

# Online Dispute Resolution: Methods and Effects

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**Abstract:** *The concept of online dispute resolution came with the development of e-commerce. It is a branch which resolves the dispute between parties without interference of court. It includes arbitration mediation and negotiation. It also includes consumer to consumer disputes. With the emerging to globalisation the concept of online dispute resolution emerging day by day. The purpose of this study is to present the main facets of online dispute resolution, including a definition of the term, the types of resolution available, and the most recent legal regulations in this area. The article is a study of ODR, online mediation and electronic arbitration. It includes their uses and their relationships with e-commerce. The paper is regarding primary aspects of online dispute resolution, its definition and its growth and development. It also includes the relationship between ODR and technology. Research paper is discussing the two forms of ODR: online mediation and electronic arbitration.*

## 1. Introduction

Thoughts with respect to online dispute resolution should be headed by giving their means of working – namely the Internet. A short description of the history of the Internet shows the speed of development of the network, which has transformed from an academic project, through a federal military plan, into a public good and the most powerful medium of the 21st century. This is confirmed by data that show a constant increase in the number of Internet user.<sup>1</sup>

The telecommunications market is managed by International Telecommunication Union ITU it is an international organisation which monitors the development of the Internet. In 21 century internet has make change revolutionary in many aria of human life. It fulfils need of human and makes its life easier. It is a source of information and communication medium.<sup>2</sup>

The Internet has had an effect on many areas of human life, including law. With Its fast growth has make many positive effect, the computerisation of certain areas of law, but has also highlighted the non-compliance of the legal framework with new realities (such as within the scope of intellectual property rights). With regard to access to information the global character approaches of the Internet has changed, its effecting on copyright and press law. New methods of communication have improved many areas of law – including modernising processes for the out-of-court disposal of disputes, examples of which are constituted by systems for online dispute resolution. The purpose of this article is to analyse new methods for out-of-court dispute resolution that could be used as alternative options in the future.<sup>3</sup>

## 2. The Definition of Online Dispute Resolution

The concept of Online Dispute Resolution (ODR) has been emerging in various jurisdictions due to globalization and success of ADR. The various advantages of ADR include less time-consuming, speedy, less costly and more convenient. These advantages make it more profitable over traditional litigation methods. Due to the lack of appropriate

e-commerce laws, time-consuming litigation process and overburdened Indian courts, ODR is a more useful way to deal with the disputes relating to e-commerce in India including consumer grievances. ‘Online Dispute Resolution (ODR)’ has been defined to mean using information technology to carry out ADR. ODR is a means of dispute settlement whether through conciliation or arbitration, which suggests the use of online technologies to help the resolve of disputes between parties. It has comparisons with offline conciliation and arbitration but the information management and communication tools which are used during the proceedings, and may apply to all or portion of the proceedings, also have an impact on the methods by which the disputes are being solved.<sup>4</sup>

### 2.1 ODR and Technology

Online dispute resolution establishes an application of existing forms of ADR that permits its use on the Internet. The main statement of alternative methods of dispute resolution – that is, the existence of a third party during the process of reaching an agreement – remains unchanged. However, this has achieved a unique character because of the use of modern methods of communication. There are therefore indirect ways of submitting requests or evidence, as well as of carrying out a full online process together with issuing a judgement at the end of proceedings (WIPO).<sup>5</sup>

Each method of ODR may use a changed technological system, modifying the course of a given process. Online mediation can take different forms, from a fully automated Internet platform using a portal based on electronic chat or video conferencing, to exclusive use of the asynchronous form of communication, i.e. through methods such as e-mail (RisolviOnline.com). The first option constitutes a system involving video meetings or online conversations (chat), during which possibilities for dispute resolution are analysed with the mediator – a more direct form of ODR. The second option is used, for example, in mediation within the scope of pecuniary obligations. Using a system of submitted offers, the parties agree on an amount that is acceptable for all parties without the need to meet directly. Electronic arbitration, which refers to amicable proceedings conducted via the Internet, may take either a synchronous or

<sup>1</sup> Karolina mania, “online dispute resolution: the future of justice” Available at <https://doi.org/10.1016/j.icj.2015.10.006> (last visited 13 April 2019)

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Pankhudi Khandelwal and Samarth Singh, blog, “ODR and e-commerce in India” Available at <http://legalreform.com/odr-e-commerce-india> (last visited 15 April 2019))

