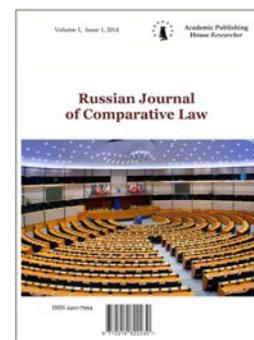


Copyright © 2015 by Academic Publishing House *Researcher*



Published in the Russian Federation  
Russian Journal of Comparative Law  
Has been issued since 2014.  
ISSN 2411-7994  
Vol. 4, Is. 2, pp. 54-60, 2015

DOI: 10.13187/rjcl.2015.4.54  
<http://ejournal41.com>



UDC 346.93

## Online Dispute Resolution under UK Legislation

Vladislav Borisov

Brunel University London, United Kingdom  
Kingston Lane, Uxbridge,  
Middlesex UB8 3FG  
E-mail: Borisovbox@mail.ru

### Abstract

The article deals with one of the alternative dispute resolution method – online dispute resolution. The critical discussion whether ODR is the best way to resolve Internet disputes will be provided. Therefore, the Information Act 2000 and the Arbitration and Conciliation Act 1996 and 2000 are extensively engaged to provide to the online platform of dispute resolution. Also, article describes the possibility to resolve disputes in such types online issues as B2B, B2C and C2C. The article will be considered from international and the UK legal perspectives.

**Keywords:** Online Dispute Resolution (ODR), Alternative Dispute Resolution (ADR), Arbitration and Conciliation Act 1996 and 2000, Information Act 2000, B2B (business-to-business), B2C (Business-to-consumer), C2C (consumer-to-consumer).

### Introduction

The increasing internet use has consequently increased the number of disputes emerging from Internet commerce. Various websites have been created to support in resolving such internet disputes and also to ease the dispute resolutions that might happen offline. The advanced internet technology makes it possible for companies or businesses to expand their operations and provide different services to huge number of e-consumers. Moreover, e-commerce transactions will at time lead to “e-disputes”. To make certain that e-consumers feel safe carrying out any online transaction, it is essential that e-disputes are dealt with sufficiently since insecurity towards the legal framework can hinder both businesses from engaging in electronic market, and consumers from buying services and products through online system [1]. Therefore, Online Dispute Resolution (ODR) is a part of dispute resolution that utilizes technology to promote dispute resolution between online parties. It mainly entails arbitration, mediation, negotiation, or integration of these three elements. Sometimes, it is considered similar to Alternative Dispute Resolution (ADR). Nevertheless, ODR may also expand the traditional approaches of dispute resolution through integrating online technologies and innovative methods to the process. This paper seeks to discuss that ODR is the best place to resolve different types of e-disputes.

### Method & Methodology

The main sources for writing this article became the official documents of the EU the United States and the UK, materials of the journal publications and archives. The study used the basic methods of cognition: the advantages-disadvantages, and situational, systemic and the method of

comparative law. Author's arguments are based on advantages-disadvantages approach. Method of comparative law defines the difference in views on actual international legal and domestic rules on the online liability. A systematic method does achieve a variety of disciplines (Arbitration law, Internet law, international law) accessible and comparable, as present is determined by the past and the future - by the present and the past.

### **Defining ODR**

Online dispute resolution is a new innovative approach of resolving disputes, issues, problems, and grievances, particularly currently when both businesses and consumers began to apply virtual space to conclude contracts and carrying out numerous transactions. Moreover, legal transactions might not be the most appropriate therapy for disputes mainly when these disputes arise from e-commerce transactions and businesses on the Internet. This online system exposes businesses and individuals to a range of fields and as a result, disputes also appear to be unavoidable. It is important to resolve such grievances or disputes coming up due to the Internet in this online platform [2].

