ONLINE DISPUTE RESOLUTION AND THE EMERGENCE OF E-MEDIATION and E-ARBITRATION
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The era we reside in is known as the era of technological advancements and being online. Every aspect of our lives is sorted out by technology. From education to shopping, the whole world has gone online and so has dispute resolution.

The internet has forever changed how the human race conducts business. Given the ever-increasing use of online communication this is not surprising. As such, online dispute resolution (ODR), a form of alternative dispute resolution (ADR) has shown possibilities to use technology in an innovative and efficient manner; as is already evident in online banking, online shopping and online financial trading. There is a rise in the use of an online facility for the resolution of disputes. ODR is the evolving frontier in dispute resolution and has been in use by some multi-international companies. This is as seen on platforms such as amazon, eBay and paypal. These systems are important because they ensure a favourable environment for the resolution of online disputes, as they are faster, easier to use and inexpensive. As a result this fosters a good platform for the emergence of agreed rules and standards.¹ This entails the use of communication of information and processing of the information to arbitrate, facilitate, negotiate, mediate and conciliate online.

This sub branch of dispute resolution, ODR, can apply to three techniques for resolving disputes:

1) **Mediation**: helping the conflicting and disputing parties in hearing each other out and understand each other contributes to clearing out any misunderstanding or any miscommunication that might have occurred. A mediator, who is a third party to a dispute is in between to help out with mediation.

2) **Negotiation**: facilitating a dialogue that occurs between the disputing parties in order to come to a solution which is mutually beneficial for all of the disputing and conflicting parties. Various tactics are used in negotiation but the goal is one, to satisfy the interests of the parties and come to a solution that is accepted whole heartedly by both of the parties.

3) **Arbitration**: solving and resolving issues without going to court. Outside court settlements are preferred since there is a lot of time and money that goes on when taking the matter in front of a judge.

¹ Ethan Katsh, ‘Online Dispute resolution: Some implications for the Emergence of Law in Cyberspace’ <http://www.tandfonline.com> last accessed 8 May 2015.
It should be noted that ODR can involve any one of the above mentioned aspects and methodologies, or there could be a combination of any two or all three. It depends upon the situation which of the tactic is to be used first and in what order.

**In what situations does the need for ODR occur?**

As mentioned above, everything has gone online. Every aspect, every phase of an individual’s life has gone online. Naturally there might be a disagreement or a dispute arising when almost everyone is online and is dealing with each other.

As such, the internet has ensured that businesses and consumers are able to engage in transactions globally without regards to geographic limitations. Consumers constitute the majority of the online population, most generated by business-to-business (B2B) transactions. Due to the surge in internet usage by businesses and consumers (B2C), revenue has grown astronomically. This has caused the recent growth in B2B and B2C. As such, the number of online dispute resolution (ODR) providers has increased equally.

Consequently, organisations and companies providing online mediation (e-mediation) and online arbitration (e-arbitration) methods for the resolution of e-commerce disputes have significantly increased.

Moreover, online disputes can also occur between a consumer and another consumer (C2C), between states (i.e. that the dispute is between two people who live in other states, hence the procedures to solve these disputes according to the states is different), marital disputes (between spouses who seek to separate from each other) and, even at many times, court disputes which the parties are trying to settle out of court.

Usually, one can notice that disputes that occur because of e-commerce are widely encountered. This is because since the consumer and the business are dealing in cyber space or in a virtual world, they lack the physical contact which can often be a cause of misunderstanding and miscommunication. There are various communication barriers such as lack of facial expressions and body language and just written communication. Often many times dissatisfaction for the consumer is also a major cause of arising of disputes between consumer and businesses.

Many times when there is a C2C business model in action, there is a chance that either consumer may be unhappy about the business transaction. There

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may be a dispute over the monetary value or one of them may be unhappy about the quality and quantity of the transaction in question.

On many occasions, when the terms and conditions regarding the deal or business operation are not fully understood, after some time, disagreement arises regarding them. The lack of promise keeping and fulfilling are also included in the situations that pave way for online dispute resolution.

