

# TOWARDS MORE EFFECTIVE ODR FOR CROSS-BORDER B2C E-COMMERCE: SELF-REGULATED OR STATE-RUN?

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### *Abstract:*

*With the emergence of Chinese Internet Courts using information technology to facilitate dispute resolution, the concept of ODR needs to be updated to include adjudicative ODR processes. By focusing on whether public or private ODR systems can protect consumers in cross-border e-commerce transactions more effectively, this article analyses the strengths and shortcomings of the two types of ODR mechanisms through the dimensions of availability, justifiability, and enforceability. It finds that private ODR systems excel in dealing with routine, uncomplicated, and domestic disputes but lack the authority, neutrality, and expertise in resolving more complicated cases and have no legally supported enforcement mechanisms. In contrast, public ODR systems can work more justifiably and professionally but face challenges in serving cross-border e-commerce consumers due to the barriers created by different countries' private international law rules. After reviewing ODR coordination at the international level, this article points out that a more coordinated global ODR legal system is needed, with more attention to regulatory harmonization of national adjudicative ODR systems.*

*Keywords:* online dispute resolution, cross-border e-commerce, consumer protection, dispute settlement clause, litigation, access to justice

### I. INTRODUCTION

Cross-border e-commerce is the online transaction of goods or services between parties in different countries. Comparing cross-border B2B (business to business) e-commerce with cross-border B2C (business to consumer) e-commerce, the former can be conducted with comparatively well-founded legal protection, as exemplified by the United Nations Convention on Contracts for the International Sale of Goods and the UN Convention on the Use of Electronic Communications in International Contracts;<sup>1</sup> whereas the latter has yet to be provided with clearly-expectable legal instructions on issues like the identification of responsible party and applicable law once a dispute arises. Cross-

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<sup>1</sup> APEC, *Report of Workshop for Developing an APEC Collaborative Framework for ODR* (Mar. 2019), [http://mddb.apec.org/Documents/2019/EC/EC1/19\\_ec1\\_009.pdf](http://mddb.apec.org/Documents/2019/EC/EC1/19_ec1_009.pdf).

border e-commerce consumers are less-assured about the complaint channels in consideration of the barriers in language, cost, spatial distance, and legal environment when transactional disputes arise.<sup>2</sup> However, the lingering pandemic has not stopped the stable growth of cross-border B2C e-commerce worldwide. It is reported that from 2014 to 2020, the world's cross-border B2C e-commerce market has risen from 236 to 994 billion dollars, with an average annual growth rate of 27.3%,<sup>3</sup> and the B2C market still holds massive untapped potential.<sup>4</sup> As concerns for trustworthiness have promoted the development of big e-retailers like Amazon, eBay, Taobao, and Jingdong, the establishment of trusted dispute settlement mechanisms will incentivize more consumers to conduct cross-border purchases.<sup>5</sup>

As a promising channel to alleviate the traditionally unavoidable barriers for resolving consumer disputes, online dispute resolution (ODR) has been paid a constant interest by policymakers, scholars, and entrepreneurs.<sup>6</sup> Large online sale platforms have understood early that addressing consumer trust issues by developing ODR systems could bring a valuable market advantage.<sup>7</sup> As a result, in the years before 2000, it appeared that ODR was growing at a quick pace without promotion and surveillance by governments.<sup>8</sup> Later, ODR has been applied not only in national adjudicatory practice but also encouraged by some intergovernmental institutions, including the EU,<sup>9</sup> the OECD,<sup>10</sup> the

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<sup>2</sup> M Dennis, *Study on Best Practices in Using ODR*, APEC Economic Committee (Jan. 2023), [https://www.apec.org/docs/default-source/publications/2023/1/study-on-best-practices-in-using-odr/223\\_ec\\_study-on-best-practices-in-using-odr.pdf?sfvrsn=1bb06f15\\_2](https://www.apec.org/docs/default-source/publications/2023/1/study-on-best-practices-in-using-odr/223_ec_study-on-best-practices-in-using-odr.pdf?sfvrsn=1bb06f15_2).

<sup>3</sup> AliResearch, *Global Cross Border B2C e-Commerce Market 2020: Report highlights & methodology sharing* (Apr. 2016), [https://unctad.org/system/files/non-official-document/dtl\\_eweek2016\\_AlibabaResearch\\_en.pdf](https://unctad.org/system/files/non-official-document/dtl_eweek2016_AlibabaResearch_en.pdf).

<sup>4</sup> UNCTAD, *Digital Economy Report 2019* (4 Sept. 2019), [https://unctad.org/system/files/official-document/der2019\\_en.pdf](https://unctad.org/system/files/official-document/der2019_en.pdf).

<sup>5</sup> AJ Schmitz, *There's an App for That: Developing Online Dispute Resolution to Empower Economic Development*, 32 NOTRE DAME JL ETHICS & PUB POL'Y 1 (2018).

<sup>6</sup> M Dubovec, Workshop on Modernizing Secured Transactions Legal Regimes in APEC Economies through International Instruments and Effective Dispute Resolution Mechanisms, APEC Economic Committee (Sept. 2022), <https://www.apec.org/publications/2022/09/workshop-on-modernizing-secured-transactions-legal-regimes-in-apec-economies-through-international-instruments-and-effective-dispute-resolution-mechanisms>.

<sup>7</sup> Schmitz, *supra* note 5.

<sup>8</sup> UNCTAD, *E-commerce and Development Report 2003* (2003), [https://unctad.org/system/files/official-document/ecdr2003\\_en.pdf](https://unctad.org/system/files/official-document/ecdr2003_en.pdf).

<sup>9</sup> Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR).

<sup>10</sup> OECD, *Guidelines for Consumer Protection in the Context of Electronic Commerce* (1999), <https://www.oecd.org/sti/consumer/oecdguidelinesforconsumerprotectioninthecontextofelectroniccommerce1999.htm>.

UNCITRAL,<sup>11</sup> the APEC,<sup>12</sup> and the ASEAN.<sup>13</sup> Some people hold an opinion that the development of ODR will continue to occur largely in the private sector with governmental efforts lagging far behind the marketplace,<sup>14</sup> whereas others comment that private ODR systems may not bring sufficient enhancement of consumer welfare.<sup>15</sup> Hence, a question now deserving special attention is whether ODR should be further developed by industry self-regulation or by state regulation.

This article attempts to answer this question by focusing on the perspective of cross-border B2C e-commerce. The answer should be found by reverting to the conceptual commitment of ODR, that is, to create simple, efficient, effective, transparent, fair, and practical access to justice for safeguarding consumers' interests.<sup>16</sup> There are also other words to describe the desired features of ODR, such as quick, enforceable,<sup>17</sup> cost-efficient and convenient,<sup>18</sup> speedy, inexpensive, and impartial.<sup>19</sup> Actually, no common international or regional standard exists for ODR. This article just uses "effective" as a criterion to assess ODR but in a more enlarged meaning. Despite further debate, we propose that effectiveness covers the dimensions of availability, justifiability, and enforceability. Thus, by evaluating ODR systems in private and public sectors based on these dimensions and reviewing ODR coordination at the international levels, this article seeks to answer which approach, self-regulation or government-running, is more likely to improve consumer trust and thus enhance cross-border e-commerce.

## II. ODR RECONCEPTION IN CONTEXT

ODR has been generally considered as emerging from the 1990s though the specific time varies slightly among different opinions.<sup>20</sup> Initially, it stresses on

<sup>11</sup> UNCITRAL, *Technical Notes on Online Dispute Resolution* (2017), [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382\\_english\\_technical\\_notes\\_on\\_odr.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf)

<sup>12</sup> APEC, *APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes* (Aug. 2019), [http://mddb.apec.org/Documents/2019/EC/EC2/19\\_ec2\\_022.pdf](http://mddb.apec.org/Documents/2019/EC/EC2/19_ec2_022.pdf)

<sup>13</sup> ASEAN Secretariat, *ASEAN Guidelines on Online Dispute Resolution (ODR)* (Feb. 2022), <https://asean.org/book/asean-guidelines-on-online-dispute-resolution-odr/>

<sup>14</sup> Louis F. Del Duca, Colin Rule & Kathryn Rimpfel, *eBay's De Facto Low Value High Volume Resolution Process: Lessons and Best Practices for ODR Systems Designers*, 6 Y.B. ARB. & MEDIATION 204 (2014).

<sup>15</sup> ASEAN Secretariat, *Feasibility Study: ASEAN Online Dispute Resolution (ODR) Network* (Nov. 2020), [https://aseanconsumer.org/file/post\\_image/Feasibility%20Study%20ASEAN%20ODR.pdf](https://aseanconsumer.org/file/post_image/Feasibility%20Study%20ASEAN%20ODR.pdf)

<sup>16</sup> UNGA, Report of the United Nations Commission on International Trade Law (Jun. 21–Jul. 9, 2010) Official Records Sixty-fifth Session Supplement No. 17.

<sup>17</sup> APEC, *supra* note 12..

<sup>18</sup> ASEAN Secretariat, *supra* note 13.

