

Online Dispute Resolution: Digitalized Disputes and Their Legal Basis

Mokhinur Bakhramova, PhD in Law

Senior lecturer at Intellectual property law department, Tashkent State University of Law,
Uzbekistan

Abstract

An analysis of the issue of digital arbitration and its jurisdiction in electronic dispute resolution showed that digital arbitration can be considered on the basis of artificial intelligence and become an effective mechanism for resolving disputes arising primarily on the Internet and with regard to smart contracts. Additionally, a proposal on digital arbitration jurisdiction has been developed to introduce special conflict-of-law rules on the subordination of the relevant domain to the law of the place of registration. It was also concluded that the introduction of digital arbitration by existing arbitration centres and their subordination to their jurisdiction is an ideal situation, and the formalization of decisions by the arbitration centre will facilitate its implementation.

Keywords: ODR process, digital arbitration, electronic dispute resolution, artificial intelligence, B2C, B2B, e-commerce websites, conflict-of-law rules, and cybercriminals.

In online dispute resolution, many complex issues may arise – including commercial and legal ones – and their consequences follow. As a rule, when accessing the ODR process, mutual consent between the parties is required, whether through an explicit clause in the contract or by mutual agreement of the parties after a dispute that may arise. The service provider must be legally binding or enforceable. Most jurisdictions recognise and enforce the standard ODR clause on a B2B website; however, in the case of B2C contracts, especially in the European Union, consumers cannot be deprived of the additional rights available to them by the law of their place of residence through an agreement restricting the jurisdiction of the court to the country of the ODR service provider if it provides lower standards of protection that the consumer is entitled to in his country of residence. Maintaining the confidentiality and secrecy of negotiations as well as of any subsequent transactions between the parties when resolving disputes is one of the most important tasks of online international arbitration. The Internet is still considered an unsafe medium for arbitration, as cybercriminals have several methods with which to intercept data and messages between parties, and any information passing through Internet networks can be illegally stored or used by cybercriminals. In light of this, increasingly sophisticated methods of security on the Internet are emerging, such as the use of digital signatures. Furthermore, technology can be used to combat any Internet security loopholes and strengthen the ODR process. Stanieri A. and Zeleznikow J. also believed that technology is a fourth party in the ODR process and noted that ODR can be used not only to effectively resolve online disputes but to build trust in virtual spaces as well. The use of cookies often violates Internet users' privacy and increases security concerns. E-litigation employs multiple layers of security, including a sophisticated server, complex passwords and software that backs up the complete data of its servers and stores information provided by parties in a secure environment. Such technical infrastructures are required to address any concerns about confidentiality breaches in the ODR process. Many paralegal rights, such as money back

guarantees, buyer protection clauses and authentication stamps, are becoming popular on e-commerce websites. This only serves to generate more trust in ODR practices and promote consumer confidence in e-commerce.

Another significant concern for most parties is that their disputes should be independent and decisions should be impartial. To this end, they tend to prefer institutional ODR providers, which are more structured and transparent, reducing the chances of bias affecting panelists' decision-making process.

To date, the use of "supervised learning" approaches has yielded the most practical results with machine learning in legal applications. "Supervised learning" is a method that starts with a dataset that has been labeled by humans according to the dimension of interest ("training data"). The system examines this dataset and determines the optimum method for predicting the relevant outcome variable based on the data's other properties. The "trained model," or the algorithm with the set of parameters that improved performance on the training dataset, is then applied to a new test dataset to determine how good it is at predicting outside the original training sample. These results are sent to human professionals via an interface for them to review and use.

