

THE CONCEPT OF ONLINE DISPUTE RESOLUTION IN THE ADMINISTRATION OF JUSTICE*

Abstract:

Not only has there been a huge increase in the use of ADR processes over the last two decades or so, but the process themselves have developed and matured. The process has been extended to suit more sophisticated needs and expectation and understanding of their use have widened. This extension includes the use of technology in dispute resolution mechanism which can be viewed from two perspectives: first, as an aid in the conventional dispute resolution system, and second, as an online dispute resolution mechanism via the Internet.

This article is aimed at examining the concept of online dispute resolution as an offshoot of ADR that is developing in other developed countries of the world and how it aids their administration of justice. The article will review the present-day reality of online justice, examine certain issues relating dispute arising online and ordinary disputes dealt with by ODR as well as other usages of ICT in dispute resolution. Finally, the article will examine the quality and effectiveness of ODR and explore what the future may hold in store for it while reflecting on some lessons from the use of ODR for Nigeria as a developing nation to learn from and use in its administration of justice.

Introduction

The administration of justice worldwide has considerable interest in using Alternative Dispute Resolution (ADR) to assist in the resolution of disputes within the civil justice system.

In the 1990s a serious attempt was made to reform the civil justice system and it was largely accepted to settle cases before they resulted in litigation or as soon as possible thereafter. The principle means adopted then, were extensive disclosure of relevant documents and evidence before the commencement of proceedings combined with the encouragement more strongly expressed in the use of ADR to promote settlement. There is a general recognition that ADR has a key part to play in the administration of justice itself and operates to the benefit of the community as a whole.¹

The public sector administration, the traditional areas of employment as well as the private sector have benefited from the introduction of ADR schemes in the resolution of civil and commercial dispute that is why with

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¹ Brown H and Marriot. A, "ADR: Principles and Practice" 3rd Ed. (London: Sweet & Maxwell, 2011), p.ix.

the emergence of e-transactions Online Dispute Resolution² became necessary. ODR is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties. ODR is the online utilization of arbitration, mediation, and negotiation techniques and can even include formal judicial proceedings.³ On a more basic level, ODR can be anything from e-mailing documents and evidence to using videoconferencing.⁴

ODR is transforming the way disputes are being resolved, in particular, in business to consumer (B2C) transactions. ODR offers a more successful means of resolving e-commerce disputes.

The Concept of Online Dispute Resolution

Instead of going to court to get disputes solved, alternative dispute mechanisms like arbitration, mediation and negotiation (headed under the common term Alternative Dispute Resolution, ADR) have become common use in various countries.

The use of the internet to resolve disputes is a different matter. In some countries⁵ online dispute resolution, is still quite unknown, but in others it already exists for several years.

With the innovation of cyberspace, businesses and individuals use computer networks to conduct businesses, share information, converse, and develop communities across borders of space and time on virtually every subject,⁶ the emergence of Internet technology has far-reaching effects on how businesses are run. E-commerce has created unique opportunities for cross-border transactions; however e-commerce has also led to a different kind of dispute and, therefore, requires a different mode of resolving disputes.

² Hereinafter referred to as ODR

³ Sarah Rudolph Cole and Kristen M. Blankley, *Online Mediation: Where We Have Been, Where We Are Now, and Where We Should Be*, 38 U. Tol. L. Rev. 193, 196 (2006).

⁴ Jason Krause, *SETTLING IT ON THE WEB: New technology, lower costs enable growth of online dispute resolution*, 93 A.B.A.J. 42, 43 (2007).

⁵ Specifically developing countries like Nigeria, although ADR is now widely recognized and unutilized in the resolution of civil matters through our various Multi-door Court Systems and other private arrangements, the concept of ODR is yet to be fully utilized and that explain why the online service providers we will later come across in the course of our research are not hosted by Nigerian organizations. This is not to say businesses are not transacted online in Nigeria or Nigerians are not involved in e-commerce even on the international level but the aspect of using ODR to resolve 'real world' disputes is quite unknown.

