



DESIGNING AN EFFECTIVE ODR PLATFORM: SCOPE AND CONSIDERATIONS

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Abstract

Online Dispute Resolution (ODR) is the latest development in the field of conflict resolution. The main function of ODR is to resolve the complaints/issues amicably with the help of technology. Thus technology is at the prime center of ODR. ODR utilizes the technology, for example, by creating a platform for parties to interact and communicate and reach to an understanding. Therefore the platform must be built in such a way that it is effective in resolving the issues peacefully. Therefore this paper analyses the requirements of a good ODR platform.

Key words: online, dispute, resolution, perspective, technology, internet, claims, ADR

1.1 Meaning and components of ODR

The American Arbitration Association defines it as, "Online dispute resolution (ODR) is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties. It primarily involves negotiation, mediation or arbitration, or a combination of all three. In this respect it is often seen as being the online equivalent of alternative dispute resolution. However, ODR can also augment these traditional means of resolving disputes by applying innovative techniques and online technologies to the process." (Association)

Online Dispute Resolution (ODR) uses alternative dispute resolution processes to resolve a claim or dispute. Online Dispute Resolution can be used for disputes arising from an online, e-commerce transaction, or disputes arising from an issue not involving the Internet, called an "offline" dispute. Dispute Resolution is

an alternative to the traditional legal process, which usually involves a court, judge, and possibly a jury to decide the dispute. Online Dispute Resolution can involve the parties in mediation, arbitration, and negotiation. The parties may use the Internet and web-based technology in a variety of ways. Online Dispute Resolution can be done entirely on the Internet, or "online," through email, videoconferencing, or both. The parties can also meet in person, or "offline." Sometimes, combinations of "online" and "off-line" methods are used in Online Dispute Resolution. (Feliksas Petrauskas)

More or less, ODR is conflict resolution outside the courts, in view of data and interchanges innovation and specifically, speed. ODR emerged as an idea, and depends on Alternative Dispute Resolution (ADR) which alludes to extrajudicial question determination procedures, for example, assertion and mediation. Be that as it may, notwithstanding procedures, for example, online mediation and online discretion, ODR has created imaginative online procedures, for example, mock trials (where a "jury" of online volunteers give a decision in view of an arrangement of actualities as a type of group sourcing) or blind-bidding negotiation systems (where every party makes progressive fiscal settlement offers, which are not unveiled to the next party and prompt a settlement if and when the offers come surprisingly close to each other). UNCITRAL's draft Rules characterize ODR as takes after: online question determination is an instrument for determining conflict through an IT based stage and encouraged using electronic interchanges and other data and correspondences technology. (Hörnle)

Thus ODR is a term which is synonymously used for online ADR. The ODR utilizes technology for the dispute resolution such as web technologies, internet etc. and also utilizes platforms which include text based or video enabled dispute resolution through various modes of ADR such as negotiation, mediation, arbitration etc.

1.2 Dispute Resolution and Information Technology

Information technology provides opportunities to facilitate communication and so assist in prevention and management of disputes. Where disputes arise, ADR services can use information technology to provide information to parties and to complement, or substitute for, traditional face to face interventions. Information technology can also play a valuable role in supporting the quality of ADR practice through more effective supervision, assessment, training, information management, research and evaluation.

Dispute resolution services may use whiteboards, telephones, fax machines or word processors. Parties and providers communicate via telephone networks, information and agreements are entered onto computers, information may be accessed and down-loaded from the Web, parties and providers may communicate via e-mail, forms may be lodged electronically, fees may be paid by the Internet. Many dispute resolution services use tele- or video-conferencing facilities. Some provide their services predominantly or entirely on-line. Some may integrate multiple telecommunication forms with 'intelligent' software. In the future, nano-technology, virtual reality, holography and robotics may be taken for granted like telephones are today.

