



REPORT

EVALUATING THE ROLE OF ONLINE DISPUTE RESOLUTION SYSTEM WITH VIETNAM E-COMMERCE UNDER THE CONTEXT OF INTERNATIONAL ECONOMIC INTEGRATION

MUTRAP ACTIVITY CODE: ICB-44

**“Research on Online Dispute Resolution System in e-commerce under the context of
EVFTA”**

Hanoi, 22 July 2016

Prepared by: Nguyen Van Minh – AMDI Expert 1
Nguyen Thanh Hung – AMDI Expert 2

This report was prepared under the support of European Union Delegation. Any view expressed in the report are the authors, and should not be attributed to the Vietnam Ministry of Industry and Trade

Table of Contents

PART I – ROLES OF ONLINE DISPUTE RESOLUTION (ODR) FOR BUILDING TRUST IN E-COMMERCE 3

- 1. To expand and equalize access to consumer remedies 3**
- 2. To deliver justice 5**
- 3. Dispute avoidance before dispute resolution 8**
- 4. Uniform procedure standards 9**

PART II – HOW ODR WORKS IN VIETNAM 10

- 1. ODR in Asia 10**
 - 1.1. ODR in China 10*
 - 1.2. ODR in Japan 13*
- 2. How ODR works in Vietnam 15**
 - 2.1. General information and functions 15*
 - 2.2. Working mechanism 23*

PART III – HOW TO DEVELOP ODR? 26

- 1. Key issues 26**
 - 1.1 Trust 26*
 - 1.2 Identity and digital signatures 26*
 - 1.3 Data security and Confidentiality 27*
 - 1.4 Privacy 28*
 - 1.5 Compliance 28*
- 2. Recommendations 29**
 - 2.1 ODR as an alternative 29*
 - 2.2 Setting up a study project 30*
 - 2.3 Creating ODR Awareness and Trust 31*

PART I – ROLES OF ONLINE DISPUTE RESOLUTION (ODR) FOR BUILDING TRUST IN E-COMMERCE

1. To expand and equalize access to consumer remedies

Most consumers do not pursue purchase complaints due to lack of resources, power, or awareness regarding their rights. At the same time, merchants commonly forbid consumers from suing in court or asserting claims as a class by including mandatory arbitration clauses in the fine print of contracts that consumers usually accept without reading. The majority of consumers forgo legitimate claims, thereby allowing companies to avoid responsibility to their customers and hide improprieties from the public eye.

Consumers lament the lack of meaningful access to customer assistance with respect to their purchases, especially those completed online. This is unsurprising in light of eMerchants' push to eliminate telephone assistance and staff email reply centers with individuals who often lack training or authority to provide meaningful remedies in response to consumers' complaints.¹ Merchants also know that consumers very rarely take complaints to the courts, federal regulators, or third parties such as a local chamber of commerce or the Better Business Bureau. Merchants also may forbid consumers from filing judicial claims or seeking class relief of any kind by requiring that consumers submit any claims to individual F2F arbitration procedures.

This leaves the vast majority of consumer claims off the public radar of courts and government regulators. It allows businesses to contain negative publicity and hinder filed claims by appeasing the few squeaky wheels who would otherwise have capacity to take such public actions, and thus inform the majority about available claims and remedies. This is economically wise for businesses, considering the costs of retaining versus obtaining customers. It is roughly five times harder to attract new customers than to retain current ones, which translates into twenty-five to eighty-five percent higher profits merely by retaining five percent more current customers. Furthermore, appeased complainers become especially loyal customers, while dissatisfied complainers are prone to share their negative experiences on social media and complaint sites like Yelp.

Companies also may ration remedies knowing that most consumers are inert and unlikely to read their contracts, let alone understand their contracts and pursue their rights through litigation or F2F

¹ See generally Sheri Carder & Larry Gunter, *Can You Hear Me? Corporate America's Communication with Dissatisfied Customers*, 24 J. Am. & Comp. Cultures 109, 109-110 (2001) (reporting study results showing businesses' low response rates to consumer complaints).

arbitration. Most consumers ignore contract terms when reading them would require action such as clicking a link on a website or scrolling through endless terms in many online contracts. Contract terms in online contracts also may be confusing, filled with legalese, and difficult to access due to “pop-ups” and other shrouding techniques. Indeed, most individuals do not read or digest the often long and complex form contracts that have become the norm in B2C exchanges. Consumers also may suffer over-optimism, cognitive dissonance, and confirmation bias with respect to their purchases.

These tendencies converge to hinder consumers from asserting their claims through F2F procedures that require sophistication and resources. Overly optimistic consumers do not want to believe they made bad purchase decisions and are prone to continue with contracts after investing time and resources in making a purchase. Most consumers also suffer from inertia, which prevents them from proactively reading or seeking to change contract terms. They similarly drop purchase complaints if pursuit requires efforts such as hiring an attorney and filing a claim in court or with an arbitration association.

At the same time, many eMerchants employ arbitration clauses that require costly F2F arbitration procedures. These arbitration procedures may require consumers to deposit high filing and administrative fees. This hinders consumers’ incentive to file a claim when the initial filing and administration costs outweigh any potential recovery through the procedure.

This is true even if consumers may be able to recoup fees in an award. Furthermore, arbitration clauses in online contracts nearly always preclude class proceedings, which would otherwise allow consumers to collectively pursue factually similar low-dollar claims.

Moreover, F2F processes are often infeasible for many consumers. Individuals lack the time, money, knowledge, and patience to pursue even small claims court proceedings. People busy with work and family obligations are likely to give up on pursuing complaints when companies ignore their initial requests for assistance. Anger may fuel a consumer’s initial e-mail or phone call regarding a purchase problem, but consumers generally do not follow up after receiving no reply or facing long hold times with customer service phone lines. Customer service representatives also may lack authority to provide remedies or may make it very stressful for consumers to obtain any redress.

Societal influences and stereotypes also hinder consumers from asserting complaints or getting remedies in person. As an initial matter, culture teaches individuals to prefer status

quo norms and contract terms. This is especially true for women, who may be reluctant to assert complaints or pursue their needs due to fear of appearing “pushy.” Women also are much less likely than men to recognize opportunities to negotiate and usually use less assertive language than men when they do pursue negotiations. Similarly, research shows that black consumers are less likely than white consumers to realize opportunities to complain regarding their purchases. In addition, these consumers often do not receive the same deals and purchase benefits as white consumers regardless of education or income.

