

Developing the Legal Regulation of Online Dispute Resolution

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Abstract: Online dispute resolution has the potential to challenge long-established stereotypes across various facets of society, including culture, politics, the economy, social perspectives, and existence. It's evident that as our mutual understanding becomes increasingly intertwined with communication, the rapid and efficient resolution of issues in this realm is only a matter of time. In the 21st century, the Internet has revolutionized various aspects of life, serving as a ubiquitous source of information, a vital means of communication, and a global platform for commerce. It has acted as a catalyst for integrating modern technological solutions into established operations. Consequently, the legal domain is poised to exert a substantial influence on public life, especially in mediation and arbitration. In the future, the definition of "Written form" should be expanded to include "letters, e-mails, and telegrams," and legal regulations should be simplified accordingly. The international implementation of this practice, including telegraphic forms, offers numerous advantages, facilitating the transmission of requests, petitions, and complaints over long distances while preserving their content. The need for electronic dispute resolution is underscored by the global expansion of digital buyers, which was expected to reach 2.05 billion in 2020. E-commerce companies have been instrumental in promoting the healthy growth of online commerce, including the establishment of efficient and prompt dispute resolution mechanisms to safeguard the rights of stakeholders and enforce obligations. This trend of choice is gaining prominence. The aftermath of the COVID-19 pandemic has expedited the transition to online dispute resolution in the legal sector. Whether implemented at the international or domestic level, there are universal principles that must be adhered to in digital mediation.

Keywords: Online Dispute Resolution. Social Perspectives. Legal Domain. Written Form. Global Platform. Information Security.

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1 Introduction: Mediation OR Dispute Resolution

Citizens are increasingly turning to the courts to protect their rights, leading to a growing workload for the judicial system. This surge not only prolongs dispute resolution but also escalates legal costs in relation to the value of the disputes. Mediation, as an alternative dispute resolution method, offers a clear advantage due to its cost-effectiveness and swifter process compared to traditional court proceedings. However, without the advancement of e-mediation, the risk of an

overwhelmed court system with substantial backlogs and protracted proceedings remains a significant concern. This is why many countries worldwide are exploring various approaches to mediation, reflecting a rising interest in alternative dispute resolution over litigation.

Enhancing digital signature knowledge and information and communication technology skills is crucial for comprehending and analyzing e-mediation while intensifying relevant factors. Recent developments suggest that AI arbitration could be employed to handle procedural tasks in August 2023 disputes in Guangzhou. This includes intelligent case acceptance, multilingual real-time translation, blockchain-based evidence recognition, and submission of opinions and statements, potentially quadrupling the efficiency of dispute resolution.

With e-mediation, individuals can use their smartphones or computers to resolve disputes from their location. When encountering an electronic dispute, consider options such as negotiating independently, engaging with a known party, or seeking legal advice from local government agencies or bar associations. Online mediation is often the preferred choice due to its convenience and accessibility. Comparative and synthesis methods were used in this research.

Adversarial adjudication in public courts has always been the primary mode of formal dispute resolution. But it is bunged with the problems of backlog, delay and its limited accessibility to many citizens. These reasons have forced to search for alternatives. This movement began in the latter half of nineteenth century globally. Many alternatives were proposed. But mediation has emerged as the most viable alternative. Mediation is a voluntary dispute resolution method that attempts to settle disputes with an amicable approach.¹

2 The Legal Regulation of Online Dispute Resolution

Online dispute resolution offers the advantage of being quick and user-friendly. With a smartphone, individuals can easily access the necessary information and follow on-screen instructions to navigate e-mediation. Moreover, the absence of physical meetings provides the flexibility to engage in the process from anywhere and at any time. Even if one opts for court proceedings, legal consultations, or independent negotiations, there are instances where access to document preparation or advice can be challenging. Additionally, e-mediation is often cost-effective or even free. However, it is important to note that online mediation may not be suitable for all types of disputes.

¹ Revista Brasileira de Alternative Dispute Resolution. Anirban Chakraborty, Shuvro Prosun Sarker. Resolving disputes with an healing effect: the practice of mediation in India. DOI: 10.52028/rbadr.v4i8.4. p 62.

