

A Review of Issues in the Development of Online Dispute Resolution (ODR) from the Perspective of E-Commerce Disputes

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Abstract: *With the development of Internet technology, the era of interconnection, the efficiency, simplicity of the internet are more and more prominent, and e-commerce transactions have reached an unprecedented scale. E-commerce as well as mobile payment has become the main way of people's daily life shopping, e-commerce law is generated at the same time, online dispute resolution mechanism is precisely in this energy background came into being. Online Dispute Resolution (ODR), as an emerging dispute resolution mechanism worldwide, is considered to be a mechanism of Alternative Dispute Resolution (ADR) linked to Information and Communications Technology (ICT). It is regarded as a brand new dispute resolution method formed by Alternative Dispute Resolution (ADR) linked with Information and Communications Technology (ICT). This paper aims to make a preliminary discussion on ODR, and then puts forward some suggestions on the development of ODR in China, so as to promote the improvement and development of China's online dispute resolution mechanism.*

Keywords: Online dispute resolution mechanism; Electronic commerce; Practice development; ODR.

1. OVERVIEW OF ONLINE DISPUTE RESOLUTION MECHANISMS

1.1 Concepts and characteristics of ODR

ODR (Online Dispute Resolution), its predecessor is the alternative dispute resolution mechanism ADR. ODR is its extension on the online network, at present, there is no uniform definition for ODR in the academic world, the domestic ODR website defines ODR as the rapid resolution of e-commerce transaction disputes, uniting professionals from all walks of life and following industry regulations, and providing a series of e-commerce dispute handling services for e-commerce enterprises and their consumers, including mediation, negotiation and conciliation, arbitration and advance payment, online legal counselling and consumer complaints. With ODR, e-commerce transaction disputes can be resolved conveniently and quickly without the need for traditional litigation procedures.

The online dispute resolution mechanism has several features: firstly, the cost of resolving disputes is low, and the online dispute resolution mechanism shifts the traditional way of resolving disputes from offline to online, largely reducing the time and money costs of the parties. The online dispute resolution platform carries out direct and fast communication through the internet line after consulting the parties' wishes. Secondly, the information record is comprehensive, the online dispute resolution mechanism relies on the most advanced internet technology, compared to the traditional clerk is more able to provide the parties with a comprehensive record of written materials, to meet the needs of the future review and reference. For the future may evolve from the litigation process and judgement results to provide comprehensive evidence to support and enforceable reliance. Thirdly, the procedure is flexible, traditional dispute resolution needs to follow strict statutory procedures, the completion of these procedures need to consume a long time cycle, the inefficiency brought about by the redundant procedures. Online dispute resolution mechanism to meet the procedural requirements of the maximum extent of the time and procedures agreed by the parties, as long as the parties to reach an agreement between the dispute can be resolved in a short period of time at the fastest speed. Online disputes originally has a small amount of the subject matter of the dispute and other characteristics, and then take the traditional litigation to solve the problem is not worth the loss, online dispute resolution minimises losses for parties involved. Fourth, convenience and speed, the parties need to online dispute resolution, need to open an account in the relevant APP, online upload dispute information can wait for the relevant personnel to solve, do not have to go to the judiciary, do not have to wait for a long time, do not have to put up with redundant procedures, in front of the computer can be resolved disputes.

1.2 Classification of ODR

1.2.1 Online mediation

In practice, the most widely used model is online conciliation. When a dispute arises between two parties, one of the parties submits an application to the platform, at which time the platform needs to seek the opinion of the other party. If both parties reach a consensus, the mediation process will be automatically initiated, and the platform will dispatch a mediator to carry out the work, who, after fully understanding the specifics of the dispute between the two parties, will provide the parties with a reasonable solution and persuade both parties to accept the outcome of the mediation. There are currently two types of online mediation available to the parties. The first is an external specialised online dispute mediation platform co-operated by the enterprise. After a dispute has arisen, both parties can submit an application online, and the mediator of the platform, who has professional quality and communication experience, will conduct mediation in accordance with the procedures and regulations. After fully understanding the focus of the dispute between the two parties, the mediator will take into account the actual situation of the case and the request of the parties, and arrive at a solution to help the parties reach a settlement. The second type is the mediation platform within the enterprise, for example, salted fish will set up a dispute resolution platform within the APP, such as customer service centre and complaint platform. Consumers can directly skip the merchants to face the platform, directly express their demands, and the platform will handle the situation according to the known situation.

