

## **Online Dispute Resolution: An Amorphous Concept, Yet An Effective Tool**

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### **I. Introduction**

Technology is becoming an ever more integrated part of society, playing a role—or at the very least touching—nearly every aspect of daily life. The world of arbitration is no exception to this phenomenon. Parties are increasingly taking advantage of online dispute resolution (ODR) to resolve issues. This is not particularly surprising, as the world of alternative dispute resolution is growing and people are looking for faster, cheaper, easier ways to solve their problems.

Online Dispute Resolution can take many forms, similar to traditional Alternative Dispute Resolution (negotiation, mediation, arbitration). For the purposes of this report, however, the focus will be on the progression and implementation of ODR in its various forms, rather than on the distinctions between “types” of online alternative dispute resolution methods (such as e-negotiation, e-mediation, e-arbitration). Together, these tools combine to form the field of online dispute resolution, and the concentration here is on the field as a whole.

ODR scholarship is fairly limited. Aside from a handful of law journal articles, most of the information on ODR exists where the process itself was born: on the Internet. As a writer for the Baylor Law Review observed,

Most commentators mainly have discussed use of the Internet for filing, scheduling, and managing ADR processes, or for numbers-focused processes... that gather parties’ confidential settlement offers and demands and determine if and what settlement the parties should mutually accept...articles and reports have provided more facial discussion of ODR’s inevitability with the rise of e-communities and the Internet-savvy generation...<sup>1</sup>

Despite the lack of scholarly attention devoted to ODR, the vast amount of scattered information available and relatively widespread use of the process merit an in-depth look at this emerging technology.

### **II. What is online dispute resolution?**

Online Dispute Resolution means exactly what it says: it is a method of

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<sup>1</sup> Amy J. Schmitz, *Drive-thru Arbitration in the Digital Age: Empowering Consumers through Binding ODR*, 62 Baylor L. Rev. 178, 182-183(2010).; Leah Wing & Daniel Rainey, *Online Dispute Resolution and the Development of Theory*, in ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE: A TREATISE ON TECHNOLOGY AND DISPUTE RESOLUTION, 25 (Daniel Rainey, Ethan Katsh, & Mohamed S. Abdel Wahab eds., The Hauge: Eleven International, 2012).

resolving disputes through the use of an “online” system (the Internet). However, there is some ambiguity as to what this could entail. Does it refer to the resolution of disputes that were born online? Conducting ADR on the Internet? A combination of traditional ADR methods and online technology to resolve issues? ODR is still evolving, but currently it can entail almost any of these qualities. Boiled down, ODR is perfectly represented by its own vague name and is perhaps best explained as “the use of Alternative Dispute Resolution (ADR) mechanisms over the internet.”<sup>2</sup>

Interpreted broadly, ODR can be considered the use of online environments to facilitate communications and dispute resolution; however, the more conventional definition of ODR is a process that utilizes the Internet as a more efficient medium for parties to resolve their disputes through a variety of ADR methods, which brings disputing parties together online to have a dialogue about resolving their dispute.<sup>3</sup> According to odr.info, which is the home of the National Center for Technology and Dispute Resolution (NCTDR) and the “prime portal for online dispute resolution”:

The online environment [is] a ‘place’ where increasingly powerful tools will be available for working to find solutions to many forms of offline/online conflict, whether they are public or private, whether they involve commercial transactions or other social relationships, and whether they are international or domestic.<sup>4</sup>

As perhaps this perspective demonstrates, ODR is an amorphous field that can almost conform to whatever role need be. Although it is perhaps most common to encounter the use of ODR in consumer disputes, it can be used in a variety of arenas. ODR can be employed by business and consumers (B2C), in the commercial field (B2B), in the public sphere to resolve government and citizen disputes (G2C), and in the resolution of disputes related to intellectual property.<sup>5</sup>