A drawback of online dispute resolution is its limited applicability to certain dispute categories, and in some cases, it may not lead to a final resolution. E-mediation can be challenging to apply in non-negotiable or complex disputes, and existing e-mediation mechanisms worldwide may not encompass all dispute types. In cases where parties fail to reach an agreement, they may resort to alternative measures such as initiating legal proceedings or seeking legal counsel.²

On the international front, e-commerce continues to experience substantial annual growth rates, prompting an increased quest for e-dispute solutions in a globalized world. As envisioned by technologists, traditional litigation cannot match the potential, effort, time, and cost savings associated with online dispute resolution.³ These principles are assumed to encompass fundamental tenets of dispute resolution, including justice, transparency, and neutrality.

However, integrating these principles into a unified set of universal standards proves challenging due to their individual nature. Digital mediation must ensure procedural fairness and equal treatment of all parties.⁴ The trust of the involved parties in the process is vital for its success. In evaluating the fairness of the procedure during dispute resolution, four key elements come into play:

1. Neutrality
2. Delivering your voice
3. Be kind and respectful
4. Equality and transparency

In 1998, the European Commission introduced seven fundamental principles for handling consumer disputes beyond traditional court settings:

1. Independence
2. Transparency
3. Adherence to the principle of open discussion
4. Effectiveness
5. Legitimacy
6. Free access
7. Consideration of principles such as representation for resolving electronic disputes.⁵

Three critical scenarios pave the way for the realization of digital mediation, including:

² JIMC-SIMC Joint Covid-19 Protocol, https://www.amt-law.com/asset/pdf/bulletins3_pdf/211110_1.pdf (accessed October 18, 2023)

³ E. Katsh & J. Rifkin, *Online Dispute Resolution, Resolving Conflicts in Cyberspace*, 1st edition, Wiley, San Francisco, p. 226. 2001

⁴ O. Turel & Y. Yuan, 'Online Dispute Resolution Services: Justice, Concepts and Challenges', in *Handbook of Group Decision and Negotiation*, pp. 425-429. 2010

⁵ オンライン調停 (ODR) の流れ、注意事項など.<https://adr.tokyo-gyosei.or.jp/2022/11/30/> accessed October 10, 2023.

1. **Monetary Disputes:** Online dispute resolution is exceptionally well-suited for settling financial disputes, especially those in which the obligation to pay is clear, but details such as the division of the amount, payment duration, and method need agreement. These disputes typically involve straightforward and non-controversial issues. Online dispute resolution excels in such cases, as traditional dispute resolution methods may be impractical due to costs and complexity, particularly for smaller sums.
2. **Child Allowance:** Disputes related to child support and alimony are often financially driven and may vary depending on factors like parental employment, the child's age, the number of children, income status of divorced couples, and the specified payment amount. Exploring digital mediation as an avenue to reach agreements becomes a viable option.
3. **Inconsistencies within Internet Platform Services:** Discrepancies within internet platform services, such as disputes between buyers and sellers on online marketplaces, lend themselves well to electronic reconciliation. These disputes are often characterized by their limited scope, making online mediation a cost-effective and efficient solution. However, it's crucial to acknowledge that the potential solutions may be constrained by the nature of the disputes.

3 Countries in Online Dispute Resolution

3.1 Japan

Introducing Japan's most convenient online mediation service, which now offers an expedited resolution process, taking just around a month – a significant improvement over traditional dispute resolution methods. What's even better is that notification fees are completely waived.

This development aligns with the Japanese government's decision on July 17, 2020, when they established the "ODR Support Council." This council was created with the vision that electronic reconciliation would become a vital part of our social infrastructure. The council is wholeheartedly committed to making the public aware of the numerous benefits of mediation, including its flexibility in managing cases, simplicity, speed, confidentiality, and its ability to adapt to the specific needs of each dispute. What's more, this service can be accessed using a smartphone, providing the flexibility to resolve disputes at any time and from any location.

Thanks to electronic reconciliation in Japan, a wide range of disputes, such as those involving child support, rent, medical expenses, and loans, are now being successfully resolved.