In sum, companies understandably ration available remedies by giving them only to the most powerful squeaky wheel customers who persistently pursue their complaints. Meanwhile, consumers with the least time and resources to learn about, understand, or pursue their claims are left without remedies and other contract benefits. At the same time, behavioral tendencies and biases work to disadvantage consumers with less power and resources. Moreover, arbitration clauses cut off access to class relief, which is often the only economically feasible means for consumers to pursue the type of low-dollar claims usually involved with Internet purchases.

2. To deliver justice

Considering the benefits of ODR, it is no surprise that ODR systems have been developing in the United States and abroad for over ten years. Nonetheless, many ODR architects and providers have focused largely on cost and efficiency without sufficient attention to transparency and fairness. This has hindered ODR’s advancement and potential for delivering consumer justice. It is therefore imperative to address policy inadequacies and advance due process principles designed to build trust in ecommerce and ensure equitable treatment of all consumers, regardless of wealth or status. Indeed, fairness should set the stage for any dispute resolution system, including those conducted online.

Of course, the proposition that fairness should lie at the core of resolving conflicts is not new or revolutionary. It proceeds from Aristotelian notions of justice, which were influential in the development of contract law and theory. Indeed, contract law historically has considered fairness and the importance of equivalent exchange.

With this in mind, ODR systems should be developed with an aim toward promoting equality of

exchange and fair behavior by merchants and consumers online. This means that consumers should receive equitable treatment with respect to their online purchases and have equal access to remedies regardless of their social and economic status. ODR policies should therefore ensure such equitable treatment, while providing efficient and transparent avenues to obtaining enforceable remedies.

Again, these are not novel ideas and most agree that these are laudatory principles. However, there is no clear consensus on how to attain these goals. Classical contract law endorses strict enforcement of contracts, free from regulations that hinder contractual freedom. Thus, advocates of free-market principles may resist regulations requiring businesses to provide ODR processes in accordance with fairness dictates. Furthermore, regulations should not thwart the free market's allowance for ODR experimentation and innovation. ODR creators are continually developing advanced systems and must remain free to adapt to new technologies and address new issues that develop over the longer term.

That does not mean that policymakers should not advance justice-focused regulations to guide the development of ODR systems. Accordingly, ODR regulations should set minimum fairness standards while allowing for flexibility and honoring choice. ODR systems should allow parties to choose from a range of processes depending on the type of claims at stake and how settlement negotiations unfold after a consumer files an initial complaint. The processes could begin with online negotiations and move to online mediation and potentially a binding evaluative procedure if parties are unable to settle their claims prior to that point. Such a tiered process like that employed by eBay provides consumers with choices and systems options on the way toward a final determination. It keeps the consumers in control of their own solutions.

Furthermore, ODR processes should be backed by an enforcement mechanism that provides assurances to users that they will receive the remedies determined appropriate from the process. An ODR process is worthless if companies can avoid paying awards. Successful ODR process employed by online platforms like eBay have relied in large part on their enforcement of ODR determinations through chargebacks, similar to those consumers now enjoy to remedy fraudulent charges on their credit cards. For example, if a seller on eBay fails to comply with an award for a consumer, then eBay can use its internal payment mechanisms to compensate the buyer and charge the amount of the award back to the seller.

It is fairly easy for platforms like eBay to institute chargeback systems when they control the payment system. Accordingly, public regulations could begin by requiring online merchants to create and honor automatic chargeback systems on a global level to remedy fraudulent or otherwise faulty B2C sales through their sites. This regulation or law could mimic that governing credit card chargebacks. That said, such a new law could open the door to improper consumer claims and fraudulent payment avoidance. It also may be overly burdensome for many online merchants - especially small businesses that rely on daily funds to keep their businesses flowing and growing.

ODR systems also should add a “trigger mechanism” that allows for regulatory and consolidated actions when consumers file a sufficient number of similar complaints. This would be especially important where multiple complaints indicate that health or safety issues are at stake. Regulators also would benefit from notice through the trigger mechanism, which would help them determine when to pursue enforcement actions. In this way, the trigger would help address the under-enforcement of statutory and other public policy claims that has occurred due to the privatization of justice in B2C cases.

It seems at first blush that no company would agree to use an ODR platform that integrates the proposed trigger mechanism, as it could arouse unwanted regulatory action. However, as noted above, use of the ODR process could ease companies’ overall dispute resolution costs. Additionally, the associated trustmark would provide marketing benefits for companies that agree to the process. Furthermore, companies’ adherence to the ODR process could help them avoid enforcement actions and class claims. Moreover, it is usually more cost-effective for businesses to address regulators’ warnings and change their practices than to endure the expense and negative publicity of enforcement actions and multiple lawsuits.

Additionally, consumers should be able to trust the implementation and individuals behind the ODR system. Therefore, online mediators and arbitrators who serve as neutrals in the ODR processes must be truly neutral and properly trained. ODR rules supported by government oversight should require these individuals to go through training and obtain a certification. The rules also should provide for a mechanism to gather user feedback in order to foster continual system improvements.

This could be done through a central website portal linked to the proposed trustmark to indicate a company’s compliance with ODR due process rules. Companies also could use the

portal to post their particular ODR policies, along with demonstrations for consumers to consult to learn about the ODR process. This could be done through a simple and straightforward chart stating whom to contact regarding complaints and how the complaint process works.

3. Dispute avoidance before dispute resolution

As previously mentioned, this chapter focuses on dispute resolution methods used to deal with B2C disputes. ODR is generally understood as a number of more or less informal dispute resolution processes that take place mainly online and that are provided by independent entities rather than by one of the disputants, i.e. automated negotiation, assisted negotiation, mediation, arbitration and small claims court procedures. Moreover, ODR maybe split into dispute avoidance and dispute resolution. Dispute avoidance mechanisms include internal complaint procedures, escrows, online payment services, reputation systems and trustmarks. Conflict prevention is of paramount importance and businesses should focus on how to improve it before investing on dispute resolution. ODR can offer added value to businesses that are interested in avoiding complaints from escalating to disputes. With these objectives in mind a number of public initiatives have been developed, such as the econsumer.gov and consumer complaint form, which were designed to standardise claims and clarify complaints, including those that are originated out of cross-border transactions.

An efficient dispute resolution system needs to be built on solid dispute avoidance mechanisms, which in itself requires consumer empowerment. The latter is achieved by ensuring that businesses provide the necessary information, educating consumers about their rights and obligations, and how to engage in sensible shopping while avoiding transactions with unreliable online businesses. It is also necessary to provide mechanisms to ensure that online businesses recognise and comply with their obligations. Even when disputes arise, ODR providers ought to be used as the last resort to resolve those disputes which cannot be resolved at an early stage between the business and the consumer. This is well illustrated by eBay whose in-house ODR process has resolved hundreds of millions disputes, while its previous preferred ODR provider, SquareTrade (and now PayPal amongst other ODR service providers), resolved just over two million in its life time. ODR providers should assist online businesses in building effective internal complainant procedures, and their disputes should therefore only be outsourced to

external ODR providers in the most difficult cases to ensure impartiality and create trust amongst consumers.