In cyberspace, there are no uniform laws for ODR, which creates challenges regarding the application of substantive and procedural law to the resolution of electronic disputes. To decide on the jurisdiction that applies to online disputes, the effects test and the Zippo sliding scale approach can be used. In private international law, the place of performance of a contract is an important parameter for determining the substantive law or jurisdiction that will be relevant to the circumstances of the case. Consumer protection law provides stronger consumer protections in Europe and the enforcement of binding legal regulations in *lex situs*, some of the challenges stemming from the lack of uniform cyber laws. Could there ever be an International Court of Justice that resolves disputes of any nature by enacting homogeneous cyber laws regulating the ODR process and procedures? Here, I draw an analogy between ODR and the application of *lex mercatoria* to international trade. It will be beneficial, though homogeneous, to formulate laws on ODR or the basic legal principles of ODR legislation and practice. Major international legislative texts, treaties, conventions and national initiatives can add certainty to ODR law and practices in cyberspace. In fact, this mission is thought to be halfway complete, as several initiatives have been implemented to bring more clarity to ODR. These initiatives include the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 and the Rome Convention on the Law Applicable to Contractual Obligations 1980. In 1999, the Organisation for Economic Co-operation and Development (OECD) published its guidelines for consumer protection in the context of electronic commerce. The guidelines stipulate that the consumer should have access to fair and cost-effective means of resolving disputes and explain the importance of information technology when using ADR systems.

In the European Union, letter E of Article 17 of the Trade Directive provides that, in the event of an electronic dispute, Member States are required to ensure that parties are not prevented from using ADR procedures, 'including appropriate electronic means', to resolve a dispute. The National Alternative Dispute Resolution Advisory Board developed standards for ADR in 2001 and established ODR guidelines in 2002.

Thus, some legislative initiatives aimed at promoting ADR and the use of technology to provide rapid dispute resolution services already exist. This is an issue of introducing new ideas and solutions to promote and optimise ODR laws, including the legal principles proclaimed by

international initiatives and fair adaptation, which will lead to the unification of ODR legislation and practices.

Some critics, such as Drake and Moberg and Wilson, Aleman and Leatham, have expressed fears arising from a lack of personal interaction between the parties of the dispute. Physical presence, body language and tone of conversation are important when resolving a dispute. Along these lines, Goffman developed 'face theory', which explains that the process of resolving a dispute and its success directly depend on the communication between the parties and any negative or positive statements made during communication.

Nevertheless, in most cases of ODR, the parties are not familiar with one another, and a face-to-face meeting between the parties may reduce the likelihood of a dispute resolution. In ODR, multiple technical methods, such as automated software, are used to resolve disputes between the parties, and the parties may not be required to participate in person or even in video conferencing hearings in which the parties can exchange negative comments. If the theory of faces can be correctly applied to ODR, hostility between the parties diminishes, as in many cases, automated online processes help to resolve disputes. Additionally, if any language or cultural barriers exist, it is common practice to use translation and interpretation services during ODR. In terms of enforcement, critics may be of the opinion that when ODR is not binding, it is useless. However, in my opinion, if the optional ODR is successful and results in a binding settlement agreement, it is enforceable in court. ODR also offers fair solutions, as it recognises the principles of fairness and natural justice in addition to statutory rules for resolving a dispute.

Over time, discussions about 'self-regulation versus government interference' in ODR have arisen. Self-regulation has been challenged by consumer groups due to a lack of credibility, leading to the role of government in the ODR process. Initially, the American Arbitration Association, ICC and Better Business Bureau laid out principles for ODR regulation and emphasised the use of the seal of confidence.

Companies such as Verisign and TRUSTe were then formed, and SquareTrade and BBB Online implemented the concept of trust marks as a self-regulatory initiative in ODR practice. At the government level, Electronic Consumer Dispute Resolution (ECODIR) and other ODR projects were implemented as measures of e-governance, as ODR proved to be an effective means of dispute resolution. Schultz was of the opinion that the role of the state is more important than the self-regulatory approach. According to Schultz, 'symbolic capital' – that is, the social reputation of the ODR provider – lends credibility and authenticity to the ODR process that the government is able to provide. The government also provides financial assistance to ODR projects and assists in setting up the technical and administrative infrastructure needed to perform ODR. In addition, Schultz suggests that accreditation is imperative when providing ODR services, as well as acting as a certifier and clearinghouse, helping parties select a service provider, facilitating electronic filing of forms and overseeing the ODR process. He also advocated for an online appeal system of verifying decisions by ODR providers that will provide greater transparency and accountability in the ODR system. Likewise, Rule states: 'To a large extent, the government is the ideal place to resolve disputes because the government has a strong incentive to resolve disputes so that society can function normally. The government is also a good place to resolve disputes, as it is usually not interested in the outcome of most of the issues that are entrusted to it'.