3.2 United States of America

In the United States, the rise of electronic reconciliation has coincided with the widespread expansion of the Internet. By 2019, more than 50 electronic courts had been established across the country. The extensive geographic reach of the United States has greatly benefited from electronic reconciliation, fostering the growth of mediation. Mediation has effectively alleviated many issues by offering digital reconciliation, resulting in a substantial reduction in costs compared to traditional solutions, making justice accessible to a broader population. The U.S. has pioneered the development of three major ODR platforms with global reach, including Modria, Cybersettle, and SquareTrade.

Modria, headquartered in San Francisco, focuses on resolving civil disputes in the commercial sector and aims to provide ODR technology for internal business disputes. It has expanded its services to ease the caseload in New York and collaborate with U.S. public institutions like the American Arbitration Association, handling over 300,000 cases annually.

Cybersettle, in operation since 1996, has gained significant support and resolved nearly 200,000 claims, amounting to a payment of \$1,457,299,751 to date. In contrast, the SquareTrade platform, which is no longer available independently, played a pivotal role in shaping the “eBay” ODR system. Unlike other platforms, SquareTrade offered digital mediation in cases where mutual agreements could not be reached, finalizing matters through digital agreements. Currently, SquareTrade has been integrated into the eBay ODR platform, providing dispute resolution services.

The algorithmic nature of these platforms ensures fair treatment in dispute resolution, eliminating human errors and one-sided biases. They also offer computer-mediated communication options for buyers and sellers, along with patent-pending technology. The process typically begins with the complainant registering with a unique identifier and password on the SquareTrade platform, providing details of the dispute. Mediation allows parties to independently resolve the issue within a timeframe of up to 10 days.

eBay has gained international recognition for its acceptance of ODR, handling over 60 million disputes annually.⁶ Another platform, PayPal, employs a distinct dispute resolution process, where sellers must rebut claims by demonstrating their fulfillment of responsibilities. The process commences with the buyer raising a dispute, temporarily halting money transfers between the involved parties. Parties

⁶ A. Pearlstein, B. Hanson & N. Ebner, 'ODR in North America', in M. S. Abdel Wahab, E. Katsh & D. Rainey (Eds.), *Online Dispute Resolution: Theory and Practice: A Treatise on Technology and Dispute Resolution*, Eleven International Publishing, The Netherlands, pp. 443-464. 2012

are obligated to resolve disputes within 20 days.⁷ Unresolved disputes proceed to a drafting requirement and a final decision before the PayPal case is reviewed. The platform imposes restrictions on the appeals process to prevent unnecessary appeals. In the United States, ODR coverage has proven to be limitless in its scope and impact.

3.3 China

China, as a global technology and e-commerce leader, is recognized for its pioneering efforts in digital reconciliation mediation. With a staggering 800 million Internet users, the necessity to transition virtual disputes into digital formats has driven the transformation of traditional dispute resolution mechanisms. China has witnessed two significant initiatives to introduce Online Dispute Resolution (ODR) into its legal landscape.

The first initiative involves digital reconciliation mediation facilitated by internally integrated ODR platforms with substantial support from the national e-commerce industry.⁸ Notably, Chinese courts have undergone a radical transformation by adopting digital processes, with three digital courts operating in major cities, including Hangzhou, Beijing, and Guangzhou, handling over 120,000 disputes by 2019. Hangzhou's digital court has specialized in internet and e-commerce disputes and is regarded as a leading example of electronic reconciliation mediation.

The court procedures in Hangzhou underscore the prevalence of online mediation, where mediators connect with parties through phone, online communication, or video conferencing, mirroring the Internet court concept.⁹ An intriguing aspect of these courts is their inclination towards the integration of artificial intelligence, raising the possibility of AI-driven dispute resolution in the future.

These three digital courts adhere to a set of standards defined by the "Rules of Procedure for the Control of Electronic Matters of the People's Republic of China," which came into effect on August 1, 2021. Although the effectiveness of these procedures and their implementation by the courts remains a subject of ongoing assessment, mediation through electronic reconciliation is thriving within the Chinese judiciary.

This flourishing is, however, showing signs of deceleration, which can be attributed to two primary factors. First, the absence of a formal legal framework

⁷ www.paypal.com/us/webapps/mpp/security/resolve-disputes.

