**WILL COURTS GO ONLINE? IS THE LEGAL SPHERE IS READY TO REPLACE TRADITIONAL LITIGATION WITH ONLINE DISPUTE RESOLUTION MECHANISMS? [[1]](#footnote-1)**

***ABSTRACT***

*Digital technology is transforming the landscape of dispute resolution: it is generating an ever growing number of disputes and at the same time is challenging the effectiveness and reach of traditional dispute resolution avenues. While technology has been a disruptive force in the field, it also holds a promise for an improved dispute resolution landscape, one that is based on fewer physical, conceptual, psychological and professional boundaries, while enjoying a higher degree of transparency, participation and change. This promise remains to be realized as the underlying assumptions and logic of the field of dispute resolution have remained as they were since the last quarter of the 20th century, failing to reflect the future direction dispute resolution mechanisms can be expected to follow, as can be learned from the growth of online dispute resolution. This article explores the logic of boundaries that has shaped the traditional dispute resolution landscape, as well as the challenges such logic is facing with the spread of online dispute resolution.*

**Key words: ODR, ADR, Artificial Intelligence, Technologies, Online Courts**

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**INTRODUCTION**

The World Wide Web (www) was invented in 1989[[2]](#footnote-2) and in 1992 an online commerce ban was levied.[[3]](#footnote-3) The Internet has forever changed peoples’ conceptions of human interaction.[[4]](#footnote-4) Modern societies have moved step-by- step onto the Internet. People not only communicate online, search for information online, purchase online, do business online, and work online, but they also conduct their social lives using online social networking.

As Ethan Katsh put it, *cyberspace is not a harmonious place*. *It is an environment with an extraordinarily high level of activity, energy, competition and innovation*.[[5]](#footnote-5) No wonder it generates a great number of disputes to resolve. Traditional courts and laws are ill-equipped to handle the unique issues that arise in cyberspace.[[6]](#footnote-6) State court litigation is obsolete. It has its traditional weaknesses, such as that it is very lengthy and expensive, but it also does not suit e-commerce disputes very well due to jurisdiction issues and the potential geographical distance between parties. For these reasons people are seeking alternatives.

One should, however, keep in mind that ODR can equally apply to disputes completely unrelated to cyberspace. On the other hand a new kind of dispute has in cyberspace emerged: disputes originated in cyberspace with consequences arising outside of it. For instance, an unlawful act in multiplayer online role playing computer games which cause financial losses to the participants in the real world.[[7]](#footnote-7)

It is unlikely that large international commercial transactions will be submitted to ODR, even though parties to disputes arising from such transactions will make use of technology improvements. But ODR may well serve the resolution of minor and medium-scale disputes. Furthermore, there is no reason to limit the application of

ODR to e-commerce.[[8]](#footnote-8)

In theory, all existing national and international arbitration laws apply to cyberspace.

The problem is in determining how to apply and interpret them.[[9]](#footnote-9)

**I. WHAT IS ONLINE DISPUTE RESOLUTION?**

**1.1. The definition of online dispute resolution**

Online dispute resolution (ODR) is a form of online settlement that uses alternative methods for dispute resolution (alternative dispute resolution). The term covers disputes that are partially or fully settled over the Internet, having been initiated in cyberspace but with a source outside it (offline). In literature on the subject, the terms electronic ADR (eADR), online ADR (oADR) and Internet dispute resolution (iDR) are treated as synonymous. [[10]](#footnote-10)

There is no permanent system for reporting the number of entities that use online dispute resolution. Published research focuses mainly on showing levels of alternative dispute resolution (ADR) use in specific countries. However, there is no similar record on entities offering its online form. [[11]](#footnote-11)

In accordance with published research, it can be stated that the number of ODR providers is not constant between years. Pursuant to analysis conducted by Conley Tyler, they numbered no less than 115 in 2004.[[12]](#footnote-12) As shown in research by Suquet, Poblet, Noriega, and Gabarró (2010) the number had decreased to 30% of this figure (less than 40 active ODR systems).[[13]](#footnote-13)

**1.2. ODR and technology**

Online dispute resolution constitutes an implementation of existing forms of ADR that enables its use on the Internet. The main assumption of alternative methods of dispute resolution – that is, the presence of a third party during the process of reaching an agreement – remains unchanged. However, this has attained a different character because of the use of modern forms of communication. There are therefore indirect ways of submitting requests or evidence (Settle Today), as well as of carrying out a full online process together with issuing a judgement at the end of proceedings (WIPO).

In the case of ODR, the technological aspect is crucial for the effectiveness of the process. With reference to research published in 2010 by Lodder and Zeleznikow, ODR systems may be divided according to the forms of synchronous and asynchronous communication used. Looking at the first type, entities may communicate with each other in real time by using Messenger or Skype. In the asynchronous form, communication is not conducted at the same time – via e-mail, for example – and is therefore less direct such as with using the services of the National Arbitration Forum. Research by Suquet, Poblet, Noriega and Gabarró has shown that the second form constitutes the most frequently used solution (42%), but as many as 48% of ODR providers use the two forms jointly. Low usage levels of online forms such as chat (10%) suggest that ODR systems fail to fully exploit the IT possibilities of extensive programmes, with their focus still on less modern methods such as forums.