1.2.2 Online Settlement

Online settlement refers to the fact that when a dispute arises the ODR platform merely provides a venue for communication and exchange without substantive involvement in the dispute. Both parties just use a channel provided by the platform to present their views and demands. Both parties agree on the channel of negotiation, and the final result reached is the result of free discussion between the two parties, and the implementation of the result is much easier. The communication channel provided by the third-party platform is more confidential than the private negotiation between two parties through ordinary video or telephone tools. The simplicity, speed, efficiency and lack of third-party involvement in this type of problem resolution provide a suitable solution for e-commerce disputes of small amounts and small disputes.

1.2.3 Online Arbitration

Online arbitration refers to the agreement between the parties to submit to arbitration. The parties' agreement to arbitrate, the choice of arbitrators, the choice of governing law, the arbitration conducted by the arbitrators of the arbitration board and the generation of the award are all carried out online. This type of mediation is more formal and is only used when neither of the first two scenarios can be successfully mediated. The Online Arbitration Rules developed by the China International Economic and Trade Arbitration Commission (CIETAC) aim to make the arbitration process fully online.

2. EMERGENCE AND DEVELOPMENT OF ONLINE DISPUTE RESOLUTION MECHANISMS

2.1 Causes of online dispute resolution mechanisms

2.1.1 The arrival of the information age has given rise to the development of emerging litigation models

The third industrial revolution, with the invention and application of the electronic computer and a number of technologies, including information technology, opened up the information age and brought about a new economic model, the knowledge economy. The Internet has swept across the globe with its convenience and speed, greatly promoting changes in the political, economic and cultural fields of mankind, and making human society develop towards a high level of modernisation. The popularity of the Internet has led to the emergence of a large number of online shopping sites, such as Amazon in the United States, Taobao and Vipshop in China, etc. The amount of online transactions has also increased year after year, and correspondingly, the number of online shopping disputes has also increased rapidly. When disputes arise, they need to be resolved, and we need to develop our system in a continuous process of dispute resolution.

2.1.2 Traditional dispute resolution models fail to meet social needs

We are in the Internet era, the network's tentacles embedded in all aspects of people's lives, bringing convenience at the same time, the drawbacks are also gradually revealed, especially in the offline integration. Among them, a large number of, repeated, scattered small e-commerce transaction disputes processing problems are particularly prominent, people urgently need a new dispute resolution model to adapt to the rapid development of the reality. According to the interpretation of judicial big data, the national online shopping contract disputes are on the rise year by year. The People's Court concluded 32,000 cases of online shopping contract disputes at first instance in 2022, nearly tripling the number of cases compared to 12,000 cases concluded at first instance in 2018. Therefore, it is necessary to establish a low-cost dispute resolution model that matches small and low-cost online disputes.

2.2 Current status of ODR processes and development in the rest of the world

2.2.1 Development status in the United States--the birthplace of ODR

The United States, as the birthplace of ODR, has been strongly supported and highly valued by the U.S. government, and the U.S. system of ODR is well constructed, with a large number of platforms, relatively mature practical experience, and a majority of the world's website sites.

Villanova University in Philadelphia, USA established the world's first systematic online dispute resolution organisation-Virtual Magistrate in 1995, which is of epoch-making significance in the field of ODR. A year later, three experimental programs were launched in the United States, two of which, online arbitration and mediation of online auction disputes, gave a great impetus to the development of online dispute resolution mechanisms in the United States. On the basis of the virtual magistrate, it expanded the scope of application of mediation to all online disputes. the online magistrate court established in 1996 included two modes of dealing with disputes, namely, mediation and arbitration, and organically integrated the two, giving birth to an epoch-making and ground-breaking mode of dealing with disputes. the U.S. Federal Trade Commission and the U.S. Commerce Commission launched a new online dispute resolution programme in 2000. Commission (U.S. Federal Trade Commission) and the U.S. Department of Commerce jointly held an open forum meeting dedicated to the discussion of ODR, this time the participants on the global implementation of the ODR programme, technological breakthroughs in the programme, media publicity programs, fairness and efficiency and other issues to be fully explored. A large number of solutions and recommendations were put forward as a result of the group's efforts. This meeting had a great impact on the development of ODR in the United States.