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

<sup>20</sup> LD Duca, C Rule & Z Loeb, *Facilitating Expansion of Cross-Border E-Commerce - Developing a Global Online Dispute Resolution System (Lessons Derived from Existing ODR Systems - Work of the United Nations Commission on International Trade Law)* 1 PENN ST JL & INT'L AFF 59, 60 (2012); UNCTAD, *supra* note 8; J Chaisse and J Kirkwood, Smart Courts, Smart Contracts, and the Future of Online Dispute Resolution (2022) 5 Stan. J. Blockchain L. & Pol'y 62, 67; E Katsh and L Wing, Ten Years of Online Dispute

how to avail of information or communications technology to help resolve the disputes between different parties.<sup>21</sup> Thus, ODR is inherently fitted to e-commerce disputes, since those transactions are primarily concluded online but the parties may be far from each other in spatial locations. However, as time elapses and technology improves, ODR has been much more than offering online communication,<sup>22</sup> and now computers can do many things better and quicker than humans, like delivering instant answers. Artificial intelligence (AI) and algorithms can play an important role in facilitating and promoting ODR, though human oversight is still indispensable in ODR system design to safeguard ODR processes and outcomes free of bias.<sup>23</sup> In view of this development, ODR systems can range from online portals for filing and receiving consumer complaints, to communications platforms via email or video conferences, and then to fully-automated ODR, according to their degree of automation.<sup>24</sup>

In addition to its advancement in automation, ODR has also been involved in various approaches to dispute resolution. A notion still widely upheld is that ODR constitutes a subset of Alternative Dispute Resolution (ADR) or an online version of ADR, serving as an alternative to the court systems.<sup>25</sup> According to this opinion, ODR may be applied primarily in negotiation, mediation or arbitration. However, if ODR is interpreted literally as facilitating dispute resolution by the use of online environments,<sup>26</sup> then it can be argued that ODR has also embraced litigation in view of the fact that courts can also use innovative digital platforms and even AI.<sup>27</sup> This article strongly suggest the promotion of such a full-fledged interpretation of ODR, based on the application of e-litigation platforms in the adjudicative process, which will be further elaborated infra.

The primary function of ODR in global markets is to catalyze consumer trust and then cross-border sales with convenience in resolving disputes.<sup>28</sup> Therefore, it is understood that ODR could not extend to litigation when the

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Resolution (ODR): Looking at the Past and Constructing the Future (2006) 38 U. TOL. L. Rev. 19, 20. K Benyekhlef & F Gelinas, *Online Dispute Resolution* (2005) 10 Lex Electronica i, 1.

<sup>21</sup> ETHAN KATSH AND JANET RIFKIN, *ONLINE DISPUTE RESOLUTION: RESOLVING CONFLICTS IN CYBERSPACE*, Jossey-Bass (2001).

<sup>22</sup> Dennis, *supra* note 2; ASEAN Secretariat, *supra* note 15.

<sup>23</sup> Dennis, *supra* note 2; APEC Committee on Trade and Investment, *Public-Private Dialogue (PPD) on Promoting Consumer Protection in the Dispute Resolution and Redress Mechanisms of eCommerce* (Sep. 2021) [https://www.apec.org/docs/default-source/publications/2021/9/ppd-on-promoting-consumer-protection-in-the-dispute-resolution-and-redress-mechanisms-of-ecommerce/221\\_cti\\_ppd-on-promoting-consumer-protection—summary-report.pdf?sfvrsn=5c9012b7\\_1](https://www.apec.org/docs/default-source/publications/2021/9/ppd-on-promoting-consumer-protection-in-the-dispute-resolution-and-redress-mechanisms-of-ecommerce/221_cti_ppd-on-promoting-consumer-protection—summary-report.pdf?sfvrsn=5c9012b7_1)

<sup>24</sup> ASEAN Secretariat, *supra* note 15.

<sup>25</sup> Katsh & Rifkin, *supra* note 21, at 2; ASEAN Secretariat, *supra* note 13.

<sup>26</sup> UNCITRAL, *supra* note 11), para. 24; APEC, *supra* note 12; Model Procedural Rules art. 21; Riikka Koulu, *Three Quests for Justification in the ODR Era: Sovereignty, Contract and Quality Standards*, 19 LEX ELECTRONICA 43, 43–54 (2014).

<sup>27</sup> NW VERMEYS & K BENYekhlef, *ODR AND THE COURTS* in MSA, *ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE*, 295, (Mohamed S. Wahab, E. Katsh & D. Rainey eds., 2nd ed. 2012); Dennis, *supra* note 22.

<sup>28</sup> Schmitz, *supra* note 5.

court process had always been tagged as lengthy, expensive, inconvenient, and complicated. However, as internet courts rise, what ODR in other dispute resolution processes can provide for satisfying the demand of e-commerce can all be realized by the litigation process, and the court can play a more important role in boosting consumer trust by fulfilling its public function. Thus, there is no sense to exclude litigation from the concept of ODR.

The indispensability of the adjudicative ODR process can be shown in some aspects of China's current cross-border B2C e-commerce situation. Tmall Global, the largest online platform for Chinese people to buy overseas goods, sets standard Dispute Resolution Rule in its User Service Agreement, which state: "if the buyer and (or) seller objects to Tmall Global's determination, it must submit the dispute to the Hong Kong International Arbitration Centre for arbitration within twenty days of Tmall Global's determination".<sup>29</sup> This is a very frustrating disputes settlement clause for mainland Chinese consumers, considering the higher arbitration fee, unfamiliar arbitration rules and different language used in the arbitration proceedings, even if HKIAC may also apply some online measures.<sup>30</sup> In such circumstance, a court process may be requisite to redress the validity of such clauses, as shown in *Dingding Sun vs. Suning E-commerce*,<sup>31</sup> and an online litigation process may be more suitable for the consumers with less motivation to sue for small claims. Moreover, as found in the Small Court of Xianyu, an ODR system designed by China's largest second-hand goods-trading platform, the cases that can be handled therein are narrowly about items return and payment refunding, and for the more complicated cases, like quality inconformity, false advisement, fraud, personal information disclosure, and porn activities, a formal litigation process is still needed.<sup>32</sup> Thus, as a whole, the legal system can definitely be improved by the incorporation of ODR, while in a sense, state-run ODR can eliminate the challenges faced by private ODR initiatives, including confidence and enforcement issues.<sup>33</sup>

<sup>29</sup> Tmall Global, *Tmall Global Dispute Resolution Rules* (12 Aug., 2014), art. 48, [https://rule.tmall.hk/rule/rule\\_detail.htm?spm=a2231.8172858.3077320320.6.4ae926b74op5tK&ut\\_sk=1.YGsen-cHw2AUDABWCFy8dr4Ke\\_21380790\\_1635165057779.DingTalk.windvane&tag=self&id=1521&source-Type=other&suid=0E88003F-18EF-402E-8DE7-FC225560C38B&tbp=1..](https://rule.tmall.hk/rule/rule_detail.htm?spm=a2231.8172858.3077320320.6.4ae926b74op5tK&ut_sk=1.YGsen-cHw2AUDABWCFy8dr4Ke_21380790_1635165057779.DingTalk.windvane&tag=self&id=1521&source-Type=other&suid=0E88003F-18EF-402E-8DE7-FC225560C38B&tbp=1..)

<sup>30</sup> HKIAC, *HKIAC Guidelines on Virtual Hearings* (15 May, 2020), <https://www.hkiac.org/news/hkiac-guidelines-virtual-hearings>.

<sup>31</sup> Sundingding Yu Jiangsu Suning Yigou Dianzi Shangwu Youxian Gongsi Guanxia Caiding Shu (孙丁丁与江苏苏宁易购电子商务有限公司管辖裁定书) [D. D. Sun v Suning E-commerce Co., Ltd.], (2015)苏中民辖终字第00253号 (Jiangsu Intermediate Court 2015). The plaintiff sued the defendant in Zhangjiagang People's Court after he bought a printer from the defendant. The plaintiff alleged that Zhangjiagang People's Court had the proper jurisdiction since Zhangjiagang was the place of delivery. In contrast, the defendant contended that the case should be handled by a court of the place where the defendant was located since the plaintiff agreed to such a forum when he registered as a user on Suning's e-commerce platform. The court ruled that the forum selection clause in Suning E-commerce Platform's User Service Agreement was a standard clause prepared by the defendant, and the defendant did not sufficiently caution consumers about this clause, and accordingly, this clause was invalid.

<sup>32</sup> Yuru Liu & Yan Wan, *Consumer Satisfaction with the Online Dispute Resolution on a Second-Hand Goods-Trading Platform*, 15 SUSTAINABILITY 3182, (2023).

<sup>33</sup> Vermeys & Benyekhle, *supra* note 27.

By integrating litigation into the realm of ODR, this article has shown an inclination to recognize the state-running approach for ODR development. However, such an affirmation would be unwarranted without a comprehensive examination of ODR effectiveness in the private market and public sphere, respectively. Thus, the following sections will discuss more comprehensively ODR development and its effectiveness in the two sectors, followed by a review of ODR cooperation at the international level.

### III. ODR IN THE PRIVATE SPHERE

Private e-commerce companies are among the first promoters of ODR systems, such as eBay's Money Back Guarantee Policy.<sup>34</sup> Due to the borderless nature of the online world, these ODR platforms are available for consumers worldwide. In China, however, consumers use Taobao and Jingdong more widely for domestic online shopping and rely mainly on the two platforms' overseas versions, Tmall Global and Jingdong Global, for overseas purchases. Tmall Global and Jingdong Global have ODR systems different from their domestic counterparts. The paragraphs below briefly introduce the ODR systems of eBay and Tmall Global, respectively. Meanwhile, various ADR providers, including major international arbitration centers, have also applied ODR in different forms. The development in these areas is driven by civil society forces, thereby lessening the caseload on the part of the public judicial system. Thus, this represents a self-regulation approach.