4. Uniform procedure standards

In ODR, consumers are one-shooters while businesses are repeat players, dealing with dozens of cases at any given time. This increases the imbalance where businesses are likely to make more informed choices than consumers. For this reason it may be preferable if outside bodies set standards ensuring procedural fairness in B2C processes. Due process rights need to be respected, but that is not sufficient, consumers need to perceive that their rights are being respected too. Hence, due process requirements and counterpoise are paramount when there is power imbalance between the disputants. In this regard, key procedural issues should be taken into account, such as the need for impartiality, the selection of third neutral parties, legality, fair procedures and the supervision of ODR providers. Fast and inexpensive judicial enforcement when available or self-enforcement mechanisms are also required for the success of ODR services.

In addition, business organisations have taken initiatives in this area with the aim of promoting e-commerce and shielding themselves from liability and court procedures. One of the most relevant initiatives was issued by International Consumer Protection and Enforcement Network. Also, dispute resolution providers have contributed to the development of ODR standards, e.g. the American Bar Association Taskforce on E-Commerce and ADR Recommended Best Practices for ODR Providers. This chapter does not intend to discuss these initiatives in detailed since they have already been discussed elsewhere.

With regards to future normative changes, it seems that the regulation of ODR is going to be slow, particularly at regional and global level. However, there are currently a number of initiatives that examine the possibility of regulating ODR in order to ensure and guarantee that (at least some) ODR service providers comply with minimum due process requirements.

In this regard, the European Commission is closely following the international developments in the field of ODR, especially the outcome of UNCITRAL working group on ODR. UNCITRAL has the role of harmonising commercial and trade law at international level. Currently, UNCITRAL is examining a set of recommendations, which may include the possibility of creating a model law. The model law would then be employed to indicate the regulation of national laws.

PART II – HOW ODR WORKS IN VIETNAM

1. ODR in Asia

1.1. ODR in China

The history of the Internet application in China is not very long. The first email sent out by Prof. Tianbai Qian on 20 September 1987 signaled the start of the Internet use in China. Since then, China entered the Internet era and made remarkable achievements in the development and application of the modern information technology. Chinese Internet population achieved the highest number in the world within a short period of time. As of June 2011, China has 485 million Internet users. The rapid development of the Internet in China has brought about substantial changes to the understanding of dispute resolution in our society. While negotiation, mediation, arbitration and litigation have been most popular mechanisms in China, the application of online schemes to facilitate the dispute resolution process has received unprecedented acceptance.

The scope of the term “online dispute resolution (ODR)” can be quite broad. Firstly, while most dispute resolution procedures can be conducted online, it does not exclude offline communications. In most situations, online and offline communications are simultaneously utilized. Secondly, the term is not a simple equivalence to online alternative dispute resolution. It also includes the adoption of online applications in court procedures. Thus, the term can be more complicated than what we expect.

While it is important to note the increasing use of online facilities in dispute resolution in daily life in China, it seems justified to contextualize our discussion of ODR in China to two promising areas, these are: (a) the Asian Domain Name Dispute Resolution Center (ADNDRC), and (b) the Online Dispute Resolution Center at the China International Economic and Trade Arbitration Commission (CIETAC). In the meantime, we should also mention the efforts made by other entities in the promotion of ODR. Furthermore, it would be important to look into the activities of the Hong Kong International Arbitration Center, with regard to ODR.

ODR and Domain Names Disputes: The ADNDRC

The successful launch of the Uniform Domain Name Dispute Resolution Policy (UDRP) and its Rules implies the new era for domain name disputes. The ADNDRC is one of the four domain

name dispute resolution providers approved by the Internet Corporation for the Assigned Names and Numbers (ICANN). The ADNDRC consists of four offices, namely the Beijing office operated by the CIETAC, the Hong Kong office operated by the HKIAC, the Seoul office operated by the Korean Internet Address Dispute Resolution Committee (KIDRC) and the Kuala Lumpur Office operated by the Kuala Lumpur Regional Center for Arbitration (KLRCA). A fully web-based online domain name dispute resolution system has been developed, which facilitates the handling of domain name dispute cases. The ADNDRC was further approved on 8 November 2004 to be one of the two registrar transfer dispute resolution (TDRP) providers.

ODR and the CIETAC Online Dispute Resolution Center

Domain name disputes are one major area for online dispute resolution. In November 2000, the China Internet Network Information Center (CNNI) enacted the Chinese-Language Domain Name Dispute Resolution Policy (Trial Implementation). The CIETAC was appointed as the first dispute resolution service provider. In December 2000, the CEITAC set up Domain Name Dispute Resolution Center (DNDRC) to deal with domain name disputes. The Center is also appointed to be the sole dispute resolution service provider for keywords managed by the CNNIC, whose resolution is subject to the CNNIC Keyword Dispute Resolution Policy issued on 4 August 2001.

The above initiatives were very successful. In view of the development of e-commerce and disputes arising from online transactions, the CIETAC, while retaining the DNDRC, adopted the title of Online Dispute Resolution Center in July 2005 and used the title for external communications since August 2007.

The Ministry of Information Industry enacted the Internet Domain Name Regulations in 2002 and formally set up the domain name dispute resolution system for both the domain name under .cn and in Chinese characters. The CNNIC published in the same year the CNNIC Domain Name Dispute Resolution Policy (CNDRP) and its Rules (CNDRP Rules). This time two bodies were authorized as dispute resolution service provider, the CEITAC Center and the Hong Kong International Arbitration Center (HKIAC).

The CNDRP is quite similar to the UDRP adopted by the ICANN. Article 8 of the CNDRP lists three conditions to support a complaint: (a) the disputed domain name is identical with or confusingly similar to the name or mark in which the complainant has civil rights and interests;

(b) the holder of the disputed domain name has no lawful rights or interests in respect of the domain name or the major part of the domain name; and (c) the holder of the disputed domain name has registered or has used the domain name in bad faith.