In the Netherlands, the e-commerce platform is a joint initiative of the business community and the Dutch Ministry of Economy, which developed a Code of Conduct for Electronic Commerce.

In Singapore, e-ADR has been launched and is jointly administered and controlled by the lower courts of Singapore, the Ministry of Law, the Singapore Mediation Centre, the Singapore International Arbitration Court Centre, the Trade Development Council and the International Economic Development Council to resolve commercial disputes. Electronic courts in India also seek to promote ODR, judicial review and judicial ODR using online resources, and the CBI (Central Bureau of Investigation) is in the process of establishing electronic courts.

After reviewing above mentioned approaches, we have come to believe that ODR growth can be realised to its fullest potential through public-private partnerships. The role of government will be to instill trust and credibility, and the private sector will contribute to cutting-edge technology. In public-private partnerships, ODR best practices can be successfully established and implemented, and greater awareness and participation in the ODR process can be realised. In the US, Australia, New Zealand, Singapore, Canada and the UK, special funding provided by the government may help to initiate ODR projects.

THE LIST OF USED LITERATURES

1. Rustambekov, Islambek, Uzbekistan: The New – and First – International Commercial Arbitration Law (June 22, 2021). ICC Dispute Resolution Bulletin, Issue 2, 2021, Available at SSRN: <https://ssrn.com/abstract=3872373>.
2. Stanieri A., Zeleznikow J., Gawler M. and Lewis B, 1999 A hybrid-neutral approach to automation of legal reasoning in the discretionary domain of family law in Australia, *Artificial intelligence and law*,7(2-3).
3. State of Maharashtra v Dr. Praful B. Desai (2003) 4SCC 601
4. Grid Corporation of Orissa Ltd. v AES Corporation (2002) AIR SC 3435
5. Brams, S.J. and Taylor, A.D. (1996) *Fair division from cake cutting to dispute resolution*. Cambridge: Cambridge University Press.
6. Б Мохинур, ARBITRATION AND LITIGATION IN THE UAE: ADVANTAGES OF ARBITRATION IN COMPARISON TO LITIGATION - ЮРИСТ АХБОРОТНОМАЦИ, 2020
7. Stranieri, A., Zeleznikow, J., Gawler, M. and Lewis, B. (1999) ‘A hybrid-neutral approach to automation of legal reasoning in the discretionary domain of family law in Australia’. *Artificial intelligence and law*, 7(2-3), pp. 153–183.
8. B Mokhinur, A THOROUGH REVIEW OF THE COMMON LAW CONCEPT OF" ARBITRARY TERMINATION" AND" UNFAIR DISMISSAL"(including DIFC&ADGM, Review of law sciences, 2020.
9. Thomas Schultz, Does Online Dispute Dispute Need Governmental Intervention? The Case for Architectures of Control and Trust, NORTH CAROLINA JOURNAL OF LAW & TECHNOLOGY VOLUME 6, ISSUE 1: FALL 2004.
10. Drake, B.H. and Moberg, D.J. (1986) ‘Communicating influence attempts in dyads: Linguistic sedatives and palliatives’. *Academy of Management Review*, 11, pp. 567–584.
11. Goffman, E. (1967) *Interaction ritual*. Garden City, NY: Doubleday.

INTERNET RESOURCES:

1. <https://www.wipo.int/amc/en/domains/decisions/html/2000/d-0049.html>
2. <https://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1038.html>
3. <https://www.legislation.gov.au/aghome/advisory/nadrac/technology-ADRno.2.htm>