2.2.2 Evolutionary status of ODR in the EU

The European Union has been a strong promoter of ODR, with the 1998 EU E-commerce Directive requiring that the laws of its member states should not prevent consumers from resolving their disputes outside of the courts, particularly online. In March 2000, the EU convened a forum in Brussels, which focused on furthering the understanding of the legal, technical and commercial aspects of ODR. The National Center for Technology and Dispute Resolution (NCTDR) of the EU and the US hosted the first annual International Conference on ODR in Geneva, Switzerland, in 2002 under the auspices of the United Nations Economic Commission for Europe (UNECE) with the goal of promoting confidence among consumers and businesses. In 2013, the European Parliament and the Council adopted Regulation (EU) No. 524/2013 on online dispute resolution for consumers and amending Regulation (EC) No. 2006/2004 and Directive (EC) No. 2009/22 (Consumer ODR Regulation) and Directive (EC) No. 2013/11 on alternative dispute resolution and amending Regulation (EC) No. 2006/2004 and Directive (EC) No. 2009/22 (Consumer ADR Directive), which entered into force on 19 January 2016. In February 2016, the in-house ODR platform was formally opened for use by the Member States.

3. PRACTICAL DEVELOPMENT AND MODEL STATUS OF ONLINE DISPUTE RESOLUTION MECHANISMS IN CHINA

China's online dispute resolution mechanism began with the establishment of the CIETAC Online Dispute Resolution Centre at the end of 2000, which was formerly known as the CIETAC Domain Name Dispute Resolution Centre. On 28 February 2002, the Asian Domain Name Dispute Resolution Centre was officially put into operation, which was led by the China International Economic and Trade Arbitration Commission (CIETAC) and the Hong Kong International Arbitration Centre (HKIAC) to land the institution. In 2004, the China E-commerce Law Network, Beijing DFID Consulting Co. cooperated to build China Online Dispute Resolution Centre.

3.1 Rapid development of in-platform ODR - Taobao e-commerce as an example

At present, China's major e-commerce platforms have set up online dispute resolution mechanisms within the platform to provide ways and channels for consumers to resolve disputes or disputes. The rapid and strong development of Taobao has led to a significant increase in the number of orders and a geometric increase in the scale of transactions, resulting in a purely manual customer service to resolve and accept disputes, which is not enough to meet the needs of the reality and long-term development. In December 2012, Taobao launched the public review mechanism, allowing a large number of Taobao members to vote, so as to allow them to rule on the reasonableness of the rules. December 2013, Taobao set up a dispute determination centre, and thus a unique online shopping platform public review mechanism was born.. 2016, Taobao officially included the public review in the business project review, to enhance the professionalism of the ruling, reduce the risk of customer service review. It operates as described below, and by its nature, this dispute resolution mechanism is part of the internal business of the company, in short, its customer service department. There are two paths to choose from when dealing with a dispute, one is that the parties can choose to have the dispute resolved by Taobao customer service personnel; the other is to choose to have the dispute resolved by public review. When the choice of customer service staff to resolve, by the parties to provide relevant evidence to the customer service staff, customer service staff in accordance with the 'Taobao Dispute Handling Specification' to deal with disputes; the parties to choose the way to resolve the public review, the parties and the seller failed to negotiate the public jury stage, the seller and the consumer independently selected members of the network jury, through the randomly selected reviewer according to the evidence given by the buyer and seller to judge the case, the public jury consists of general Taobao users. The jury is composed of general Taobao users, who do not have professional legal knowledge and skills, and rely on 'simple values' to make a judgement. At present, the vast majority of e-commerce companies will set up a set of dispute resolution mechanisms and violation penalty mechanisms based on the operation of their own websites from the perspective of self-government, and have unique reporting and complaint channels, such as Jingdong and Suning.com.