ODR is applied globally for various forms of online dispute resolution through ADR approaches. ODR integrates the current ADR approaches founded on the presumption that particular disputes (mainly the e-disputes) may be resolved faster and sufficiently through the Internet. ODR's definition can be provided as the use of computer networks and applications to resolve issues, grievances, and disputes using an integrated ADR approaches. Both brick and motor and e-disputes may be resolved through ODR, where there are currently four main types of ODR system: Online mediation: dispute resolution using website with the support of experienced mediators; Online resolution for consumer complaints: particular types of consumer complaints are resolved through email; Online arbitration: e-dispute resolutions with the use of website under the support of experienced arbitrators; and Online settlement: financial claims are resolved automatically using expert system [3].

Moreover, the Information Act 2000 and the Arbitration and Conciliation Act 1996 and 2000 are extensively engaged to provide to the online platform of dispute resolution.

ODR originated from the integration between ICT and ADR, as the best approach for dispute resolution that comes up online, where the traditional approaches were ineffective and unreliable. The integration of ICT with dispute resolution methods is currently receiving a greater growth to the level that difference between ODR and off-line dispute resolution is blurred. Under ODR, the management of information is not only performed by physical individuals, but by software and computers as well [4]. The support of ICT has been termed "fourth party" since ODR is considered an independent party to dispute management. Along with the third neutral party and two or more disputants, the naming of ICT as the fourth party is an apparent symbol that emphasizes how technology may be as powerful and influential to transform the traditional three-party mock-up.

ICT, the fourth party, represents a variety of capabilities in similar way that the third neutral party does. Whilst the fourth party can sometimes engage in the role of the third party, that is, automated negotiation, it will often be applied by the third party as a way and device for assisting the dispute resolution process. Therefore, ODR processes are growing in effectiveness offering their disputants with higher benefits in respect to cost reductions and time savings. Generally, ODR entails four elements: Like ADR, businesses do their dispute resolution outside the courts, but the difference is that ODR make use of Internet to improve the process; Software tools are applied to improve Internet exchanges; ADR practices and policies are integrated to the Internet environment; and Guidance is provided by professionals, where they use their ADR experience to facilitate the Internet processes [5].

New Web-based services providing various ODR applications are being examined and launched that contain software that allows arbitrators and parties to: Manage and retrieve prime documents; Access databases under precedents; Meet online and engage in safe and shared work spaces; Engage in meetings with video and voice conferencing as preferred, where translations are provided if need be [5].

### **Legal Perspective**

The EU consumer protection regulations are founded on the government interventions to prevent any market abuse, whereas the US public policy enables the attorneys to intervene extensively in protecting consumer rights and monitoring market abuses. The main reason for these approaches is that US attorneys can alter contingent fees after the court approves. Latest

legislative amendments in various European member states (such the United Kingdom) are likely to adopt the US system allowing the altering of conditional fees [6]. This enables the lawyers not to be paid when they do not win a case and to receive an upscale premium (of even 100 percent of the original fee) when they win a case. Moreover, the United Kingdom currently is taking into consideration establishing the contingency fees so that they can reduce legal costs.

When cross-border issues and problems are resolved using the courts, there is more issues that should be considered: conflict of laws. At the moment, there are two conflicting approaches globally. This may be experienced with the policies used in the US and the EU. In the latter, conflicts of laws are often resolved based on the Rome Regulations and Brussels, which differ with the standpoint in the US. Based on the EU law, the trend is to identify the habitual residence of the consumers as the proficient forum, while the domestic law of the consumers as relevant law even with the existence of the contractual clause instructing or directing otherwise [7]. Therefore, it can be anticipated that if online businesses were vulnerable to be sued under the consumer's forum, (irrespective of how rate such can be) one will anticipate the business to favor the application of ODR. According to Wang, "in the European Union, in particular, legislative measures have tended to favor the utilization of ODR mechanisms" [8].

Even though it is normally considered that one significant benefit of ODR is that it evades jurisdictional issues, it needs to be pointed out that ODR services will not often be dependent on disputants to oblige and to often have self-enforcement means. As a result, there is greater necessity to synchronize conflicts of laws via an international convention attaining the needed compromise to determine the jurisdiction for the consumer dispute resolution.