#### A. Platform-embedded ODR

As the world's premier auction-style online marketplace between consumers and small and middle-sized enterprises, eBay has been a forerunner in providing private ODR. The eBay Money Back Guarantee Policy plays a vital role in enhancing consumers' confidence in dealing with unknown sellers.<sup>35</sup> It applies when the buyer does not receive an item, when the item received by the buyer doesn't match the listing, or when the seller doesn't fulfill their return policy.<sup>36</sup> The procedure is almost the same for the three types of claims, including four steps, respectively the buyer's report, the seller's response, eBay's step-in, and appeal. For example, in the case of undelivered goods, the buyer is entitled to file an online complaint within 30 calendar days after the estimated or actual delivery/collection date has passed. The seller is then required to respond to the buyer's report within three business days after the report date. If the seller hasn't responded or if the buyer and seller can't reach a resolution, either party can ask eBay to step in. If the buyer or the seller does not agree with eBay's resolution, either party can appeal by providing new information

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<sup>34</sup> ASEAN Secretariat, *supra* note 15.

<sup>35</sup> UNCTAD, *supra* note 8.

<sup>36</sup> eBay, *eBay Money Back Guarantee policy*, <https://www.ebay.com/help/policies/ebay-money-back-guarantee-policy/ebay-money-back-guarantee-policy?id=4210#not-received>.

within 30 calendar days of the case closing. The whole process starts with online negotiation between the parties, followed by facilitated settlement, and then by a binding decision. If needed, eBay may enforce its determinations through a charge-back in the PayPal financial system.<sup>37</sup>

Tmall Global, Alibaba's subsidiary serving Chinese consumers' online purchase of high-quality overseas goods, also has its own ODR system. After a consumer makes an order on it, the goods are shipped from countries or regions outside the Chinese mainland through international logistics or from China's bonded areas.<sup>38</sup> When disputes arise between consumers and sellers, they can be solved in accordance with Tmall Global Dispute Resolution Rules.<sup>39</sup> The Rules classifies the disputes into two types, namely pending-sale disputes and after-sale disputes. The former arises when the buyer does not receive the goods, the goods are irregular in appearance, the goods received do not match its description, or the goods possess quality problems, insofar as any claim is submitted before the transaction is closed as shown on the platform.<sup>40</sup> The latter may concern claims about counterfeit goods or other circumstances of mismatch with the description after the transaction is completed.<sup>41</sup> In both categories of cases, the buyer may apply for refund. The buyer and seller may choose to resolve their dispute through negotiation, Tmall Global's step-in, or judicial means.<sup>42</sup> If Tmall Global steps in and make a final determination within the platform, it may enforce the determination by instructing AliPay to process full or partial payment of the transaction funds.<sup>43</sup>

### B. Private third-party ODR

Theoretically, commercial arbitration is available for the disputants in a cross-border B2C e-commerce transaction if they can agree on bringing their case to an arbitration center. With the COVID-19 pandemic, and the resulting restrictions on meetings and travel, international arbitration has shifted to ODR in varying degrees. Major international arbitration centers have adopted virtual hearings,<sup>44</sup> which might bring convenience for solving cross-border e-

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

<sup>38</sup> Tmall Global, *Executive Rules on Cross-border Direct Supply* (20 Jul., 2015), [https://rule.tmall.hk/rule/rule\\_detail.htm?spm=pc\\_detail.27183998/evo385483b517998evo385485b518001.0.0.34577dd6aCSMi1&acm=lb-zebra-165849-1009353.1003.4.1827482&id=1572&tag=self&scm=1003.4.lb-zebra-165849-1009353.OTHER\\_14956498639362\\_1827482](https://rule.tmall.hk/rule/rule_detail.htm?spm=pc_detail.27183998/evo385483b517998evo385485b518001.0.0.34577dd6aCSMi1&acm=lb-zebra-165849-1009353.1003.4.1827482&id=1572&tag=self&scm=1003.4.lb-zebra-165849-1009353.OTHER_14956498639362_1827482).

<sup>39</sup> Tmall Global, *Tmall Global Dispute Resolution Rules* (5 May, 2022), [https://rule.tmall.hk/rule/rule\\_detail?spm=a2o8rj.import\\_rules\\_portal.0.0.6b2c6f0cauPSIB&id=1519](https://rule.tmall.hk/rule/rule_detail?spm=a2o8rj.import_rules_portal.0.0.6b2c6f0cauPSIB&id=1519).

<sup>40</sup> *Id.*, art. 6 & 37.

<sup>41</sup> *Id.*, art. 27 & 37.

<sup>42</sup> *Id.*, art. 36.

<sup>43</sup> *Id.*, art. 45.

<sup>44</sup> HKIAC, *supra* note 30; ACICA, *ACICA Online Arbitration Guidance Note* (May 2020) <https://acica.org.au/wp-content/uploads/2020/05/ACICA-Online-Arbitration-Guidance-Note.pdf>; KCAB, *Seoul Protocol on Video Conference in International Arbitration* (18 Mar., 2020) [http://www.kcabinternational.or.kr/user/Board/comm\\_notice\\_view.do?BBS\\_NO=548&BD\\_NO=169&CURRENT\\_MENU\\_CODE=](http://www.kcabinternational.or.kr/user/Board/comm_notice_view.do?BBS_NO=548&BD_NO=169&CURRENT_MENU_CODE=)



commerce disputes. However, the costs incurred from an international arbitration process are usually inappropriately higher than the claimed amount in an online purchase case; thus, international commercial arbitration is still unsuitable for such disputes. As mentioned above, Tmall Global's User Services Agreement prescribes that a buyer can bring his/her dispute to HKIAC if it is not satisfied with Tmall Global's determination,<sup>45</sup> so presumably, there should be numerous cases acceptable by HKIAC. However, no such cases handled by HKIAC have yet been reported, which somehow shows the enormous barriers faced by consumers in the Chinese mainland to safeguard their legal rights in e-commerce transactions. Many Chinese consumers criticize on the internet this remedy channel set by Tmall Global, especially the arbitration step through HKIAC. Some of them say it is more challenging than "climbing onto the sky".<sup>46</sup>

In China, arbitration centers gain support in staff, funds, and premises from the government in their incorporation stage<sup>47</sup> but are legislatively recognized as independent from China's administrative authorities.<sup>48</sup> Accordingly, this article still regards them as private ADR institutions. In recent years, ODR has been performed in various ways by a number of arbitration centers in China, among which CIETAC is one of the forerunners. Early since 2015, CIETAC has executed its Online Arbitration Rules with the establishment of a specialized internal organ named "CIETAC ODR Center" and a specialized ODR website [www.cietacodr.org](http://www.cietacodr.org).<sup>49</sup> It is stated manifestly that ODR is applicable to the resolution of e-commerce disputes [24].<sup>50</sup> ODR covers almost the entire process of arbitration, including submission of the arbitration application,<sup>51</sup> submission of the respondents' reply,<sup>52</sup> presentation of electronic evidences,<sup>53</sup> online oral hearing,<sup>54</sup> and online mediation.<sup>55</sup>

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MENU0025&TOP\_MENU\_CODE=MENU0024; CIETAC, *Guidelines on Proceeding with Arbitration Actively and Properly during the COVID-19 Pandemic* (28 Apr. 2020) <http://www.cietac.org/index.php?m=Article&a=show&id=16919&l=en><http://www.cietac.org/index.php?m=Article&a=show&id=16919&l=en>; SIAC, *SIAC Guides: Taking Your Arbitration Remote* (Aug. 2020) <https://siac.org.sg/wp-content/uploads/2022/08/31-August-2020-SIAC-Guides---Taking-Your-Arbitration-Remote-August-2020.pdf>.

<sup>45</sup> Tmall Global, *Tmall Global Dispute Resolution Rules* (5 May, 2022), art. 48, [https://rule.tmall.hk/rule/rule\\_detail?spm=a2o8rj.import\\_rules\\_portal.0.0.6b2c6f0cauPSIB&id=1519](https://rule.tmall.hk/rule/rule_detail?spm=a2o8rj.import_rules_portal.0.0.6b2c6f0cauPSIB&id=1519).

<sup>46</sup> *Seeking Remedies for My Tmall Global Transaction is More Difficult than Climbing onto the Sky* (13 Jun, 2019) <https://zhuanlan.zhihu.com/p/68915832>.

<sup>47</sup> State Council of China, *Plan on Establishing or Reorganizing Arbitration Institutions* (28 Jul., 1995) [http://www.gov.cn/zhengce/2020-12/26/content\\_5574827.htm](http://www.gov.cn/zhengce/2020-12/26/content_5574827.htm).

<sup>48</sup> Zhong Cai Fa (仲裁法) [Arbitration Law] (promulgated by the Standing Comm. Nat'l People's Cong., September 1, 2017, effective January 1, 2018), art. 14 (Chinalawinfo).

<sup>49</sup> CIETAC, *Online Arbitration Rules* (1 Jan., 2015), art. 2. <http://www.cietac.org/index.php?m=Page&a=index&id=19&l=cn>

<sup>50</sup> *Id.*, art. 1.

<sup>51</sup> *Id.*, art. 18.

<sup>52</sup> *Id.*, art. 21.

<sup>53</sup> *Id.*, art. 29.

<sup>54</sup> *Id.* art. 36.

<sup>55</sup> *Id.* art. 37.

