

WHAT IS ONLINE DISPUTE RESOLUTION?

In the Internet context parties located in different parts of the world make contracts with each other at the click of a mouse. However litigation for these disputes is often inconvenient, impractical, time-consuming and expensive due to the low value of the transactions and the physical distance between the parties. **Online Dispute Resolution (ODR) is often referred as a form of ADR which takes advantage of the speed and convenience of the Internet and ICT.** ODR is the best (and often the only) option for enhancing the redress of consumer grievances, strengthening their trust in the market, and promoting the sustainable growth of e-commerce. Hence, e-commerce is the most natural field for the application of ODR, in particular for settling complaints that are characterised for being:

- cross-border
- low value
- high volume
- occurred between Internet users

For that reason there is ongoing work to enhance the use of ODR for resolving these types of disputes. Presently the most significant initiatives are:

1. The European Commission is due to publish a Directive on Consumer ADR and a Regulation on Consumer ODR establishing an ODR Platform by the end of November. For background information see Digital Agenda for Europe COM (2010)245 p. 13, and Green Paper on ADR (2001) and Responses at http://ec.europa.eu/consumers/redress_cons/adr_en.htm#consultation.
2. UN Commission for International Trade Law (UNCITRAL) Working Group III (Online Dispute Resolution) is drafting procedural rules for ODR to settle disputes arising from e-commerce. See A/CN.9/WG.III/WP.109 - Online dispute resolution for cross-border electronic commerce transactions: draft procedural rules. Available at http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html

A few success stories of ODR providers:

- ✓ **eBay/PayPal** employ a tiered ODR process where parties first try to voluntarily settle their disputes by using assisted negotiation software; when they cannot reach a settlement the claim escalates to adjudication. PayPal freezes the money involved in the transaction of the dispute, thus ensuring the enforcement of the final decision. It resolves over 60 million disputes a year.
- ✓ **CyberSettle** uses blind-bidding negotiation to settle insurance and commercial disputes. Parties make confidential offers that will only be disclosed when both offers match certain standards (usually ranging from 30 to 5 percent) or a given amount of money. The settlement is the mid-point of the two offers. CyberSettle has been working online since 1998 settling over 200,000 disputes with an accumulated value of more than USD 1.6 billion.
- ✓ **Domain Names:** The UDRP, developed by ICANN, is an adjudicative ODR process that allows trade mark owners to fight cybersquatting (domain name holders, who had registered a domain name in bad faith for the purpose of reselling it for a profit, or taking advantage of the reputation of a trademark). The UDRP is similar to non-legally binding (but enforceable) arbitration. The most important ODR service provider is WIPO Mediation and Arbitration Centre. Thus far, more than 20,000 disputes have been resolved.

CHALLENGES IN THE GROWTH OF B2C ODR

Despite the need for ODR, its growth has been slow when compared with traditional ADR, accounting for a very limited number of successful ODR providers. Presently, ODR is used for specific subject matters (e.g. the UDRP for domain names) and it operates in specific market places (e.g. PayPal for eBay). Some of their defining features are that they incorporate incentives for parties to participate and rely on non-legalistic self-enforcement mechanisms.

What are the hurdles for the growth of ODR in the consumer context?

- Lack of awareness: Most consumers and traders have not heard of ODR.
- Traders do not have incentives for using external ODR. When consumers propose traders to use ODR (e.g. ECODIR) they often refuse as they perceive it as biased entity (i.e. a consumer tool).
- Private and for profit ODR providers are mistrusted. The funding of ODR providers by traders may raise issues related to the independence and impartiality of ODR services.
- It is difficult to designing ODR processes that consider asymmetric relationships taking into account the needs of repeat-players versus one-time-users.
- Applying consumer law and procedural standards to low value disputes
- Costs and red-tape: Investment in ODR may not justify economies of scale.
- Added cross-border challenges:
 - Language barriers
 - Complexity of conflict of laws
 - Costs
 - Enforcement

THERE IS STILL NEED FOR ODR: KEYS FOR ITS GROWTH

The law should seek for ways to overcome the hurdles in the growth of ODR. An effective ODR will install greater confidence in consumers while increasing their access to justice and recognising consumers' legitimate rights. There are a number of strategies that can be put forward to enhance the use of ODR:

- ✓ Business and consumer education and awareness campaigns
- ✓ Investment in dispute avoidance
- ✓ Tiered processes: resolving disputes at the earliest possible stage
- ✓ Financing: Public/ industry/ trader/ case fees/etc.
- ✓ Free ODR Platform coordinating ODR services
- ✓ Minimum standards to guarantee fair outcomes
- ✓ Accreditation of ODR providers
- ✓ Making it mandatory in certain sectors or generally in all cross-border disputes?
 - Duty by the trader to link on its website and in other communications to the ODR platform and stating a commitment to participate/comply
- ✓ Incentives for traders
 - Trustmark: public or private?
 - Black lists: Name and shame on the ODR platform?
 - Condemn of legal costs
 - Pressure by payment providers
 - Allowing pre-dispute binding ODR?