⁶ Munir, A. B., Yasin, S. H. M., "Information and communication technology law state, internet and information, legal & regulatory challenges" (Asia: Sweet & Maxwell, 2010), 39

⁷ Hassan, K. H., et al, "The use of technology in the transformation of business dispute resolution", *European Journal of Law and Economics*, (New York: Springer Science+Business Media 2012) 56

ODR was born from the synergy between ADR and ICT, as a method for resolving disputes that were arising online, and for which traditional means of dispute resolution were inefficient or unavailable. The introduction of ICT in dispute resolution is currently growing to the extent that the difference between off-line dispute resolution and ODR is blurry. It has been observed that it is only possible to distinguish between proceedings that rely heavily on online technology and proceedings that do not

ODR is a wide field, which may be applied to a range of disputes; from interpersonal disputes including consumer to consumer disputes or marital separation; to court disputes and interstate conflicts. It is believed that efficient mechanisms to resolve online disputes will impact in the development of e-commerce. While the application of ODR is not limited to disputes arising out of business to consumer online transactions, it seems to be particularly apt for these disputes, since it is logical to use the same medium (the internet) for the resolution of e-commerce disputes when parties are frequently located far from one another.⁸

ODR services are key mechanisms that may provide a viable solution to the flood of e-disputes. ODR services can cater to online (and potentially offline) consumers and can address many of the above mentioned problems of physical litigation systems. ODR services, also known as e-ADR services, are interactive, web-based services intended to support parties in dispute in reaching an agreement.⁹

Essentially, these services apply information technology and telecommunication via the Internet to alternative dispute resolution processes, such as negotiation, mediation and arbitration. That is, electronic means, together with supporting individuals at times, are used for better serving e-Justice. The logic behind this concept is that consumers that transacted via electronic means are already accustomed to the Internet environment, and expect the same efficiency, time-wise and cost-wise, when it comes to resolving problems they have encountered online. Overall, it is believed that the use of ODR services is a potential solution to the current upsurge in online-based disputes, and the decaying ability of the judicial procedure to resolve such disagreements. Given the increasing demand and potential, many commercial ODR services have emerged, capitalizing on the capabilities of computerized environments.¹⁰

⁸ Ibid

⁹ Hornle, J., "Online dispute resolution: the emperor's new clothes? Benefits and Pitfalls of Online Dispute Resolution and its Application to Commercial Arbitration", *Int Rev Law Comput Technol* (2003) 17(1). p 27-37

¹⁰ See a list at <http://www.odr.info/providers.php>). For example, SquareTrade provides online negotiation and mediation services for online shoppers (e.g., eBay users) as well as to offline consumers (e.g., clients of the California Association of Realtors). These services enable disputants to communicate directly with one another using electronic mail and then, if needed (i.e., if settlement was not reached), use online chat facilities to communicate with a professional neutral (i.e., a mediator). Another example is CyberSettle that provides web-assisted claim resolution services using double-blind offers for insurance carriers and legal professionals. In this process parties participate in alternating bidding rounds, in which they send their confidential offers electronically. The system decides when the offered amount from both sides is similar enough or identical, and determines this amount as the final settlement.

ODR transforms the way disputes are being resolved, in particular, in business to consumer (B2C) transactions. ODR also offers a more successful means of resolving e-commerce disputes.⁷

From a technology gadget, ODR has become a major phenomenon in dispute settlement. Admittedly, it may appear to lack any connection with international commercial arbitration, the main area of activity of the recipient of this volume, yet the day-to-day operation of commercial arbitration cannot remain unaffected by such a vast phenomenon. Well aware of these realities, ICC, whose International Court of Arbitration is chaired by Robert Briner, has launched several projects in the area of IT.¹¹ These include issuing guidelines on the use of IT in arbitration,¹² devising a web based system for conducting and managing arbitration proceedings,¹³ and setting up an online clearinghouse system for small claims.

While browsing the net, it reveals that there are currently over a hundred institutions offering dispute resolution services and an additional fifteen to twenty new providers emerge each year.¹⁴ What strike the observer first and foremost are the multifarious nature of the offer and the diversity of the methods. In an attempt to put some order into this diversity, one can distinguish three traditional methods of dispute settlement—negotiation, mediation and arbitration—plus a number of other methods such as dispute assessment, mock trials and prevention mechanisms.¹⁵

The technology that makes ODR possible is so important that some scholars suggest it can be looked at as a ‘fourth party’ to the dispute resolution process: a party working with and assisting the third party.

This fourth party – the technology – has:

- the ability to regulate and structure certain aspects of (online) dispute resolution processes, like managing the complaints (complaint forms);
- the ability to schedule a ‘get-together’ with the parties involved in the dispute (calendar); and,
- the ability to provide communication exchanges between the parties and the third (email or chat provider).