What is now known as ODR was initially a response to problems occurring in cyberspace, where a dispute resolution process that took place over a network seemed necessary and appropriate.<sup>6</sup> ODR traces its origins back to the 1990s with the emergence of the Internet and a new atmosphere where disputes would arise and need to be resolved.<sup>7</sup> Originally, ODR was focused on disputes related to online activities but is now employed in offline disputes.<sup>8</sup> Currently the issue isn't what disputes should utilize ODR, but what tools can be used to deliver trust, convenience,

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<sup>2</sup> Julio Cesar Betancourt & Elina Zlatanska, *Online Dispute Resolution (ODR): What Is It, and Is It the Way Forward?*, 79 *Arbitration*, Issue 3 (2013), at 256, electronic copy at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2325422](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2325422).

<sup>3</sup> Nicolas W. Verymeys & Karim Benyekhlef, *ODR and the Courts*, in Wahab, Katsh & Rainey, *supra* note 1, at 295-296.

<sup>4</sup> THE NATIONAL CENTER FOR TECHNOLOGY AND DISPUTE RESOLUTION, odr.info, <http://odr.info/mission> (last visited December 4, 2013).

<sup>5</sup> Pablo Cortes, *Online Dispute Resolution for Consumers*, in Wahab, Katsh & Rainey, *supra* note 1, at 139.

<sup>6</sup> Orna Rabinovich-Einy & Ethan Katsh, *Technology and the Future of Dispute Systems Design*, 17 *Harv. Negot. L. Rev.* 151, at 164 (2012).

<sup>7</sup> Ethan Katsh, *ODR: A Look at History*, in Wahab, Katsh & Rainey, *supra* note 1, 9-11.

<sup>8</sup> *Id.* at 13.

and expertise for many different kinds of conflicts.<sup>9</sup> Online commercial transactions were among the first to touch ODR. eBay was one of the first users of online dispute resolution, and by 2010 eBay handled sixty million disputes.<sup>10</sup> During the Internet “bubble” in 1999-2000 ODR start-ups appeared and then disappeared, although a few remain intact; however, a new wave of ODR start ups are appearing, likely because of an expanded interest in ODR, the availability of software appropriate for the service, along with the acceptance of ODR by the ADR community.<sup>11</sup>

The current ODR landscape can be considered in two separate domains: tools (applications and technology) and systems.<sup>12</sup> ODR tools are essentially types of software that can assist or manage the process and are found in the various forms of the providers of ODR, which will be discussed later. ODR systems, on the other hand, include ODR tools used in a coordinated way in a closed setting by a limited number of users who are engaged in ongoing interactions with other users.<sup>13</sup> One example of an ODR system is that created by eBay, mentioned above.

ODR is a unique form of dispute resolution. Some of its more noteworthy features include the fact that the disputants don’t have to meet face to face, the process can take place at any time regardless of geographical distance, and asynchronous communication is possible.<sup>14</sup> However, the distinctive features of ODR will be considered in greater detail later in conjunction with the various providers of ODR and the benefits and drawbacks of the process.

Similar to traditional ADR, ODR can work in different ways. Depending on the circumstances of the conflict (the provider of the service, the parties involved, the type of dispute, etc.), certain forms of ODR, such as e-negotiation, e-mediation, or e-arbitration may be encountered. However, “general” or “generic” online dispute resolution is also a possibility. The way ODR works will be discussed in greater detail with the consideration of different ODR providers.

Although the field is not precisely defined, ODR is gaining acceptance in the world of alternative dispute resolution. The process can be very attractive to those seeking cheaper, faster, and less intrusive avenues for dispute resolution than found through in-person processes, and perhaps even more significantly, it increases the range of connection and communication possibilities.<sup>15</sup>

### **III. Providers of Online Dispute Resolution**

Online Dispute Resolution, naturally, exists online. Attempting a general Internet search for ODR providers will provide a potentially overwhelming amount

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 15.

<sup>11</sup> *Id.* at 15-16.