The way in which lawyers control and deliver certain information is in harmony with the application of ICT. Moreover, ODR should enable legal representation when need be because ODR intends to facilitate and speed-up fair dispute resolutions, but not to hinder them. When legal representation occurs, it should be revealed to all parties [9]. Nevertheless, there are various concerns that can come up from the application of legal representation, as well as the neutral third party, since they may be less experienced in ICT applications. This may be solved through increasing training on the procedures and online systems. Moreover, it will be challenging to assess licenses, along with the quality of this legal representation due to the nature of the situations; varied legal policies across different countries. As a result, this can be resolved through adopting friendly and accommodating ODR platforms and consensual processes

### **Types of Online Disputes and Applications of ODR**

This paper will briefly discuss three main types of dispute classifications and effectiveness of ODR applications to resolve these online disputes.

#### *Business to Business (B2B)*

Disputes related to business to business are concerned with two commercial parties trying to resolve certain dispute(s) for a particular transaction. These two parties under the B2B are likely to be sophisticated users, where there is basically minimal concern over the party sustainability, and higher focus put on the expertise and convenience of the process. Most B2B e-disputes are often resolved using the arbitration form of ODR.

#### *Business to Consumer (B2C)*

Disputes towards business to consumer are considered the common forms of disputes, mainly with the increase and advancement of e-commerce. Disputes on B2C are likely to be inexpensive, but high-volume, and can entail imbalanced bargaining power between the business and consumer. An ODR process can resolve and achieve the consumer's needs and preferences for redress against these businesses and to offer the needed help for the rights of the due process.

#### *Consumer to Consumer (C2C)*

Dispute son consumer to consumer revolve around the transactions between certain consumers (regarding the sale and purchase of certain item) [10]. This form of e-commerce transaction is considered more common due to the existence of certain websites, such as Craigslist and eBay as supported between the two parties, even though these websites are not the actual party for the occurred dispute.

### **Applications of ODR**

The sub-sections above have shown the importance of ODR in resolving these three main types of e-disputes. This section will discuss some application of ODR using some specific disputes that may be encountered during online transactions. States that there are three types of online

disputes which are more probably to be resolved using mediation process, with the resultant equal satisfaction of both parties [11]. Firstly, such are disputes in which the defendant accepts total or partial liability [12]. Second, there are some disputes in which parties search for resolution instead of self-recognition; that is, public credit of being right. Finally, particular types of disputes tend to be resolved and managed through mediation, such as disputes linked to the payment of services and goods.

ODR may occur either partly or entirely through the Internet or revolve around two types of disputes: the one that occur offline or those occurring in cyberspace. The effectiveness of Uniform Domain Name Dispute Resolution Policy (UDRP) as an ODR approach relies on making the disputants to apply the UDRP and its effective self-enforcement methods. Moreover, these self-enforcement methods might not be accessible for some types of e-disputes, including mainstream disputes originating from a transaction between an online buyer and seller; apart from when there is a partnership of entities that can strengthen the outcome. This may include, for example, the payment service (such as Paypal or VISA) or when a dispute originates from a third party setting or other agents, including disputes originating from market places (such as eBay) or disputes arising from information presented on mass partnership sites (such as Wikipedia and Facebook).

Based on the UDRP, the arbitration agreement is not signed by the involved parties. Nevertheless, the UDRP has never been totally effective. Most have suggested that it is the right time to make some reforms on the UDRP rules and regulations with the aim of achieving not only effectiveness, but also an ODR process with a fairer position. Irrespective of its flaws, the UDRP demonstrates that the effectiveness of adjudicative ODR process relies on their self-enforcement methods and compulsory participation. When choosing the adjudicative ODR process to use (arbitral or judicial), it is needed to consider which procedure that provides higher accessibility and equality, in which the power imbalance between the involved parties is probably to be substantial.