Each form of ODR may use a different technological system, individualising 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 videoconferencing (TheMediationRoom.com), 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 (Smartsettle) or asynchronous form (Settle Today).

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. Using advanced technologies allows the creation of computer algorithms that analyse all data entered into the system (Family\_Winner).

**II. TYPICAL PROS AND CONS OF THE ODR**

Many authors have written about the pros and cons of the ODR. Some of them also recommend critical requirements for a successful system. For example, Patricia Galloway enumerates advantages of ODR such as that it is economically viable, efficient, fast and flexible, interaction is asynchronous, it is non-confrontational, communication is more reflective, it is convenient, it allows access to better neutrals (because distance is not an issue), it facilitates record-keeping, data archiving, document management and searching, and also provides a neutral forum (not somebody’s office).[[14]](#footnote-14)

She also lists disadvantages. Some of them seem legitimate - authenticity, confidentiality, prone to false testimony, obstacles in using expert testimony. Others are not convincing: miscommunication (no body language), less control from neutrals, problems with building rapport, enforceability (although she admits that it is no different from the enforcement of an arbitration award granted in traditional arbitration).[[15]](#footnote-15) She also considers some of the advantages to be disadvantages at the same time. For instance, rapid communication and archived communication in her view may cause more harm than good.

According to Sami Kallel, the strengths of ODR include efficiency, flexibility, speed, and low cost.[[16]](#footnote-16) On the other hand, the three major legal challenges of ODR include: 1. conclusion of the arbitration clause online, 2. determination of the applicable law, and 3. enforcement of the arbitration award.[[17]](#footnote-17) He also identifies four major obstacles for ODR. They include: 1. confidentiality concerns, 2. transparency concerns, 3. evidence authenticity concerns, and 4. problems with language and terminology. This last argument seems off the mark, since cyberspace is more globalised than the real world and space for miscommunication or misinterpretation is smaller. However, the other three seem to be fair criticisms.

In the view of Gabrielle Kaufmann-Kohler, a successful ODR provider must obey five major principles: 1. transparency (of procedural rules and outcomes), 2. accessibility (mostly absence of cost barriers), 3. independence (funding issues), 4. timeliness (speed), 5. fairness (equal treatment of the parties).[[18]](#footnote-18)

Shekhar Kumar lists four major benefits of ODR: 1. drastic costs decrease, 2. negotiations quality increase (without emotions), 3. Speed, and 4. removal of symbolic detriments of face-to-face meetings.[[19]](#footnote-19) Among the disadvantages he enumerates are: 1. technological gap (unequal access to ODR), 2. due process concerns (procedural and substantive fairness), 3. potential for miscommunication and 4. difficulty with obtaining authority by the mediator/neutral.[[20]](#footnote-20) Kumar’s recommendations for the development of ODR include: 1. using technological advances along with training in how to use them, 2. government involvement to regulate the sector, and 3. conducting empirical research on ODR.[[21]](#footnote-21) In his opinion, ODR should be run by private entities but regulated by the government.[[22]](#footnote-22)

Ethan Katsh, the founder of the Online Ombuds Office ODR project, praises ODR for speed, flexibility, low cost, easy communication, and avoiding jurisdiction problems.[[23]](#footnote-23)

To Lan Hang the primary advantages of ODR are: convenience, low- cost, legitimacy for online users and avoiding jurisdictional issues.[[24]](#footnote-24) Disadvantages include: loss of the human factor, lack of accessibility (hardware and software requirements), lack of confidentiality and security, and difficulties with enforcement of arbitral awards.[[25]](#footnote-25) In his view a successful ODR should be: 1. specifically designed for online users, 2. establishing trust (ensuring confidentiality and security), 3. less expensive than litigation and traditional arbitration, 4. easy to use, 5. convenient, 6. less time consuming, and 7. establishing a presence in cyberspace communities.[[26]](#footnote-26)

As a side note it is worth mentioning that some authors are concerned about developing countries having unequal access to ODR when compared to industrialized states, due to insufficient numbers of personal computers, Internet hosts, illiteracy, and a lack of awareness and computer skills. The obstacles are not only technological in nature, but also social and legal.[[27]](#footnote-27) Even in industrialized countries, as Thomas Schultz remarks, due to the small value of most ODR disputes they are highly unlikely to be pursued in national courts (due to economic irrationality). Allegedly only one dispute in a million million at eBay eventually goes to court.[[28]](#footnote-28)

**III. CHALLENGES FOR ODR SYSTEMS. EFFECTIVENESS OR ENFORCEMENT OF ODR DECISIONS**

In order for an arbitration award to be enforceable, the ODR procedure must guarantee due process.[[29]](#footnote-29) One of the challenges is authentication, which is more difficult in cyberspace than in the “real world”. It encompasses any method of verifying a piece of information in an electronic environment: its integrity, the identity of the author, and that it has been transmitted in its entirety.[[30]](#footnote-30) The first problem is of a purely legal nature, namely, whether an arbitration agreement and arbitration award not in writing are valid. This depends on the applicable national law. For example, in Poland an arbitration agreement does not need to be in writing[[31]](#footnote-31), but the award needs to be printed and signed by an arbiter[[32]](#footnote-32), unless he signs it using

an electronic signature.[[33]](#footnote-33) According to the NY Convention[[34]](#footnote-34) an arbitration agreement should be in writing, which includes an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.[[35]](#footnote-35) However, in the view of the majority of experts, this should be interpreted as encompassing modern means of electronic communication.[[36]](#footnote-36)