<sup>12</sup> Orna Rabinovich-Einy & Ethan Katsh, *Lessons from Online Dispute Resolution for Dispute Systems Design*, in Wahab, Katsh & Rainey, *supra* note 1, at 40.

<sup>13</sup> *Id.* at 41-42.

<sup>14</sup> Aura Esther Vilalta, *ODR and E-Commerce*, in Wahab, Katsh & Rainey, *supra* note 1, at 114.

<sup>15</sup> Schmitz, *supra* note 1 at 181.

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of results. Currently, over 60 academically recognized ORD providers exist.<sup>16</sup> Fair consideration cannot be given to each provider of online dispute resolution, but an examination of a few examples reveals how the process operates.

a. Major Arbitration Providers and ODR services

In the world of Alternative Dispute Resolution, the American Arbitration Association (AAA), the International Institute for Conflict Prevention & Resolution (CPR), and Judicial Arbitration and Mediation Services (JAMS) are the leading arbitration providers, and each organization has in some way incorporated ODR into their programs.

AAA provides online services for its users, including arbitration clause-building, claim filing, case management, and electronic document transfer.<sup>17</sup> Also, at mediation.org, a division of AAA, an online dispute resolution service is available.<sup>18</sup> AAA offers to conduct the entire mediation process online, with no telephone sessions and no face-to-face meetings if the dispute involves only two parties and neither the claim nor the counterclaim exceeds \$10,000.<sup>19</sup> If this process is chosen, a trained AAA staff mediator is assigned to handle the matter from start to finish, the mediator is usually appointed within 48 hours of receipt of the responding party's agreement to mediate, a flat fee of \$200 includes the mediator's time (no additional costs are incurred), and the mediation is conducted via AAA chat rooms and Instant Messaging (IM).<sup>20</sup> Issues are usually resolved within a 30-day time period, joint discussions between the parties are facilitated by the Mediator in an online chat-room environment, and private discussions between the Mediator and each party can be held individually.<sup>21</sup> Furthermore, the international division of AAA, the International Centre for Dispute Resolution (ICDR) has a manufacturer/supplier online dispute resolution program, which is designed to help manufacturers and suppliers resolve small disputes quickly, fairly, and inexpensively.<sup>22</sup> From start to finish the process is designed to take no longer than 66 days, consisting of two

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<sup>16</sup> Wahab, Katsh & Rainey, *supra* note 1 at xvii-xviii.

<sup>17</sup> AAA, [http://www.adr.org/aaa/ShowPDF?doc=ADRSTG\\_015216](http://www.adr.org/aaa/ShowPDF?doc=ADRSTG_015216) (last visited December 4, 2013).

<sup>18</sup> *Online Mediation for Claims under \$10,000*, AAA, mediation.org, [https://www.mediation.org/mediation/faces/mediation\\_services/online\\_mediation?\\_afLoop=2823237867655724&\\_afWindowMode=0&\\_afWindowId=ou7unu8ox\\_137#%40%3F\\_afWindowId%3Dou7unu8ox\\_137%26\\_afLoop%3D2823237867655724%26\\_afWindowMode%3D0%26\\_adf.ctrl-state%3Dou7unu8ox\\_169](https://www.mediation.org/mediation/faces/mediation_services/online_mediation?_afLoop=2823237867655724&_afWindowMode=0&_afWindowId=ou7unu8ox_137#%40%3F_afWindowId%3Dou7unu8ox_137%26_afLoop%3D2823237867655724%26_afWindowMode%3D0%26_adf.ctrl-state%3Dou7unu8ox_169), [https://services.adr.org/eroom/faces/welcome\\_and\\_steps.jspx](https://services.adr.org/eroom/faces/welcome_and_steps.jspx) (last visited December 4, 2013).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *ICDR Manufacturer/Supplier Online Dispute Resolution Program*, AAA, [http://www.adr.org/aaa/ShowPDF?doc=ADRSTG\\_015216](http://www.adr.org/aaa/ShowPDF?doc=ADRSTG_015216) (last visited December 4, 2013).

