Chapter 10
An Exploratory Analysis of the On–Line Dispute Resolution Mechanism

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ABSTRACT

The 21st century is being characterized as the century of evolution for information technology, communication technology and electronic communications. Contemporary society does business using the internet; the forthcoming 'dispute resolution space' (Katsh and Rifkin 2001), where people buy and sell regularly and even a large number of corporations have existence via an internet address. This excitement for further improvement of dispute techniques, in relation to the exploitation of those technologies used for the management of online virtual communication led to the appearance of the Online Dispute Resolution (ODR) mechanism. The choice for settlement of disputes through the modern mechanism provides an easement for interested parties to tackle their disputes from any place and at any time through e-mails, video conferencing or chatrooms, instead of being in courtrooms. The fact that the business's transactions are conducted on the internet causes uncertainty, regarding the security of personal data and business secrets in combination with the lack of a framework that could have supported such scheme. For that reason, the role of Government is taken into consideration in the accreditation of service providers, as well as in the settlement of e-administrative disputes and the securing of e-transactions in general. The necessity for self-regulation, equality of digital divide and government's recommendation for ODR tools is discussed. The current chapter will identify and explore considerable notions, concepts and debates for moving towards the development of an international dispute resolution framework on-line and trustful mechanism internationally.

WHAT IS ONLINE-DISPUTE RESOLUTION (ODR)?

In late 1960s, the legal world was experiencing a new trend, known as 'Alternative Dispute Resolution' or else with its universal acronym ADR that gradually became one of the most important tools for an immediate and competent settlement of (international) disputes. Basically, ADR refers to any out-of-court proceedings or alternatives to the judicial process. It has been characterized as 'the principal vehicle' (Katsh and Wing, 2006) that exists for over thirty years and deals with offline disputes, because of its flexible, quick and cost-effective approach.

ODR is the 'offspring' of the traditional ADR and not its supplement. None statutory definition can be found or any generally accepted definition of the term. Julia Hornle (2002) characterizes ODR as the Information Technology and Telecommunication via the internet- together referred to as 'online technology'- that applies to ADR (p.1). Similarly, Colin Rule correlates ODR with the utilization of an advanced level of technology. Ethan Katsh suggests that ODR is a network application that illustrates how, as data is generated by interactions between humans and machines, boundaries between dispute prevention and dispute resolution, or between dispute resolution and standard setting, may become less clear (2007 p.105). Alternatively, he acknowledges that ODR is part of the movement to build civic institutions online that are needed to encourage online activity and growth (Katsh 2001 p.19). Kaufmann and Schultz are of the same opinion that ODR is a movement and not a passing trend or some legal or business fad (2004 p.67). They simply define it as a system that deals with dispute settlement methods that exist online. From consumer associations' perspective, the notion of on-line dispute resolution is approached differently. For instance, after a relative international survey entitled as 'Disputes in Cyberspace: ODR for Consumers in Cross-Border Disputes' (2000),

they reported and defined ODR as the term they use for ADR services offered entirely by electronic means, without the need of the disputing parties to leave their home/offices. The above approach was regarded by several ODR practitioners as very stringent.

Overall, ODR is a branch of dispute resolution assisted by Information Technology and telecommunications to facilitate the resolution of disputes conducted on net (online), such as consumer disputes, cyberspace and e-commerce disputes, domain name and intellectual property disputes and disputes that arise from issues not involving the internet (offline), like family and employment ones. The On-line Dispute Resolution mechanism can otherwise be called as Virtual ADR, Internet Dispute Resolution (iDR), Electronic Dispute Resolution (eDR), Electronic ADR (e-ADR) or Online ADR (oADR).

THE RATIONALE OF ODR

Gabrielle Kaufmann-Kohler and Thomas Schultz (2004 p.5) wrote that the common reasoning in this field is to reconstruct an architecture online that resembles offline negotiation and mediation. While Katsh and Rifkin (2001) argued that the most valuable challenges are not to use the internet to duplicate the offline dispute resolution or face-to-face environment, but to expand thinking and look for ways that dispute resolution expertise can be of value online (Brannigan 2003). In addition, Online ADR should focus on using the network in ways that maximize the power of technology, power that that may be missing in face-to-face encounters (Katsh 2000 p.6). In 2003, the United Nations Economic Commission for Europe (UNECE) Forum on ODR explained that the rationale behind the early ODR programs was to leverage the cost-efficiency, accessibility, detemporalization and depersonalization of online interaction while preserving all of the procedural advantages presumed to be perfected in existing

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