Also, EU legislation[[37]](#footnote-37), the UNICTRAL Model Law on Electronic Commerce[[38]](#footnote-38) and the UNCITRAL Model Law on International Commercial Arbitration[[39]](#footnote-39) recognize the validity of electronic contracts without electronic signatures. There are still problems of a technical nature, such as verification of the identity of a party which does not use an electronic signature, or authenticity of evidence provided online. These can be dealt with in a variety of ways, for example by submitting a scanned ID or by making a payment from a personal bank account which has been verified by a bank.

Choice of law can be dealt with quite easily. Since an arbitration agreement is necessary to submit a dispute to ADR or ODR, there is no problem to include choice of applicable law in such an agreement. Furthermore, it is suggested that with time the body of customary rules applied in cyberspace will evolve into *lex electronicae* or *lex cybesneticae* (analogous to *lex mercatoria*).[[40]](#footnote-40) It could develop from current customary practices of Internet users’ behaviour, commonly known as *netiquette* (combining words “Internet” and “etiquette”)*.[[41]](#footnote-41)*

Another reason for the lack of attractiveness of ODR may be enforcement issues. Unfortunately, to become enforceable, arbitral awards require reference to state courts. This means a return to the paper form and geographical limitations. For this reason some authors suggest other means of enforcement which include: a) money methods (financial guarantees, escrow accounts, charge-back agreements with credit card companies or some kind of judgement fund), b) technical control methods (like in the UDRP procedure for domain names, where domains are simply transferred or cancelled regardless of the consent of the losing party), c) reputation methods (trustmarks).[[42]](#footnote-42) None of these solutions seems easy to implement.

The problems with ODR systems are not only legal, but also technological. An example of technological limitations are videoconferences, which require particular hardware (camera, microphone), software (compatible with different operating systems), Internet connection (data transfer) and servers (data storage).

The fabulous advantage of online disputes is that distances are abolished. A dispute is resolved in the same manner as the contract was entered into—and performed, if it was performed by downloading software. As a general rule, an efficient dispute resolution method is one that has a conceptual affinity with the activities that gave rise to the dispute. This, however, is a broader topic that extends far beyond ODR. As far as online justice is concerned, if the competent court is located far away from the claimant’s home, ODR will guarantee access to justice that might otherwise be impracticable. This is all the more necessary as on the Internet people and businesses whose paths would never have crossed offline now enter into contracts with each other.

The advantage of ODR in overcoming geographical limitations holds true until it comes to enforcing the outcome of the ODR procedure. If the outcome is a binding award, the winner will have to apply for an exequatur, possibly on the other side of the globe, as online award enforcement is still far away. If the outcome is a settlement that is not being performed, then the situation is even more problematic, as the creditor will have to start a new court action, not simply enforcement proceedings.

This is hardly satisfactory.[[43]](#footnote-43) For the full potential of ODR, in particular of its accessibility, to be realized, other means of enforcement without recourse to the courts must be found. Many ideas have been put forward,[[44]](#footnote-44) some of which

have partly come to fruition. In essence, there are three methods of enforcing the outcome of ODR proceedings without going to court. The first is based on money, the second on technical control and the third on reputation:

* –  Methods of enforcement relying on money include financial guarantees, escrow accounts, insurance and charge-back agreements with credit card companies. An alternative might be for business suppliers joining an ODR site to set up a ‘judgment fund’ to cover the outcome of ODR proceedings
* –  In very specific situations, technical control may be used to make ODR decisions self-enforcing. The UDRP procedure for domain name disputes is a good example. Ten days after the decision by the panel of experts, the domain name is either cancelled or transferred to the winning party, depending on the panel’s decision and provided the loser has not furnished evidence of having started a court action to challenge the decision. The decision is implemented by the registrar that registered the domain name and exercises technical control over the registration.[[45]](#footnote-45)
* –  Reputation may provide leverage causing businesses to voluntarily comply with ODR decisions. Imagine a business site is granted a trustmark certifying that it complies with a certain code of conduct that provides for ODR and for compliance with the resulting decisions. Failure to comply would lead to the suspension or removal of the trustmark, which would damage the trustmark holder’s reputation and—it is hoped—deter potential clients from using the site. To avoid losing business, the trustmark holder will therefore endeavour to comply with the ODR decisions. [[46]](#footnote-46)
Such methods, often called self-enforcement or built-in enforcement, respond to a real need and deserve to be further developed.

**IV THE FUTURE OF DISPUTE RESOLUTION: ONLINE ADR AND ONLINE COURTS**

**4.1. Online Alternative Dispute Resolution**

OADR has seen a number of waves or generations of technology use.

OADR may adapt existing technologies such as email, instant messaging, videoconferencing and Skype to allow disputants to communicate directly and to allow facilitators, mediators or arbitrators to be brought into a dispute resolution process as needed. This form of ODR seeks to provide a place or mechanism to resolve the dispute rather than simply providing sources of information or suggested steps but there is still a human performing the mediation or decision making.