These types of online disputes are effectively managed and resolved through the applications of ICT tools, mainly with the growth of e-commerce, in turn, the increase in the occurrence of cross-border disputes. The application of technology to resolve and/or negotiate such e-disputes can support in overcoming challenges linked to the application of litigation in different jurisdictions. It also helps ease online communication among a range of consumer claimants.

ODR's role in resolving different disputes has been normally considered to be a significant success of the ADR initiative. According to Farkas, "over the last quarter century, ADR has proven that moving justice away from the courthouse is often desirable and that the arena of dispute resolution, once thought to be the exclusive domain of law and courts, is markedly different from what it was several decades ago". Whereas ADR has shifted dispute resolution outside the courts and litigation, e-dispute resolution goes far beyond this trend. ODR has shown to move ADR process from physical approach to a more virtual place, which makes online dispute resolution more convenient, effective, reliable, safe, cost-effective, and flexible.

According to Wang (2010), there are three main potentials used to determine the place of provision of a certain service as it is offered online: the place of downloading, the place of uploading, and the nearest connecting factor. Wang (2010) further states that this determination of the place of provision may be resolved easily through ODR since the distance and location factors are not considered during online dispute resolution process. However, the place of uploading will normally characterize the address the provider of the service. The provider of the services normally carries out their business, and as a result, uploads the information from the location in which they consider their costs will be reduced. Regardless, the place of upload normally supports, favors, or inclines towards the provider of service, which poses a risk of including the third party to the resolution process. This poses another threat of not integrating ICT to the dispute resolution since it removes the challenge of place of uploading or downloading. ODR, therefore, provides a better solution for these above mentioned challenges and problems provided by Wang (2010). Moreover, the potential partial solution to these issues can be obtained in already assessed ruling on the CJEU in *Rehder* and *Wood Floor Solutions* [15]. This case law helps in resolving the issue of offering the service in various member states.

Moreover, the place of the service provision may be localized in a place with the nearest connecting factor with the service provider of the end-user. On the behalf of legal certainty, such location needs to be connected with the address of the service provider or the end-user. This can be

executed through the ODR, as an effective, faster, and widely accessible platform for the users, regardless of the distance and time [16].

### **Advantages and Difficulties in Using ODR**

The application of ICT in dispute resolution transforms the way in which the parties involved interact. However, ODR process has some advantages and challenges due to the use of ICT. Based on the rule, the main objective is to implement ODR platforms that capitalize on the benefits and reduce challenges or drawbacks.

Internet use for dispute resolution can accelerate the process because the involved parties are more flexible when applying ODR asynchronous communications. Moreover, this is because ODR process enables the involved parties to engage in their convenient time; this is, not only during the court sessions or with programmed meetings.

The application of asynchronous communications enables the involved online parties to get prepared to present their best possible responses of the case without being influenced or demoralized. In addition, some studies believe that asynchronous communications enable the involved parties to think more carefully than during physical or verbal exchanges before truly presenting their messages. It provides communication lines that are not applied in the more formal offline court or legal processes. Gramatikov states that ODR normally utilizes confidential processes that promote honesty among the parties due to a trusting environment that promotes settlement [17]. Furthermore, ODR encourages the parties to begin engaging on the resolution of their online disputes instantly. It enables also neutral parties to go on to support the parties for the main and essential communications [18].

ODR provides reduced costs compared to offline processes since there are no accommodation and travel expenses, which under the international consumer disputes are normally greater than the worth of the dispute. The application of informal forms of ODR promotes faster settlements and self-representation, leading to time and cost savings. The reduced costs increase the opportunity to use ODR process in low-value online disputes, which enhance consumer access to fairness and justice.