phases, negotiation and arbitration, at the end of which the dispute is either settled or decided by an arbitrator.<sup>23</sup> The filing fee is \$500, and should the dispute proceed to arbitration an additional \$1000 fee is charged, and similar to AAA's online mediation, the dispute cannot exceed \$10,000.<sup>24</sup> This is a desirable process for manufacturers and suppliers who want to quickly resolve a dispute and continue with business. As the demand for online dispute resolution grows, it is likely that AAA will expand its ODR services beyond small claims and manufacturer/supplier disputes.

The International Institute for Conflict Prevention & Resolution (CPR) has devoted particular attention to online dispute resolution. CPR has acknowledged the impact of the Internet on cross-border transactions and the deficiency of processes for resolving issues that may arise in the context.<sup>25</sup> In response, CPR is involved in several initiatives to leverage ODR in business relationships. First, CPR is working with modria.com, an ODR platform based in Silicon Valley.<sup>26</sup> Launched in 2008, Modria licensed and further developed the ODR platform used by eBay and PayPal to enable its use in other business contexts, which can be adapted to support a wide variety of business to business (B2B) ADR processes.<sup>27</sup> Currently, CPR is working with Modria to develop online processes and rules that can be customized to fit a range of B2B disputes.<sup>28</sup> Second, CPR is participating in the efforts of UNCITRAL Working Group III, which is focused on developing generic rules and procedures governing ODR for business to business and business to consumer transactions internationally.<sup>29</sup> The progress of Working Group III will be covered in greater detail in the section IV "ODR in the International Context."

To a lesser extent, Judicial Arbitration and Mediation Services (JAMS) has also expanded into the realm of online dispute resolution services. Like AAA, JAMS provides electronic submission of cases and an electronic filing system.<sup>30</sup> Also, JAMS provides a Virtual Conference Room, so that offsite parties can participate in dispute resolution, particularly the hearing process, through a web conference.<sup>31</sup> Although JAMS currently does not offer an official ODR procedure, it is likely that as their competitors expand into the arena, JAMS will follow.

#### b. Other ODR providers

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *CPR Online Dispute Resolution (ODR) Overview*, CPR, <http://www.cpradr.org/AcrossBorders/CPRODROverview.aspx> (last visited December 4, 2013).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> JAMS THE RESOLUTION EXPERTS, <http://www.jamsadr.com/electronic-filing/>, <http://www.jamsadr.com/virtual-conference/> (last visited December 4, 2013).

<sup>31</sup> *Id.*

The adoption of ODR services by major ADR service providers should not come as a surprise, especially considering the assortment of providers solely dedicated to ODR that exist on the Internet. As mentioned before, over 60 providers of ODR currently exist. Although these ODR services have a common goal in mind, they have slight variations and offer distinctive features.

SmartSettle, for example, offers an online negotiation system centered around collaboration, saving time, and preserving relationships.<sup>32</sup> SmartSettle can cover a large array of disputes and provides four products, each tailored to meet the user's particular needs.<sup>33</sup> SmartSettle Observer (Lite), designed for trainees, observers and parties in online cases, has all the features needed for evaluation but may not be used commercially except in an online case created and facilitated by a licensed user of SmartSettle Pro.; however it can be used in two commercial cases online without charge.<sup>34</sup> SmartSettle Decider is a multivariate stand-alone support system, suited for solving complex problems for individuals, and it can help the user clarify the issues and compare alternatives in complex situations.<sup>35</sup> SmartSettle Negotiator is designed for professional negotiators; it provides secure real-time communication with other Negotiators and generates optimal solutions based on the preferences of parties located around the world.<sup>36</sup> Finally, SmartSettle Pro, the flagship product for facilitators, provides a tool for secure multi-party negotiations and is designed for simultaneous facilitation of any number of cases.<sup>37</sup> SmartSettle prices can range from \$700 to \$2000, however SmartSettle Pro is priced upon request.<sup>38</sup> With a focus on e-negotiation, SmartSettle is a good example of a well-developed online disputes resolution provider.

