
LEGAL STATUS OF INTERNATIONAL INSTITUTIONS SPECIALIZED IN RESOLUTION OF ODR DISPUTES

Mokhinur Bakhramova, PhD in law

Senior lecturer at Intellectual property

law department,

Tashkent state university of law,

Tashkent, Uzbekistan,

email: mokhinurbakhramova@gmail.com

During the 1990s, a working group in the United States (Philadelphia) launched the first prominent ODR project at a meeting sponsored by the National Center for Automated Information Research and the Cyberspace Law Institute. The Virtual Magistrate Project was a voluntary online arbitration procedure with the goal of resolving disputes between Internet Service Providers and users of online systems⁵. Although VM only issued one decision (in 1996), its failure was attributed not to the nature of the ODR mechanism, but to insufficient advertising and a limited range.

The origins of ODR can be traced back to 1996 when the Virtual Magistrate Project was created to offer an online arbitration system for resolving electronic defamation issues. For instance, the University of Massachusetts Online Ombuds Office resolved a website dispute with the owner of a local newspaper associated with a copyright infringement through mediation.¹ Since 1999, many ODR service providers have actively addressed disputes in both the public and private spheres involving public and commercial entities.²

ODR offers plenty of flexibility, as it can be initiated at any point in a trial or even before a trial begins. The ODR may also be terminated if the parties mutually agree that it does not lead to a workable solution. The parties have the right to independently determine the methods and procedures for resolving disputes online in the event of disputes arising under a specific electronic contract. Even in the absence of a written contract declaring the ODR as a dispute resolution method, parties can use ODR methods to resolve their disputes when such disputes arise. In contrast to litigation, the parties are free to choose their governing contract law, dispute resolution procedure, ODR service provider and other related issues. The use of ODR also allows for the selection of a neutral third party from an experienced group of mediators and arbitrators, which increases impartiality and means that the parties can present their cases on their own without fear of their private disputes entering the public domain through legal precedents. Disputes and negotiations between the parties will always remain confidential. In B2C (Business to Consumer) transactions, ODR encourages customer loyalty, while in C2C (Consumer-to-consumer) transactions, it minimises dissatisfaction and the risk of fraudulent transactions between stakeholders.

The jurisdiction of online dispute resolution may involve the application of the conflict of laws rule to the server location or registration of the corresponding domain. If it is a company, then the place of registration is that of the company. It is ideal if the arbitration center associated with the ODR platform uses its jurisdiction and the approval of the decision by the center itself to ensure its execution. ODR can gain the most popularity and relevance within the framework of smart contracts. In this regard, it is necessary to adopt an international convention or amend the New York Convention as well as recognize national laws and the UNCITRAL Model Law, a rule on the recognition and enforcement of ODR awards. Also, online arbitration needs to be described, the procedure is only online, and there are parties and arbitrators in it. In digital arbitration, everything is done by a computer and through artificial intelligence.

To provide another example, in India, ODR originated from alternative dispute resolution (ADR) processes in which family disputes were resolved by scenes (businessmen doing the same business) and

¹ See Centre for Technology and Dispute Resolution, Online Ombud's narrative 1: website developer and the newspaper at <http://www.ombuds.org/narrative%201.html>

² See United States ODR provider at <https://www.adr.org> In Australia ADR online at <http://www.adr.online.org> etc.

parishads (a group of men with legal knowledge). In other jurisdictions, ODR was also based on ADR practices, adding technologies to the ADR process to make it more efficient and convenient for the parties. In India, the use of ADR techniques is explicitly encouraged in the Nyaya Panchayat, Lok Adalat, Arbitration and Conciliation Act 1996, based on the UNCITRAL Model Law on Arbitration, providing statutory arbitration among other initiatives. The Indian legal framework supports ODR, including Section 89 of the 1908 Civil Procedure Code, which promotes the use of alternative dispute resolution between parties. Likewise, Rule 1A of Bylaw X empowers the court to direct the litigants to select any ADR method to resolve disputes. In addition, the Information Technology Act 2000 legally recognises the use of electronic signatures and electronic records. Recently, in the State of Maharashtra v Dr Praful B. Desai,³ the Indian Supreme Court ruled that video conferencing is an acceptable method of recording witness statements. In the case of Grid Corporation of Orissa Ltd v AES Corporation,⁴ the Supreme Court ruled: ‘When effective consultation can be achieved through electronic media and remote conferencing, there is no need for two people who need to act in consultation with each other to necessarily sit together in one place unless required by law or by the basic agreement between the parties’.⁵

Thus, the legal framework, as well as the precedents set by the Supreme Court of India, support the use of technology to resolve disputes and encourage the use of ODR practices.