Information technology has the potential to enhance access to some otherwise disadvantaged groups. Barriers that can be removed or reduced through technology include: geographical isolation; mobility impairment; confinement or imprisonment; sight or hearing impairment (e.g. through voice recognition software); language difficulties (through translating software); lack of confidence or competence in face to face communication; and physical violence or intimidation. On-line communication operates globally and is not constrained by physical distance and geography (but is confined by the

availability of carriers and media). Practitioners and parties can be from anywhere in the world.

While information technology theoretically promotes access, the 'digital divide' may prevent this potential from being realized in practice. Lack of computer literacy and lack of access to appropriate hardware, software and telecommunication infrastructure are key barriers. Those on low incomes, those with low literacy and older people may find it harder to access on-line services. Those in rural and remote areas frequently do not have the reliable high bandwidth telecommunications forms required for effective on-line use of services, and may also be more likely than their urban counterparts to experience the social barriers mentioned above.

Accessibility and acceptability will influence whether a new process, such as on-line ADR, is accepted in the first place. By contrast, fairness concerns the actual and perceived equity of outcomes for parties once they use the service.

While ADR services may use on-line communication to complement face to face services, some processes are conducted entirely on-line. The acronym 'ODR' (on-line dispute resolution) is often used to describe these processes. ODR processes include:

- Automated negotiation, such as blind bidding
- Mock juries
- On-line arbitration
- On-line mediation
- Credit card charge back and escrow arrangements.

Some ODR processes, such as on-line mediation and arbitration, attempt to reproduce traditional face to face processes. However, unique forms of ADR, such as automated blind-bidding and mock juries, have also developed out of the virtual environment. These new forms challenge the definitions and standards developed for traditional ADR processes. (Heuvel)

1.3 ODR Frameworks

There can be four types of ODR systems:

- Online settlement, using an expert system to automatically settle financial claims;
- Online arbitration, using a website to resolve disputes with the aid of qualified arbitrators;
- Online resolution of consumer complaints, using e-mail to handle certain types of consumer complaints;
- Online mediation

ODR represents the gamut of dispute resolution possibilities which are difficult to measure and classify by any coherent set of criteria and principles. It may involve automated negotiation processes administered by a computer, or it can provide world-class experts to administer arbitration procedures remotely. While some ODR mechanisms are “procedures of agreement” (for example online mediation), others belong to “procedures of advice” (e.g. tools supporting negotiation) or “procedures of decision” (e.g. online arbitration). ODR phenomenon encompasses a collection of diverse procedures intended to prevent, manage or resolve disputes in the online environment. Fitting them into a coherent theoretical framework suitable for dispute resolution is certainly a difficult task. The role of technology in mediating communication between parties is seen as the main difference between ODR and other methods of dispute resolution.

Alternate Dispute Resolution (ADR) was the original model for ODR, and many goals and techniques of ADR will certainly remain goals and techniques of ODR. The necessity for new methods of dispute resolution arises from the fundamental nature of the Internet itself. First, the global character of the Internet undermines the notion of territoriality, one of the foundations of traditional locus-based systems of dispute resolution. Because the Internet does not correspond to the jurisdiction of any sole existing sovereign entity, territorially defined laws and rules are difficult to apply to the Internet and activities of Internet users. Traditional, state-run and territorial courts are “too slow, too expensive, and too inaccessible to address all problems that arise on the Internet.” The Internet collapses not only physical space, but also time, in many ways. Information travels rapidly on the Web: cyberspace allows people in all corners of the world to send and receive information 24/7.

In 1999, the OECD has published “Guidelines for Consumer Protection in the Context of Electronic Commerce”. These guidelines encourage businesses, consumer representatives and governments to work together to provide consumers with meaningful access to fair and timely alternative dispute resolution and redress, without undue cost or burden. Special attention is given to cross-border transactions. Special emphasis is placed on the innovative use of information technologies in implementing ADR systems.