<sup>5</sup> Ibid

asynchronous form .ODR techniques can be used in many ways, with different levels of integration into proceedings. Systems that have an intensive impact on proceedings may “support” parties by suggesting arguments or assessing their levels of satisfaction at each stage. by using advanced technology allows the creation of computer algorithms that analyse all data entered into the system.<sup>6</sup>

## 2.2 Methods of ODR

The number of electronic forms of alternative methods for dispute resolution changes over time, but in mediation 74% and arbitration 40% cases decided by ODR. Just behind these is negotiation. Modern hybrid forms of ADR differ from classic models, being based on chosen elements of mediation and arbitration that constitute innovative and alternative joint methods. The leading examples are Med-Arb and a mini trial. At a European level, modern solutions have not been adopted properly.<sup>7</sup>

Many ODRS web sites are presently operating. A number of prior projects have failed to work or are no longer in service. Some of these web sites employ traditional methods of ADR. The only difference is that instead of meeting face to face, the parties interact online. Other websites offer different forms of dispute resolutions. Currently, most of these sites are experimental projects still in development, which also means that they do not charge for their services. Each ODRS has its own procedure for resolving disputes.<sup>8</sup>

### a) Online Mediation

To analyse the legal grounds for using online mediation, it is necessary to denote to regulations with respect to alternative methods of dispute resolution. Literature on the subject defines two meanings of the term “online mediation” – the first relating to the place in which the legal relation for the dispute was created, and the second having its basis in the online tools used to resolve the dispute, regardless of the place of its creation.<sup>9</sup> The procedure of online mediation starts when an e-mail is sent to the parties having the basic information on proceedings. Virtual meetings are directed in chat rooms. These can be carried out separately with each party or concurrently with all parties. The electronic tools used for communication purposes. Online mediation is usually conducted through text-based communication and meetings in real time by teleconferences.<sup>10</sup>

### b) Virtual Magistrate Project

VMP is one of the earliest and most talked about ADR online sites. The National Centre for Automated Information Research (“NCAIR”), Cyberspace Law Institute (“CLI”), AAA, and the Villanova Centre for Information Law and Policy sponsored it. The VMP heard cases arising solely

from Internet-related activity i.e. complaints about electronic messages and postings, copyright and trademark infringement, misappropriation of trade secrets, defamation, fraud, deceptive trade practices, inappropriate materials, and invasion of privacy. An individual wishing to make a complaint e-mailed the VMP describing the alleged wrongful conduct and the names of the parties involved. The Villanova Centre for Information Law and Policy received the complaint and the AAA reviewed it before formally accepting it for resolution. “The actual proceedings occurred via e-mail. In making a decision, the VMP Magistrate considered netiquette, the contracts involved, applicable laws, and the willingness of system operators to enforce the decisions.”<sup>11</sup>

### c) Online Ombuds Office

It was established in 1996, the OOO is the beta version of VMP. Sponsored by the same organizations that sponsored VMP, the OOO only resolves disputes through an ombudsperson, whose function is very similar to that of an mediator. The ombudsperson does not make decisions on disputes. The complainant fills out an electronic form describing the dispute that arose from an online activity. The ombudsperson replies to the e-mail message and attempts to contact the other party involved. The service provided by the OOO, like the VMP, is free of cost to the parties. It resolved disputes involving online businesses and trademark disputes involving domain names. It does not have a transcript of those disputes, but OOO's website offers a transcript of one case that it helped resolve.<sup>12</sup>

### d) Electronic Arbitration

Electron arbitration is less popular than online mediation, with the adoption of UNCITRAL model in 2010 gave importance to electronic arbitration. The most important in Europe being the World Intellectual Property Organization Arbitration and Mediation Centre, which was established in 1994 and has conducted electronic arbitration proceedings since 2010.<sup>13</sup>

The procedure begins after a complaint is submitted via electronic means, which is confirmed by feedback sent by WIPO. A formal examination of the complaint is done which including with regard to paying the fee, dependable on number of domain names included in the complaint and type of panellist (a complaint compliance review) – for up to three days. If there are any deficiencies, the complainant can remove them within five days. After authorization of the correctness of a complaint, the relevant procedure starts in the form of formal administrative proceedings – about which the other party is informed via electronic means of communication. The other party can submit a response within 20 days. If this is not submitted, the panel deciding

<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup> Lan Q. Hang, Comment, “Online Dispute Resolution Systems: The Future of Cyberspace Law”, 41 Santa Clara L. Rev. 837 (2001) Available at:

<http://digitalcommons.law.scu.edu/lawreview/vol41/iss3/4> (last visited 14 April 2019)

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Lan Q. Hang, Comment, “Lan Q. Hang, Comment,” Online Dispute Resolution Systems: The Future of Cyberspace Law”, 41 Santa Clara L. Rev. 837 (2001) Available at:

<http://digitalcommons.law.scu.edu/lawreview/vol41/iss3/4> (last visited 14 April 2019)

<sup>12</sup> Ibid

<sup>13</sup> Online Dispute Resolution Systems: The Future of Cyberspace Law”, 41 Santa Clara L. Rev. 837 (2001) Available at: <http://digitalcommons.law.scu.edu/lawreview/vol41/iss3/4> (last visited 14 April 2019)

on the dispute will make a decision based on the evidence provided by the complainant. After 20 days response period, the Centre will appoint a list of members of an administrative panel, consisting of one or three people. Upon the consent of both parties, a single-member panel will be appointed. If one of the parties raises an objection, the complainant and other party are entitled to choose three people from the list of panellists. The Centre will endeavour to appoint one panellist from the list of candidates provided by each party, with a third panellist appointed individually for each case. The panel will send its decision on the complaint within 14 days to the Center, which then delivers the decision to the parties, the registrar and ICANN. Within 10 days of receipt of the decision, the registrar is obligated to transfer the domain name, in accordance with article 4(k) of UDRP.<sup>14</sup>

### e) World Intellectual Property Organization

One ODRS that differs from the others is the expedited procedures for arbitration of domain name disputes and other intellectual property disputes. These sites encourage arbitration through digital communication, including online chatting as well as audio and tele video conferencing." A third party who believes that a domain name infringes on his intellectual property rights can apply to the WIPO Centre to begin online mediation." The purpose of the expedited procedures was to avoid lengthy delay through traditional litigation." WIPO is limited, however, to online intellectual property disputes only."<sup>15</sup>

## 2.3 ODR in Consumer Disputes

The resolutions of consumer disputes that arise on the basis of commercial transactions by means of electronic communication are an example of effective implementation of ODR techniques. The creation of a system that enables the conclusion of disputes between a consumer and trader using the same medium over which the purchase or sales transaction was made – that is, the Internet – is a logical extension of introducing e-commerce.<sup>16</sup>

## 2.4 Benefits of ODRS

ODRS gives a number of benefits to online users. Many of the benefits relate to the advantages commonly associated with traditional ADR, but ODRS's value is twofold because of online communication. "The process will allow for greater flexibility, more creative solutions and quicker decisions." The combination of ADR and online communication will enhance a user's online experience.<sup>17</sup>

<sup>14</sup> Ibid

<sup>15</sup> Lan Q. Hang, Comment, "Lan Q. Hang, Comment," Online Dispute Resolution Systems: The Future of Cyberspace Law", 41 Santa Clara L. Rev. 837 (2001) Available at: <http://digitalcommons.law.scu.edu/lawreview/vol41/iss3/4> (last visited 14 April 2019)

<sup>16</sup> Pankhudi Khandelwal and Samarth Singh, blog, "ODR and e-commerce in India" Available at <http://legalreform.com/odr-e-commerce-india> (last visited 13 April 2019)

<sup>17</sup> Lan Q. Hang, Comment, "Lan Q. Hang, Comment," Online Dispute Resolution Systems: The Future of Cyberspace Law", 41 Santa Clara L. Rev. 837 (2001) Available at:

### a) Suitability

The main benefit of ODRS is that parties will not have to travel to resolve their dispute." Many online transactions occur between parties located in different areas. In some cases, the parties may reside in different countries. If the parties are far apart, at least one party will have to travel far to litigate. This may be time consuming and expensive. Online communication solves the problem because parties can sit at their home computers and settle the matter.<sup>18</sup>

### b) Low-Cost

Litigating a dispute can be costly. A major portion of the expense is the cost of hiring an attorney. In many instances, parties engaging in online dispute resolution through ODRS will not have to consult an attorney at all. For instance, if each party knows the range within which he will settle the case, then the parties may use a settlement instrument type of ODRS to resolve their dispute. Additionally, ODRS can save the parties the cost of long-distance calls and teleconferencing.<sup>19</sup>