Jurisdictional issues have been studied in depth by western experts. In particular, Johnson examined the topic of borders on the Internet, countries in which the domain name is registered under the jurisdiction of the court.⁶

Another definition of international jurisdiction is analysed by Fedotov. In his opinion, the country in which the Internet server is located depends on the criterion of jurisdiction. The author believes that every server that is materially located in a particular state and on the territory of that state is subject to its laws.⁷

The state establishes its jurisdiction over a person if there is a specific connection between his territory and that person. A connection to a region is particularly evident when the information is located on a specific server that allows Internet users to access it. Obviously, a state can, at any time, establish its jurisdiction over persons who store information on its territory, and it is inappropriate for a person operating on the Internet to ignore the legislation of the state in which the information is posted. However, this precedent does not mean that other states should abandon their jurisdictions in favor of the jurisdiction of the state in which the server is located.⁸

In Canada, the Cyber Tribunal in Montreal has successfully resolved electronic disputes using ODR, while in the United States, the Online Ombuds Office has used electronic mediation. SquareTrade is a well-known ODR provider that resolves disputes between sellers and buyers who use online commercial services by adopting methods of negotiation and mediation. Financial and insurance disputes may be resolved in the USA through Cybersettle and Click ‘N Settle. Other ODR service providers include www.mediate.com, www.novaforum.com, www.icourthouse.com and www.tribunal.com. Smartsettle uses negotiation software to resolve disputes between parties as well as give priority to various interests affected by disputes.

Deutscher Bundestag put forward his proposal to regulate the considered sphere of relations.⁹ According to the author, non-contractual obligations on the Internet should be governed by the legislation of

³ Maharashtra v Dr Praful B. Desai (2003) 4SCC 601

⁴ Grid Corporation of Orissa Ltd v AES Corporation 2002 AIR SC 3435

⁵ See also Maruti Udyog Ltd vs Maruti Software Pvt Ltd Case No. D2000-1038 at <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1038.html>.

⁶ Johnson, D.R. (1996) Law And Borders – The Rise of Law in Cyberspace // Stanford Law Review. pp. 34. <https://files.grimmelman.net/cases/JohnsonPost.pdf>

⁷ Fedotov, M.A. (2002) ‘Legal protection of works in cyberspace’. *Electronic libraries*, 5(4), p. 54. http://www.evarussia.ru/upload/doklad/doklad_330.doc

⁸ Leanovich, E.B. ‘Problems of legal regulation of Internet relations with a foreign element’. Internet resource: <http://www.evolution.info>

⁹ Deutscher Bundestag (2008), “Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes zur Neuregelung des Schiedsverfahrensrechts”.

the country of permanent residence, the main place of business of the operator of the site or an individual or legal entity who has posted the results of intellectual activity on the Internet. However, the level of protection afforded under the relevant law cannot be lower than the level of protection afforded under the Berne Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights. Otherwise, the laws of the country containing the server hosting the illegally used intellectual property shall apply. The author proposes the use of the proximity principle as a criterion for correction.¹⁰

One of the most successful ODR initiatives is the WIPO Uniform Domain Name Dispute Resolution Policy (UDRP). The policy, adopted by ICANN on 26 August 1999, provides for an administrative procedure to resolve domain name disputes through accredited service providers that follow the UDRP along with their own additional rules. WIPO, the National Arbitration Forum and the Asian Domain Name Dispute Resolution Center are among the most highly accredited ODR service providers. In administrative proceedings, it is stipulated that disputes are subject to resolution. Within a certain time frame, procedures can be initiated before the trial continues. The decision of the administrative board can be appealed within 10 days. Disputes have been resolved through the UDRP on the transfer of domain names registered in bad faith by the respondent, which has no legitimate interest if the domain name is deceptively similar or identical to the complainant's trademark. At *Tata Sons Ltd. v Advanced Information Technology Association*,¹¹ WIPO ordered the transfer of the *Tata.org* domain name to the plaintiff *Tata Sons Ltd.*, as all three criteria of the UDRP policy were established in the case.¹²

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.¹³ 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.¹⁴ 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

¹⁰ Ginsburg, J. (1998) Private international law aspects of the protection of works and objects of related rights transmitted through digital networks. Doc. WIPO GCPIC, p. 32.

¹¹ Case No. D2000-0049 at <http://www.wipo.int/amc/en/domains/decisions/html/2000/d-0049.html>

¹² See also *Maruti Udyog Ltd. v Maruti Software Pvt. Ltd.* Case No. D2000-1038 at <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1038.html>.

¹³ *Grid Corporation of Orissa Ltd. v AES Corporation* (2002) AIR SC 3435

¹⁴ 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).