Online arbitration

¹¹ Kaufmann-Kohler, G. “Online Dispute Resolution and its Significance for International Commercial Arbitration” www.iccbooks.com. accessed on 08/6/13.

¹² See Operating Standards for Using IT in International Arbitration (“The Standards”) in *Using Technology to Resolve Business Disputes*, ICC IC Arb. Bull. Special Supplement (ICC Publishing, 2004) 75, cited in Kaufmann-Kohler, G., *ibid*.

¹³ See Philippe, M., “NetCase: A New ICC Arbitration Facility” in *Using Technology to Resolve Business Disputes*, ICC IC Arb. Bull., Special Supplement, (ICC Publishing, 2004) 53.

¹⁴ For a list of existing (and former) ODR providers and further global statistics, see Conley Tyler, M., “115 and Counting: The State of ODR (2004) Also see Katsh E., & Choi, D., eds., *Proceedings of the Third Annual Forum on Online Dispute Resolution*, <www.odr.info/unforum2004/>. For a description of the most significant ODR providers based on empirical research and interviews with representatives of these institutions, see Kaufmann-Kohler, G., & Schultz, T., *Online Dispute Resolution: Challenges for Contemporary Justice* (The Hague: Kluwer Law International, 2004) at 249-76. Extracted from Kaufmann-Kohler, G., *op.cit*.

¹⁵ Kaufmann-Kohler, G., *op. cit*.

¹⁶ Ethan, K., and Janet R., “Online Dispute Resolution: Resolving Conflicts in Cyberspace”, (San Francisco: Jossey-Bass, A Wiley Company 2001).

The fourth party (the technology) does not replace the third party, but can help and assist the third party by making us able to design web based tools that can be used in online dispute resolution processes to regulate, structure and manage/control the process. An example of such a tool is an online complaint form. It gives the parties involved in a dispute easy access to the dispute resolution process, it takes less time than writing an email and everyone can fill out a form. The online complaint forms are not only convenient to users, but in one sense at least, they are convenient to those who will be receiving and working with the complaints (the third parties).¹⁷

ODR means different things to different people, collating the different uses of the term ODR, Hornle defines ODR as “information technology and telecommunication via the Internet applied to alternative dispute resolution, or in other words, ODR applies information technology and distance communication to the traditional ADR processes such as conciliation, mediation and arbitration (including the various mutants thereof).” Although ODR efforts were initially focused on online disputes¹⁸, however, ICT and ODR resources are not limited to dealing with disputes arising online, but are increasingly used and available for disputes arising in the real world. They are also used alongside traditional ADR processes to complement and enhance those processes.

Like ADR, ODR has generally the same advantages of greater efficiency and greater party control. ODR is economically viable. In addition, its speedy resolution, non-confrontational nature and the fact that it offers a neutral forum are among some of the advantages of using ODR. However, despite these advantages, ODR poses several problems in B2C dealings. Major issues with ODR include enforcement and validity of ODR outcomes, inadequate confidentiality and security, inadequate authenticity, lack of human interaction and miscommunication, consumer trust and confidence, insufficient accessibility and its limited range of disputes.¹⁹

Disputes Arising Online

Many disputes arise online while transacting business online, E-bay²⁰ for example used to employ a specialist company, Square trade²¹ to handle some hundreds of thousands of disputes between its buyers and sellers, but in 2008, e-bay took this service over itself. E-Bay’s Resolution Centre deals online with matters that cannot be resolved between the parties directly, and may facilitate by making a decision in favour of either the buyer or the seller. The seller may be required to issue a refund, or the buyer may be required to pay for an item, or the sale may be reversed.²²

Other internet retailers are using different mechanisms to address disputes arising with their customers. One favoured procedure is to invite customers to register a complaint or claim, and to facilitate communication,

¹⁷ Ibid. The third parties can structure the complaint process by the design of the form, just getting the required information, something which is impossible by email communications.

¹⁸ Hornle, J., “Online dispute resolution – the emperor’s new clothes? Benefits and Pitfalls of Online Dispute Resolution and its Application to Commercial Arbitration. 17th BILETA Annual Conference, (2002).

¹⁹ Hassan, K. H., et al, op cit.