Another provider, Juripax, "the worldwide leader in online mediation software," focuses on the ODR system and the technology behind dispute resolution.<sup>39</sup> Juripax is ideally suited for fully online proceedings, but can also supplement and be integrated into meeting-based procedures.<sup>40</sup> With 10 years of experience, Juripax allows for streamlined textual, asynchronous communication between the parties that is always transmitted through the mediator.<sup>41</sup> The process consists of three phases, part one (preparation, diagnostics, mediator evaluation), part two (mediation), and part three (resolution).<sup>42</sup> Like SmartSettle, Juripax offers four editions of its services: Juripax Roleplay (free online demo), Juripax Community

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<sup>32</sup> SMARTSETTLE, <http://www.smartsettle.com/> (last visited December 4, 2013).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> JURIPAX TECHNOLOGY FOR EARLY DISPUTE RESOLUTION, <http://www.juripax.com/EN/home.php> (last visited December 4, 2013).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

(introduction package), Juripax Mediator (single user), and Juripax Professional (multi user and case administration).<sup>43</sup> The system is based out of the Netherlands, with agents in Germany and the United States, and prices range from 49 Euros to 1299 Euros, with options to add on services.<sup>44</sup>

VirtualCourthouse, yet another example, is a “web-based combination of multimedia technologies and business processes, integrated with a customer-friendly user interface. [The] system replicates the current process of dispute resolution in an online environment, removing the constraints of time, expense, and distance...”<sup>45</sup> To file a case, the parties and representatives submit a brief description, then select 3 or more mediators/arbitrators, rank them, and send the list to the opposing party along with an invitation to participate in ADR through VirtualCourthouse.<sup>46</sup> Once the process begins, the parties submit their case online, schedule a meeting or video conference, and use the provider’s secure and confidential asynchronous messaging system.<sup>47</sup> Filing a case is \$50 per party, an online decision and simple online neutral case evaluation of an hour or less each cost \$300, and beyond that fees are assessed at the neutral’s published hourly rate.<sup>48</sup> One interesting feature offered by VirtualCourthouse is “Mediator Marketing,” which “provides the mediation community with the tools to develop a successful strategy to increase caseloads and transition to the Internet... The only online dispute system that provides a marketing utility and a selection component. Not only can a mediator create a wide Internet presence but is also available for selection by a party who starts a case using VirtualCourthouse,” selection and marketing begins at \$5 per month.<sup>49</sup> The main focus of VirtualCourthouse is “fair, fast, and reliable” dispute resolution, but marketing and case management services for mediators are also available.

Although each supplier has different qualities and features, the common goal among ODR providers is to adapt to the customer’s needs and provide a dispute resolution mechanism that can be fully utilized online, enhancing efficiency, economy, and satisfaction.

#### **IV. ODR in the International Context**

While ODR has its roots in North America,<sup>50</sup> the process is taking off internationally. Scholars have written articles on the expansion of ODR in Europe,

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<sup>43</sup> Juripax, *supra* note 39, <http://www.juripax.com/EN/products.php>.

<sup>44</sup> *Id.*

<sup>45</sup> VIRTUALCOURTHOUSE: ONLINE ALTERNATIVE DISPUTE RESOLUTION SYSTEM, <http://www.virtualcourthouse.com/> (last visited December 4, 2013).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Arthur Pearlstein, Bryan Hanson & Noam Ebner, *ODR in North America*, in Wahab, Katsh & Rainey, *supra* note 1, at 431.

Australia, Asia, Latin America, and Africa.<sup>51</sup> A big draw for ODR is its ability to solve disputes despite vast geographical distances, making it a prime candidate for the resolution of international disputes. Much of the focus devoted to ODR by providers has been on international case management (e.g. AAA, CPR).