OADR can also employ “expert systems” or what is also called simple or rules-based artificial intelligence. To create the expert system the system designers need to acquire expert knowledge from human experts and encode that knowledge into rules which will be applied based on the factual information obtained from the users. Expert systems collect facts from users through interview-style questions and produce answers based on a decision-tree analysis. This form of OADR goes beyond assisting what is otherwise traditional ADR by providing tools for communications and is used for “idea generation, strategy definition and decision making”.[[47]](#footnote-47)

Additionally or alternatively, OADR can replace or significantly reduce the role of humans and instead use advanced artificial intelligence (including algorithms, machine learning and big data) to become the third party that performs the mediation or decision making.[[48]](#footnote-48) An example is “blind-bidding” systems which use multivariate algorithms to help parties arrive at the optimal outcome. The technology obtains information from the disputants as to how they rank or value issues within the dispute and then combines those outcomes to suggest solutions.[[49]](#footnote-49)

Perhaps the most fundamental question that must therefore be posed is this – is court a service or a place? Do we always need to congregate physically in a court building to resolve our differences? Or might some of our civil problems be more appropriately resolved using one of a number of online techniques?[[50]](#footnote-50)

**4.2. Online Dispute Resolution Examples**

To illustrate the operation of ODR three examples are explained below: the Netherland’s platform called Rechtwijzer (Roadmap to Justice), the Canadian province, British Columbia’s Civil Resolution Tribunal and the recommendations for an online court for the United Kingdom.

*A) Rechtwijzer*

An example of a leading ODR system is provided by the Netherland’s platform called Rechtwijzer (Roadmap to Justice) for couples who are separating or divorcing. Couples pay €100 for access to Rechtwijzer, which starts by asking each partner for their age, income, education, and other information such as whether they want the children to live with only one parent or part time with each, then guides them through questions about their preferences. The platform uses algorithms to find points of agreement, and then proposes solutions. If the proposed solutions are not accepted then couples can employ the system to request a mediator for an additional €360 or, a binding decision by an adjudicator.[[51]](#footnote-51) The Legal Aid Board has explained the aim of Rechtwijzer as “to empower citizens to solve their problems by themselves or together with his or her partner. If necessary, it refers people to the assistance of experts”.[[52]](#footnote-52) Rechtwijzer is voluntary and non-binding up until the point where the parties seek a binding decision.

*B) Civil Resolution Tribunal*

A further example is the British Columbia’s Civil Resolution Tribunal which deals with small claims and condominium disputes. The Civil Resolution Tribunal involves four stages:[[53]](#footnote-53)

Stage 1 – an expert system called Solution Explorer uses interactive questions and answers to give people tailored legal information as well as tools and resources, like template letters, to help them resolve their dispute consensually.

Stage 2 – if no consensual resolution is achieved then Solution Explorer provides an online intake process that commences a claim.

Stage 3 – once a claim is commenced there is a further attempt to facilitate a consensual resolution by employing facilitators from around British Columbia. The process can be online or in person. Agreements become orders of the Civil Resolution Tribunal.

Stage 4 – if an agreement is not reached the dispute proceeds to adjudication where a tribunal member, who is a lawyer with relevant expertise, hears the parties’ evidence and submissions and makes a binding decision. Hearings will generally take place through electronically submitted written documents, or through telephone or videoconferencing.

*C) UK Online Court*

A further example is Lord Justice Briggs’ Civil Courts Structure Review reports which recommend an online court for claims up to £25,000 in the UK.[[54]](#footnote-54) The online court would involve three stages:[[55]](#footnote-55)

Stage 1 – a largely automated, inter-active online process for the identification of the issues and the provision of documentary evidence. The online portal will guide the litigant through an analysis of his or her grievance so as to produce a document capable of being understood both by opponents and by the court. It will in effect be a simplified pleading.

Stage 2 – conciliation and case management, by case officers. Once the claim and supporting information is extracted through stage 1 the aim is to then employ ADR where appropriate. Part of the purpose of stage 2 is to educate litigants of small claims about the existence of ADR.

Stage 3 – resolution by judges. There is no presumption that this requires the traditional trial. Rather, the court may choose to determine the matter on the documents, or by communicating with the parties through telephone or video. A face to face hearing if employed, may only be used for resolving particular issues.

Even if lawyers are not excluded from the online court, there will still need to be assistance for the many litigants in person in answering the questions posed by the online portal. The interim report states that there will be a need for “substantial assistance online, in the form of digital help, for the purpose of completing online forms” as well as a telephone helpline.[[56]](#footnote-56) In the final report Lord Briggs reported that one of the most widespread issues raised in response to the recommendations in the interim report was how to assist persons who would find using a computer (or paper) to resolve their dispute challenging.[[57]](#footnote-57) The answer to this concern is that there will remain a need for pro bono and litigant in person advice and assistance agencies.