The CNDRP further provides examples of “bad faith”, which include (1) the holder of the disputed domain name has registered or acquired the domain name for the purpose of selling, leasing or transferring the domain name in any other form to the complainant who is the owner of civil rights and interests relating to the domain name or to a competitor of this complainant, and obtaining unjustified benefits; (2) the holder of the disputed domain name has, for many times, registered the domain name by using the names or marks in which others have the lawful rights and interests so as to prevent others from using the name or marks in which they have the lawful rights and interests in the form of domain names on the Internet; and (3) the holder of the disputed domain name has registered or acquired the domain name for the purpose of damaging the reputation of the complainant, disrupting the normal business of the complainant, creating confusion with the name or mark of the complainant or misleading the general public.

One major deviation from the UDRP is that the domain name dispute resolution service providers shall not accept any dispute over a domain name which has been registered for two or more years. Another difference lies in the language of the process; the CNDRP Rules provides that “unless otherwise agreed by the Parties or determined in exceptional cases by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese. The Panel may order that any documents submitted in languages other than Chinese be wholly or partially translated into Chinese.” This is drastically different from UDRP, which provides the language to be that of the registration agreement.

On a different note and in view of the rapid development of e-commerce, the CIETAC adopted the Online Arbitration Rules in 2009. This has been one major breakthrough in the promotion of ODR and shows the efforts of the CIETAC to increase the speed and ease of its dispute resolution process in the new era of information technology. The Online Arbitration Rules intend to independently, impartially, efficiently and economically resolve, by means of online arbitration, disputes arising from economic and trade transactions of a contractual or non-contractual nature, and shall apply to the resolution of e-commerce disputes and may also be applied to the resolution and other economic and trade disputes upon the agreement of the parties. In addition to online arbitration, the Online Arbitration Rules also provides the

possibility of online mediation.

1.2. ODR in Japan

It is unequivocal that Japan is a world leader in ICTs. Over the past decade, several initiatives and projects have focused on exploring the relationship between ODR and the conduct of B2B and B2C e-commerce transactions.

One of the most successful accomplishments was online application or case filing, such as the online case filing system operated by the Ministry of Justice.

On a different note, there are organizations that provide full dispute resolution services online, such as: the EC network, one of the most popular service providers in Japan, which resolves small claim disputes online via emails. However, ODR is still at its experimental or start-up phase in Japan, most of users or service providers consider ODR as an online consultation tool rather than a reliable forum for dispute resolution, since high-volume disputes remain to be resolved in domestic courts.

Believing that governmental support is necessary for the development of ODR, it should be noted that, from organizational and structural perspectives, there are two main ministries that play important roles in domestic legislation involving online transactions of any kind, namely, the Ministry of Public Management, Home Affairs, Post and Telecommunications (MPHPT), and the Ministry of Economy, Trade and Industry (METI).

According to a “research report on the investigation of effective dispute resolution mechanism”, it has been recommended that ODR is an effective and appropriate mechanism to facilitate the resolution of e-commerce disputes that could not be resolved via normal legal process, a standard system shall be adopted in order to provide a transparent, predictable and enforceable resolutions to disputants. Further to this report, an e-commerce dispute consultation room has been established in 2000, the mandate of this initiative is to study the effectiveness of various dispute resolution mechanisms (mediation, conciliation, adjudication and arbitration), and training and education of relevant personnel.

In 2001, the “Guidelines on e-commerce related transactions” were promulgated by METI to regulate the market environment of e-commerce and provide a legal framework for online transactions. The guidelines have been revised and improved in June 2004, in response to

required regulation of online auctions, the timing of a contractual relationship, and limitation periods for specific online activities.

METI has partnered with the Software Information Center (SOFTIC) of Nippon Foundation Corporation in 2005, and proposed many amendments and updates to existing laws and regulations on the jurisdiction and applicable laws to cross-border e-commerce transactions.

Moreover, METI also commissioned Japan Information Processing Development Corporation to set up a research committee on online transactions and an investigation committee on the legal system of cross-border trades by SOFTIC of Nippon Foundation Corporation. Additionally, there are many other research initiatives by law schools at various universities and NGOs in Japan.

Similarly, the Consumer Agency in its 2011 work plan states that, as to effective resolution of web-based cross-border disputes, the government shall actively communicate and interact with relevant governmental departments, corporations, and NGOs. The work plan also provides that Japan shall consider using online platforms more proactively to participate in case investigation and online consultation, and shall resort to Internet networks to facilitate the resolution of cross-border consumer disputes. The Consumer Agency is willing to adapt successful European and American systemstocase filing, claim monitoring, and dispute resolution. The goal of these initiatives is to come up with a reasonable solution to cope the needs for actual operations.

International Consumers Advisory Network (ICA-Net)

ICA-Net is a localized approach to handle cross-border disputes led by Consumer Agency, which mainly serves southern and eastern Asia. Originally proposed by GBDe (Global Business Dialogue on Electric Commerce in November 2007 as a two-year pilot and is currently exploring broader implementation. This is being accomplished through cooperation amongst member States, and amongst complaint handling organizations, enforcement authorities, ADR providers and government agencies.

It is evident from various governmental, public and private ODR related initiatives that we are on the verge of a new era for ODR in Japan. However, as Japan enters the ODR world, several challenges and uncertainties do exist. For example, the complexity of cultural, politics, laws, standards, and languages, do render an interconnected regional system more effective than a global system to resolve cross-border e-commerce dispute. Japanese experience may be well-

positioned to help identify domestic and regional requirements to the development of a global ODR regime.

The complexity of ODR applications and schemes and their adaptation to national contexts render ODR an interdisciplinary field that may involve professionals from a myriad of professions such as psychology, artificial intelligence, medical, and business.

In any event, it is submitted that ODR need not be exclusive to online disputes, as it is equally capable of efficiently resolving high volume offline disputes.

2. How ODR works in Vietnam

2.1. General information and functions

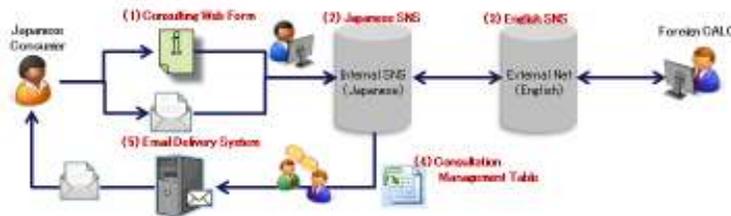
The Online Dispute Resolution (ODR) in Vietnam will be a receiving - handling port for consumers' issues relating to online transactions. The procedure of receiving and handling complaints in Vietnam should be handled online in order to ensure the benefits of Internet. The ODR system should satisfy three requirements: user-friendly; winning the trust of consumers; and being the third party assessing and handling complaints.