Taobao's independent exploration of the dispute resolution mechanism based on the majority of the community, supported by the relevant credit system to protect and regulate, has laid the foundation for the long-term development of the enterprise, and provides a good example for other enterprises in the same industry, and, at a higher level, opens up a new mode of governance in the Internet society, and proposes a model for social ODR governance. However, it also has problems such as limited dispute handling, irregularity and irrationality of the rule mechanism. These problems need to be solved urgently in the future social practice.

3.2 ODR in court to explore a new judicial model - the institutional model of Hangzhou Internet Court as an example

Since 2017, based on the development of the times and the objective needs of judicial practice, China has set up three Internet courts in Hangzhou, Beijing and Guangzhou. The three Internet courts rely on modern technology for network governance, which not only can efficiently set points and stop disputes in Internet-related cases, but also is a powerful judicial guarantee to safeguard national network security, promote the deep integration of the Internet and the economy and society, and serve the strategy of a strong network, providing a blueprint for the construction and reform of China's Internet courts. This article mainly explores the first - Hangzhou Internet Court. 2015, Zhejiang Provincial High Court in Hangzhou Central Court, Hangzhou West Lake District Court, Binjiang District Court, Yuhang District Court have set up e-commerce online court, 12 August 2015 online court formally on-line, the prosecution, filing, trial, judgement, service and other multi-process litigation procedures are all completed online. On 18 August 2017, according to the programme considered and adopted by the Central Leading Group for Comprehensively Deepening Reform, the Hangzhou Internet Court was set up, concentrating on hearing six types of first-instance civil and administrative cases involving the Internet over which grassroots people's courts within the jurisdiction of Hangzhou city have jurisdiction. Data from the Supreme Court shows that since 2018, the three Internet courts in Beijing, Hangzhou and Guangzhou have received a total of 217,256 new cases of first instance and other types of Internet cases, and concluded 208,920 cases. Among them, 15,327 cases were received in 2018, and 12,792 cases were concluded; 104,714 cases were received in 2019, and 99,405 cases were concluded; 97,215 cases were received in 2020, and 96,723 cases were concluded Hangzhou Internet Court, based on the characteristics of Internet-related cases, and at the same time combining with the relevant trial requirements, has explored and introduced the 'Hangzhou Internet Court Litigation Platform Trial Regulations' and 'Hangzhou Guidelines on Prosecution and Jurisdiction of Internet-related Cases in Hangzhou Internet Court', aiming to solve the problems of trial process and jurisdiction of Internet-related cases. The business scope of the online platform

for the diversified settlement of conflicts and disputes is divided into five modules: online counselling, online assessment, online mediation, online arbitration and online litigation.

3.3 The New Development of Off-Platform ODR - The Case of Shenzhen Zhongxin E-Commerce Transaction Guarantee Promotion Centre

Zongxin Centre is responsible for the construction and operation of 'Zongxin.com', the basic support platform for trustworthy e-commerce transactions, and the public service platform for e-commerce market, which is a third-party service organisation authorised and entrusted by the government according to the law and co-sponsored by Shenzhen Research Institute of Standards and Technology (SRIST) and Shenzhen Public Credit Centre (SPCC) with the support of the government. The business of Zongxin Centre is mainly to help enterprises to solve the following problems which are difficult to be solved by themselves: enterprise service and public service. In the first stage, it mainly provides identity authentication services for enterprises engaged in e-commerce within Shenzhen, and the platform will provide dynamic electronic logos for enterprises that pass the authentication after the information is matched without error. In the middle stage, it mainly provides services for the online signing and management of electronic contracts, as well as storage of transaction certificates as a third party. The later stage is mainly through the display of the electronic logo so that consumers can access dynamic enterprise registration information, IP address and other basic information. These innovations are at the forefront, although one drawback is that the scope of services is narrow, limited only to e-commerce enterprises in Shenzhen, which is difficult to meet the needs of the current rapid development of e-commerce. It can be suggested that local governments vigorously cultivate this model, and promote it to all parts of the country after it has accumulated a large amount of experience, talent and capital, to break through geographical restrictions. The success rate of the ODR approach to problem solving in China can be promoted through information sharing.

