Schroder, 2012).
and their potential parties are likely to feel comfortable with this medium for conducting mediation.\(^6\)

Believing that this tendency towards online video-based mediation is indeed the wave of the future – even given the folly of trying to predict anything the future holds with regard to technology\(^7\) – we find ourselves writing this article with a sense of urgency. Already in spin from being transitioned online, mediation practice once again needs to adapt to a new environment – the near-yet-distant environment of video-based communication. In this somewhat unfamiliar environment, nonverbal communication – of diminished importance in text-based communication - once again plays a major role. However, before we explore nonverbal communication in the online environment, we will explore a more basic issue challenging the feasibility of online mediation - the negative effects of online communication media on trust.

**Trust in ODR**

In e-mediation processes, the role of trust as a mediator’s greatest asset does not diminish; indeed – it may be compounded. However, the online environment poses significant threats to the formation and maintenance of trust. Colin Rule, one of the

\(^6\) In this regard, we note the work of Giuseppe Leon who, together with the Hawaii chapter of the Association for Conflict Resolution, is spearheading a project using Skype for conducting mediation simulations between parties situated at a distance, in order to train mediators. See, e.g., [http://www.adrhub.com/profiles/blogs/mediators-around-the-world-improve-their-mediation-skills-with](http://www.adrhub.com/profiles/blogs/mediators-around-the-world-improve-their-mediation-skills-with). Last accessed Feb 28th 2-13.

\(^7\) Indeed, some authors are already looking beyond video and suggesting the benefits of holography for ODR (see Exon, 2002).
earliest advocates for ODR, suggested that trust might very well be the Internet’s scarcest resource in a wide sense: "Transactions require trust, and the Internet is woefully lacking in trust" (Rule 2002, p. 98). The literature on negotiation and dispute resolution, as well as the literature on other aspects of online communication, has noted many specific challenges to trust –creation and -maintenance in the online environment (Ebner 2007; Ebner 2012B).

Much of the literature on e-mediation, and on trust in computer mediated communication in general, has focused on text-based communication, primarily asynchronous, such as email –based communication. This lean media, providing few contextual cues for assessing trust seemed to present the greatest challenge to trust-investigators and warranted the most attention (Barsness and Bhappu 2004, Ebner et al., 2009). This has led to detailed mapping out of the topic, such as Ebner’s (2007) list of eight discrete challenges to trust and Exon’s (2011) six building blocks for enhancing trust. However, while certain of these findings carry over to video communication, the lion’s share of insight on this topic does not. Indeed, reading through the literature one gets the sense that there is an assumption, spoken or unspoken, that in video-based communication trust would not pose any more of a challenge than it does in face-to-face communication.

Indeed, research has found video interactions to be almost as good as face-to-face interactions for trust emergence. However, even if trust can emerge to the same degree through video interactions, in a quantitative sense, qualitative differences with regards to trust development and resiliency persist (Bos, Olson, Gergle, Olson & Wright, 2002).
We suggest that video presents new challenges to trust formation precisely owing to this intuitive assumption that video and face-to-face communication are largely the same. In reality, video-based communication does not fill in the full range of cues and psychological impacts lacking in text-based communication. It only fills them in partially, and alters others – while giving the impression of providing them in full. Communicators’ expectations that video would be the same as in-person may lead them to forgo conscious filtering of the unique set of contextual cues provided by online video communication. These could pose even greater challenges to mediators aiming to build trust, given the opportunities for misreading these cues by all communicators involved.

**Developing Trust in video-based e-Mediation**

Bringing the discussion above into mediators’ attempts to develop trust with parties in the online, video-based environment, we first suggest that mediators are not venturing into wholly uncharted territory. Indeed, when using most commonly encountered videoconferencing platforms, a mediator will find that the attributes and actions conducive to building trust in in-person, face-to-face interactions carry over to the e-mediation setting to a large extent. Reviewing each of the previous mentioned nonverbal cues that contribute to trust, including those of rapport, mirroring, and mimicry, a mediator can apply each similarly in their e-mediation sessions.

However, this review and application must include care and adaptation, as characteristics of the online environment and the videoconferencing channel, do affect nonverbal communication. Awareness to some of the major effects can go a long way in facilitating simple adaptations - physical or technological. Such characteristics might
include the potential for the Internet connection creating delay or disruptions in voice or video, for poor lighting preventing people from being visible or shadowing them in particular ways; for noisy backgrounds and other audio issues, and for the camera’s positioning not showing everyone who in the room.

Approaching these issues through the lens of nonverbal communication and utilizing the METTA model, some of the challenges to trust in video-based mediation, related to these characteristics of videoconferencing, are depicted in Table 2.