This system in Vietnam will work with four main functions, as follows:

- For consumers to send claims
- Being account for focal point and relating partners to resolve matters
- Updating and reporting about cases
- Giving information and alerts

The structure of ODR system in Vietnam will be learnt from the system of Consumer Center of Japan (CCJ). Therefore, the illustrations of CCJs' ODR system are used in this report to explain how the ODR will work in the context of Vietnam.

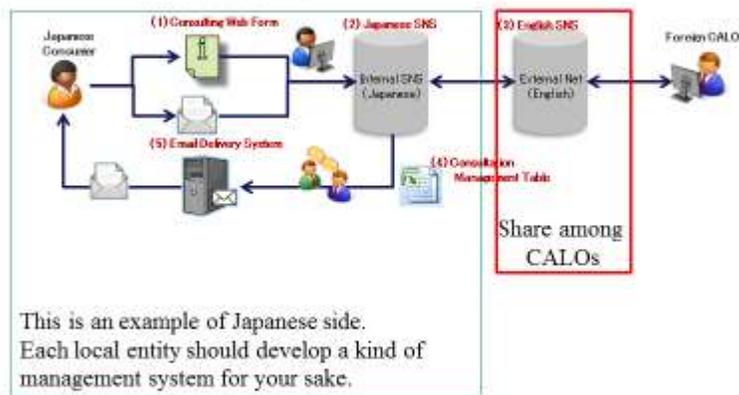
Add tools on Practical process



- (1) Consultation Web form**
Consumer easily file their complaint via Web form
- (1) SNS(JPN) for internal staff**
Each cases are shared by staffs to find right solution
- (1) SNS(ENG) for counter parts (CALO)**
Cases are shared with overseas partners via secured SNS
- (1) Analysing-table management system**
All cases are stored into Integrated database to analyse
- (1) Email between consumers**
For even elder consumers, email is familiar way to communicate

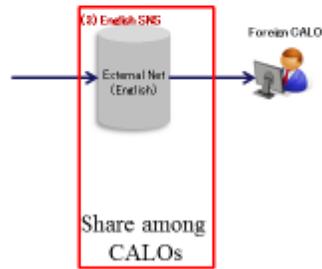
Regarding to the first function of ODR for consumers to send claims, it is considered the most important function of the whole system for its direct benefit for consumers. The consumers could fill the claim via form in official website of ODR system. Once the agency receives the complaints from the consumers, staffs of agency will work together, and contact with the relating agencies and organizations to find the solution to resolve disputes. All the information of cases is stored in the integrated database of website so all the relating parties could easily access them. The platform also provides the communication method via email for elder consumers who have not got used with web form yet. Once the solution is found, the consumer will be informed by the system.

Add tools on Practical process



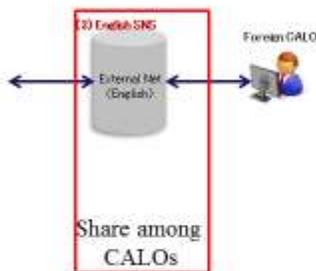
The second functions of ODR system is being a place for agency and relating parties to communicate and discuss to find solutions for consumers. One of the biggest obstacles for resolving disputes is the lack of communication between involving parties. Even with the use of email, it is possible for the information being lost or not being received by parties. The existence of a website for restoring data and sending them properly to the involving parties, would help reduce the risk caused by the ineffective method of communication.

When you received a complaint



The procedure of handling the complaint from consumer

When you received a complaint

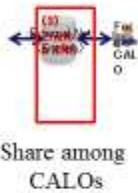


- 1) Foreign CALO received a email to be invited a case.
- 2) Follow a link in a email to the CASE, hit the link and joins
- 3) Learn the case details and will handle it with a business in your country
- 4) Post your response on SNS
- 5) CALO could see surface status of CASEs

The procedure step by step

When you received a complaint

[Detail](#)



- 1) Foreign CALO received a email to be invited a case.
- 2) Follow a link in a email to the CASE, hit the link and joins

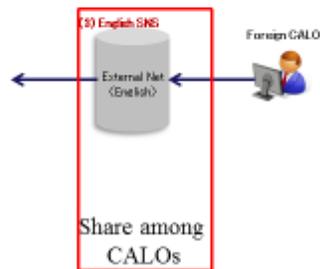


- 3) Learn the case details and will handle it with a business in your country
- 4) Post your response to SNS



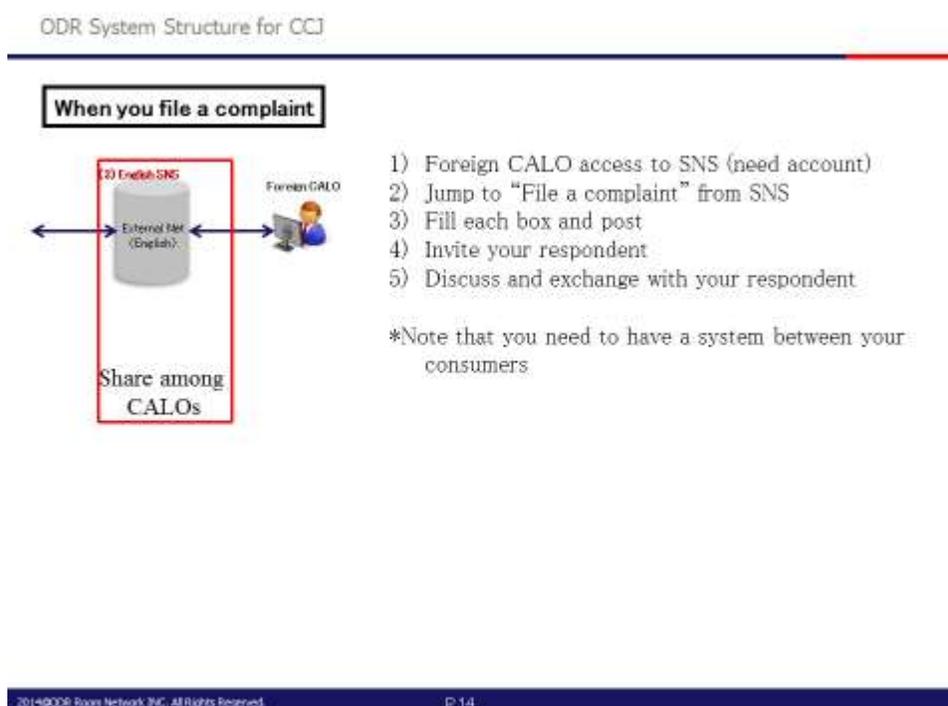
The procedure step by step (continued)

When you file a complaint



The procedure of consumer filing a complaint

Another main function of the ODR system is updating and reporting for the specialized agency in Vietnam about the current situation. The data collected by the system will help the agency realize the tendency of the online disputes, what kind of problems that consumers are troubling about the most, which companies need to pay attention to, which provinces/ cities that the quality of services is not good, etc. All the above data is precious for relating management government agency in Vietnam to understand about the status of market and consumers. Basing in the data, they could draw the proper policies in order to protect the right of consumer better and at the same time, find solutions for disputes in macro scale.



