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Online resolution

Is this the future for disputes?

Online dispute resolution (ODR) is an umbrella term for dispute resolution processes driven by information and communications technologies.

In particular, ODR is a branch of dispute resolution that utilises technology and artificial intelligence (AI) to settle disputes.¹ Negotiation, mediation and arbitration may all be pursued online and supplemented by AI, and information processing and data analysis tools. An explosion of internet-driven services has not only provided a platform for disputes to be resolved online, but catalysed a need for disputes to be resolved in an online forum.

A number of technology trends have provided both the possibility and need for ODR: communication speed (as we have moved from dial-up to broadband and mobile broadband); portability and mobility of devices; storage capacity; cost of services; and the digitisation of currency.² The combination of these trends has led to flourishing software-as-a-service (SaaS) companies such as eBay, AirBnB and Uber, which have become global brands.

Ecommerce disputes

ODR is particularly suited to ecommerce disputes where buyers and sellers are more likely to be disparate. The need for ODR processes in this arena has been recognised by the Council of the European Union, which adopted a regulation on ODR on 18 June 2013, and the United Nations Commission on International Trade Law, which established an ODR working group in March 2010.³

A leading service provider in this area is San Francisco-based company Modria (modria.com), which provides a SaaS product. Modria can be used by anyone with an online store. What makes it interesting is that it uses a variable mapping system to automatically attempt to resolve

disputes between buyers and sellers. This is done by collecting and analysing relevant data, such as buyer details and transaction information, and mapping that data to a seller-defined list of rules, which define policies regarding refunds, credit and so on.

The concept has found support from investors. According to crunchbase.com, a website designed to track and analyse startup activity, Modria raised \$2.5 million in angel funding in 2012 and \$5 million in Series A funding in 2013.

The funding seems to have been prescient: the SaaS product built by Modria has also been deployed to systems outside ecommerce. In December 2014, the Ohio Board of Tax Appeals launched an online resolution centre for tax appeals which is powered by the same software. Parties can file everything online, check the progress of the appeal and access documents, timetables and case details via the Ohio BTA portal (ohio-bta.modria.com). The system even allows for the publication of decisions.

Modria is not the only SaaS provider in the domain of ODR; other companies include Smartsettle, Cybersettle and eQuibbly. Other forums are adopting ODR processes, too. The World Intellectual Property Organization (WIPO) is currently developing a mechanism to resolve disputes online through the WIPO Arbitration and Mediation Centre, and the China International Economic & Trade Arbitration Commission (CIETAC) offers an ODR service.

The future of ADR?

The benefits of ODR are consistent with the benefits and goals of other forms of alternative dispute resolution: disputes can be resolved quickly and cheaply while providing a high degree of autonomy and user empowerment. In an article on the recent World Masters of Law Firm Management conference, which was held in Sydney in March, the *Australasian Law Management Journal* reported that Richard Susskind (the IT adviser to the Lord Chief Justice) forecasts the rise of ODR practitioners.⁴

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Taking advantage of technology and moving dispute resolution online may save clients time and money and reach outcomes more quickly. Report by **Hamish Clift**.



A shift toward ODR is inevitable as SaaS products create opportunities for disputes to be resolved with as little friction as possible. By shifting dispute resolution online, we can save our clients time and money and reach outcomes even more quickly.

While there are obvious benefits to disparate parties in using ODR, the benefits are not limited to disputes with parties in different parts of the world. ODR processes are suitable for consumer, administrative and even taxation disputes. It is only a matter of time before it becomes more common to resolve these sorts of disputes online than to resolve them in the corporeal world.

If you are interested in reading more about ODR, a copy of *Online Dispute Resolution: Theory and Practice* by Wahab, Katsh and Rainey is available online at ombuds.org/odrbook/Table_of_Contents.htm.

This article appears courtesy of the Queensland Law Society Alternative Dispute Resolution Committee. Hamish Clift is a solicitor at Bartley Cohen.

Notes

- ¹ Editorial, *International Journal of Online Dispute Resolution* 1 (2014) 1.
- ² Ethan Katsch, "ODR: A Look at History" in *Online Dispute Resolution: Theory and Practice*. Wahab, Katsch & Rainey (eds.), p 30.
- ³ Cf Mirèze Philippe, "ODR Redress System for Consumer Disputes", *International Journal of Online Dispute Resolution* 1 (2014) 57.
- ⁴ "Delivery models the key to a prosperous future: Susskind", 27 March 2015.

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