As mentioned before, CPR has joined with the United Nations Commission on International Trade Law (UNCITRAL) to develop universal rules and techniques for online dispute resolution. The goal is to better enable global commerce by providing a globally recognized framework for dispute resolution.<sup>52</sup> Specifically, the idea is to provide a practical way to resolve disputes arising from the low-value, high-volumes transactions worldwide that need a rapid, effective and low-cost dispute resolution response.<sup>53</sup> The Working Group had their 28<sup>th</sup> session November 18-22, 2013, in which they further drafted procedural rules. Once in general use, this ODR framework will significantly improve international consumer dispute resolution.

## V. Pros and Cons of ODR; Current Issues and Perspectives

The rise of Online Dispute Resolution has led to some debate over its effectiveness and the benefits of its use. According to some scholars, computer-mediated communication (CMC), which is inextricably linked with ODR, facilitates the interaction process through the use of computers; however, with e-negotiation, for example, it is also believed that [CMC] can undercut the effectiveness of negotiation and lead to “misunderstandings, sinister attributions, and ultimately, negotiation impasse.”<sup>54</sup> Research has shown that email negotiations increased contentiousness, diminished information sharing, diminished process cooperation, diminished trust, and increased effects of negative attribution.<sup>55</sup> Certainly, face-to-face communication has its benefits, but just how concerning are the downsides to online dispute resolution?

Electronic communication cannot allow for the inclusion of tone or expression, which is a pivotal part of human communication, as written language does not always convey the complete meaning of what an individual is trying to communicate.<sup>56</sup> It has been argued that this can be compensated for with further clarifications,<sup>57</sup> but does it still leave something to be desired? In some situations it may not be appropriate to mediate face to face, for example when both parties are emotionally charged, when it would not be cost effective to bring both parties together, or when there is a huge power imbalance between the parties.<sup>58</sup>

One of the most compelling objectives of any type of dispute resolution service

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<sup>51</sup> Wahab, Katsh & Rainey, *supra* note 1, at 453, 471, 499, 517, 549.

<sup>52</sup> CPR, *supra* note 25, at

<http://www.cpradr.org/AcrossBorders/CPRODROverview.aspx>.

<sup>53</sup> *Id.*

<sup>54</sup> Betancourt & Zlatanska, *supra* note 2, 260-261.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*



is justice. To ensure justice, ODR providers must aspire to certain goals, including transparency, independence, impartiality, effectiveness, fairness and integrity, accessibility, flexibility and affordability.<sup>59</sup> Most providers ensure their services are easily accessible, flexible, and affordable, but guaranteeing independence, impartiality, and fairness can be more difficult to demonstrate. The attempted use of ODR along with recommendations by prior users should ameliorate these fears, as trust in the system grows. Another concern is the integrity of communications and documents; however many ODR service providers offer virtual secure environments, for example AAA's WebFile system.<sup>60</sup>

Currently, a universally accepted set of rules governing online arbitration proceedings does not exist<sup>61</sup> (although as mentioned above CPR is working on a set of International ODR rules and procedures). Despite the lack of structure and formality, online arbitration is most certainly taking place through the use of various systems and mechanisms supplied by various providers. Such systems have been criticized because they can only deal with "very restricted classes of disputes, a simplified or basic arbitration process, the start of the process before variations become necessary [and] the process used by a single arbitration provider."<sup>62</sup> Furthermore, it has been said that online arbitration is particularly appropriate for simple fact patterns and small claims,<sup>63</sup> but as providers gain experience with ODR and the systems' technology advances, more complicated disputes should be accommodated. Several ODR providers discussed above also provide services for "complicated" or "complex" dispute resolution.