4. THE DILEMMA OF ONLINE DISPUTE RESOLUTION DEVELOPMENT IN CHINA

4.1 Uneven levels of development between regions

The eastern part of China has convenient transportation, active foreign trade, favourable maritime conditions, abundant resources, abundant labour force and a mild climate, while the western part of the country is deeply landlocked, with inconvenient transportation, less easily developed resources and a relatively poor natural environment. Geographical differences have led to a wide gap between the economic development of the eastern and western parts of China. In the implementation of the western development strategy for many years, the eastern provinces of the western provinces for one-to-one assistance, financial transfers, resource tilt, the gap between the west and the east is gradually narrowing, but the reality of the gap is inevitable, and the eastern part of the economic development there is still a large gap between the infrastructure and financial strength is relatively weak, affecting the implementation of many tasks. The eastern region is economically developed, the local financial allocations, in addition to personnel expenses, case expenses are still surplus, the court can be used for infrastructure, hardware and software facilities. And the western region is economically less developed, local financial allocations less, the funding gap is large, personnel funds and case funding sometimes can not be guaranteed, so the wisdom of the construction is difficult. In addition to objective economic reasons, there are subjective ideological reasons. Many judges in the western region are accustomed to the traditional way of work, some of the technical difficulties of online dispute resolution are "rejected" by them, bringing great ideological pressure and burden.

4.2 Platform technology constraints and lack of expertise

Relative to the volume of e-commerce transactions and the number of e-commerce disputes the number of existing online dispute resolution mechanism platforms in China is far from enough, and there is a relative lack of attached e-commerce dispute handling platforms within enterprises and industries as well as external specialised online dispute handling platforms, and there is a serious phenomenon of duplicated construction. In terms of professionals, they are currently only hired from the court system or legal aid centres or lawyers, and there are relatively few people specialising in ODR.

4.3 Low level of public trust due to the scope of cases and remedies available to the public

ODR is a mode of dispute resolution built on a high degree of networking and informationisation, and the level of development of communication technology, as a necessary condition for the survival and operation of ODR, determines and constrains the development of ODR. The Internet provides people with convenient communication with unseen risks. Online dispute resolution requires personal information to be transferred to the network, and there is a risk of information data being lost or maliciously stolen, intercepted and tampered with. But these are not problems with the online dispute resolution mechanism, but problems that already exist in the online world. For example, the lack of real-name authentication and the pressure of face-to-face communication reduces the parties' trust in the person on the opposite side of the network, and ODR itself is built on a virtual platform on the network, which raises the issue of information security and confidentiality. The parties may worry about the disclosure of their personal privacy, or that the person on the other side of the network is in fact a false identity or false information. When entering the ODR platform for dispute resolution, the parties know little about the other party, or even the other party's assets and credit status, and rely almost entirely on the third-party platform for mediation, which may cause doubts and suspicions as to whether the third-party platform can be fair and impartial, and whether the final judgement can be enforced smoothly.

Subsequent implementation issues are almost entirely dependent on the conscientiousness of both parties, if one party does not support the legitimacy of the ruling, the platform in addition to the platform to restrict the network behaviour of one party, there is no effective way to bind the parties, the rights and interests of the parties can not be guaranteed, the judgement is just a waste of time, a waste of energy, and the establishment of its original intention to save money runs counter to the original intention of the cost. Finally, the implementation of the results of the dispute is difficult to get the protection of public power, the parties still need to go to court to sue to finally solve the problem. At present, the adjudication results of online dispute resolution mechanisms in the world and China are only recognised as binding on both parties to the dispute, but not enforceable, the adjudication results are not guaranteed by the official authority, and there are also legal risks and challenges such as the difficulty in determining the proving power of electronic evidence, which largely limits the development of ODR in China.

4.4 Limitations in dealing with cross-border e-commerce disputes

Online Dispute Resolution (ODR) mechanism plays an increasingly important role in dealing with China's domestic e-commerce disputes, but domestic ODR platforms do not meet the actual needs of cross-border e-commerce disputes, and with the continuous development of e-commerce, cross-border e-commerce has been immersed in all aspects of our lives. For example, global shopping and overseas shopping on behalf of others are commonplace. However, domestic ODR is not sufficiently prepared to resolve cross-border e-commerce disputes. The problem of determining jurisdiction, the application of substantive law norms, the implementation of dispute resolution, and especially the lack of a cross-border online dispute resolution mechanism platform will make the advantages that ODR itself has greatly reduced.