²⁰ Is an online shop that sells fashion accessories, electronics, collectibles and art, women clothings, jewelry and watches, cars and lots more. See www.ebay.com.

²¹ An ODR provider.

²² Brown, H., and Marriott, A., op cit

of refunding any amount in issue. Credit card companies also have a role, in making a chargeback of any disputed sum to the account-holder where services or products have not been satisfactory. The procedure facilitates pragmatic arrangements for the avoidance and quick settlement of any dispute.²³

In some jurisdictions, an Internet Ombudsman has been piloted in which consumers can register their complaints about products or services that have been purchased on the internet and have them resolved by neutral conciliators and adjudicators. Its two stage process starts with mediation, and if this does not resolve the issues, then adjudication which is not binding on the consumer, but may be binding on the supplier which is member of the Communication and Internet Services Adjudication Scheme will be resorted to.

Also where disputes arise in relation to domain names²⁴, these can be dealt with under the Uniform Domain Name Dispute Resolution Policy (UDRP) created by the Internet Corporation for Assigned Names and Numbers (ICANN).

In the global market, consumers today are confronted with a complex array of new technologies and are increasingly enmeshed in an international grid of production and services.

The advent of technology has revolutionised the nature of disputes, as well as the way disputes are resolved. The Internet has emerged as one of the most significant and revolutionary inventions of our time. According to Hornle, the Internet has intensified international contracts and thus gives rise to a greater number of disputes between small businesses, consumers and others; he states, "Therefore, the Internet gives rise to many disputes with a significant power imbalance between parties."²⁵

In Nigeria for instance, there are the popular Jumia.com and Konga.com online business shops but where there is a problem of delivery where the customer paid for the product before delivery, the customer is left at the mercy of the online shop. A typical example is a post on the internet by a customer of jumia.com and it goes thus;

I ordered and paid for a Tablet from Jumia for (N26,923) on the 11th March. I only paid after calling them to confirm the availability and was told it was available; I went on to pay online.

To my shock they called me three days later to inform me that the product is not available and that I should order for something else to which I declined. I asked for a refund and was told the refund will take between 1 - 5 days, it has been more than 8days now and I have been calling them on daily basis to which they keep telling me that it is under process, this to me is kind of FRAUDULENT.

²³ Ibid.

²⁴ For example, where trade mark owners object to the similarity to their mark of another domain name or allege bad faith in the registration and use of a domain name.

²⁵ Hornle, J., Cross-border internet dispute resolution. (United Kingdom: Cambridge University Press 2009).

The ways in which the technology is applied, taking into account factors like effectiveness and ease of use, makes ODR interesting for Law “while reducing the load of cases that would have gone to court or even through ADR.

It is an online payment, my experience has always been when online payment for service is unavailable, the fund is sent back to the originating account once all confirmations have been made. I have sent all confirmations, the money is supposed to be returned to the account from which I paid initially. Till Now I am still waiting. My dilemma now is how to retrieve my money, and to also warn unsuspecting customers never to pay before they take delivery of the goods for JUMIA²⁶.

He later posted that jumia paid him back probably because he resorted to posting it on nairaland.com. But assuming he was not paid back and with no ODR mechanism in place by the online shop, the process of recovery would have been a long one.

Ordinary Disputes Dealt by Online Dispute Resolution

Online resources are also used to facilitate ordinary “real world” disputes rather than only those arising online. ODR has all of the same cost-saving and efficiency advantages of traditional ADR because “it is simply ADR on the internet”²⁷ and that is because the process takes place online, it can be faster, more convenient and more cost efficient.

ODR process for resolving real world disputes range from fully automated programmes to providing incidental support for mediators and arbitrators (“flesh and blood” practitioners, as one online commentator has called them).²⁸

Automated Negotiation

Automated negotiation is a process of blind bidding. First, the parties jointly determine the range or spread within which they agree to settle. For instance, they say they will settle if their offers are within 10 per cent of each other. Each party then makes an offer, unaware of its opponent’s offer. If the offer is within the agreed spread, the computer calculates the mean value and the dispute is settled for that amount. If the offers are outside the spread, then no settlement is reached and the computer invites the parties to proceed to a new round of blind bids. The process is simple and efficient, but very basic. Indeed, it is limited to disputes where liability is undisputed and the only issue is to determine the amount to be paid.²⁹ One of the primary proponents of this system is Cybersettle, which has patented (and successfully defended) its blind bidding system, giving each party three negotiating rounds to try to reach agreement, as they move progressively closer to resolution. It also offers confidential telephone facilitation for claims that do not settle online.³⁰

²⁶ Mjay, my shopping experience with jumia.com posted 11.41 am on March 21 2013, www.nairaland.com, accessed on 10/3/14

²⁷ Galves, F, “Virtual Justice as Reality: Making the Resolution of E-commerce Disputes More Convenient, Legitimate, Efficient and Secure” (2009) (1) *Journal of Law, Technology & Policy*

²⁸ Kaufmann-Kohler, G., op cit.