A recent article by the AAA considers the benefits of the ICDR ODR program (discussed above) for resolving domestic and international disputes between manufacturers and suppliers. Conflicts between manufacturers and suppliers can be recurring, are often relatively small, and turn on a few essential questions of fact.<sup>64</sup> Because of their unique nature, these disputes are ideal candidates for ODR, which can quickly and efficiently resolve disagreements so that the business relationship can continue. Although manufacturer-supplier relationships have unique qualities, other areas of practice and industries with similarities could benefit greatly from utilizing ODR. Also, as ODR is adopted with increasing recurrence, it will likely develop to handle more complex matters for current users and expand into other industries that witness its success.

According to Juripax, the use of online mediation can provide a savings in time and costs of 30% and parties can experience greater satisfaction than with

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<sup>59</sup> Ruda Devanesan & Jeffrey Aresty, *ODR and Justice*, in Wahab, Katsh & Rainey, *supra* note 1, at 265.

<sup>60</sup> Vilalta, *supra*, note 14 at 128.

<sup>61</sup> Betancourt & Zlatanska, *supra* note 2, at 262.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Markus Altenkirch, *A Fast Online Dispute Resolution Program to Resolve Small Manufacturer-Supplier Disputes: Using the ODR-MS Program*, 67 *Disp. Resol. J.* 48, at 49 (2012).

traditional “face to face” mediation.<sup>65</sup> Other benefits include enhanced effectiveness through better preparation and reflection, creation of a more equal and level playing field, enhanced party autonomy, and greater focus on conflict prevention (de-escalation, mitigation of damages, customer retention, etc.).<sup>66</sup>

Undoubtedly, ODR offers a new way to resolve disputes, providing those in need of ADR with different opportunities and processes. The Internet allows for flexible scheduling and asynchronous communication as well as real-time dialogue.<sup>67</sup> Like other forms of ADR, ODR allows for greater privacy by keeping claims out of courts. Anyone with access to the Internet can appreciate the convenience and speed of ODR, and the lower costs and travel and paper savings are yet another draw for the process.<sup>68</sup> Another more unique feature of the process is the empowerment found in the comfort of anonymity.<sup>69</sup> Face to face confrontation can be stressful and intimidating, but resolving a dispute online eliminates that concern.

Perhaps one of the more overlooked benefits to ODR is its role in providing technology as a vehicle to improve consumer access to justice.<sup>70</sup> Regardless of where the dispute occurs, ODR allows access to its settlement. ODR literally transcends geographical borders. The ease of knowing online dispute resolution is available and used by a business can be an added benefit to its consumers and other entities involved in its dealings. While some critics attack ODR as undermining trust due to the lack of face-to-face communication, others argue that incorporating ODR into systems like e-commerce can raise the consumer’s level of trust.<sup>71</sup>

Ultimately, the parties in need of ADR will have to weigh their concerns and decide whether ODR suits their particular needs. However, with more individuals and businesses relying on the Internet every day, the benefits of ODR will likely lead to its increased expansion and adoption in the near future.

## **VI. Conclusion**

A great deal more attention could be devoted to ODR and its relatives in the field. Greater focus could be given to how e-negotiation, e-mediation, and e-arbitration are put into practice differently. As with many forms of new technology, ODR has (and continues to) spark new innovation that builds off itself, for example the use of mock online jury trials and Artificial Intelligence to handle online disputes has really taken off of late. Also, the use of ODR beyond North America was only given brief consideration, although the spread of online dispute resolution around the world is tangible. However, as mentioned, the goals of this report were to

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<sup>65</sup> Juripax, *supra* note 39, at <http://www.juripax.com/EN/odr.php>.

<sup>66</sup> *Id.*

<sup>67</sup> Schmitz, *supra* note 1, 181-182.

<sup>68</sup> *Id.* at 200.

<sup>69</sup> *Id.* at 202.

<sup>70</sup> Pablo Cortes, *Online Dispute Resolution for Consumers*, in Wahab, Katsh & Rainey, *supra* note 1, at 141.

<sup>71</sup> Schmitz, *supra* note 1, at 203.