Table 2: METTA Model of Nonverbal Communication and nonverbal challenges in e-mediation

<table>
<thead>
<tr>
<th>Movement</th>
<th>Are the movements of the mediator building rapport and creating trust? Are the movements of both the parties and the mediator visible? Is the mediator’s eye contact with the screen or the webcam?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environment</td>
<td>Is the location of the mediator and each party conducive to confidentiality? Is it too noisy? Are they distractions in the background such as people walking to and fro, or motion behind the mediator?</td>
</tr>
<tr>
<td>Touch</td>
<td>Is the mediator aware of movements that can be representative of anxiety or stress? Might the angle/frame of the camera restrict the mediator’s ability to perceive such movements?</td>
</tr>
<tr>
<td>Tone</td>
<td>The tone of the mediator needs to be clear with limited “ums” and “ahs” while the technology has to not disrupt the fluency of the speakers by interrupting the audio channel.</td>
</tr>
<tr>
<td>Appearance</td>
<td>The mediator’s clothing needs to display a professional presence while also ensuring the context is accounted for. Using earphones or some other type of headset might be perceived as inappropriate.</td>
</tr>
</tbody>
</table>

These concerns are formidable, not only to mediators but to other professionals in early stages of transitioning from face-to-face meetings, or from text communication, to
video-based interactions. However, these characteristics are not inherently negative. On the contrary, we suggest that through familiarity with their effects on nonverbal communication, and through approaching them with intentionality, mediators avoid trust pitfalls, but also harness these characteristics for enhancing trust-building.

In Table 3, we provide examples of how creating more opportunities for nonverbal channels to be used in video-based mediation increase the mediator’s capacity to build trust with the parties.

Table 3: Using METTA to build trust

<table>
<thead>
<tr>
<th>Movement</th>
<th>Make eye contact with the webcam, use open-handed gestures, orient your body towards the computer, head nod occasionally while listening, sit up right while occasionally lean forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environment</td>
<td>Ensure each party participates from a quiet location to limits distractions</td>
</tr>
<tr>
<td>Touch</td>
<td>Avoid fidgeting, playing with jewelry or your hair, avoid frequent touching of your face and your clothing.</td>
</tr>
<tr>
<td>Tone</td>
<td>Be prepared and confident – this helps ensure tone and paralanguage is positive</td>
</tr>
<tr>
<td>Appearance</td>
<td>Dress suitably, the same as one would for conducting a face-to-face mediation process.</td>
</tr>
</tbody>
</table>

To demonstrate the particular characteristics of nonverbal communication through video, we will briefly expound on two issues: user-webcam proximity and the frame of vision, and eye contact and screen management.

Current videoconferencing technology allows for parties’ and mediators’ nonverbal actions to be visible to each other, reinstating the nonverbal communication cues that are absent in text based mediation. However, discussants’ grasp of each other is not all-encompassing, and is more limited than it would probably be in a truly face-to-
face, in-presence interaction. First, sensory information is limited to sight and sound. Odor and touch are still missing. Second, even sight and sound are affected, and limited by the definition of webcams, the sensitivity of microphones, and the quality of internet connection. In addition to these limitations, one significant limitation exists with regard to the scope of vision. Parties and mediators do not see each other in their entirety. They see each other, on screen, in a window. The size of the window and how much of the user’s body and background is visible might be affected by the choice of videoconferencing software and the hardware specifications of the webcam. However, one issue relating to the way each actor is viewed on-screen, which can be manipulated to serve trustbuilding, regards party-webcam proximity. Distance between the user and the webcam, as shown in the three examples below, can affect the process by contributing to, or hindering, trust building, based on the visibility of the nonverbal actions of the actor - parties or mediator.
Image One demonstrates how one setting might limit the visibility of nonverbal cues, due to the actor being too close to the webcam. Due to this proximity, the screen is filled with his face – a somewhat artificial view in its own self – leaving his hands and body, as well as his background, invisible.

Image Two shows how another setting might serve to limit the visibility of nonverbal cues due to an excessive degree of distance between the actor and the webcam. While hands and body are now visible, micro expressions of the face and hands might easily go unnoticed or be misconstrued. In addition, external motion or actions in the background are easily visible and might distract or confuse.

Image Three demonstrates what we suggest as a “just right” balance for webcam-actor proximity in mediation settings. This distance allows for actors’ facial expressions to be clearly visible as well as their hand gestures, posture, and body orientation; some background is visible for providing cues but attention is still directed towards the actor.
As noted above, making or maintaining eye contact is associated with trust, trustworthiness and liking (and by implication, rapport) (see Zeigler-Kratz, 1990; Beebe, 1980; Mehrabian, 1967; Andersen, 2008); indeed this point is often made in mediation training. In the online video-based mediation setting, this important cue remains a bit elusive and contrived, due to the characteristics of most videoconferencing platforms and the way computers are constructed. A mediator looking at a party’s image on the screen, even if looking directly into the party’s eyes, will appear to be looking elsewhere to the party. This is due to the fact that the mediator’s computer webcam is not located behind the screen, but elsewhere - usually, although not always, at the top of the screen.