²⁹ Brown, H., and Marriot, A., op cit

³⁰ Brown, H., and Marriot, A. op cit, p. 590.

Online arbitration services can involve a range of ICT processes including for example the downloading of claim and other relevant forms, the extensive use of email for communication and submission and exchange of documents, and the use of telephony, video-conferencing and virtual meetings. These services may offer paperless case submission processes, with evidence submitted electronically by secure email.³¹ In some services, arbitrators make their award electronically, with results available online immediately after they have been made.³²

Supporting traditional ADR

Other forms of ODR technology assist mediators and arbitrators in their traditional process, for example an online mediation service such as Juripax offers support for individual mediators, or for businesses with large volumes of cases, in relation to divorce, employment, e-commerce and small claims. This includes online intake of forms, online discussion room and conference facilities, digital document and case management systems, and the use of network software (ASP).

The World Intellectual Property Organisation (WIPO) Arbitration and Mediation Centre provides ODR facilities for use in connection with dispute resolution procedures such as the arbitration of intellectual property disputes. Digital communication tools allow parties to file request by completing electronic forms and to submit documents, and exchange correspondence online through secure channels, with automatic notifications and databases to support the logging and achieving of documents and online dispute resolution facility to deal with disputes arising out of the registration and use of internet domain name.³³

Other Usages of ICT in Dispute Resolution

With the Internet, a new method of resolving disputes has evolved. ODR transforms the way in which consumer disputes are being settled. According to the American Bar Association Task Force on E-Commerce and Alternative Dispute Resolution (ADR), “Online Dispute Resolution has only one overarching feature—it takes place online.” Further, “ODR encompasses many forms of Alternative Dispute Resolution (ADR) and court proceedings that incorporate the use of the Internet, Web sites, e-mail communications, streaming media and other information technology as part of the dispute resolution process.”³⁴

Access to the Web provides a source of instant information as well as alternative forms of communication such as Internet telephony.

Email and document scanning have become an indispensable means of communication and transmitting document in ADR processes.

³¹ Ibid.

³² One example of an online arbitration service is net-ARB, which claims to be the world’s first and only Small Claims Court for the Internet, breaking jurisdictional boundary by providing for non-appearance dispute resolution by email: the hearing is conducted by email over time, usually between a couple of days to a week or more, the arbitrator, or panel if so agreed, will then issue an award.

³³ H. Brown, and A. Marriot, op cit, p. 591

³⁴ K. H. Hassan, et al op cit.

Methods of communication with multiple parties include phone and video conferencing and virtual meetings, making it easier for parties in different countries to meet one another.

Data storage and retrieval is also instant; standard and bespoke forms can be completed and exchanged online, and many other resources are available and constantly being added.

Professional and social networks have extended to include information exchange and advice seeking. The use of these resources combined with mobile phone technology, have had a profound impact on the nature of communicating news and events around the world, changing the whole paradigm of information dissemination.³⁵

ICT resources have become so integrated with mediation and arbitration practice that it is difficult to imagine working without them, even though a few years ago they were not even contemplated.

Some Practice Issues on Online Dispute Resolution.

Convenience, Trust and Expertise

ODR providers have to make the “basic building choices” when they start designing their ODR website, like should they use email or chat communication tools and should the third party be a human or a software program. These decisions alone will not guarantee a successful ODR business or even its continuance. The three fundamental features” or “building blocks” – convenience, trust and expertise – must all (at a minimum level) be present in every ODR system.

No ODR system will be used or be successful unless it is convenient to use, provides a sense of trust and confidence in its use and also delivers expertise, or in other words such system needs to facilitate access and participation (convenience), have legitimacy (trust), and provide value (expertise)³⁶.