*D) eBay - www.ebay.com*

A remarkable 60 million disagreements amongst traders on eBay are resolved every year using ODR. There are two main processes involved. For disputes over non-payment by buyers or complaints by buyers that items delivered did not match the description, the parties are initially encouraged to resolve the matter themselves by online negotiation.They are assisted in this by clearly structured, practical advice on how to avoid misunderstandings and reach a resolution. Guidance is also given on the standards by which eBay assesses the merit of complaints. If the dispute cannot be resolved by negotiation, then eBay offers a resolution service in which, after the parties enter a discussion area to present their argument, a member of eBay’s staff

determines a binding outcome under its Money Back Guarantee.This e-adjudication process is fast with strict time limits.The claim must be escalated to eBay within 30 days from the actual or latest estimated delivery date and, to encourage a full opportunity for self-resolution, no earlier than 8 days since the complaint was first raised with the seller. Disputes over feedback (reviews by buyers of sellers), which can include reviews that might otherwise lead to court- based defamation claims, are dealt with by an independent company called Net Neutrals.Their service is called Independent Feedback Review (IFR). Using a separate discussion space for each dispute, a trained independent neutral reviews the evidence from both parties, invites fresh argument, and determines whether the feedback meets one of four criteria for removal. The process takes seven days and eBay removes the feedback pending the outcome. Operational only in the Netherlands, a novel crowd-sourcing resolution process for feedback disputes is available for one of eBay’s subsidiaries, Marketplaats. After arguments are exchanged, 21‘jurors’ are randomly selected from a volunteer panel of experienced users of Marketplaats and shown the details of a dispute.The buyer is given 7 days to respond and the seller then has 2 days to rebut.The jurors, after that, have 10 days to review and they issue a decision as to whether the feedback should be withdrawn. Marketplaats acts in accordance with the majority decision.

*E) Resolver - www.resolver.co.uk*

Resolver is a UK-based online facility that helps consumers raise complaints with suppliers and retailers.The operators of the site have populated it with the e-mail contacts of the complaint departments of over 2000 major organisations. Through a form-filling exercise and helped by the provision of standard phrases, a consumer is given online assistance in drafting a complaint. This is then e-mailed directly to the relevant complaint department.The suppliers and retailers are urged to respond to the Resolver e-mail address so that the exchange of messages can be stored on the consumer’s case file that is then maintained on the site.The service presently covers energy, telecoms, transport, loan companies, restaurants, high street shops, solicitors, and many more sectors. Resolver provides a platform through which parties can discuss their differences in a structured way. Emoticons are provided to help consumers better express their emotions. The service hold details of the escalation procedures of the 2000 organisations and guides users from first-tier complaints handling up to the highest level. Users are alerted by e-mail to any responses and are prompted to escalate when responses are not received.The service is free of charge, both to consumers and to the organisations to whom they are complaining.

*F) Youstice - www.youstice.com*

Youstice is an ODR service for handling large volumes of low value consumer complaints, relating both to goods and services, whether or not the purchases took place online.There are two tools.The first enables negotiation between parties. It provides assistance in framing arguments – parties are invited to describe their position by selecting from a series of phrases, with relevant icons for each.The site also suggests suitable solutions that again can be represented by icons.A form of structured (asynchronous) dialogue can take place within a limited area for free form comment.The objective is to encourage and facilitate the parties to reach an agreed settlement directly between themselves. Using the second tool, customers can escalate cases and seek an independent review by one of a number of neutrals accredited by Youstice. Customers can file their claims either directly at the retailers ́ websites or at websites of consumer organisations. Shops are entitled to use the Youstice logo if they reach agreement on Youstice with consumers in at least 80% of cases and they implement at least 98% of the agreements reached or of decisions by third-parties. Use of the facilitated negotiation platform is free to consumers, with Youstice earning its income from the retailers who pre-register and who display theYoustice logo in their marketing.

*G) Traffic Penalty Tribunal - www.trafficpenaltytribunal.gov.uk*

The Traffic Penalty Tribunal (TPT) of England and Wales has recently launched a web-based portal BECK (Best Evidence Cloud Knowledge), for use by appellants, respondent authorities as well as the adjudicators and administrators. The Portal enables appellants to appeal, upload evidence and follow cases and hearings under one evidence screen and account. Likewise, each authority has a dashboard showing current cases, enabling them to submit evidence, comment, and follow progress of hearings and decisions. Appellants create an account and receive all notifications by email. They comment on evidence, request their preferred hearing type and follow progress of the case through to the decision, viewed online.Their dashboard displays the status in each case, prompting actions.The TPT administrators, who no longer data-input, now focus on customer service, for example, ‘offline’ appellants phoning for a form or help. TPT’s workload, which will shortly increase by 30%, will be administered by the same staff numbers with reduced case closure times.Adjudicators can manage their own caseload, send directions to parties, and easily see uploaded evidence, including videos, which is also displayed to all parties. At telephone conference hearings all participants can view the same evidence, guided by the adjudicator.

*I) Internet-based court service - HM Online Court (HMOC).*

HMOC should be an integrated, three-tier service, as depicted in the following diagram.