⁸ C. S. Shang & W. Guo, 'The Rise of Online Dispute Resolution-led Justice in China: An Initial Look', *Australian National University Journal of Law and Technology*, Vol. 1, No. 2, pp. 25-42. 2020

⁹ NCTDR, 'Hangzhou Internet Court', NCTDR (August 18, 2017), <http://odr.info/hangzhou-internet-court/>, accessed August 21, 2021

has impeded the e-commerce industry's development. Second, the readiness of experienced private sector entities to take on the risk of ODR implementation has facilitated the integration of ODR into their complaint resolution systems.¹⁰ Notably, Alibaba Group, with over one billion users, including the world's largest C2C e-commerce platform, Taobao, has harnessed ODR successfully.¹¹

Addressing information security concerns in electronic mediation remains a challenge, but in 2019, China's Ministry of Industry and Information Technology, Cyberspace Administration, and the Ministry of Public Security and Market Regulation adopted guidelines for the detection, collection, and use of personal information by software. Whether implemented at the private or public level, China demonstrates an unwavering commitment to the continuous evolution of the digital dispute resolution process, establishing itself as a pioneer in the field of ODR.

3.4 European Union

The European Union (EU) boasts a unique feature in the way its member states are intricately connected and are progressively embracing digital technologies. This interconnectedness has led to the rapid adoption of Online Dispute Resolution (ODR) within the EU. The EU has already established a framework of common policies and regulations covering various areas, including e-commerce and online procedures. As a result, ODR has been widely accepted, and its implementation is well-regarded, particularly within the context of e-commerce.

One notable milestone is the EU Parliament's adoption of ODR legislation, known as the Regulation, specifically focused on consumer disputes in the realm of e-commerce. This legislation seeks to safeguard consumer rights by creating a European ODR platform with the objective of resolving disputes between consumers and merchants online, independently, fairly, efficiently, and expeditiously, thus bypassing traditional court proceedings.¹²

The Council of the EU has taken the responsibility of developing, designing, and maintaining this ODR platform, offering cost-free services for notifying respondents of complaints and supplying electronic tools for redress. Furthermore, an e-reconciliation point of contact is mandated to have at least two consultants with expertise in ODR. The regulations also address critical aspects related to databases, personal data processing, data privacy, security, user data, and the roles of competent authorities.

¹⁰ L. Liu & B. R. Weingast, 'Law Chinese Style: Solving the Authoritarian's Legal Dilemma through the Private Provision of Law'. Working Paper, August 2020.

¹¹ L. Liu & B. R. Weingast, 'Taobao, Federalism, and the Emergence of Law, Chinese Style', *Minnesota Law Review*, Vol. 102, No. 1563, 2018, p. 1583.

¹² Council Regulation 524/2013, pp. 165. 2013

The inherently cooperative nature of the EU has driven the modernization of traditional dispute resolution mechanisms both at the national and international levels. This transformation has facilitated the gradual transition towards electronic dispute resolution. The EU's remarkable success in integrating ODR can be attributed to its member states' strong interconnectedness and the presence of established legislative bodies, ensuring consistency across various domains.

The EU has set a pioneering example for e-mediation in cross-border disputes and has become a global model for ODR implementation. Additionally, the EU's focus on handling e-commerce disputes, particularly those involving consumers and small businesses, has played a crucial role in ensuring equal treatment throughout the dispute resolution process.

3.5 Australia

Australia has made significant strides in establishing a stable Alternative Dispute Resolution (ADR) environment over the past few decades. Courts and arbitral tribunals in Australia now possess the authority to direct disputes towards ADR processes, making ADR a de facto prerequisite before pursuing litigation. Alongside this progress, Online Dispute Resolution (ODR) has slowly but successfully integrated into the legal framework, with the Australian Dispute Resolution Advisory Council (ADRAC) taking a leading role in evaluating ODR's development in the country.

While Australia has achieved an advanced stage of ODR development by international standards, ADRAC has recognized that this growth hasn't fully met initial expectations. The country's unique characteristics, including its vast geographical remoteness and a forward-thinking population, have the potential to accelerate legal innovation in the realm of electronic mediation.