CIETAC's Work Report disclosed that in 2022 its service has been more convenient and efficient due to informatization and digitalization, with the number of online case submission accounting for one third of the total number of case submissions and the number of online hearings rising to a half of the total number of hearing.<sup>56</sup> However, no number and other information relating to e-commerce cases are mentioned in this report, suggesting a deserted condition in this situation. The reason might be related to its fee schedule, which is RMB 10,000 plus a registration fee of RMB 10,000 at minimum.<sup>57</sup> CIETAC's ODR system looks expensive and unsuitable to cross-border B2C e-commerce disputes which generally concern low values.

Another Chinese arbitration center leading in ODR development is Guangzhou Arbitration Commission (GAC). In 2015, GAC started its Internet arbitration service. In 2020, GAC launched an upgraded cross-border e-commerce ODR system that integrates negotiation, mediation, and arbitration processes and supports the automatic creation of arbitral files, online signing, and online service of arbitral awards.<sup>58</sup> This platform can accept e-commerce disputes since its ODR Guidelines make clear that contractual disputes and other disputes over proprietary rights and interests between citizens, legal persons and other organizations may be submitted to this ODR system.<sup>59</sup> Also, the arbitral fees charged for GAC's ODR service are lower than that of CIETAC, which is RMB 100 at minimum.<sup>60</sup> In May 2022, GAC's ODR platform was enlisted as an ODR provider of the APEC ODR Collaborative Framework. By then, GAC had accepted through its ODR system nearly 200 cases, involving a total value of about RMB 5 billion, with an average settlement period of 23 days, almost 3 months faster than traditional arbitration proceedings.<sup>61</sup> However, still no specific statistics about cross-border B2C e-commerce cases handled through this platform is released.

Also, there are other entities around the world that do not provide ODR services by themselves but promote better ODR practice by extending certain ODR standards. The National Center for Technology and Dispute Resolution and the International Council for Online Dispute Resolution jointly issued the

<sup>56</sup> Zhongguo Guoji Jingji Maoyi Zhongcai Weiyuanhui (中国国际经济贸易仲裁委员会), *Maozhongwei 2022 Nian Gongzuo Baogao* (贸仲委2022年工作报告), Zhongguo Guoji Jingji Maoyi Zhongcai Weiyuanhui Zhejiang Fenhui (中国国际经济贸易仲裁委员会浙江分会) (Jan. 20, 2023), <http://www.cietac-zj.org/index.php?m=Article&a=show&id=18845>

<sup>57</sup> CIETAC, *Schedule of Fees*, <http://www.cietac.org/index.php?m=Page&a=index&id=191&l=en> (last visited Jun. 12, 2024).

<sup>58</sup> GAC, *Cross-border Dispute Settlement Platform*, <https://odr.gzac.org/disputeSettlementSystem/dashboard#/login> (last visited Jun. 12, 2024)

<sup>59</sup> GAC, *ODR Guidelines* art. 2.

<sup>60</sup> The Municipal Government of Guangzhou, *Notice on the Arbitration Charges Applicable to GAC* (Apr. 21, 2021).

<sup>61</sup> 中国新闻网 (Zhongguo Xinwen Wang), 'Guangzhou Chuangxin Zhongcai Fuwu Moshi Gaoxiao Huajie Shengang Shangshi Jiufen' (广州创新仲裁服务模式 高效化解涉港商事纠纷) (May 25, 2022) <https://baijiahao.baidu.com/s?id=1733809128684033198&wfr=spider&for=p>.

Online Dispute Resolution Standards in May 2022.<sup>62</sup> The International Standards Organization working group on Transaction Assurance in E-commerce is also developing its own Guidelines for Online Dispute Resolution (ISO/TC 321).<sup>63</sup> The ODR.com platform is dedicated to key concepts and systems designs that have inspired others to build their own ODR systems. These entities are privately sponsored, but their work contributes to promoting public ODR recognition and fostering better ODR practice.

### C. Effectiveness of Self-regulated ODR

#### 1. Availability

Platform-embedded ODR is undoubtedly convenient and friendly for cross-border e-commerce consumers in terms of the availability of dispute remedies. Even a number of years ago, eBay handled over 60 million disputes per year,<sup>64</sup> and easy ODR accessibility plays a role for this success. The ODR of predominant Chinese e-commerce platforms, like Taobao, has also been widely used. It was reported that in 2014 Taobao resolved 7 million disputes through its ODR system.<sup>65</sup> The most significant advantage of platform-embedded ODR is a “one-stop shop” service, saving consumers’ time and costs and promoting the reliability of B2C e-commerce providers. However, Tmall Global and other big Chinese B2C cross-border e-commerce providers have not yet received commendable reports on their ODR systems.

Private third-party ODR may also have the potential to be widely used by cross-border e-commerce consumers, but this needs to be confirmed in the future. A major reason for their low acceptability is that they are mostly provided by traditional arbitration centers resolving commercial disputes, which are costly and incompatible with B2C e-commerce consumers. Even though some of them, like GAC’s ODR system, provide cheaper service, they are still less well-known and inconveniently accessible than the “one-stop shop” ODR of B2C e-commerce platforms.

Platform-embedded ODR is of immense significance given the huge number of cases such ODR handles and the vast improvement of consumers’ trust in these platforms such ODR contributes. However, as a general practice, cross-border B2C e-commerce platforms recognize consumers’ dual remedy paths: a third-party neutral plus their own ODR. Sometimes, the third-party neutral is a court in the public judicial system. For example, Amazon’s “Conditions of Use” provision marked “Disputes” states: “Any dispute or claim relating in any

<sup>62</sup> NCTDR and ICODR, *Online Dispute Resolution Standards*, ICODR (May 2022), <https://icodr.org/files/english.pdf>.

<sup>63</sup> ISO, *Transaction assurance in e-commerce — Guidelines for online dispute resolution (under development)*, <https://www.iso.org/standard/84834.html?browse=tc> (last visited Jun. 12, 2024).

<sup>64</sup> Duca, Rule and Rimpfel, *supra* note 14.

<sup>65</sup> Zou Tiantian (邹田田) et al., *Wangluo Gouwu Weiquan ODR Ji Dianshangfa Yingyong Yanjiu* (网络购物维权ODR及电商法应用研究) [*Remedies for Online Shopping through ODR and the Application of E-commerce Law*] 21 XIANDAI SHANGYE (现代商业) [MODERN BUSINESS] 40, 41 (2020).

way to your use of any Amazon Service will be adjudicated in the state or Federal courts in King County, Washington, and you consent to exclusive jurisdiction and venue in these courts".<sup>66</sup> Sometimes, the third-party neutral is an arbitration center, as illustrated by Tmall Global's Dispute Resolution Rules mentioned above.<sup>67</sup>

In the above latter case, the validity of these pre-dispute arbitration clauses may be questionable depending on the legal practice in different countries. In the United States, three Supreme Courts judgments paved the way for respecting party autonomy in choice of forum.<sup>68</sup> These cases are the foundation of a consistent policy allowing the parties to choose litigation or arbitration and then the specific forum where their disputes can be settled. In the EU, the Council Directive 93/13/EEC of 5 April 1993 includes language about the prohibition of pre-dispute arbitration agreements in consumer contracts,<sup>69</sup> which has been implemented by many EU member states.<sup>70</sup> In China, the validity of such pre-dispute arbitration clauses is not clear. In some cases, the courts ruled such clauses as nonbinding on the ground that they are standard clauses that impose unfair or unreasonable rules on consumers pursuant to the Law on Protection of Consumer Rights and Interests.<sup>71</sup> But in many other cases, the courts dismissed the action for the reason that such pre-dispute arbitration clauses agreed between cross-border e-commerce platforms and consumers precluded the courts' jurisdiction from hearing these cases.<sup>72</sup> In such cases, consumers cannot have access to public adjudicatory remedies. It seems that the easy accessibility to platform-embedded ODR does not mean a supplement from public judicial institutions is nonessential.

## 2. Justifiability

<sup>66</sup> Amazon, Conditions of Use (14 Sep. 2022) <https://www.amazon.com/gp/help/customer/display.html?nodeId=GLSBYFE9MGKKQXXM>

<sup>67</sup> Tmall Global, *supra* note 39, art. 48. eBay's User Agreement for its customers requires all disputes to be resolved exclusively through arbitration, but it also allow the customers to reject this clause by a written opt-out notice. And if the agreement to arbitrate does not apply, the disputes shall be resolved exclusively by a state or federal court located in Salt Lake County, Utah.

<sup>68</sup> *M/S Bremen v. Zapata Off-Shore Co.* 407 U.S. 1, 15-19 (1972); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc.* 473 U.S. 614 (1985); *Carnival Cruise Lines Inc. v. Shute* 499 U.S. 585, 972 (1991).

<sup>69</sup> Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts, 1993 Off. J. of the Eur. Cmty., Annex (Apr. 4, 1993).

<sup>70</sup> Ronald A. Brand, *Party Autonomy and Access to Justice in the UNCITRAL Online Dispute Resolution Project*, 10 LOY U CHI INT'L L REV 11, 26 (2012).

<sup>71</sup> Xiaofeizhe Quanyi Baohu Fa (消费者权益保护法) [Law on the Protection of Rights and Interests of Consumers] (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 25, 2013, effective Mar. 15, 2014) art. 26; *Sundingding v. Suning E-commerce*, *supra* note 31.