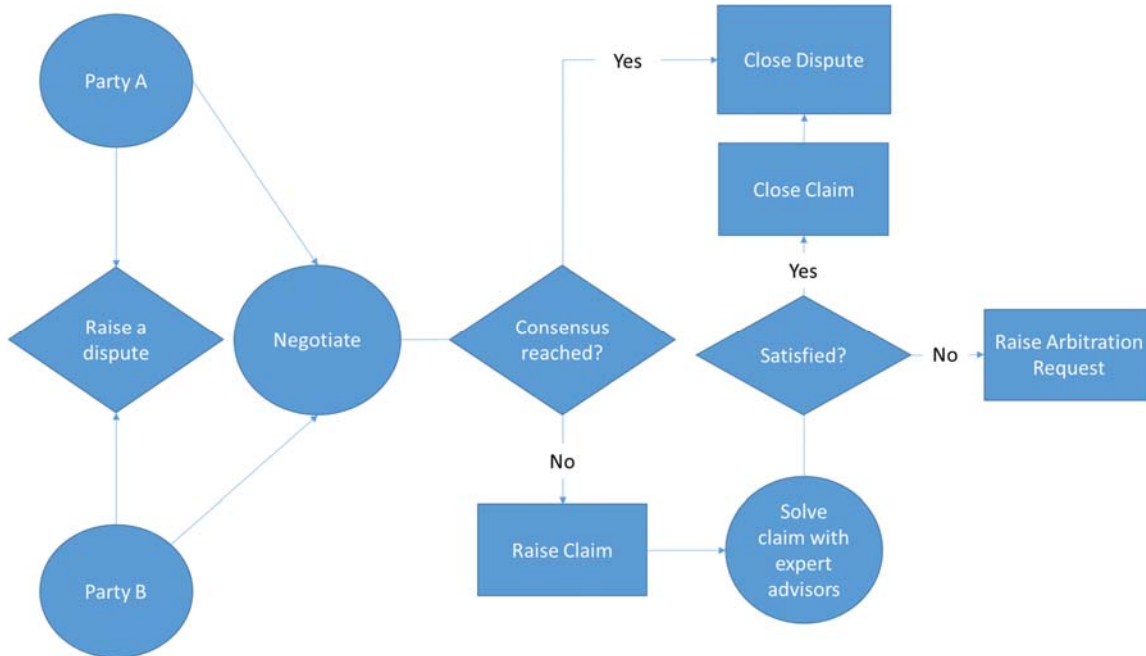
The EU has addressed this issue in the European ‘Directive on electronic commerce’ (98/0325 (COD)). The first part of article 17 of the directive states: ‘Member States shall ensure that, in the event of disagreement between an Information Society service provider and the recipient of the service, their legislation does not hamper the use of out-of-court schemes, available under national law, for dispute settlement, ‘including appropriate electronic means’. The OECD’s Guidelines were later adopted by the G8 in the Okinawa charter on the global information society, which says that extra-judicial dispute resolution mechanisms are a way of solving problems related to consumer recourse in cyberspace and that the “private sector plays a leading role in the development of information and communications networks in the information society, but it is up to governments to create a predictable, transparent and non-discriminatory policy and regulatory environment necessary for the information society”. The European Union and the United States renewed their support for the OECD’s guidelines at the 2000 Summit.

After a dispute is raised, it is advised that the disputed parties come together for a discussion to reach a mutually agreed solution using ‘Negotiation’ process between them. In some cases, when negotiation is failed, ‘Mediation’ process is followed where a mediator tries to direct the discussion to reach a consensus but does not suggest any outcome. But there are times where disputed parties will not mediate, and then a third party known as conciliator tries to settle a dispute by providing multiple suggestions for reaching a common agreement. This process is known as ‘Conciliation.’ There are events where all processes mentioned above are unable to settle a dispute, then a single person or a group of people known as arbitrators hear

the case presented by disputed parties along with all supporting pieces of evidence. This process is termed as 'Arbitration.' All parties involved in a

dispute need to be bind by the decision put forth by arbitrators. Arbitration helps in resolving a dispute privately instead of going to court.