### c) Authentic to Online Users

Related to the Law Merchant concept, online users are more likely to adhere to the judgments of their own virtual communities than the laws of physical space far away from where they live. People are more likely to accept a system of law that evolves from the public it governs. This could be true of computer-generated communities.<sup>20</sup>

## 2.5 Drawbacks of ODRS

Critics of ODRS point to a number of difficulties, and they discount the benefits of the advantages. The most salient attacks argue that mediation or arbitration through the Internet is not really mediation or arbitration, and therefore, it does not offer the same advantages of traditional ADR. This argument and the following present just some of the problems ODRS as following.<sup>21</sup>

### a) Loss of the Human Issue

One criticism of ODRS is that online mediation and arbitration offers no face-to-face contact, a applicable factor in resolving disputes through mediation and arbitration. The mechanics of mediation and arbitration through e-mail lose the dynamics of the traditional ADR process, where the parties meet in the same room and face each other. For instance, mediation is thought to help bring about solutions because it forces the parties to confront their emotions and vent their feelings. E-mails may not carry the same emotionally-charged tones, thereby hindering the mediation process. Furthermore, because the parties cannot see each other, they will not be able to read those same

<http://digitalcommons.law.scu.edu/lawreview/vol41/iss3/4> (last visited 14 April 2019)

<sup>18</sup> Ibid

<sup>19</sup> Dr. N.V. Paranjape, law relating to arbitration and conciliation in India 375 (central law publication) 5<sup>th</sup> edn. 2013

<sup>20</sup> Lan Q. Hang, Comment, "Lan Q. Hang, Comment," Online Dispute Resolution Systems: The Future of Cyberspace Law", 41 Santa Clara L. Rev. 837 (2001) Available at:

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<sup>21</sup> ibid

emotional messages through body language as they could if they were in the same room together. Another problem is the fact that mediators/arbitrators may not be proficient in online communications, and this weakness is detrimental to the dispute resolution process where the mediator must be a highly skilled communicator<sup>22</sup>.

#### b) Lack of Confidentiality and Safety

One major obstacle facing ODRS is the protection of sensitive material. In traditional ADR, there is no physical record. If someone wanted to record the proceedings, then the others would know about it unless someone brings in a hidden recorder. No such guarantee exists with ODRS. Someone could easily print out e-mails used in the process and distribute that information without anyone else's knowledge. Messages on user groups are also vulnerable. The feeling of confidentiality in ADR proceedings promotes a feeling of trust among the parties. Protecting trust and the discussion process in ADR is very important because parties are more likely to speak freely when they can be sure that their words will not come back to be held against them.<sup>23</sup>

#### c) Trouble of Enforcing Arbitral Agreements

To ensure the legitimacy of the ODRS process, parties engaged in arbitration must believe that the decisions rendered are enforceable. The U.S. Supreme Court has supported ADR by enforcing arbitration decisions. Not only does ODRS have to ensure enforceability of arbitral awards to gain legitimacy, ODRS needs to reassure Internet users that they will have the equivalent of their "day in court." "One tool to help enforce decisions is through "cooperative exile." "Taking the idea that cyberspace law should be based upon custom; the cooperative exile model requires the cooperation of system operators and network administrators. A party that does not live up to his arbitration agreement may be exiled from the Internet."<sup>24</sup>

#### d) Shifting Power Away from the Online Consumer

ODRS raises concerns that arbitration clauses in contractual relationships will shift power away from consumers. The fear is that businesses will draft arbitration clauses to suit their needs such as choice of arbitrator and location of arbitration. Businesses may write off many of the advantages offered to consumers by ODRS, especially if the contractual agreement between the parties expressly prohibits the use of ODRS. Additionally, courts have the obligation of ensuring that the parties have equal standing before the law. Arbitrators, especially those drawn from the industries in which they are experts, are not bound by the same duty, although they do have a duty of fairness.<sup>25</sup>

### 3. Conclusion

It is autonomy of parties in choosing a way to settle a dispute by common courts or by using alternative methods. The scope of ODR methods is not unlimited. Online mediation deals with a wide range of methods, i.e. consumer and family law. However, there are many legal issues, such as lack of trust, Violation of legal liability, number of mental barriers etc. which effects mediation.

Online dispute resolution is a solution to the growing desires of the Internet community. ODRS is an alternative to taking one's dispute from the place where it started to a legal system ill-equipped to handle such cases. It offers fast, convenient, and cheap service, the trademark of doing business online. Acceptance of ODRS by the virtual community is a great achievement in it.

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<sup>25</sup> Ibid