**Emphasis of the state - proposed**

Tier 1 dispute avoidance online evaluation informational

Tier 2 dispute containment online facilitation inquisitorial

Tier 3 dispute resolution online judges adversarial

Tier One – Online Evaluation

The function of Tier One of HMOC will be to help users with grievances to evaluate their problems, that is, to categorize their difficulties, and understand both their entitlements and the options available to them.This will be a form of information and diagnostic service and will be available at no cost to court users. This part of HMOC will be shared with or will work alongside the many other valuable online legal services that are currently available to help users with their legal problems. For example, systems developed by charitable bodies or provided by law firms on a pro bono basis will either sit within HMOC or be linked to the service.The broad idea of online evaluation is that the first port of call for users should be a suite of online systems that guide users who think they may have a problem. It is expected that being better informed will frequently help users to avoid having legal problems in the first place or help them to resolve difficulties or complaints before they develop into substantial legal problems.

Tier Two – Online Facilitation

If problems are not resolved through this initial online evaluation, then users proceed to a second stage – online facilitation.At the heart of this will be trained and experienced facilitators, working online, who can review papers and statements from parties, and then help them by mediating, advising, or encouraging them to negotiate. A mix of ADR and advisory techniques will be used.

Tier Three – Online Judges

Tier Three will provide a new and more efficient way for judges to work. Online judges will be full-time and part-time members of the Judiciary, who decide suitable cases (or parts of cases) on an online basis, largely on the basis of papers submitted to them electronically, as part of a structured but still adversarial system of online pleading and argument.This process will again be supported, where necessary, by telephone conferencing facilities. The decisions of online judges will be binding and enforceable, enjoying the same status as decisions made by judges in traditional courtrooms.A court fee will be payable but much lower than in today’s courts.Aside from making judicial services available at a lower cost, this will provide a new, more flexible career option for the Judiciary. [[58]](#footnote-58)

**4.3. Online Dispute Resolution Methods**

ODR platforms are modeled after traditional ADR mechanisms, such as arbitration, evaluation, and mediation. The processes and interactions thus look similar but use different technologies. As in traditional ADR, participation in a non-binding ODR process does not prevent disputants from pursuing their case in court—these methods of dispute resolution may be used before, during, or after a lawsuit has been filed, although issues settled through binding decisions may not be re-litigated. They also tend to be less formal than litigation.[[59]](#footnote-59)

A)*Arbitration*In arbitration, a neutral third party (arbitrator) renders a decision after hearing arguments and looking at evidence. The arbitral award may be binding and replace a judicial decision; non binding awards must be confirmed by a court to have the force of a court judgment.[[60]](#footnote-60) In documents-only arbitration, the arbitrator renders a decision based solely on documents submitted by parties. Reliance on submissions alone, rather than live testimony or discussion, makes documents-only arbitration well-suited for ODR, where users can easily initiate proceedings, submit documents, communicate with the arbitrator, and receive a decision entirely online.

B) *Mediation*

Mediation is voluntary dispute resolution facilitated by a neutral third party (mediator) and is a common form of ODR for small consumer disputes.[[61]](#footnote-61) Unlike an arbitrator, the mediator does not render a decision, instead helping the disputants reach an agreement by encouraging constructive discussion and resolution. The mediator may improve dialogue, encourage parties to share information, cultivate empathy and understanding of the other party’s interests, and perhaps even offer suggestions or proposals.[[62]](#footnote-62)

*C)Negotiation*

In negotiation, disputants interact without the assistance of a neutral third party and instead communicate directly or through lawyers. They may thus determine the structure or process of dispute resolution and resolve some or all issues. Negotiation may occur at various stages during a case.

Automated negotiation systems for dispute resolution diverge more from the other traditional ADR processes. Where an issue does not require the flexibility of a human neutral, algorithms may be designed and implemented in software and ODR tools to resolve disputes with fully automated ADR processes. Double blind bidding is the most popular automated negotiation system.[[63]](#footnote-63) In double blind bidding, parties have already agreed that monetary compensation is due, but have not determined what amount. Parties submit settlement offers and demands to an automated system in several rounds. The amounts are usually not disclosed to the opposing side; rather, the software compares the offered and acceptable settlement amounts in each round. If an offer is greater than the demand, the dispute settles. If the two values are sufficiently close, according to settlement parameters chosen by the parties (e.g., within $1000 of each other or where the offer is no more than 5% less than demand), the case settles for the arithmetic mean. Otherwise, bidding proceeds to the next round.[[64]](#footnote-64) This type of automated negotiation is limited to handling purely numerical interests, such as money distribution in insurance disputes. Smartsettle is a program that provides a multivariate blind bidding system which can resolve disputes among any number of negotiators and involving any number of numerical or binary interests.

*D) Evaluation and Mini-Trials*

Both evaluation and mini trials combine elements of other dispute resolution processes to advise parties on the likely outcome(s) of a trial, should the parties resort to litigation. In evaluation, a neutral third party (evaluator) renders a non-binding recommendation based on each party’s arguments and evidence submitted. This can sometimes be interchangeable with non-binding arbitration, where parties submit the dispute and receive a decision that can then be accepted, modified, or rejected;[[65]](#footnote-65) however, arbitration may focus on reaching a decision acceptable to both parties, while evaluation may seek the most likely outcome. The evaluator may be an expert in the subject matter of the dispute, particularly if technical issues are raised.[[66]](#footnote-66) In mini trials, also called summary jury trials, a jury of peers renders a non-binding determination of issues based on documents and other allowed submissions. Volunteers acting as if they were a jury take the place of the neutral third party evaluator.