It is explained by some authors what is meant by convenience, trust and expertise. Convenience they say can be seen as the ease of use of the ODR system and is determined by the costs of use, the necessary computer/online skills of the user and the equipment the user of the system is provided with.

Trust should be seen as the risk the user has to take using the ODR system. When there is a previous relationship the user knows what he can expect and whether there is confidence. Expertise stands for the

³⁵ Brown, H., and Marriot, A. op cit, p. 591-592.

³⁶ Infra, p. 73

process used, which can be clarified by additional information and during the process itself³⁷. The weight given to these elements depends not only on the circumstances (context) the user is in (does he have more opportunities to get his dispute resolved or not), but also depends on his personal preferences (needs). They also admit that there is no objective way to measure the three factors to ascertain whether, in any particular ODR process, there is a sufficient amount of each. The challenge should be to . . . provide enough of each to meet some threshold level.³⁸

Confidentiality

Rules regulating to confidentiality in mediation or other ODR processes should be agreed before the process is started. This should cover both a contractual commitment to confidentiality by the parties and technological assurance about confidentiality and privacy in ICT system.

Technological developments, such as digital signatures using encryption technology, are likely to improve levels of security and confidentiality, both in relation to e-commerce and more specifically to ODR processes, video-conferencing and virtual meetings.³⁹

Each year close to a million disputes are resolved online and over a hundred online dispute resolution Providers⁴⁰ offer their services worldwide, though with some challenges.

Challenges of Online Dispute Resolution

The Internet has led to the confrontation of modern institutions with less effective information boundaries. Thus, online conflicts present new challenges in terms of potential resolution processes and legal actions. For example, imagine a Dutch person buying an item from an Australian person on a Canadian auction site that is hosted on a server based in India, and that the item is shipped to France. Who has legal jurisdiction if dispute arises? Different courts have developed dissimilar approaches, so jurisdiction determination can be inconclusive. International treaties have not solved these issues, nor have they solved the problem of enforcement of judgments across borders.⁴¹ Thus, even when judgment is obtained in one country, it might be inflexible to enforce it on assets in another country. Moreover, in cross-national disputes there is an inevitable need to choose a jurisdiction and therefore impose specific values on the case. Furthermore, even when jurisdiction is conclusive and other details of the e-conflict are clear, is it worth the cost of traveling

³⁷ Ethan Katsh and Janet Rifkink, *op. cit.* p. 74

³⁸ *Ibid*, p. 75

³⁹ Brown, H., and Marriot, A. *op cit*, p.593.

⁴⁰ Modria.com is acknowledged as one of the world leading expert in the field of ODR. It is seen as the fairness engine for the internet. Other online dispute resolution providers include: Mediation Arbitration Resolution Services (MARS) <http://www.resolvemydispute.com> , Online Resolution <http://www.onlineresolution.com/> , SquareTrade <http://www.squaretrade.com> , SmartSettle <http://www.smartsettle.com>, Nominet <http://www.nominet.org.uk>, Family Relationships Online <http://www.familyrelationships.gov.au>, e.t.c. SquareTrade for instance, was allied with eBay to provide web-based tools for parties to resolve dispute in auction through direct online negotiation, mediation, or arbitration. In the last few years, SquareTrade has resolved millions of disputes across 120 countries in 5 different languages. SquareTrade has proven that processes such as online negotiation and online mediation can be efficient tools to resolve e-commerce disputes.

⁴¹ Chen, C., "United States and European Union approaches to internet jurisdiction and their impact on e-commerce. *Univ Pa J Int Econ Law* (2004) 25(1), p.423

qualifications or experiences of the third and the dispute resolution across the globe for resolving disputes for low-cost, low-involvement items?⁴²

The preoccupation with maximising profits at any cost remains the maxim of unscrupulous business. Caveat emptor is still widely applicable. However, the development of an electronic trading system provides benefits, as well as threats, to consumers, by helping them to avoid scams and con schemes. In the current global market, Starek states, "...Advances in communications technologies allow fraudulent marketers to communicate easily with their victims in foreign countries. The transnational nature of a scam may make it very difficult for law enforcers to catch the perpetrators and to compensate the victims. In particular, complicated questions of jurisdiction and choice of law can pose barriers to effective enforcement."⁴³

Enforcement is one of the main obstacles for further development of ODR. Enforcement mechanisms are necessary when a party refuses to comply with a ruling.