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.

In the European Union, letter E of Article 17 of the Trade Directive¹⁵ 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 2002.¹⁶

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.¹⁷

Some critics, such as Drake and Moberg¹⁸ and Wilson, Aleman and Leatham,¹⁹ 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, Goffman²⁰ 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.

It is stated that the growth of e-commerce has been one of the most notable features of the recent decade. Nonetheless, owing to the enormous frequency of these low-value disputes, courts show to be the least ideal venue for dealing with the settlement of emergent e-commerce issues 100. As a result, policymakers such as the European Commission and UNCITRAL set about developing ODR guidelines to encourage the out-of-court settlement of disputes arising from cross-border e-commerce transactions. On the one hand, recent European law (ODR Regulation EU No 524/2013 and ADR Directive 2013/11/EU) prioritizes consumer safety while also promoting ODR throughout the European Union. On the one hand, contemporary European law (ODR Regulation EU No 524/2013 and ADR Directive 2013/11/EU) prioritizes consumer safety while also promoting ODR inside the European Union. On the other hand, UNCITRAL approaches its draft regulations primarily with the goal of improving online transactions and ODR processes. However, the

¹⁵Thiessen, E.M. and McMahon, J.P. (2000) 'Beyond win-win in cyberspace'. *Ohio State Journal on Dispute Resolution*, 15, 643

¹⁶ 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.

¹⁷Drake, B.H. and Moberg, D.J. (1986) 'Communicating influence attempts in dyads: Linguistic sedatives and palliatives'. *Academy of Management Review*, 11, pp. 567-584.

¹⁸ <https://www.wipo.int/amc/en/domains/decisions/html/2000/d-0049.html>

¹⁹ <https://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1038.html>

²⁰ Goffman, E. 1967. *Interaction ritual*. Garden City, NY: Doubleday.

discrepancies between the EU and UNCITRAL models do not preclude their compatibility because they share the same fundamental values of impartiality, independence, transparency, fairness, expertise, and consent.

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 centers and their subordination to their jurisdiction is an ideal situation, and the formalization of decisions by the arbitration center will facilitate its implementation.

The List Of Used Literatures

1. Fedotov, M.A. (2002) 'Legal protection of works in cyberspace'. *Electronic libraries*, 5(4), p. 54. http://www.evarussia.ru/upload/doklad/doklad_330.doc
2. Leanovich, E.B. 'Problems of legal regulation of Internet relations with a foreign element'. Internet resource: <http://www.evolution.info>
3. 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).
4. Brams, S.J. and Taylor, A.D. (1996) *Fair division from cake cutting to dispute resolution*. Cambridge: Cambridge University Press.
5. Thiessen, E.M. and McMahon, J.P. (2000) 'Beyond win-win in cyberspace'. *Ohio State Journal on Dispute Resolution*, 15, 643
6. 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).
7. Goffman, E. 1967. *Interaction ritual*. Garden City, NY: Doubleday.
8. 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*.
9. Yuldashov, A. (2012). Government policies related to social protection of disabled persons in Uzbekistan: National and international aspects. *Teise*, 84, 186-191. <https://doi.org/10.15388/Teise.2012.0.23>;
10. Yakubova I. "Civil-law protection of honor, dignity and business reputation in the civil legislation of Uzbekistan and Japan" *Review of law sciences*, no. 3, 2018, pp. 79-85. doi:10.24412/2181-1148-2018-3-79-85;
11. Khujayev, S. A. (2018). Judgments under the law of the Republic of Uzbekistan «On banks and bank activity» in the new edition. *International Journal of Legal Studies (IJOLS)*, 4(2), 295-301;
12. Mokhinur, B. (2020). A thorough review of the common law concept of "arbitrary termination" and "unfair dismissal" (including DIFC&ADGM. *Review of law sciences*, (NOVEMBER);
13. Бобур Мукумов (2020). Оценка регулирующего воздействия нормативно-правовых актов на предпринимательскую деятельность в условиях пандемии коронавируса (на примере Торгово-промышленной палаты Республики Узбекистан). *Review of law sciences*, (2), 74-77. doi: 10.24412/2181-1148-2020-2-74-77.

<http://euroasiaconference.com>

Internet resources

1. <https://www.legislation.gov.au/aghome/advisory/nadrac/technology-ADRno.2.htm>
2. <https://www.wipo.int/amc/en/domains/decisions/html/2000/d-0049.html>
3. <https://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1038.html>
4. www.nmi.mediation.nl/en/nmi/mediationframed.http
5. <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1038.html>
6. <http://www.ombuds.org/narrative%201.html>
7. <http://www.adr.online.org>