<sup>72</sup> HANGZHOU HULIANWANG FAYUAN (杭州互联网法院) [HANGZHOU INTERNET COURT], HANGZHOU HULIANWANG FAYUAN KUAIJING MAOYI FATING FUWU HE BAOZHANG ZHONGGUO (ZHEJIANG) ZIYOU MAOYI SHIYANQU JIANSHE BAIPISHU (杭州互联网法院跨境贸易法庭服务和保障中国(浙江)自由贸易试验区建设白皮书) [WHITE PAPER OF THE SPECIALIZED CROSS-BORDER TRADE TRIBUNAL OF HANGZHOU INTERNET COURT ON FACILITATING THE ESTABLISHMENT OF CHINA (ZHEJIANG) PILOT FREE TRADE ZONE] (Jul. 15, 2021).

The easy availability of private ODR does not guarantee their substantive justice, especially in the process of mediation and arbitration. Three weak points of private ODR may undermine their decisive justification. One is the authoritative deficiency. Private ODR, especially platform-embedded ODR, relies mainly on virtual networks and online communication to resolve disputes. Without a sense of seriousness and solemnity as requisite in a public courtroom, the reliability of the communication between the buyer, the seller, and the platform cannot be always warranted.

The second is neutrality deficiency. New platform-embedded ODR systems should be fair and transparent to attract consumers and convince them of their effectiveness. However, consumers may also reject the ODR system for fear that the business platform has an unbalanced advantage in any process that they design and in which they perform as repetitive players.<sup>73</sup> Some commentators even fear that third-party ODR providers will favor the e-commerce companies that use and pay for their services.<sup>74</sup>

The third is professional deficiency. The mediators or arbitrators serving platform-embedded ODR are not subject to the professional qualification required in the judicial system, which restrain them from handling more complicated issues. This deficiency has been confessed by Tmall Global, who says in its Dispute Resolution Rules that: “Tmall Global is not a judicial body, and has limitations in the ability to ascertain proof/evidence and to handle disputes. Tmall Global does not guarantee that the results of a dispute resolution will meet the expectations of the Buyer and (or) Seller, and will not be liable for any dispute resolution resolved in accordance with these Rules”.<sup>75</sup> Basically, e-commerce providers using ODR perform the function of dispute resolution mainly for the purpose of maximizing the number of successful transactions. Thus, a more professional and authoritative judicial proceeding is still needed when platform-embedded ODR are not suitable or competent to resolve e-commerce disputes.

### 3. Enforceability

Some big-name e-commerce providers' ODR systems rely on payment platforms to ensure ODR compliance, such as PayPal for eBay and AliPay for Taobao Global. Meanwhile, these platforms' reputation rating system also plays a role in promoting ODR compliance.<sup>76</sup> There are even suggestions for the creation and coordination of a trustmark system at the international level to assist consumers in recognition of reliable traders and ADR providers,<sup>77</sup> but such a trustmark system has yet to be in place. By its nature, the enforcement

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<sup>73</sup> UNCTAD, *supra* note 8).

<sup>74</sup> Schmitz, *supra* note 5.

<sup>75</sup> *Supra* note 39, art. 3.

<sup>76</sup> Amy J. Schmitz, *Drive-Thru Arbitration in the Digital Age: Empowering Consumers through Binding ODR*, 62 BAYLOR L. REV. 178, 212 (2010).

<sup>77</sup> GP Calliess, *Online Dispute Resolution: Consumer Redress in a Global Market Place*, 7 GERMAN L.J. 647, 654 (2006).

mechanisms of platform-embedded ODR are non-legal, though sometimes with *de facto* force.<sup>78</sup>

Suppose a cross-border e-commerce dispute goes through the arbitration process in a platform-embedded ODR. In that case, it may be proposed to enforce the arbitral award through the New York Convention, but there are still barriers in practice. First, it is questionable whether a platform-embedded ODR system can be regarded as a proper arbitration center under some domestic laws. For instance, Chinese Arbitration Law only recognizes institutional arbitration centers, and thus, platform-embedded ODR systems are not arbitration centers within the meaning of this law.<sup>79</sup> These platforms' arbitral awards for trans-border e-commerce disputes may not be enforced by a Chinese court through New York Convention. The reason is that Article 5 of the New York Convention gives power back to the national courts to set aside such arbitral awards according to their national law. Second, the New York Convention requires that all arbitration agreements must be in writing<sup>80</sup> and the writing form is limited to "an arbitral clause in a contract or an arbitral agreement, signed by the parties or contained in an exchange of letters or telegrams".<sup>81</sup> The New York Convention did not forecast the appearance of ODR in the current digitalized era, and accordingly the arbitration clause contained in an electronic user agreement formatted by an e-commerce platform cannot meet this requirement. Third, the New York Convention allows for a commercial reservation,<sup>82</sup> which has been adopted by 53 contracting parties.<sup>83</sup> This means that these contracting states may refuse to enforce a non-commercial arbitral award, while B2C disputes have been normally regarded as not commercial. Therefore, platform-embedded ODR awards for cross-border e-commerce disputes are not suitable to be enforced under the New York Convention. This enforcement barrier also applies to third-party ODR sponsored by commercial arbitration centers, since their ODR awards should also be subjected to the challenges in writing requirement and commercial reservation, if their appropriateness as institutional arbitration centers is beyond any debate.

In general, the issue of enforceability ought to be a primary consideration when setting up ODR systems. ODR enforcement mechanisms in the private sector excel at automatic execution of the outcome of proceedings,<sup>84</sup> while the challenge for voluntary participation in ODR schemes is that traders may not

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<sup>78</sup> Schmitz, *supra* note 76.

<sup>79</sup> SCNPC, *supra* note 48, art. 11.

<sup>80</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. 2.1 (adopted June 10, 1958, entered into force June 7, 1959).

<sup>81</sup> *Id.*, art. 2

<sup>82</sup> *Id.*

<sup>83</sup> New York Arbitration Convention, *List of Contracting States: Declarations and Reservations*, <https://www.newyorkconvention.org/list-of-contracting-states> (last visited Jun. 17, 2024).

<sup>84</sup> UNCITRAL Working Group III, *Online Dispute Resolution for Cross-Border Electronic Commerce Transactions: Overview of Private Enforcement Mechanisms* (Nov. 18–22, 2013), para. 4.

take their obligations towards consumers seriously enough.<sup>85</sup> For cross-border e-commerce disputes, the transnational judicial enforcement of ODR awards through the New York Convention is largely unattainable. The cause of cross-border ODR enforcement dilemma might be that efforts by governments are still required to achieve coordination at the international level.

#### IV. ODR IN THE PUBLIC SPHERE

ODR has been praised for its speed, low cost, convenience, and travel and paper savings,<sup>86</sup> which has advanced its development in the private sector. Yet, the easy availability of this type of ODR cannot fill the gap of private remedies in professionalism and enforceability. Since technology is neutral, what ODR has achieved in the private sector for satisfying the demand of e-commerce is probably accomplishable in the public judicial system. Thus, court-run ODR should not be disregarded but instead provides an alternatively promising approach to improve ODR effectiveness. In recent years, ODR has been applied in different degrees of automation by the courts in various countries, and some of them may provide helpful experience for improving ODR effectiveness.

##### A. *Internet courts in China*

As the number of netizens and mobile Internet users grows rapidly, combining Internet technology with judicial adjudication has been practiced more widely in China. In April 2017, the Supreme People's Court of China issued "Opinions on Accelerating the Construction of Smart Courts", which presented an objective of improving adjudicative capacity by informatization and bringing more convenience to the public. In August 2017, the Hangzhou Internet Court was established to handle six types of civil and administrative Internet-related disputes, including e-commerce disputes. In 2018, two other Internet courts were established in Beijing and Guangzhou, respectively. Hangzhou, Beijing, and Guangzhou also have the headquarters of the three major e-commerce providers in China, Taobao, Jiangdong, and Weipinhui, respectively. The establishment of the three Internet courts in China exemplifies the necessity of judicial reform in the digital age. It represents the potential ways of addressing a surging number of e-commerce disputes. Following is an introduction to China's Internet Courts.

Through the application of information technology and relevant institutional innovation, the Internet courts can achieve an entire process of online case handling. According to the Chinese Supreme Court's special rules on the work of the Internet Courts, the litigation steps, including case acceptance, service, mediation, evidence exchange, pre-trial preparation, hearing, and judgment declaration, should generally be completed online; but if any party apply for an offline proceeding or the case so demand, the Internet courts can make

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<sup>85</sup> ASEAN Secretariat, *supra* note 15.