5. EXPLORING THE DEVELOPMENT PATH OF CHINA'S ONLINE DISPUTE RESOLUTION MECHANISM

5.1 Establishment of a nationally unified online dispute resolution mechanism platform

At present, the ODR organisations established in China have begun to operate and realise online dispute resolution, but territoriality is still a problem, with each website having a different scope of service, radiation area, means of redress, and main business content, and people's familiarity with most of the ODR organisations is very low in comparison with traditional dispute resolution modes such as the courts, and it is therefore recommended that reference be made to the Online Conflict and Dispute Resolution Platform model to build a national unified online dispute resolution platform that integrates national ODR dispute resolution resources. Each ODR platform applies to the unified platform when it is established, and if it meets the requirements of the unified platform for its establishment, it can obtain a qualification certificate issued by the unified platform, similar to a 'market access qualification certificate', and it can also join the platform and set up a search link in its webpage. When parties need to resolve a dispute, they can go to the unified platform to search for the ODR organisation that suits them. The platforms with different service scope can also co-operate and communicate with each other and strive to achieve information sharing, resource sharing and complementary advantages among the platforms.

5.2 Strengthening the interface between online dispute resolution mechanisms and the judiciary

The ODR system is a very important supplement to judicial dispute resolution. The State should adopt legislation to confirm the status of the ODR platform constructed by enterprises or third-party subjects or associations. At the same time, the results of dispute resolution through the ODR mechanism should be recognized, and corresponding implementation recognition measures should even be set up, thus improving the effectiveness. The social acceptance of the ODR mechanism and the level of public trust have contributed to the acceptance and use of the ODR mechanism by the public.

5.3 Enhancement of the commercial operation of the ODR Platform

A small number of ODR platforms of public interest exist in the market, and some ODR services are purchased by the government and opened to the public free of charge. From the perspective of long-term development, profit-making is the most effective way for ODR to develop, through charging reasonable fees to ensure that the platform continuously optimises and upgrades the system, improves the level of talent supply and treatment, and enhances the motivation of platform service personnel to promote long-term development. Commercial operation can satisfy the market demand-oriented, so that platforms compete with each other to achieve the survival of the fittest. The "invisible hand" of the market is used to make full and reasonable allocation of resources to achieve the maximum use of resources, forcing ODR organisations to continuously improve their service quality and develop new business directions, thus making the online dispute resolution mechanism burst with long-lasting vitality.

5.4 Strengthening cooperation with ODR platforms around the world

With the continuous development of cross-border e-commerce, people's choice of goods is expanding to all corners of the world, and with that comes the internationalisation of disputes, so it is crucial to build a global online dispute resolution system. China has also made clear provisions from the law, to promote the development of the practice to make institutional safeguards, the People's Republic of China E-commerce Law, Article 73 clearly to: "The State promotes the establishment of cross-border e-commerce exchanges and cooperation with different countries and regions, to participate in the formulation of international rules of e-commerce, and to promote the international mutual recognition of e-signature, electronic identity and so on. The State promotes the establishment of cross-border e-commerce dispute resolution mechanisms with different countries and regions." The "Beijing Consensus" reached at the International Online Dispute Resolution (ODR) Conference held in Beijing in 2016 aims to unify the basic principles and norms for the operation of ODR platforms. The "Beijing Consensus" has made a good model for international cooperation on ODR platforms. At the same time, this kind of international ODR seminars initiated by the civil society also build a good platform for mutual exchanges, learning and cooperation among platforms.

6. CONCLUSION

Social development promotes the emergence and growth of ODR mechanism, and the further development of ODR mechanism also promotes social progress and innovation. The development of ODR in China is still at the stage of starting and groping, and compared with countries with mature ODR development such as Europe and the United States, there still exists a gap from the development concept to the legal system to the specific procedures of ODR operation. We need to enrich and develop our own mechanism with Chinese characteristics on the basis of learning from other countries, so as to create more possibilities belonging to us in this era.

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