ADR has a range of advantages when matched up to litigation, which are integrated to the ODR processes. One major advantage is that the involved online parties have higher control over the actual decisions and processes. For example, in consensual ODR, the online involved parties generate their own agreement without being forced on them by either the third party or fourth party. Therefore, they might not often be strict losers or winners following the dispute resolution. Moreover, the parties can choose the more suitable process or third party [19]. Neutral third parties are professionals on certain issues of field of the dispute that may eliminate the requirement for expert witnesses or lawyers. Further, judges are forced to adhere to the existing precedents and procedures. For example, when the consensual ODR processes are adopted, the rules of evidence do not often apply; therefore, there is more flexibility on the processes, and legal experts do not often represent the parties involved.

Cortés asserts that ODR emerges to be most suitable approach to resolve e-disputes. according to Ponte and Cavenagh, 'the online community is looking for conflict resolution options that mirror the speed and efficiency of the Web' [20]. Nevertheless, it will be irrational to consider ODR a cure-all for all online disputes; actually, ODR is undergoing various challenges in its implementation.

Facial expressions, tone of voice, and body language are essential elements of communications. The nonexistence of non-verbal indicators may increase misrepresentation of identity, which in turn, result in miscommunication. Moreover, video-conferencing and other internet applications can support in balancing the absence of face-to-face interactions, but this does not fully replace it. Technologies and neutral third parties have an essential part in providing relevant communications and enhancing trust. This needs various training and experience for neutral third parties. However, face-to-face communications and interactions are considered mostly to support parties or individuals who are more eloquent and physically attractive. This can generate potential bias in relation to physical appearance, nationality, sex, and religion. As a result, the online dispute resolution system allows the parties to self-represent, which, in turn, eliminate prejudices.

The argument that those that are experienced on computers or online system are favored by ODR is actually incorrect. This is because the number of users using online system or computers is

increasing on daily basis, although the parties might be having varied scale of skills and knowledge towards computer use [21]. Moreover, there are no identical technical standards. This means that technology advances vary in every region, state, and country. Currently, across the European Union, most citizens still apply broadband connections and dial-up connections.

Presently, most available ODR services apply only English, which may be another challenge in providing accurate information and preventing any miscommunications from occurring. This may be a major barrier not only for the involved parties who does not understand or write English, but also for the involved parties using English as the third or even second language [22]. Lack of clear legal requirement and standards for the ODR processes generates various challenges, mainly if the necessity of public enforcement comes up.

### **Conclusion**

In most countries, most consumers with better access to Internet connection make various and regular online transactions, such as accommodation, transport, and even make salary payments. Online trading has been there for many years, but it is currently becoming a common feature. Even though most potential consumers do not have adequate Internet connections in developing countries, increasingly most have an access to cell phones and cybercafes, used for particular financial transactions. Online communications and miscommunications are unavoidably emerging online disputes, where the most apparent aim for the launch of ODR is e-commerce. If certain conflicts come up online, it appears reasonable that they need to be resolved online. This approach is occurring in various regions, including disputes on domain names solved by ICANN, which is an approved UDRP service provider, along with the common B2B and B2C disputes in PayPal and eBay.

It is likely that different types of ODR services will increase initially with the major digital providers (e.g. iTunes) or major corporations with an increased number of digital trading or transactions (e.g. airlines). However, ODR may not often offer a perfect online dispute resolution mechanism for all these types of e-disputes, but it can actually provide a satisfactory resolution to various e-disputes, such as those that are caused by the B2C components, including disputes from SMEs, or disputes arising from outside commercial setting and online sphere, including disputes from citizen to government (C2G). The necessity for ODR intensifies when parties undergo particular conditions, including urgency in dispute resolution, huge geographic distance, and limited economic resources.