The quality of justice in ODR is important and outcomes must be made effective, whether these are settlements, agreements or final decisions on paper or electronic documents. There is not much use in winning a case if there is no possibility of enforcing the judgment. Consider, for example, the *LICRA v Yahoo*⁴⁴ case, where a US court refused to apply and enforce the verdict of a French case decided by the High Court of Paris in 2000. The case concerned the sale of memorabilia from the Nazi period by Internet auction and the application of national laws to the Internet. The issues are whether Yahoo may be prosecuted in France under French law for maintaining both auction site that sell Nazi-related items and information site promoting Nazi doctrine and whether U.S. courts should enforce the resulting judgment. The judgment has created a universal reluctance to bring Internet cases before the French courts⁴⁵.

The problem of inadequacy of confidentiality and security is one of the biggest concerns of ODR. Despite the development of cutting-edge security technologies and encryption methods, the Internet "can still be porous when it comes to the security of data transmitted electronically."⁴⁶ Closely related to the issue of security, is the issue of authentication. Katsh points out that in cyberspace, it is not easy to verify the authenticity of the message received. It is possible for a third party to impersonate or misrepresent one of the parties of the dispute⁴⁷.

Another major concern in the use of ODR as a mechanism for dispute settlement is the lack of consumer confidence in e-commerce. To develop a consumer's trust in the on-line environment is not the same as developing in the bricks-and-mortar world. It is said that, "It is the promise of trust

⁴² Turel, O., and Yufel Y. "Online dispute resolution services: justice, concepts and challenges", in, *Handbook of Group Decision and Negotiation*, (Springer Netherlands, 2010), p. 426.

⁴³ Starek, R. B., *Protecting the consumer in the global marketplace*. (1997) (<http://www.ftc.gov/speeches/starek/awe9fn.htm>).

⁴⁴ [9th Cir. 2005] 433 F.3d 1199. Accessed from www.hlli.org/articles/18_04_05.pdf, on 07/7/13

⁴⁵ Ibid

⁴⁶ Hassan, K. H., et al "The use of technology in the transformation of business dispute resolution." *European Journal of Law and Economics*, (Springer Science+Business Media New York 2012)

⁴⁷ Katsh, M. E. *Dispute resolution in cyberspace*. (1996). *CONN. L. REV.* 953

that needs to restore affinity between business and consumers in this electronic environment with no close proximity of distance, differences in culture, language, legislation and jurisdiction.”⁴⁸

Conclusion

Online dispute resolution has been shown to transform the way disputes are being resolved, in particular, in business to consumer transactions. ODR offers a more successful means of resolving e-commerce disputes. Also, in the realm of consumer protection, the advancement of new technologies indeed presents benefits and challenges to any consumer protection regime.

E-transactions may need online mechanisms for better serving e-justice. Offline judicial procedures may be cumbersome, leading to delays, high costs, inaccessibility for certain market segments, and overall, to the miscarriage of justice. At the same time, the online environment can adequately facilitate ADR procedures in an efficient and effective fashion. Thus, in Nigeria, ODR services should be researched, developed, and offered. These endeavors should involve e-commerce researchers, online vendors, consumer organizations, trade commissions and other policy makers.

Attention should be paid to technology adoption issues and human computer interaction concerns, as these seem to be important stumbling points, which researchers and practitioners need to overcome.

The information communication technology (ICT) is being used in many developed countries to change the way disputes are resolved. This explains why issues of jurisdiction, contract formation, contract validity, authentication, and integrity are among the topics that modern legal systems need to be addressed regularly.

Nigerian Legislators need to adjust their systems to tackle these issues, because online markets evolve faster. Thus, the gap between the needed legislation to the applied one is growing, and justice deficiencies are formed.

For developing countries like Nigeria, configuring ODR systems is both an opportunity and a challenge. The opportunity is that any business can, quite quickly, have its own “court” specialized in disputes that might occur in its specific business domain, thus reducing the encumbrances associated with the slow dispensation of cases in our judicial system. The challenge is that the technical instrumentation must simultaneously satisfy the business viewpoint asking for trust and the legal viewpoint, which requires accordance with the current practice in law. Nonetheless, it is a concept worthy of emulation.

⁴⁸ Ong, C., B2C e-commerce trust in redress mechanism (cross border issues). *Informing Science* (2003) 46, extracted from Hassan, K. H., op cit.