Step 1: Consumer log in to the account

The last function of the ODR system is giving information and alerts for the involving parties. The party just needs to access their account in ODR's official website to be able to get all the information available in the database. More than that, they will also receive alerts from the systems when there is something happen so that they will not miss any cases.

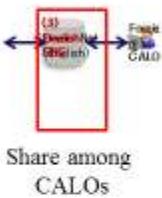
The consumers only need to fill the form in the website of ODR or simply send an e-mail to the mailbox of the ODR and wait for the response of the system. Normally, they will received an confirmation of receipt that inform them how many time they are expected to wait until they know their complaints are accepted or not. On the other hand, they might be required to provide

more information about the issue. After that, if their cases are accepted, the consumer will be informed that the staffs of ODR are contacting with relating parties in order to find a solution for their issues. Finally, they will receive an email that let them know the final result.

When the staffs of ODR system receive the complaints from consumer, the first mission of them is researching the problem to make sure the consumers providing enough information and evaluating the issue could be able to solve or not. Once they accept to resolve the problem, they will contact with relating parties (as government agencies for consultant or involved parties as sellers, e-commerce websites owners, etc) for finding a solution. Whether they could find out a solution or not, after a fixed amount of time, they have to inform the consumers about the final results.

ODR System Structure for CCI

When you file a complaint



Share among CALOs

Detail

- 1) Foreign CALO access to SNS (need account)
- 2) Jump to "File a complaint" from SNS



ODR Freedom Network

Cross-Border Transaction Consumer Advisory Network Project Available

[File a complaint](#)

ETA Project	Pending
ICM-HA	Pending
ATA Community	Available

E-MAIL:

PASSWORD:

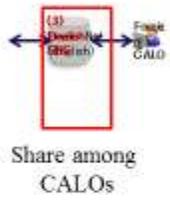
Automatic login in

[Quick manual for ATA Terms of use Privacy Policy](#)

2014 ODR Freedom Network, Inc. All Rights Reserved. P.14

Step 2: Consumer assesses "File a complaint"

When you file a complaint



Detail

5) Discuss and exchange with your respondent



Step 5: Consumer discuss and exchange with respondent

2.2. Working mechanism

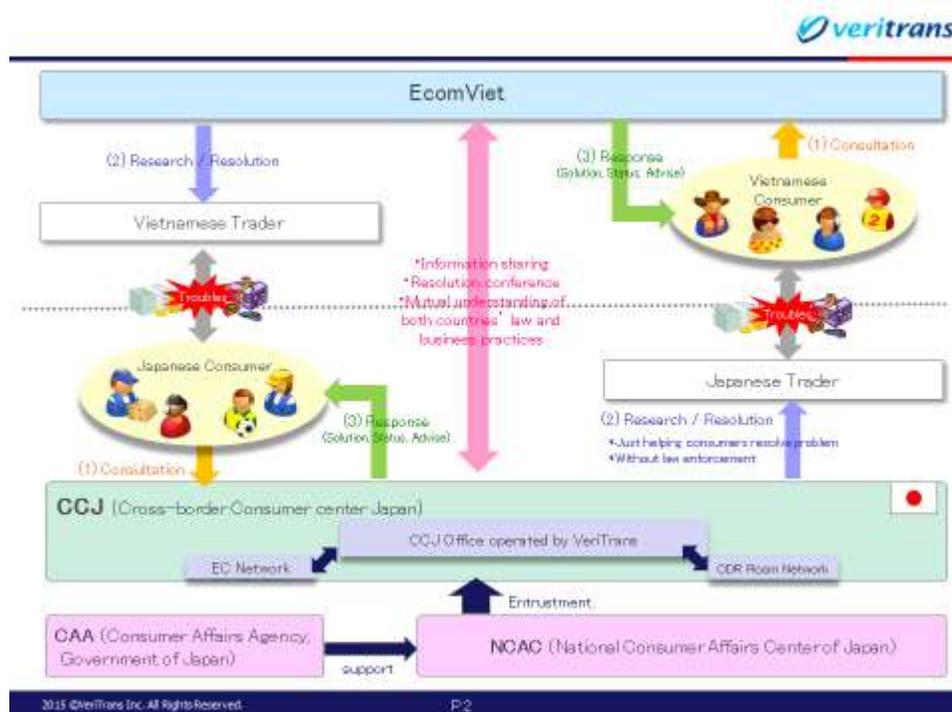
The working mechanism of handling complaint individuals/organizations:

The accesses to the ODR will be enhanced by media methods as from consumer advisory organizations (by provinces' Department of Industry and Trade, Vietnam Competition Authority, etc), from the Internet (Facebook, etc) and from international e-commerce sites.

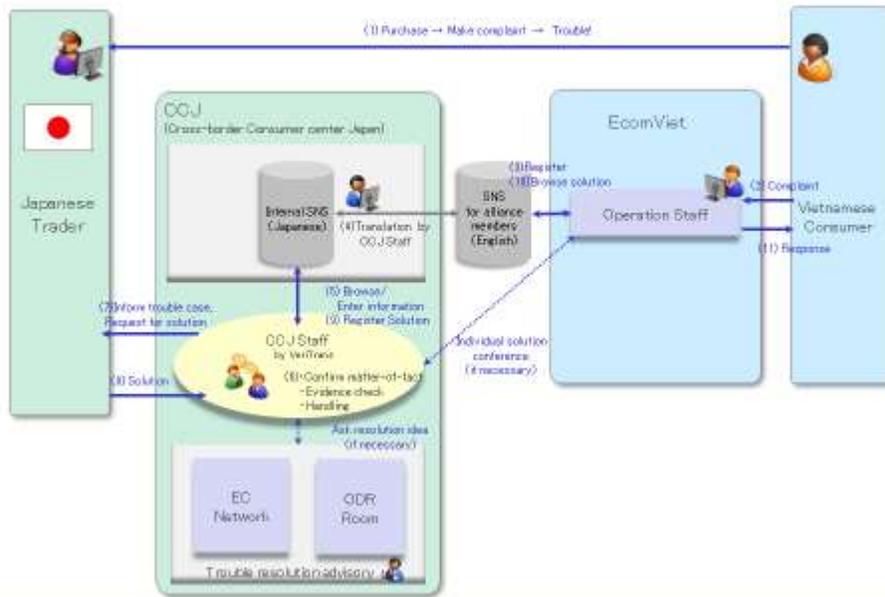
In Vietnam, the agency that takes the role of focal point handling both domestic and cross-border complaint will be Vietnam Agency of E-Commerce and Information Technology (VECITA). VECITA is directly under the Vietnam Ministry of Industry and Trade, and fullfills the State management and legal enforcement functions in term of e-commerce, development and application of information technology, serving the State management of the Ministry in accordance with regulations of laws. When receiving the complaint from consumers purchasing online, VECITA would contact directly with involved parties (consumers, sellers, platform providers, etc) in order to find a solution for disputes or request help from 63 Department of Industry and Trade of provinces and Vietnam E-commerce Association.