<sup>86</sup> Schmitz, *supra* note 76.

such a decision.<sup>87</sup> The identity of the parties of litigation can be verified with biometric technology based on the identity information database provided by the police department in China. The parties can log onto Internet courts' ODR websites and complete the filing of a lawsuit by selecting case type and cause of action, filling in the information about the subject matter of the lawsuit, parties, and representatives, and uploading the complaint, identity certificates, proofs, etc. as required.<sup>88</sup> These steps can also be done with a cellphone by logging onto the Internet courts' Wechat ODR mini-programs. It is said that normally case filing can be completed within 5 minutes.<sup>89</sup> After filing a case, the system will automatically generate relevant legal documents and affix the courts' official seal, which will be delivered by electronic means such as social media and email. As for online hearings, all three Internet courts have issued their own Rules on online hearings, which specify the requirement for audio, cameras, cyber environment, and other technical preparation as well as the participants' dressing and behavior standards. As for verification of electronic files and proofs, if the authenticity can be proved through electronic signature, trusted timestamp, hash value verification, blockchain, and other technical means, the Internet court shall confirm it.<sup>90</sup> The written record of online hearing can be generated instantaneously with speech recognition technology, which also helps shorten the duration of online hearing. Still, the seriousness and solemnity of the courtroom can also be maintained during online hearings because specific disciplines have been applied regarding the layout of national emblems and judicial gavels as well as the participants' speech and activities.<sup>91</sup> The parties can complete all the steps of online hearing with only a computer or a cellphone. Also, more advanced technologies, such as "batch adjudication system for similar cases", can be used by the Internet Courts.<sup>92</sup>

The Internet courts have achieved far more improved work efficiency than other courts. Statistics show that as of 31 August 2020, all three Internet courts have accepted a total of 222,473 cases and concluded 194,697 cases, of which

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<sup>87</sup> Supreme People's Court of China, *Zuigao Renmin Fayuan Guanyu Hulianwang Fayuan Shenli Anjian Ruogan Wenti De Guiding* (最高人民法院关于互联网法院审理案件若干问题的规定) [Provisions on Several Issues Concerning the Adjudication of Cases by Internet Courts] (Sept. 7, 2018).

<sup>88</sup> Hangzhou Internet Court, *Rules on Litigation Using Online Platform* (Aug. 18, 2017), available at [http://www.zjcourt.cn/art/2017/8/18/art\\_109\\_2453.html](http://www.zjcourt.cn/art/2017/8/18/art_109_2453.html).

<sup>89</sup> Liwei Zhang, *Hangzhou Internet Court: Institutional Redesigning - Creating a "Hangzhou Sample" of Internet Adjudication* (16 Sep. 2022), <http://zj.people.com.cn/n2/2022/0916/c228592-40126864.html> (last visited Jun. 17, 2024).

<sup>90</sup> Schmitz, *supra* note 87, art. 11.

<sup>91</sup> Beijing Internet Court, *Beijing Hulianwang Fayuan Dianzi Susong Tingshen Guifan* (北京互联网法院电子诉讼庭审规范) [Rules on Hearing in Electronic Litigation] (Feb. 21, 2020) <https://www.bjinternetcourt.gov.cn/cac/zw/1582274924940.html> (last visited June 17, 2024).

<sup>92</sup> Shengdan Zuo, *The Batch Adjudication System for Similar Cases of Guangzhou Internet Courts Goes Online* (Aug. 13, 2019), available at <https://www.chinanews.com.cn/sh/2019/08-13/8925336.shtml> (last visited Jun. 17, 2024).



99.7% are filed online, and 98.9% are heard online,<sup>93</sup> and the average court hearing time is 29 minutes, saving about three-quarters of the time than standard offline litigation proceedings. The types of disputes to be heard by the Internet court include disputes arising from online shopping, internet service contracts, online financial loans, ownership and infringement of online copyright, and domain names.<sup>94</sup> Cases initiated by online consumers account for a large part of all the cases accepted. For instance, as of 29 February 2020, the Beijing Internet Court accepted 6462 cases involving the protection of online consumers' rights, accounting for 12.3% of all the cases accepted. Among such cases, disputes arising from online shopping account for the highest proportion, 83%.<sup>95</sup> All three Internet courts have also handled cross-border B2C e-commerce cases, mostly involving Chinese consumers' purchasing of overseas products with famous brands.<sup>96</sup> It is reported that in the Hangzhou Internet Courts, the cases concerning the purchase of imported products through Tmall Global, NetEase Kaola, and Xiaohongshu have been constantly increasing.<sup>97</sup>

Probably because of the e-commerce hub position of Hangzhou in China, the Hangzhou Internet Court opened its Specialized Cross-border Trade Tribunal (SCTT) on 15 July 2020, which is also the only tribunal of this kind in China so far.<sup>98</sup> SCTT mainly handles the disputes regarding sales contracts and product liability arising from cross-border e-commerce and the disputes regarding the service of cross-border e-commerce platforms. Statistics show that since its opening, a rapidly increased number of cross-border e-commerce cases have been brought to the Hangzhou Internet Court. In 2020, the Hangzhou Internet Court accepted more than 100 such cases with a yearly growth rate of 40%; about 60% of all the cases involved a cross-border e-commerce platform as the defendant, and many cases arose from the import and export of consumer

<sup>93</sup> Zhuqing Zhao & Qian Lü, *The Supreme Court: The Internet Courts Have Accepted More than 220 Thousand Cases* (Sept. 24, 2020), available at <http://it.people.com.cn/n1/2020/0924/c1009-31873231.html> (last visited Jun. 17, 2024).

<sup>94</sup> Schmitz, *supra* note 76.

<sup>95</sup> Huiying Ren & Fan Zhang, *Beijing Internet Court Announces Cases Involving the Protection of Online Consumers' Rights and Interests* (Mar. 13, 2020), available at <https://www.chinacourt.org/article/detail/2020/03/id/4847101.shtml> (last visited June 17, 2024).

<sup>96</sup> SanJia HuiLianwang Fayuan Shenjie Shewai Anjian 2320 Jian Biaodi'e 2.4 Yiyuan (三家互联网法院审结涉外案件2320件 标的额2.4亿元) [*The Three Internet Courts have Concluded 2320 Foreign-related Cases*], CHINANEWS (Sep. 23, 2020), <https://baijiahao.baidu.com/s?id=1678627932508172844&wfr=spider&for=pc>.

<sup>97</sup> Hangzhou HuiLianwang Fayuan Fabu 2018 Niandu Dianzishangwu Anjian Shenpan Baipishu Tesila, Wurenji Chuxian Zai Wanggou Chanpin Zhong Xiaohongshu, Quanchiugou, Wangyikaola Bei Dianming (杭州互联网法院发布2018年度电子商务案件审判白皮书 特斯拉、无人机出现在网购产品中 小红书、全球购、网易考拉被点名) [*Hangzhou Internet Court Released Its 2018 White Paper on E-commerce Cases: Tesla and Drone Appearing in Online Shopping Products and Red Book, Global Shopping, NetEase and Kaola were Criticized*], ZHENGJIANG FAZHI BAO (浙江法治报) [ZHEJIANG LEGAL NEWS] (Mar. 9, 2019), [http://www.pazjw.gov.cn/yaowen/201903/t20190319\\_9704436.shtml](http://www.pazjw.gov.cn/yaowen/201903/t20190319_9704436.shtml)

<sup>98</sup> Huaxia, *China opens first cross-border trade tribunal*, XINHUA NET (July 15, 2020, 08:20 PM), [http://www.xinhuanet.com/english/2020-07/15/c\\_139214917.htm](http://www.xinhuanet.com/english/2020-07/15/c_139214917.htm).

products like clothes, cell phones, foods, and maternal and infant products.<sup>99</sup> Foreign parties in these cases are mainly from Hong Kong, Japan, South Korea, the United States, Europe, New Zealand, and Australia, covering consumers, cross-border e-commerce platforms, and e-commerce operators registered outside China. Currently, the number of cross-border e-commerce cases is still far lower than the number of ordinary e-commerce cases heard by the Hangzhou Internet Court,<sup>100</sup> but it provides a more convenient and reliable way for online consumers to safeguard their legal rights in engaging in cross-border e-commerce transactions.

### *B. Effectiveness of State-run ODR*

#### *1. Availability*

Adjudication is the last line of defense for social justice, and access to justice should not be denied by the availability of any form of private remedies. Therefore, even if e-commerce consumers enjoy a convenient and cheap way to resolve their disputes with e-commerce sellers or e-commerce platforms through ODR in the private sphere, they should still be entitled to a final resort to a public court of justice. Moreover, there are numerous cases that are unfit to be handled by a private ODR system, which can be vindicated by the fact that the impetus for the establishment of the Hangzhou Internet Court is just to alleviate the workload of the local courts in Hangzhou where massive low-value internet-related cases had entered.<sup>101</sup> However, even assuming that adjudicative ODR convenience can be available all around the world, in addition to language barriers as well as restrictions in data protection and security, jurisdictional barriers still exist, which may prevent online consumers from initiating a lawsuit easily.

No customary law or applicable conventions concerning adjudicative jurisdiction issues exist worldwide. Jurisdiction for cross-border e-commerce disputes should still be determined by each country's different private international law rules. Considering the particular features of cross-border e-commerce, it seems more convenient to allow consumers to sue in the court of their domicile.<sup>102</sup> The Civil Procedural Law of China sets a general jurisdiction rule that requires a contractual dispute to be brought to the court of the place where the defendant is domiciled or where the contract is performed.<sup>103</sup> As for the place of performance of the contract concluded through the Internet, the Interpretation of the Supreme Court of China on the Civil Procedural Law

<sup>99</sup> Hangzhou Internet Court, *supra* note 72.

<sup>100</sup> *Id.*

<sup>101</sup> Fei Long, *Cong Dashuju Linian Kan Dashuju Shidai Jiufen De Yufang Yu Jiejue* (从大数据理念看大数据时代纠纷的预防与解决) [*Prevention and Resolution of Disputes in the Digitalized Era from the Perspective of the Big Data Concept*], SINA (Oct. 27, 2016), <https://news.sina.com.cn/pl/2016-10-27/doc-iffxfysn7850077.shtml>.

<sup>102</sup> Schmitz, *supra* note 5, at 20.

