By Chris Macturk

In Tomorrow’s Lawyers, Richard Susskind writes, “It is exciting and yet disconcerting to contemplate that there is no finishing line for IT and the Internet.”

Susskind’s observation is equally applicable to the future of family law mediation. Like the Internet itself, there are ever-expanding and seemingly endless options to consider — options born of rapidly evolving applications of new and developing technology and clients’ desires for more access to a greater diversity of dispute resolution opportunities at a lower cost.

Online Dispute Resolution (ODR) has existed for many years, with perhaps its origin and infancy credited to eBay’s ODR process through SquareTrade which began in 1999. SquareTrade’s technology provides the opportunity for parties to resolve disputes concerning eBay purchases with or without the aid of a mediator.

A staggering number of disputes have been resolved using ODR. Modria, a newer ODR provider, states on its website, “Our founders created the online dispute resolution systems at eBay and PayPal which have processed hundreds of millions of disputes, 90 percent through automation — without human intervention.” While technology can increase access to justice at a lower cost, resolving a dispute over whether a Cabbage Patch doll was really “like new” doesn’t seem to compare to the difficulties presented in disputes involving real children. Even so, ODR is currently being offered and attempted for family law mediation.

Online mediation

While many of the current ODR providers focus on internet-based commercial matters, companies such as FamilyResolve, based in Australia, provide ODR for family law disputes.

Australia’s Family Law Act 1975, as amended by the Family Law Amendment (Shared Parental Responsibility) Act of 2006, provides that all persons who have a dispute about children must be able to press the “mute” button or “hide” one party, so the other party can speak uninterrupted. Cams.

How participants and the mediator should interact with each other online is but one question to answer when it comes to ODR for family law disputes. Many others exist, such as what constitutes Artificial Intelligence (AI)?

IBM’s Watson is seen participating in a group therapy session in a recent television commercial featuring Star Wars’ actress Carrie Fisher. While Fisher, the human, plays the part of the therapist who runs the group and Watson and other robots are the group members, the inverse could soon be with us — and it could be more effective for us humans.

Tell it to the avatar

We are being primed for the next stage in the human-machine interface. What happens when we humans speak with a computer — through an “avatar” — may not be exactly what we expected.

In a research study described in The Economist, half of the participants were told (truthfully) they would be interacting with an artificially intelligent virtual human. The others were told (false) that the avatar (named Ellie) was not truly artificially intelligent, but controlled by a human being, “a bit like a puppet, and was having her say

Remarkably, those who thought they were really dealing with another human were less forthcoming. Thinking they were truly speaking with an artificially intelligent avatar, however, made them more open, honest, and willing to disclose personal information.

Could this happen in mediation of a family law dispute? Could an AI avatar mediator enable more open and honest discussion between humans, creating improved chances of finding that “win-win” solution?

Technology is — and will continue to be — “disruptive” and “transformative,” forcing changes to current methods and established norms. Its effect on family law mediation will be no different.

As of 2014, online dispute resolution has its own international journal, surely a milestone in development of this problem-solving tool. “Over time, it will be clear that ODR is not simply a more efficient process than ADR,” just as practitioners realized that alternative dispute resolution was not simply a more efficient approach than what happened in court, according to a contribution by Orna Rabinovich-Einy & Ethan Katsh to the 2014 inaugural International Journal of Online Dispute Resolution. “ADR involved not only new tools and techniques, but different assumptions, principles and values, and so will ODR,” the authors said.

Even without a “finish line” to struggle toward, lawyers can look to the principles and values that continue to motivate them to serve their clients, in order to make the best use of this developing technology.