The cooperation mechanism with cross-border disputes:

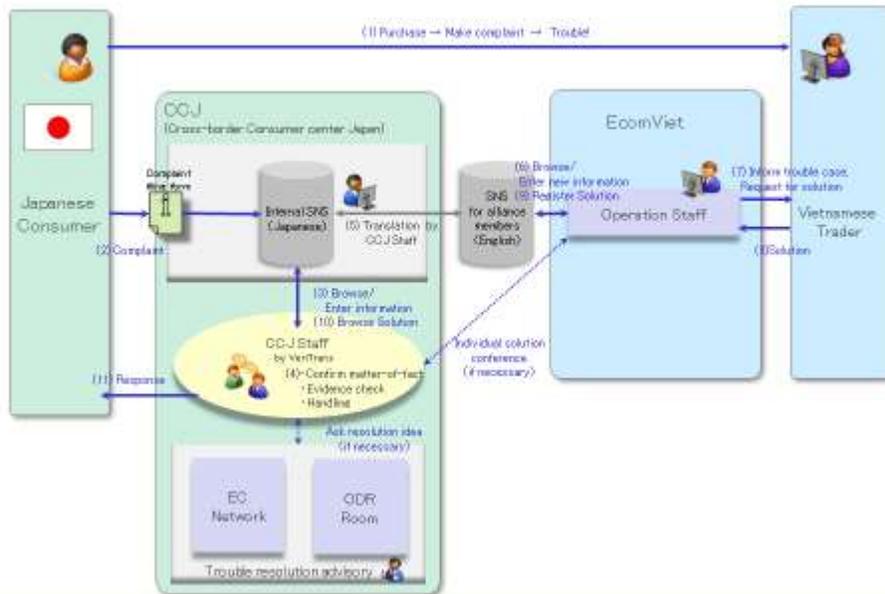
This online dispute resolution system could be expanded to the international scale. Some new features might be added to adapt with this new mission and the staff also must carry new duties. In this case, VECITA will still act as the focal point of Vietnam and collaborate with foreign partners as CCJ of Japan or BBB of US to resolves complaint of consumers. The staffs of VECITA now will have to translate the complaint and relating documents from Vietnamese to English before handle all the data to the partner organization. The partner organization will help contacting with relating parties in its country and two sides will discuss to find a solution for the issue. Finally, the staffs will translate the solution to Vietnamese and let the consumer know about the final result. The procedure is similar with cases of foreign consumers.



The procedure of handling cross-border online dispute



The detailed procedure of handling cross-border online dispute for Vietnamese consumer



The detailed procedure of handling cross-border online dispute for foreign consumer

PART III – HOW TO DEVELOP ODR?

1. Key issues

1.1 Trust

An essential aspect of mediation, whether online or offline is trust. It is essential for a good mediator to be able to establish trust between himself and the disputing parties. In face-to-face mediation this trust is established during the mediation sessions. Where online mediation is concerned it seems far more difficult, though no less important, to establish and maintain trust. Offline mediation often takes place between parties that have an ongoing relationship and history together.

Their common goal is to reach a solution that will be acceptable to both parties and will damage the relationship as little as possible, so that future relations will not be endangered. This is important to both of them and the mediator can use information about their history.

In the online mediation process, parties often do not know each other and do not have an ongoing virtual or real-time relationship of any kind. The parties are involved in an electronic commerce transaction in a consumer/merchant relationship (onlinemediators.com) or a consumer/consumer relationship (eBay.com). In most cases these parties have not had dealing with one another before the dispute arises. The mediator can not draw on the relationship or ask about the background of the dispute in relation to earlier interactions between parties, because there have not been any. The fact that there is no face-to-face contact but communication takes place via e-mail or real-time online, makes it difficult for the mediator to manage or temper the tone of the interactions or use his skills in reading body language. It is therefore far more difficult to establish and maintain trust.

1.2 Identity and digital signatures

There are several trust-related problems where online transactions and online mediation is concerned. First of all, the identity of the person you are dealing with is not always clear. How can one be sure that the person one is dealing with is who he claims to be? Here digital signatures can play an important part. There is already EU legislation in the form of a directive, which has to be implemented in all EU member states in the year 2001. In the US, on June 30, 2000, president Clinton signed into law the 'Electronic Signatures in Global and National

Commerce Act', which will be active on October 1, 2000.² This act gives a signature or record sent through cyberspace the same legal validity as a pen-and-paper document. The fact that a digital signature and digital records have the same legal validity as written documents, makes it far easier to check someone's digital identity. In fact, it might well prove more difficult to falsify digital signatures than written signatures. A digital signature is an authentication method that uses public-key cryptography. The digital signature plays an important part in ensuring the authenticity, integrity and non-repudiation of data communication, thus enhancing trust.

Closely linked with the problem of identity on the Internet are the problems of data security and confidentiality.

1.3 Data security and Confidentiality

How can one be sure that the data sent and received have not been tampered with and how can you be sure that no unauthorized third parties have access to the information?

Here again, encryption plays an important part in ensuring confidentiality and data security. Encryption makes it possible for the mediator and the parties to communicate without the risk of unauthorized third parties having access to their communication, thus creating secure data communication.

For a mediation procedure to be successful, confidentiality is essential. In an offline mediation procedure confidentiality is not really a problem. Most communication is oral; transcripts of conversations are usually not made. Any written documents that do exist only circulate in a very small group of people. This is different with online communication. First of all, the communication takes place in written form over insecure networks. To transfer the data over the Internet there are numerous temporary copies made along the way. This is inherent to the nature of the Internet.