**4.4. Technologies used in Online Dispute Resolution**

A) *Automation Technology, Algorithms, and Artificial Intelligence*

An ODR platform may use algorithms and party input to auto- mate the decision-making and settlement process. Early automation technologies in law focused on “expert systems” designed to apply clear and domain-specific rules, such as by determining eligibility under statutes.[[67]](#footnote-67) Blind bidding emerged in ODR, automatically resolving disputes reduced to a single variable, like money. Mul- tivariable resolution programs resolve more complicated disputes by collecting relative preference and value information from each party and then using an algorithm to calculate one or more optimal solutions, in addition to allowing disputants to generate settlement proposals.

By 2006, numerous ADR systems “rendered expert advice or decision-making on cases where to date human intelligence had been required to process the factual information.”[[68]](#footnote-68) There have been a few proposals to apply modern conceptions of artificial intelligence to dispute resolution, with techniques that more closely resemble human reasoning.

Arno Lodder and John Zeleznikow have written about artificial intelligence and ODR at length, discussing decision-making technologies ranging from traditional simple algorithm automation to artificial intelligence, including: (1) rule-based reasoning, where knowledge is represented as a collection of rules; (2) case-based reasoning, which applies training examples to solve a specific problem; (3) machine learning, which uses training examples to build a general model, rather than one tailored to a specific problem, and which can then be used to make data-driven predictions or solve various problems; and (4) artificial neural networks, where algorithms in- spired by biological neural networks use statistical learning algorithms presented as systems of interconnected “neurons” to compute values from inputs and conduct machine learning and adaptive pattern recognition with different learning paradigms and algorithms.[[69]](#footnote-69)

One program built with artificial intelligence, Split Up, provided decision-making advice on property distribution after divorce under Australian law by using a neural network to mimic how judges combine relevant variables.[[70]](#footnote-70) Another, the INSPIRE system, studied cultural differences in negotiation with decision theory. In many high- context cultures, an agreement is viewed as the beginning of a negotiation, and renegotiation and revision are integral to the negotiation process. INSPIRE allowed a user to construct a utility function that would evaluate offers based not only on the current and past offers, but also on the potential for Pareto improvements that could be considered post-settlement.[[71]](#footnote-71) In both cases, the artificial intelligence provided advice rather than a binding agreement. However, the role of artificial intelligence in ODR may grow as artificial intelligence technologies and computational power improve and consumer confidence in them increases.

**V. WHAT IS THE FUTURE OF THE ONLINE DISPUTE RESOLUTION IN TURKEY?**

Due to the connections with the other nations, Turkey is one of the largest and quickest developing B2C e-commerce markets in Eastern Europe. Turkey’s internet market has been skyrocketing in the recent years; it positions in the leading 30 nations worldwide by logistic development.[[72]](#footnote-72) As Hurriyet Daily News stated one of that “..Tremendous development in communication and transportation infrastructure in Turkey has helped e-commerce to boom.”[[73]](#footnote-73)

Remarkably, the E-commerce Foundation report, published in December 2017, asserted that although 49 million people (48% of the population) represents internet consumers, only 29% of them did digital shopping in 2016 and B2C digital transactions grew 30.5% that accounts for US$ 5,852 million targeting for international companies.[[74]](#footnote-74) There are four main advantages that Turkey’s e-commerce market to improve: “(i) use of credit cards; (ii) sound logistics infrastructure; (iii) high use of mobile internet; and (iv) social media and 56.8 million credit cards and 100.2 million bank cards are being used in Turkey, which carries Turkey to 2nd tier in Europe in the number of credit cards and to 1st tier in bank cards.”[[75]](#footnote-75)

There are many domestic B2C e-commerce players in Turkey, namely, HepsiBurada.com, GittiGidiyor.com, and N11. The marketplace in Turkey is a convenient e-commerce model for foreign investors with players such as GittiGidiyor.com was owned by eBay, and N11 was launched by Turkish Dogus Group and South Korean SK Group. At present, Alibaba also has planned to invest in the most popular online fashion retailer, Trendyol which has a significant position in Turkey’s fragmented e-commerce market.[[76]](#footnote-76)

In order to create secure, transparent and accessible e-commerce environment, the Turkish government regulated e-commerce with different laws. One of them is the Law on Electronic Commerce which is parallel with the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular, electronic commerce, in the Internal Market, therefore it governs; ‘(i) commercial relations; (ii) liabilities of online service providers; (iii) agreements to be executed through electronic devices; (iv) obligation to provide information; and (v) sanctions.

In Turkey, there are also many approaches that consumers can pursue to complain about goods and services. A Private company which is called Sikayet Var ensures information for companies and facilitates their communication with consumers which is likely to a private ombudsman. Sikayet Var is on Facebook (136K followers) and Twitter (29.4K followers), and has a smartphone application and a YouTube channel which means consumers are most likely to be attracted to informal methods of resolving their disputes at a time when formal methods are not working for them. [[77]](#footnote-77)

Another website for consumer complaints is sikayetim.com (mycomplaint.com) which targets to increase consumer awareness in line with EU standards. Like other complaint platforms, this site allows consumers to submit their complaints and the website connects the relevant companies. If a company replies to the complaint in five days, the website publishes the complaint together with the company’s positive or negative response. Otherwise, the site only publishes the complaint.