<sup>103</sup> Minshi Susong Fa (民事诉讼法) [Civil Procedural Law of China] (promulgated by Nat'l People's Cong., Dec. 24, 2021, effective Jan. 01, 2022), art. 24 (Chinalawinfo)

further clarifies that (1) if the subject matter is delivered through the Internet, the domicile of the buyer is the place of contractual performance, and (2) if the subject matter is delivered through other means, the place of receipt is the place of contractual performance. This interpretation provides more convenience for consumers to initiate a lawsuit in the court of their domicile. However, the legislation of other regions has not taken enough consideration on this matter. The EU has specific consumer jurisdiction rules but has no clear stipulation on the contract concluded via the Internet. Under Articles 17-19 of the Brussels Regulation, consumers are entitled to favorable adjudicative jurisdiction in cross-border litigation, including the jurisdiction of the court of the consumer's domicile.<sup>104</sup> The application of these rules is subjected to three qualifications, one of which is the targeting test, meaning that the seller should target the country of the consumer's domicile by pursuing business activities.<sup>105</sup> However, in some circumstances, only a website cannot sufficiently prove that the business activities are directed to the consumer's state.<sup>106</sup> In the US, no specific consumer jurisdiction rules exist. To confirm the court of a consumer's domicile own jurisdiction over a foreign or nonresident defendant, US courts should examine (1) whether the state long-arm statute provides a statutory basis for exercising jurisdiction over the defendant; and (2) whether the defendant has sufficient minimum contacts with the forum state according to the Due Process Clause of the Constitution.<sup>107</sup> Consumers, as the weaker party, cannot get jurisdictional advantages through US law due to the application of general jurisdiction rules to consumer contracts.

Insofar as the jurisdictions of the three Chinese Internet courts are concerned, because of the courts' varying decisions on the validity of pre-dispute arbitration clauses, some users of cross-border e-commerce platforms were rejected to bring a case,<sup>108</sup> and they would still face the frustration associated with these standard arbitration clauses, for example, the inconvenient and expensive arbitration process required by Article 48 of Tmall Global's User Services Agreement. Moreover, the three Internet courts are designated as local courts, and accordingly, they are not available for those who have no jurisdiction foundation pursuant to the above-mentioned provision of the Civil Procedural Law. If the defendant is not domiciled, or if the contract is not performed, in the three cities, the plaintiff cannot start a case in the Internet Courts.

Therefore, if consumers plan to bring an e-commerce dispute to an internet court or any other type of cyber court, without an agreement on the choice of

<sup>104</sup> Council Regulation 1215/2012, 2012 O.J. (L 351) 1 (EC).

<sup>105</sup> Zhen Chen, Internet, *Consumer Contracts and Private International Law: What Constitutes Targeting Activity Test*, 32 INFO. & COMM'NS TECH. L., 23, (2021).

<sup>106</sup> Case C-190/11, Mühleitner v. Yusufi, ECLI:EU:C:2012:542, ¶ 19 (Sept. 6, 2012); ZHENG SOPHIA TANG, *Chapter 11: Consumer Contracts And The Internet In EU Private International Law*, RESEARCH HANDBOOK ON EU INTERNET LAW 256 (1st ed. 2014).

<sup>107</sup> Federal Rules of Civil Procedure 4(k)(1); *Eurofins Pharma U.S. Holdings v. BioAlliance Pharma SA*, 623 F.3d 147, 155 (3d Cir. 2010).

<sup>108</sup> Hangzhou Internet Court, *supra* note 72.

forum, they will still probably find it difficult to initiate the proceedings in an easy and convenient way. With diverse laws on jurisdiction for cross-border disputes, forum conflicts and forum shopping are also likely to arise. It seems that the existence of a variety of national laws concerning cross-border e-commerce has been incongruous with the current borderless online world.

## 2. Justifiability

The judicial process should be the origin of justice, as one foul judgement does more hurt than many other foul decisions.<sup>109</sup> An accessible and usable court proceeding should also be a justifiable proceeding.<sup>110</sup> The strength of adjudicative processes is that judgments are made regardless of whether the parties can come to an agreement. If, by offering ODR service, consumers can have easier access to justice, the imbalance between the cost of judicial procedures and the amount in dispute may be redressed. Public courts are also more reliable in delivering trust and due process guarantees.<sup>111</sup> Thus, in a sense, the extended use of ODR in the adjudicatory process represents a desirable ODR development towards ODR justification.

However, it might be difficult for consumers engaging in cross-border e-commerce to expect rational adjudicative decisions consistently, primarily because of differing private international law rules on applicable law. In the EU, consumers are granted specific choice of law rules, but like the status of the EU's consumer jurisdiction rules, these rules cannot provide firmly favorable conditions for cross-border e-commerce consumers. Article 6 of the Rome I Regulation stipulates that consumer contracts shall be governed by the law of the country where the consumer has his habitual residence. Nonetheless, the application of this rule should still go through the targeting test,<sup>112</sup> which normally requires the traditional methods of invitation and advertising<sup>113</sup> and cannot be fulfilled by merely a passive website.<sup>114</sup> In the United States, the Second Restatement on Conflict of Laws, which concludes the practical approach adopted by the American courts, states that generally a more neutral regulatory attitude is taken in the case of e-commerce contracts.<sup>115</sup> In China, the legislation on applicable law in consumer contracts has borrowed lessons from the EU's legislation with modifications. In the Law on Choice of Law for Foreign-related Civil Relationships, it is provided that:— the laws where the consumer has habitual residence shall apply to consumer contracts; if the business operator has no relevant business operations at the habitual residence of the

<sup>109</sup> Francis Bacon, *Of Judicature, Litigation*, Spring 1983, at 64.

<sup>110</sup> Dennis, *supra* note 2, at 17.

<sup>111</sup> PABLO CORTES, *ONLINE DISPUTE RESOLUTION FOR CONSUMERS IN THE EUROPEAN UNION* 133 (1st ed. 2011).

<sup>112</sup> Council Regulation 593/2008, art. 6, 2008 O.J. (L 177) 6 (EC)..

<sup>113</sup> Frederic Debusseré, *International Jurisdiction over E-consumer Contracts*, 10 INT'L J.L. & INFO. TECH. 344, 355 (2002).

<sup>114</sup> Proposal for a Council Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, COM (1999) 348 final (Jul. 14, 1999).

<sup>115</sup> Restatement (Second) of Conflict of Laws § 187 (Am. Law Inst. 1971).

consumer, the law where the goods or service is provided shall apply.<sup>116</sup> Still, no specific rules on the applicable law concerning cross-border e-commerce contracts can be found in Chinese law. With the business models of e-commerce platforms around the world being much the same, the private international law rules on cross-border e-commerce look outdated. Harmonization of differing applicable law rules on B2C e-commerce transactions would bring more feasible access to justice for consumers in the cross-border context.

### 3. Enforceability

The question of enforceability should be a significant consideration for designing ODR mechanisms in the private sphere and setting up judicial ODR systems. Compared to some e-commerce providers' ODR enforcement that relies on payment platforms, courts are invested public power to enforce their decisions. However, from the perspective of consumers, even after getting a favorable judgment, the judgment may not be easily realized if its enforcement needs to be done in a country other than the country where the judgment is made, which is quite possible in cross-border e-commerce cases. For example, supposing that a Chinese consumer has a dispute with an American seller due to a transaction made on Jingdong Global and that he sues the American seller to Beijing Internet Court and then obtains a favorable judgment, he would still be frustrated by the issue of how to enforce the judgment if it cannot be performed by the seller automatically. The reason is that the traditional option to enforce the judgment through judicial assistance by the American judicial system is unfeasible since no treaty exists between China and the United States concerning mutual recognition and enforcement of judgments. Moreover, even though a few civil judgments rendered by Chinese courts have been recognized and enforced by American courts on the basis of reciprocity,<sup>117</sup> no cases in e-commerce transactions exist. Again, facing the very complicated and time-consuming tasks related to the application in a foreign court for the recognition and enforcement of a small-value judgment based on reciprocity, consumers will be more likely not to proceed. An online regime for consumers to initiate such a proceeding might be more appropriate, but no cooperative effort in this regard has emerged.

## V. ODR COORDINATION AT THE INTERNATIONAL LEVEL

ODR in both the private and public spheres should be more coordinated at the international level to better protect the interests of cross-border e-commerce consumers. The work of UNCITRAL on cross-border e-commerce ODR was meant to develop a set of procedural rules from negotiation to arbitration, but

<sup>116</sup> Shewai Falü Guanxi Shiyong Fa (涉外法律关系适用法) [Law on Choice of Law for Foreign-related Civil Relationships] (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 28, 2010, effective Apr. 1, 2011), art. 42 (Chinalawinfo).

<sup>117</sup> Haibin Lin, *Washington State Recognizes Chinese Judgment for the First Time*, [https://www.chinajusticeobserver.com/a/washington-state-recognizes-chinese-judgment-for-the-first-time#google\\_vignette](https://www.chinajusticeobserver.com/a/washington-state-recognizes-chinese-judgment-for-the-first-time#google_vignette) (last visited Aug. 14, 2022).

the outcome was only a set of ODR Technical Notes due to the divergent approaches to consumer arbitration in the US and EU.<sup>118</sup> Several other international organizations have made efforts in this regard with differing approaches, and reviewing their experience may help understand the core issues in promoting ODR advancement in parallel to the borderless online world.