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consider what ODR entails, how it can be implemented, who are the providers, and what are the benefits and drawbacks of the process. Undoubtedly ODR will continue to grow, and more people in need of ADR are likely to acknowledge its advantages and utilize its process.

## **Bibliography**

Amy J. Schmitz, *Drive-thru Arbitration in the Digital Age: Empowering Consumers through Binding ODR*, 62 *Baylor L. Rev.* 178, 178-244 (2010).

*CPR Online Dispute Resolution (ODR) Overview*, CPR,  
<http://www.cpradr.org/AcrossBorders/CPRODROverview.aspx> (last visited December 4, 2013).

*ICDR Manufacturer/Supplier Online Dispute Resolution Program*, AAA,  
[http://www.adr.org/aaa/ShowPDF?doc=ADRSTG\\_015216](http://www.adr.org/aaa/ShowPDF?doc=ADRSTG_015216) (last visited December 4, 2013).

JAMS THE RESOLUTION EXPERTS,  
<http://www.jamsadr.com/electronic-filing/>, <http://www.jamsadr.com/virtual-conference/> (last visited December 4, 2013).

Julio Cesar Betancourt & Elina Zlatanska, *Online Dispute Resolution (ODR): What Is It, and Is It the Way Forward?*, 79 *Arbitration*, Issue 3 (2013), electronic copy at  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2325422](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2325422).

JURIPAX TECHNOLOGY FOR EARLY DISPUTE RESOLUTION,  
<http://www.juripax.com/EN/home.php> (last visited December 4, 2013).

Markus Altenkirch, *A Fast Online Dispute Resolution Program to Resolve Small Manufacturer-Supplier Disputes: Using the ODR-MS Program*, 67 *Disp. Resol. J.* 48, 48-53 (2012).

ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE: A TREATISE ON TECHNOLOGY AND DISPUTE RESOLUTION (Daniel Rainey, Ethan Katsh, & Mohamed S. Abdel Wahab eds., The Hauge: Eleven International, 2012).

*Online Mediation for Claims under \$10,000*, AAA, mediation.org,  
[https://www.mediation.org/mediation/faces/mediation\\_services/online\\_mediation?\\_afLoop=2823237867655724&\\_afWindowMode=0&\\_afWindowId=ou7unu8ox\\_137#%40%3F\\_afWindowId%3Dou7unu8ox\\_137%26\\_afLoop%3D2823237867655724%26\\_afWindowMode%3D0%26\\_adf.ctrl-state%3Dou7unu8ox\\_169](https://www.mediation.org/mediation/faces/mediation_services/online_mediation?_afLoop=2823237867655724&_afWindowMode=0&_afWindowId=ou7unu8ox_137#%40%3F_afWindowId%3Dou7unu8ox_137%26_afLoop%3D2823237867655724%26_afWindowMode%3D0%26_adf.ctrl-state%3Dou7unu8ox_169),  
[https://services.adr.org/eroom/faces/welcome\\_and\\_steps.jspx](https://services.adr.org/eroom/faces/welcome_and_steps.jspx) (last visited December 4, 2013).

Burkley Wombwell  
12/16/2013

Orna Rabinovich-Einy & Ethan Katsh, *Technology and the Future of Dispute Systems Design*, 17 Harv. Negot, L. Rev. 151, 152-183 (2012).

SMARTSETTLE, <http://www.smartsettle.com/> (last visited December 4, 2013).

THE NATIONAL CENTER FOR TECHNOLOGY AND DISPUTE RESOLUTION, odr.info, <http://odr.info/mission> (last visited December 4, 2013).

VIRTUALCOURTHOUSE: ONLINE ALTERNATIVE DISPUTE RESOLUTION SYSTEM, <http://www.virtualcourthouse.com/> (last visited December 4, 2013).

*Working Group III 2010 to Present: Online Dispute Resolution*, UNCITRAL: UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, [http://www.uncitral.org/uncitral/commission/working\\_groups/3Online\\_Dispute\\_Resolution.html](http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html)