The development of ODR, through online courts came into existence in 2002. In the United Kingdom, small businesses can make small claims, such as actions against someone who is being owed money, and where there is a refusal by the person who owes the money to pay. Court claims for money are part of the small claims, which use the online service commonly known as ‘small claims court’. The UK e-mediation service is seen as one of the successes of resolving disputes online. Obviously, in an online era, the use of the e-mediation service is a better alternative to mediation. This is done by logging into the service and imputing the required information accordingly.

In the same vein, online arbitration, which is currently at its infancy, is a matter of free decision. With each case being dealt with in the light of practical expediency, and decided in accordance with the ethical stance of its circumstance. E-arbitration is similar in some ways to conventional arbitration, because both are substitutes for proceedings in a law court.

The difference between arbitration and e-arbitration is the ability of e-arbitration to transcend most areas that have been plagued by conventional arbitration such as jurisdiction, flexibility, cost and time, through its use of technology all through proceedings, except the qualified human arbitrator who gives the arbitral award. In this regard, e-arbitration is seen as a substitute for arbitration. The law is a tool, not an end in itself. Like some tools, in this instance, a replacement is needed to serve our purpose efficiently and effectively in our technological world. This is where e-arbitration becomes inevitable in dispute resolution.

E-arbitration works in conceivable ways. There is the requirement for mutual agreement by parties to the terms and conditions of having their dispute resolved online by an arbitrator. With the provision of details of the dispute, the entire facts of the case, as well as the upload of evidential documents and photos to support claims. The e-arbitrator sits in the background; goes through the materials provided and with the use of information provided, invite parties to respond. In time, the e-arbitrator answers questions online and a signed arbitration award is issued.
The pros and cons of online dispute resolution

ODR has its fair share of advantages and disadvantages.

The pros include that since the resolution takes place in cyber-space, a great deal of time is saved. Otherwise, issues such as setting up a meeting place, waiting for the disputing parties to come to the decided place and many times bearing the frustration and irritation when one of the parties fails to show up, prolong the proceedings. This leads to dispute escalation and not resolution. Also a lot of money is spent when physically trying to solve disputes. One can keep in mind the various costs that incur when deciding upon a place, renting that place and the transportation costs. When resolving issues online, every one of the conflicting parties uses their own means of electricity and internet connection to take part in the resolution.

ODR is cost effective and time saving. More than this, using technology in solving disputes helps in better documentation, emails and chats being saved for future use and in case of any disagreement between the parties in the future.

Where there are pros, there are also various cons for online dispute resolution. Since everything is done online and every aspect is heavily relied on technology, there is a great chance that the technology in question might not work properly or might stop working right in the middle of the resolution process. This leads to delays in resolving the issues which creates even more distance between the conflicting parties. Not to mention the added frustration and anger, which is harmful in itself in resolving disputes. Another disadvantage to using technology could be that many parties may not be able to communicate properly by the use of technology. They may not be able to deliver their exact meaning and the other party may end up interpreting some other meaning, causing misunderstanding and miscommunication between the already aggravating parties. This can cause problems for the resolution and there is a high chance that resolution might take longer than usual. Often, various parties are conversing with each other from different locations. This can be from various countries, cities or states. The timings may clash and there is a high chance that bringing the conflicting and disputing parties together may be a hassle, let alone help them talk and negotiate.

However many parties make use of instant messaging or emails as a source of communication, and many people and parties don’t lack the confidence or the poise of writing in a way that delivers the right message. ODR is being preferred by various individuals, organisations and businesses
to resolve their issues without taking them up before a judge. Consequently, ODR has been advancing with the pace of time and is being adopted in various situations. The wide spread of the internet has made it possible for the whole world to be connected, and since the advent of search engines, all the information of the world is available in the palm of our hands. This has increased awareness and has played a vital role in acting as a catalyst for the growth of ODR.

Being cost effective and suitable for various entities, online dispute resolution has been taking over the traditional and conventional method of dispute resolution. ODR is spreading and many researchers and practitioners of this methodology see a lot of potential in it. Many say that online dispute resolution might even take over the normal and traditional way of conflict and dispute resolution. Courts and litigations might start to occur online in a matter of few years and people might be appearing before a judge online. The world is changing and so are dispute resolution methods.