Below are some of the steps of how an ODR process would work online:



1.4 Suitable cases for ODR

With a specific end goal to survey the sort of cases that would be appropriate for online mediation it is easier to begin by alluding to those which are inadmissible for online dispute resolution. These are cases including criminal matters (in any event when the casualty so chooses), conflict where a critical lawful point of reference is looked for or where there is a matter of strategy which should be tended to. Moreover, a noteworthy trouble is to intercede with somebody who does not have any desire to be in a process like e-mediation. Online ODR is more proper when the uniqueness of force between the parties is not awesome, ie B2B, C2C, B2C (with little and medium estimated undertakings (SMEs)). By complexity, online dispute resolution is the best strategy for determining those question where parties "need" to determine the conflict yet the parties can't or hesitant to meet the other party, as much of the time including e-business conflict. (Cortés, Online Dispute Resolution for Consumers, n.d.)

ODR is suitable with protection conflict, development question, job conflict, individual harm claims, medicinal carelessness cases and family question. Besides, ODR is presently growing to new fields, for example, monetary

administrations, rivalry question, little claims and e-trade conflict. Directing mediations completely online gives the chance to extend the advantages of ODR to numerous question that generally would not have the capacity to be determined, especially conflict between parties who are topographically removed and question where the estimation of the conflict is not adequately high to legitimize vis-à-vis parties. For example, under the Spanish Mediation Bill all conflict underneath must occur on the web, aside from when online access is not accessible to one of the parties. Conflict where specific behavior may not think about well an individual or business might be better tended to through mediation – eg B2C – where the business needs to stay away from attention or where it includes delicate material. In those situations where there is a potential progressing business or individual relationship, a consensual strategy will offer an answer without disturbing a relationship. ODR is proper when both sides effectively looked for an assention through arrangements yet they neglected to discover one. Mediation will be additionally fitting to manage those question where parties require a quick settlement since adjudicative systems, specifically prosecution, are for the most part slower in determining conflict.

Pre-requisites for an effective ODR platform

Some of the major advantages of alternative dispute resolution are the facts that it can solve the problem of jurisdiction, it is swift and can be provided at low or no cost to e-consumers, but quality guarantees are necessary as well as guarantees that the solutions will be followed (compliance).

In the borderless online commercial center, parties situated in various parts of the world make contracts with each other at the snap of a mouse. In this virtual environment, where exercises occur amongst outsiders, the potential for misconception, mix-up and extortion is expanded. In any case, solution for these conflicts emerging out of e-business is badly designed, tedious and costly inferable from the low estimation of the exchanges and the physical separation between the parties. Furthermore, courts may do not have the assets and the ability to stay aware of the development in cross-outskirt question emerging out of an always rising e-trade. The determination of conflict is upgraded when helped by Information and Communications Technology (ICT), on the grounds that when separation correspondences are used there is no compelling reason to travel, which thus lessens expenses and expands access to equity. Online Dispute Resolution (ODR) essentially includes Alternative Dispute Resolution (ADR) forms, to a great extent helped by the pace and accommodation of ICT and the web, which are famously suited to the requirements of e-trade. ODR makes the open door for the determination of lesser-esteem and cross-outskirt conflict which couldn't just be determined something else. Likewise, ODR in the B2C setting has the part of expanding buyer trust, vital in the advancement of practical e-trade; if that is not gave, shoppers will absolutely like to shop at the neighborhood store.

There are a few misguided judgments about ODR, for example, the possibility that ODR is legitimate for little cases, or that ODR only depends on mechanized innovation, or that ODR can just manage online conflict. In actuality, ODR has demonstrated effective in determining logged off and substantial worth question, and it by and large joins impartial outsiders. (UNCITRAL)

Conclusion

Thus it can be said that designing the ODR is a great challenge as it involves the incorporation of human element into the system. An effectively designed platform will help in resolving the conflicts virtually and thus saving time and money. People no longer need to go to court and to seek justice. ODR will help in identifying the issues to be resolved by analyzing the components of dispute. It also helps in maintaining the neutrality of third party such as mediator and arbitrator. Effectively built ODR platform is surely the future for seeking redress.

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