It is necessary to make copies on the routers when transferring data from one computer to another, to make copies when downloading or uploading information. In Cyberspace communication takes place through constant copying. This is something the mediator has to be aware of. He must take all possible precautions to make sure that (automatic) backups are kept no longer than necessary and are not accessible to unauthorized third parties. These precautions do not guarantee complete confidentiality.

² <http://www.mbc.com/ecommerce/legis/congress.html#hb1714>

The only way to protect data and to guarantee confidentiality is through encryption. Encryption is the automated process of making data inaccessible to unauthorized people by means of an algorithm and a key. Decryption is the reverse process. A popular method to guarantee confidentiality is the so-called asymmetric crypto system: this system uses two different keys (a public and a private key) for encryption and decryption of data. This means that without the right key no one can read the message. The key, needed to read the message, is sent to the recipient separately from the message and reaches him by another route than the message itself.

When the confidentiality has been guaranteed by means of encryption, the fact that the Internet is built up from copies also has its advantages. The complete written file is accessible to both parties and the mediator at all times to check certain details or to see how things are. It is not necessary to take notes because everything is already written down.

1.4 Privacy

Another important issue that has to be addressed when setting up an online mediation procedure, is privacy. Where privacy is concerned, parties should be made aware of the ways in which their privacy is protected and in what ways personal information is stored or used by the mediator or mediation company. It is imperative that the mediator or the mediation firm should have a privacy policy, which addresses a number of issues. Any dispute that they receive via a website must be treated in accordance with rules of confidentiality. The disputes must only be known to the parties involved in the dispute, including the mediator. All personal data must be recorded and used with great care. By making strategic use of security possibilities, it is possible to guarantee that the right of respect for personal privacy of all parties involved in an online mediation procedure is respected. Here again encryption plays a key role.

In a privacy policy, parties must also be made aware of the fact that the mediation site will probably make use of cookie technology. They need to be told that if they do not want any cookies to remain on their hard disk, they can use their browser options to switch off the cookie technology. There are several privacy policy generators to be found on the Internet that can help the mediation organisation to make its own privacy policy. Since August 2000 the OECD Privacy Policy Statement Generator has been made available.

1.5 Compliance

Another important issue for online mediation, and one closely linked with the concept of the

shadow of the law is compliance. How can you be sure the other party will comply with the outcome of the dispute resolution process? With offline mediation compliance is high, because the mediation agreement that is usually the outcome of the process, can be made legally binding according to the applicable law.

As the researchers found out in the eBay project, compliance with the result of an online mediation procedure was high as a result of 'eBay Law'. The party that 'lost' did not want to jeopardize his or her position in the eBay community and was therefore willing to comply with the outcome.

The researcher also noted that if a virtual marketplace would choose online arbitration or some other form of binding rulings, compliance could be achieved by using the threat of exclusion from the virtual marketplace. This of course would be another form of the 'law of the Internet', and would also assure compliance with the outcome of the dispute resolution procedure. Where binding advice is used in offline consumer complaint resolution, the same mechanism of the threat of expulsion is used to achieve compliance from companies.

In the eBay experiment, it proved not necessary to obtain a writ of execution to achieve compliance. The Squaretrade initiative, which resulted from the eBay experiment, uses the same basis of people not wishing to jeopardize their position in the eBay society. With the online mediator initiative, that is not restricted to ecommerce transactions, parties can either accept the outcome as it is, or assure compliance by making the outcome legally binding in a contract.

2. Recommendations

I am fully aware of the fact that I have only been able to skim the surface of ODR in relation to cross-border e-disputes. I have identified a number of key issues, but do not claim to have made a complete inventory of issues to be studied.

2.1 ODR as an alternative

It is the fact that even if ODR will prove to be successful, it will never completely replace litigation. This is as yet only possible for domain name disputes concerning top-level domain names like **.com**, **.org**, **.net**. When registering such a domain name the holder agrees to be bound by the ICANN rules, that include arbitration rules. For domain name disputes concerning top-level-country domain names, like **.nl**, **.uk** etc., the option of arbitration is only open when both

parties agree to it. The same would be true for the choice of mediation to solve these kinds of disputes.

So far parties do not seem to choose (online) alternative dispute resolution as a means to solve their dispute. Why is this the case? Does it seem likely that in the near future more people will choose (online) alternative dispute resolution?

Another problem with ADR is that an ADR body does not have the power to deprive anyone of their freedom. Courts on the other hand, do have that power. The fact that ODR is voluntary, means they can not be forced to participate. This may be a reason for the other party to opt for litigation.

It seems highly unlikely that ADR or ODR will ever come to replace the courts. They will always be an alternative and in all likelihood they will become more important than they are now for reasons of speed, cost-efficiency and cross-border issues. The very fact that ADR is private and contractual, which at first may be an obstacle, could in many cases become more of an advantage than a problem, because it also means there will be no publicity if you should be found to be in the wrong. However, in the end ADR and its online counterparts will remain just what they are by nature: an alternative way of dispute resolution, be it online or offline.

All in all, it is predicted that ODR mechanisms will come to play an important role in cross-border e-disputes in the EU and worldwide. So far only the first steps have been taken. ODR should be studied extensively at an early stage, because I am convinced that ODR will become more important as more people start using the Internet and become involved in electronic transactions.

If ODR is to be in any way successful, a number of issues will have to be addressed. I will give a few recommendations in this paragraph.

2.2 Setting up a study project

The main object of such a study should be to find out whether compliance is as high as it was in the eBay project, when the dispute in question is a cross-border dispute.

If this is indeed the case, self-regulation where enforcement is concerned, will have proven its worth in an e-commerce environment, but as yet all predictions about the future of online mediation are a form of educated guesswork. The reality is as yet far from clear.

2.3 Creating ODR Awareness and Trust

People will need to be made aware of the existence of online dispute resolution mechanisms. Creating ODR awareness has priority and I recommend that it be a joint undertaking of the EU, national governments and the business community, to ensure that not only awareness will grow, but trust will grow with it from the start. It is imperative that issues like data security and privacy are taken seriously. Encryption techniques and digital signatures must be used by all ODR websites. Essential requirements for successful ODR ought to include the fundamental fairness principles that the American Better Business Bureaus promotes, including visibility, ready access, timeliness and low or no cost of online dispute resolution.

Attention should also be given to the seven principles that the European Commission mentions in the Recommendation on 'The out of court settlement of Consumer Disputes'. These principles are minimum guarantees that out of court settlement bodies should offer their users. The guarantees are: independence, transparency, respect of the adversarial principle, effectiveness, legality, liberty and representation. The application of the principles in the EU Communication is limited to dispute resolution forms where a third party decides, like arbitration and consumer complaints procedures, but they should be taken into account when setting up any form of ODR.