Moreover, ICPEN is an international network of consumer protection authorities that protect members from fraudulent, deceptive and unfair commercial practices around the world by ensuring information about consumer challenges that cross-borders. As the ICPEN presidency transitions to Turkey, the new website will continue to assist global consumer enforcers in the detection, identification and response to illegal conduct affecting consumers transacting across international borders.[[78]](#footnote-78)

*Is Turkey Ready to Have ODR Systems for Consumer E-disputes?*

In addition to the above mentioned developments towards dispute resolution process, the existing examples of online dispute resolution increase crucial questions about the best approach of regulation. While there is no ODR law but there are provisions related to ADR for consumer disputes.

Turkey has to strengthen ADR schemes with technological developments to operate the processes. In the present, consumer is not mainly protected by only consumer protection law but by several including e-commerce law. Secondly, Turkey’s economic and social necessities have led to consider about transformation into an information society; therefore Turkey’s endeavours transformed itself into an information society by implementing the e-Transformation Turkey project. The main objectives were defined such as “Policies, laws, and regulations regarding ICT will be re-examined and changed if necessary, with respect to the EU acquis; e-Europe+ Action Plan, initiated for the candidate countries, will be adapted to Turkey.”[[79]](#footnote-79)

Furthermore, the 2007 OECD E-government Studies in Turkey stated that “Turkey is making strong progress in implementing e-government. Turkey has achieved quick wins in the e- government arena by prioritizing projects that make government more efficient, effective, transparent and accountable.”[[80]](#footnote-80) Turkey has been trying to achieve greater coherence with EU. As part of the e-government, UYAP was built up as an e-justice system to provide fast, reliable soundly operated and accurate judicial system. The central network project includes all Courts, Offices of Public Prosecutors and Law Enforcement Offices together with the Central Organization of the Ministry of Justice to realize these aims.[[81]](#footnote-81) Lawyers and citizens are able to investigate all their files, deposit their case fee, submit any document or claim and file a case to any court of Turkey via Internet by using their e-signature. Moreover, E-government gives consumers to complain online through Arbitration Committees. They only need to explain the dispute clearly.

The developments in ICT sector in Turkey is also growing faster than the world average. ICT spending on Hardware, IT services and telecommunication services in Turkey is expected to increase to USD 35 billion by 2018.[[82]](#footnote-82) In consideration above information, Turkey is already

accomplished e-government service that has been operating since 2006. It shows that Turkey is able to embrace the technology which is also the main elements of ODR. With the increase of ICT should lead Turkey to implement ODR to settle consumer e-disputes.

Without a doubt, Turkey is preparing itself to implement ADR schemes following the current Directive which means that Turkey is aware of the developments of EU regarding to consumer e- disputes. For the future model of ODR which will be definitely needed to implement in Turkey due to technological developments and therefore the emergence of B2C e-commerce. ODR systems could be the best solution to resolve consumer e-disputes for the future consumer needs. In Turkey, There are public and private institutions that consumer can easily complain, and learn how to access to justice online which shows that Turkey is improving in this field.

**CONCLUSION**

In conclusion, online dispute resolution is a recent phenomenon and will likely become an increasingly effective mechanism for resolving disputes as technology advances. In the future, as online video conferencing becomes increasingly available, it will become easier for disputants to undertake face-to-face negotiations. This will address the major claimed disadvantage of cyber-mediation: that it is impersonal. Online arbitration can be through submission of documents only or via videoconferencing— synchronous transfer of video information. There are also many providers of online arbitration, including Nova Forum, Private Judge and Word&Bond. Nowadays, there exist forty-three ODR sites from the USA, twenty from Europe, four from Canada, and five from Australia and four from the rest of the world. In total, there are 76 ODR sites.

The characteristics that have encouraged increased computer use among contracting parties are the same justifying the adoption of ODR systems. Internet is a resource that extends what we can do, and where and when we can do it. In this context, the communication tools used in online ADR have changed as online technology has developed. For example, while early online ADR sites tended to rely mainly on email, meaning that communication was text-based and insecure, the services launched in the last years use secure web sites with encryption technology. With encryption parties are given a password to access the web site area dedicated to their dispute. This allows synchronous communication through real time chat facilities. Moreover, ODR mechanisms should not be limited to disputes of cyberspace. There should not be objections to its use by companies geographically distant from each other in need of a fast, efficient, and cheap dispute settlement. To do this ODR uses the power that computer technology has, to support the storage and dissemination of information. For instance, simultaneous translation software can facilitate participation of multicultural companies in a real-time videoconference process. While language barriers have often blocked the engagement on both ADR and traditional adjudication procedures, ODR has the potential to ensure efficient procedures for the parties in dispute. In this context, ODR is meant to have an immense impact on the facilitation and organization of dispute resolution.

Disputes over the Internet are not different from disputes in the physical world. They involve people and they will use whatever mechanism for resolving their disputes if it meets their needs. When a field is new, such as ODR, and the road marks are few, there is often a greater need for public precedents that can show the way. But because ODR is private and contractual it cannot generate a decision which has the same strength than a court order. Furthermore, like traditional ADR, it cannot bring together unwilling parties. Consequently, it seems that the courts will never be replaced totally by ODR as they were not by ADR.

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