#### A. EU

The EU's regulation on consumer ODR<sup>119</sup> is a salient legislative solution for coordinating cross-border ODR outcomes. It provides out-of-court solutions, in particular to the disputes arising from cross-border online transactions.<sup>120</sup> It takes the form of an interactive website offering a single point of entry to consumers and traders seeking dispute resolution.<sup>121</sup> The platform tries to ensure all competent ADR entities are registered with the platform.<sup>122</sup> Also, in order to ensure broad awareness of the platform among consumers, e-commerce providers within the EU are required to provide an electronic link to their websites.

The EU ODR platform respects the legal traditions of the Member States.<sup>123</sup> No management on the obligation performance of ADR entities exists at the EU level, and the member states are rested with the right to assess the ADR entities' compliance with the EU ODR regulations.<sup>124</sup> However, due to the platform's non-coercive nature, e-commerce providers were reported with a large percentage of non-engagement in the ODR procedure.<sup>125</sup> Moreover, there is still a big question as to the recognition and enforcement of ODR outcomes across different EU members. Since the EU ODR platform is an out-of-court solution, the Brussels I (recast) Regulation is not applicable to the outcomes of the EU ODR platform. Thus, even though the conciliation or mediation outcomes of the ODR platform may have binding force on the parties themselves, they do not have cross-border enforcement value. This would be a discouragement for cross-border e-commerce consumers from bringing their disputes to the EU ODR platform. Indeed, this platform provides a centralized hub for resolving online disputes, but "three-and-a-half years after the launch of the ODR platform, the ADR/ODR framework is underused and has yet to reach its full

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<sup>118</sup> Brand, *supra* note 70, at 23.

<sup>119</sup> Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR).

<sup>120</sup> *Id.*, art 1.

<sup>121</sup> *Id.*, art 5.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*, preface.

<sup>124</sup> *Id.*, art 15.

<sup>125</sup> Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes (Sep. 25, 2019).

potential”.<sup>126</sup> The European Commission summarized some reasons for that, like e-commerce providers’ low engagement, but a major gap is that the EU legislation has made fewer efforts in the harmonization of the judicial enforcement of cross-border consumer ODR.<sup>127</sup>

### B. APEC

To help global businesses resolve cross-border disputes by using ODR, the APEC launched in 2019 the APEC’s ODR Collaborative Framework that focuses on MSMEs’ business-to-business (B2B) disputes within the APEC economies.<sup>128</sup> Since MSMEs may be exacerbated by the same uncertainty and costs of dispute resolution as that faced by consumers in cross-border e-commerce, the APEC ODR Framework is helpful for online consumers. The overall arrangement of the framework is similar to the EU ODR platform in that there is also a centralized website that links to participating ODR providers. Currently, there are four partnering ODR providers, including the above-mentioned GAC. These providers then offer online negotiation, mediation, and arbitration through their own platforms.<sup>129</sup>

Compared to the EU ODR platform, the APEC ODR Framework stresses more on unification at the regional level. Participating APEC ODR providers are required to use a set of Model Procedural Rules for resolving disputes in cross-border transactions.<sup>130</sup> All ODR providers should comply with the Procedural Rules and the terms of the ODR Framework; if they cannot comply with these requirements, they can be removed from the list of ODR providers.<sup>131</sup> However, specific enforcement mechanisms of ODR outcomes are still missing, with the APEC ODR Framework only encouraging APEC members to support the development and recognition of private international law instruments relevant to ODR and to enter into bilateral agreements to enforce arbitration awards.<sup>132</sup>

### C. ASEAN

ASEAN also plans to develop its regional ODR network to foster ASEAN citizens’ confidence in domestic and cross-border e-commerce transactions and to promote economic growth. So far, there has been no effective regional regulatory framework in consumer protection and ODR. However, an ASEAN ODR Guidelines has been developed through the ASEAN Strategic Action

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<sup>126</sup> *Id.*

<sup>127</sup> S Hourani, *Mind the Gap? A Critical Analysis of the Recognition and Enforcement of Cross-Border Consumer ODR Outcomes in the EU*, 1 REVISTA ITALO-ESPAÑOLA DE DERECHO PROCESAL 73 (2022).

<sup>128</sup> APEC, *supra* note 12, art. 1.

<sup>129</sup> APEC, *List of ODR providers*, <https://www.apec.org/SELI/ODR-Providers> (last visited Oct. 14, 2016).

<sup>130</sup> APEC, *supra* note 12, art. 2.

<sup>131</sup> *Id.*

<sup>132</sup> APEC, *supra* note 12, art. 7.

Plan for Consumer Protection 2025 (ASAPCP 2025).<sup>133</sup> Also, the ASEAN Secretariat has published guidelines and feasibility studies on ODR development in this region. Through these publications, the features of ASEAN ODR development may hopefully be predicted. ASEAN focuses on the role of member states in improving their existing consumer dispute resolution schemes to be compatible with an online and more automated system.<sup>134</sup> It is thought that government involvement in the ODR system is indispensable, particularly that of the consumer protection agencies.<sup>135</sup> ASEAN envisages the establishment of ODR systems in the member states should be distinctly government-led and/or administered by other public institutions assisting consumers in B2C disputes.<sup>136</sup> Thus, the development of ASEAN ODR network would likely show a more evitable state-running characteristic.

*D. Effectiveness of International ODR Coordination and Future Agenda*

The work of the above four institutions in promoting regionally or globally harmonized ODR regulatory framework represents an approach of public and private collaboration in ODR development. It can be noticed that if international ODR regulatory coordination builds excessively upon the voluntary participation of private entities, such international ODR cooperation is likely to be disregarded, as in the case of the EU ODR platform. On the contrary, if coordination among national governments is required, like in the case of UNCITRAL's attempt to provide guidelines for internet arbitration, ODR regulatory harmonization at the international level would not be easy.

The fact is that none of the four supranational efforts in ODR regulative harmonization has mentioned including adjudicative ODR systems in their design. An unfavorable result of this ignorance is that enforcement, especially cross-border enforcement of ODR outcomes cannot be guaranteed. As ODR has been used in the judiciary process in many countries, unified cross-border adjudicatory ODR platforms can be expected to be set up with fewer technological restrictions. Nonetheless, the collaboration at the international level on the regulatory harmonization of national adjudicative ODR systems has not yet been put onto the agenda.

## VI. CONCLUDING REMARKS

Up to this point, the question of whether ODR as an effective redress mechanism in cross-border e-commerce should be self-regulated or state-run seems to be not yet clearly answered. Still, a general view of the associated scene has been provided. ODR systems in the private sphere, in particular platform-

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<sup>133</sup> ASEAN, *ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2025*, <https://asean.org/wp-content/uploads/2021/01/ASEAN-Strategic-Action-Plan-for-Consumer-Protection-2016-2025-ASAPCP-2025.pdf> (last visited Oct. 14, 2016).

<sup>134</sup> ASEAN, *supra* note 13.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*



embedded ODR, excel in dealing with routine, standardized, uncomplicated, and local disputes, for instance, items-return and payment-refunding cases arising from online shopping. Nevertheless, they may lack the authority, neutrality, and expertise in resolving more complicated cases, and have no workable and legally-supported enforcement mechanisms for their ODR outcomes except relying on payment platforms and reputation rating systems. Whether or not a process in such ODR systems in the private sphere is completed, there should be no limit on consumers' rights to seek legal remedies in situations where judicial attention is warranted. The state-run ODR systems, represented by Chinese Internet Courts, have brought massive efficiency to litigation by alleviating cost, time, and the workload of the judiciary. These Internet Courts may also work more justifiably and professionally owing to their background as public judiciary institutions, but they still face challenges in serving cross-border e-commerce consumers in certain circumstances due to the barriers created by different countries' private international law rules.

Thus, both ODR systems in the private and public spheres can work as a backup force for consumers to engage in cross-border e-commerce transactions depending on their respective advantages. More specifically, ODR systems in the public sphere are of more promising potential if adjudicative ODR regulatory harmonization can be accomplished at the international level. It is clear that the adjudicative systems around the world for resolving B2C cross-border e-commerce disputes are still quite disconnected and uncoordinated. To more effectively deal with the challenge of cross-border redress and consumer protection, a more coordinated global ODR legal system is needed, with efficient mechanisms for the whole procedure from case submission to judgment enforcement. The coordination by UNCITRAL and other international institutions ignores the regulatory harmonization of national adjudicative ODR systems. The unsuitability of the traditional dispute resolution approach based on private international law to deal with low-value e-commerce disputes has become apparent.

Uncertainty about the legal system regarding cross-border e-commerce may restrain consumers from purchasing foreign products over the Internet. There is a perceivable gap between ODR's potential in handling cross-border e-commerce disputes and its current use. The ideal solution might be complete worldwide harmonization of the laws on jurisdiction, applicable laws, and judgment enforcement, but it is unlikely that this can be accomplished in a short time. The reason is that the main cross-border ODR stakeholders, including public agencies, online businesses, consumers, payment channels, and ODR providers, have varying views on how the ODR regulatory framework should be developed. The most important stakeholders for ODR harmonization should be national governments, because they determine, with concerns beyond ODR development itself, the national laws that bring barriers to a globally coordinated ODR framework. Thus, some kind of collaboration in the world is needed to eliminate such barriers. Just as the WTO can function to lower tariffs and

other trade barriers with a mandatory intergovernmental system for dispute settlement, institutional design to safeguard cross-border B2C e-commerce should not ignore the necessity of a binding force that can compel the national government to reduce barriers to a globally harmonized ODR system. It should take some time before such an institution emerges.