However, Australia has exhibited some reluctance in embracing the electronic revolution in the legal sector. Concerns about the perceived impersonality of electronic processes and the complexity that users may encounter have contributed to this cautious approach. Nonetheless, a significant milestone was reached when the Federal Court of Australia recently introduced e-litigation within domestic courts, signifying a pivotal moment in the reform of e-mediation within the judicial system.

While there is no specific legislation solely dedicated to e-mediation, several laws related to e-commerce encompass the foundational principles of ODR. These laws include the Australian E-Commerce Regulations, the Competition Act, and the Electronic Transactions Act. The Australian E-Commerce Regulations are designed to enhance public confidence in businesses engaged in e-commerce activities. The Competition Act serves as the primary federal instrument for regulating fair trade and commercial matters, ensuring the adherence to legal standards in commercial transactions. Consequently, the Competition Act is often examined in conjunction

with the Electronic Transactions Act. These legislative changes have contributed to the adaptation of the legal framework to the online environment. Although they do not explicitly outline ODR, the mechanisms in e-commerce regulations align closely with the core principles of ODR.¹³

Conclusion

The development of e-mediation in any jurisdiction faces a significant challenge due to the heightened risk of data breaches and privacy infringements. Studies conducted in countries that employ e-mediation reveal notable shortcomings in data protection and consumer safeguard dissatisfaction. However, e-mediation has demonstrated its exceptional utility, particularly in cases of infectious disease outbreaks and domestic violence, effectively alleviating the burdensome time constraints associated with traditional court processes. This approach, which entails resolving legal issues through expert-guided discussions without the need for court intervention, offers numerous advantages. Notably, e-mediation operates seamlessly even on weekends and holidays, facilitating smoother negotiation processes.

1. Expanding the definition of the term “Written form” to encompass “letters, e-mails, and telegrams” while simplifying the regulation of legal content is a progressive step. This approach, already successfully adopted internationally, offers several advantages, particularly in enabling the transmission of requests, petitions, and complaints over long distances while preserving their content.
2. Conduct an investigation into and introduce e-courts, which have brought about a profound transformation in the exercise of judicial authority through electronic processes. The initial step should involve the implementation of e-mediation for dispute resolution. It is believed that this approach can pave the way for the regulation of legal relations within our country, mirroring the rules and standards set forth in the “Rules for Electronic Proceedings of the People’s Court of the People’s Republic of China.”
3. As per the Government of Japan’s decision dated July 17, 2020, it is advisable to consider the establishment of a council akin to the “Council to Support Online Dispute Resolution.” This council can play a vital role in overseeing and supporting the implementation of online dispute resolution initiatives.

¹³ M. Kirby, ‘The Future of the Courts – Do They Have One?’, *Journal of Law, Information and Science*, Vol. 9, No. 2, p. 141. 1998

4. Embrace the adoption and testing of an Online Dispute Resolution (ODR) platform. In essence, this involves studying and leveraging global experiences in the field of electronic mediation to enhance the effectiveness and applicability of ODR in your jurisdiction.
5. Leverage e-commerce platforms to facilitate the submission of claims by both consumers and merchants. In the event of a dispute, consider employing electronic mediation as a means of resolution. This approach will help alleviate the burden on traditional courts, ensuring that such disputes do not overburden the court system.
6. Legal regulation can be effectively achieved by incorporating principles within existing laws related to e-commerce, negating the necessity for the creation of a separate law specifically dedicated to Online Dispute Resolution (ODR). This can encompass various areas, such as Civil Law, Family Law, Conciliation Law, E-Commerce Regulations, Competition Law, and laws pertaining to Electronic Transactions.
7. In the process of dispute resolution, it is advisable to incorporate the four essential elements or principles that ascertain procedural fairness. These elements, which include Neutrality, Voice, Courtesy, Equality, and Transparency, should be integrated into laws and regulations as guiding principles for every electronic mediation process. This will ensure that the process is fair, transparent, and equitable for all parties involved.

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Informação bibliográfica deste texto, conforme a NBR 6023:2018 da Associação Brasileira de Normas Técnicas (ABNT):

BATDULAM, Munkh-Erdene. Developing the Legal Regulation of Online Dispute Resolution. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 05, n. 10, p. 241-251, jul./dez. 2023. DOI: 10.52028/rbadr.v5i10.ART11.NZ.