Looking at parties’ eyes on the screen, in such a case, the mediator will appear to the party not to be focused on him or her, but rather to be looking downwards at something else, and not meeting their gaze. In this case, following the instinct to aim eyes towards eyes, and practicing training to the letter, would backfire due to the mediator adapting for media characteristics.

One solution is for mediators to retrain themselves from maintaining contact with parties’ eyes, and instead to practice looking directly into the webcam, giving the impression that they are gazing directly at parties. This, however, hinders the mediator’s own ability to view parties’ nonverbal cues. Another simple solution to alleviate this issue, which works with many types of videoconferencing platforms (including, e.g., Skype, G-talk, Google Hangouts, and ooVoo), is to move - or “drag” - the video window showing the party to a point on the screen as close to the webcam as possible. This way, when looking at the party, the mediator’s eyes are angled towards the party, giving the

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8 For example, parties using computers without integrated webcams might have the camera set up on their table, below the screen and to the side, pointing upwards.
impression of eye contact. Of course given that in reality no real eye contact is made, mediators’ actions in this regard will certainly feel artificial – however, they should enhance their ability to build trust and rapport with the parties.

These examples demonstrate how nonverbal communication through video, while sharing much in common with its off-camera, face-to-face counterpart, has unique characteristics that must be taken into consideration. Attention to the characteristics of video communication and how they affect the elements identified in the METTA model is likely to eliminate pitfalls and create uncover new opportunities for trust building.

**Future research and implementation**

Considering that online video-based mediation - and video-based interaction in general - is fairly new, there are many opportunities for research to be conducted measuring different aspects of the engagement process, the role of technology, and the impact nonverbal communication has on the session. Research can explore the initial expectations as well as post-process feedback from both mediators and parties offering for a multi-perspective view of video-based mediation.

Granted that mixed or combined methodologies offer unique perspectives into conflict resolution research (Druckman, 2005), both qualitative and quantitative means of research can be applied to this area of exploration. Surveys measuring various mediator skills and scale-based party feedback are current measures often employed in community mediation centers for measuring mediator effectiveness and process quality. These can be adapted and implemented for assessing nonverbal communication elements of online
video-based mediation. These can be complemented by ethnographic interviewing of mediators and parties.

Research on video-based online mediation holds great promise for online as well as for traditional face-to-face mediation, owing to the capacity to record and review entire interactions in their original form. For example, a future study can explore the role of nonverbal communication during the mediator’s introduction to the process. Having the mediator record his or her introduction and it being reviewed by expert raters allows many potential raters to be used regardless of their location as the file can be shared electronically. Additionally, because reviewing the process is conducted by means of the raters using the same technology and viewpoint encountered by parties in the actual mediation, it is arguably more accurate compared to people rating a mediator’s introduction recording of an in-person mediation session. Simply, a recording of an online video-based mediation process contains all the information and cues that were experienced by parties in the actual recording. This, as opposed to reviewing a video-recording made of a face-to-face mediation session, in which case the reviewer is viewing a recording on a screen or monitor which was shot from a somewhat arbitrary point of view (not that of the actual parties), and which leaves out all the environmental and some of the nonverbal cues (e.g., the reviewer does not see a window in the corner which was not captured by the camera’s frame, even though the actual parties did; the reviewer sees parties shaking hands with the mediator, but does not experience the sense of touch). Taking this into account, as further research emerges online video-based mediation will contribute to a greater understanding how mediators – online and in a traditional setting, can be effective and develop trust.
We suggest that our own suggestions, and any further research outcomes, are not limited to assisting mediators. Establishing interpersonal trust is always a challenge, context notwithstanding. Findings on how to do it better will benefit other professionals whose efficacy depends on their ability to work with others at a distance in a collaborative manner based on establishing trust and rapport. Examples of such professionals might be team members engaged in projects spread across a large geographic area; corporate employees based in different locations; interviewers of any sort, such as academic researchers or journalists; diplomats engaged in international diplomacy; negotiators conducting their business online, online teachers and online counselors. Trust, so essential to mediators, has a market ranging far beyond mediation – and the ripples of research into trust in the context of mediation is likely to spread far.

Conclusion

Trust building is a necessary skill for mediators to be effective. Previous research has uncovered how mediators and parties believe trust can be created, while research in nonverbal communication has demonstrated the micro cues that correspond with trust building. Similarly, other traits have been identified, which are based primarily on nonverbal cues - such as rapport, immediacy, mirroring and mimicry - that are associated with trust and support its development.

As Internet-based video technology proliferates as a communication channel for professional and private uses, mediators and other professionals whose practice relies on trust building must learn to operate in the video environment in a trust-promoting manner. Intentionality regarding nonverbal communication is an important component of
this emerging new skillset. Mastering these skills will allow professionals to overcome trust-degrading media effects and conduct their business successfully at a distance.
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