### **Примечания:**

1. Petrauskas F. & Kybartienė E. Online Dispute Resolution in Consumer Disputes // JP. 2011. № 925.
2. Arya S. ODR: An Effective Technological Advanced Mechanism for Resolving Disputes' (2012) 65 IIRRJ
3. Rabinovich-Einy O. 'Going Public: Diminishing Privacy in Dispute Resolution in the Internet Age' (2002) 13 VJLT
4. Sourdin T. & Liyanage C. 'The Promise and Reality of Online Dispute Resolution in Australia' (2010) 486 JIL
5. Rabinovich-Einy O. & Katsh E. 'Digital Justice: Reshaping Boundaries in an Online Dispute Resolution' (2014) 3 IJODR
6. Liyanage K. 'The Regulation of Online Dispute Resolution: Effectiveness of Online Consumer Protection Guidelines' (2012) 254 DLR
7. Kaufmann-Kohler G. 'Online Dispute Resolution and its Significance for International Commercial Arbitration' (2005) 441 GRIL
8. Wang F. Online Dispute Resolution: Technology, Management and Legal Practice from an International Perspective (Oxford: Chandos Publishing 2008) 216
9. Lodder A. & Zeleznikow J. Enhanced Dispute Resolution Through the Use of Information Technology (Cambridge: Cambridge University Press 2010) 91
10. Tyler M. & McPherson M. 'Online Dispute Resolution and Family Disputes' (2006) JFS
11. Cho H. International Commercial Online Dispute Resolution: Just Procedure Through the Internet (ProQuest 2009) 36
12. Yuksel A. 'Online International Arbitration' (2007) 85 ALR

13. Katsh E. 'Online Dispute Resolution: Designing new Legal Processes for Cyberspace' (2009) 5 PWSOL
14. Farkas B. 'Old Problem, New Medium: Deception in Computer-Facilitated Negotiation and Dispute Resolution' (2010) 167 CJCR.
15. Rehder and Wood Floor Solutions [C-204/08 Rehder; C-19/09 Wood Floor Solutions]
16. Wang F. Internet Jurisdiction and Choice of Law: Legal Practises in the EU, US and China, (Cambridge: Cambridge University Press 2010) 80
17. Gramatikov M. Costs and Quality of Online Dispute Resolution: A Handbook for Measuring the Costs and Quality of ODR (Maklu 2012) 13
18. Wang F. Internet Jurisdiction and Choice of Law: Legal Practises in the EU, US and China, (Cambridge: Cambridge University Press 2010).
19. Rule C. Online Dispute Resolution For Business: B2B, ECommerce, Consumer, Employment, Insurance, and other Commercial Conflicts (John Wiley & Sons 2003) 115
20. Cortés P. Online Dispute Resolution for Consumers in the European Union (Routledge 2011) 151
21. Goldberg J. 'Online Alternative Dispute Resolution and Why Law School Should Prepare Lawyers for the Online Forum' (2014) 11 PDRLJ
22. Goldberg J. 'Online Alternative Dispute Resolution and Why Law School Should Prepare Lawyers for the Online Forum' (2014) 11 PDRLJ

УДК 346.93

### **Онлайн разрешение споров по законодательству Великобритании**

Владислав Борисов

Brunel University London, UK  
Kingston Lane, Uxbridge, Middlesex UB8 3FG  
E-mail: Borisovbox@mail.ru

**Аннотация.** Статья описывает один из альтернативных методов разрешения споров – разрешение споров онлайн. В содержании будет найдена дискуссия на тему, что онлайн разрешение споров - самый удобный, быстрый и бюджетный способ разрешения споров. Закон об информации 2000 г. и Закон об Арбитраже и Примирении Сторон 1996 г. и 2000 г. – важнейшие источники статьи, поскольку являются базовым законодательством для платформ, предоставляющих онлайн разрешение споров. Данный вид разрешения споров подходит для ситуаций, возникающих в онлайн сферах: Бизнес-Бизнес, Бизнес-Потребитель, Потребитель-Потребитель. В статье анализируется законодательство Великобритании.

**Ключевые слова:** онлайн разрешение споров, альтернатива разрешения споров, бизнес-бизнес, бизнес-потребитель, потребитель-потребитель, закон об арбитраже и примирении сторон 1996 г. и 2000 г., закон об информации 2000 г.