Online Dispute Resolution – From Origins to the Present

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Abstract

This article explores the historical evolution of Online Dispute Resolution (ODR) against the backdrop of the internet's inception and development. In the early years, the internet was largely restricted to government organizations, the military, and scientific institutions. Censorship was prevalent, limiting the emergence of disputes within this limited virtual environment. To overcome these constraints, private commercial online services like CompuServe and AOL emerged, offering content-rich platforms but with limited connectivity. This limitation inadvertently reduced the incidence of disputes. However, unrestricted access to online services led to cases of identity deception and abuse, exemplified by the infamous case of a virtual persona, 'Joan'. The 'Joan' incident underscored the challenges of managing online interactions in the absence of regulatory mechanisms. It prompted the emergence of system administrators responsible for balancing content policies and First Amendment rights. The article also delves into the early legal landscape concerning online communication and the challenges of regulating content and expression. This historical analysis offers insights into the origins of ODR, highlighting the need for effective dispute resolution mechanisms in the evolving digital landscape. It sheds light on the internet's journey from a closed network to a global platform, raising critical questions about identity, freedom of expression, and the role of administrators in online governance.

Keywords: *Online Dispute Resolution (ODR), Internet history, censorship, virtual environment, digital identities, content moderation, freedom of expression, early internet communication.*

JEL Classification: K15, K22, K41

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1. The historical genesis of ODR

For society, the development of operational communication has always played a significant role in their lives. Therefore, one of the important indicators that were able to unite millions of people was the Internet. But the historical genesis of its emergence shows us the evolution of modern technologies, without which a significant part of the world's population cannot imagine their lives today. The internet was invented in 1969,

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as a result of the merger of four sites in different states of the United States. Over the next two decades, the Internet built up its potential by connecting a large number of sites. Those who had access to the Internet and could use it belonged to a kind of 'closed club'. At that time, such users were limited not only by the right to access the Internet, but also by the range of functionality that they were allowed to do when using the network, since the target audience was government organizations, military and scientific institutions. That is why the US government has imposed restrictions on the use of the network. In support of this approach, in 1982, when the Internet was known as ARPANet (Advanced Research Projects Agency Network), the Massachusetts Institute of Technology (MIT) informed its users that it was illegal to use ARPANet for personal purposes by exchanging personal messages between ARPANet subscribers, as it was anti-social and illegal and, accordingly, it was not a direct endorsement of U.S. government policies.[2]

Supporting these conceptual approaches, the National Science Foundation created the civilian part of the Internet NSFNet, the main purpose of which was to exchange information between users in a purely scientific and research field[3]. That is, we can see that for most of its existence, the Internet has been unavailable for use by ordinary citizens due to the presence of censorship in the process of its administration. In this connection, in this limited virtual environment, the presence of disputes was quite rare.

An attempt to overcome this barrier of limited use of the Internet was the creation by companies such as Apple II, IBM PC of private commercial online services not related to the Internet (CompuServe, AOL, Prodigy). Despite the fact that at that time the connection speed was very low, and the payment for use was quite high, these services had a large amount of content, active thematic discussion groups with quite convenient and understandable software for users. But the main disadvantage of these online services was that e-mail, communication, and data exchange were possible only if it took place between subscribers purely within a specific network. [4]Such 'filters' for the use of online resource provision also had positive consequences – reducing the volume of any disputes that could arise during its use.

Providing free and unhindered access to the use of online services to its users has become an impetus for users to abuse their rights. For example, in 1985, it became known that one of the users of the discussion group on CompuServe was a man who was a psychiatrist in real life and pretended to be a woman in a virtual environment. Such a virtual reincarnation had quite significant consequences for many women in the United States, since in the virtual world, this 'woman' named Joan claimed to be a New York neuropsychologist who was seriously injured in a car accident in which her

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[2] Christopher C. Stacy, Getting Started Computing at the AI Lab 9 (Mass. Inst, of Tech. Artificial Intelligence Laboratory, Working Paper No. 235, 7 September 1982).

[3] The NSFNET Backbone Services Acceptable Use Policy, Cyber Telecom (1995), www.cybertelecom.org/notcs/nsfnet.htm#aup.

[4] AOL bought CompuServe in 1998. See Caitlin Dewey, A Complete History of the Rise and Fall – and Reincarnation! – of the Beloved '90s Chatroom, Wash. Post (30 October 2014), https://www.washingtonpost.com/news/the-intersect/wp/2014/10/30/a-complete-history-of-the-rise-and-fall-and-reincarnation-of-the-beloved-90s-chatroom/.

boyfriend died. Joan said she herself spent a year in the hospital treating brain damage that affected her speech and ability to walk. Dumb, confined to a wheelchair, often suffering from severe back and leg pain, Joan was initially so embittered by her disability that she told the group that she was thinking about ending her life. Over the next two years, she became an active member of an online group that served as both a support for other women with disabilities and an inspired discourager of stereotypes about healthy people. When Joan's real name was revealed, CompuServe users asked for additional protective warnings to be put in place for new users that they might encounter impostors while using the network. But, realizing that any restrictions on users could lead to their prosecution, they responded to such a protest that accusing CompuServe of impostors is as ridiculous as accusing the phone company of obscene calls[5].

This incident did not find its publicity due to the limited number of users of this online service, but became the object of the journalistic opus, 'The Strange Case of a Virtual Mistress'. In fact, it was this event that initiated the activities of independent content observers in a specific virtual environment – 'system administrators' [6]who had to balance between compliance with the policy of online services and the prevention of violations of the First Amendment to the US Constitution (the right to freedom of expression).

In support of the above arguments, attention should be focused on the law enforcement practice of American national courts at that time. In one case, the defendant and another person exchanged e-mails, the content of which expressed a sexual interest in violence against women and girls. The defendant posted a fictional story in an interactive newsgroup in which he described the torture, rape and murder of a young woman who bore the name of one of the defendant's college classmates. The defendant was charged with violating 18 U.S.C. § 875 (c), which prohibits interpersonal communications involving threats to kidnap or bodily harm another person. The defendant was subsequently charged with an additional indictment, which was based on several e-mails between him and his friend. The trial court and the appellate court dismissed the indictment, arguing that the e-mails sent and received by the defendant and his friend by e-mail did not constitute a 'real threat' under the First Amendment because they were protected by the right to freedom of expression[7].

The development and spread of the Internet in the world took place quite quickly in the early '90s and began to cover almost all spheres of public life. This was primarily due to the introduction of Internet providers and the attempts of users to unite in a single world network. Such a manifestation of digitalization of social relations at that time had not only a positive effect, but was the result of the emergence of such negative manifestations, which were called 'spam', 'fleming', 'virus' and were aimed at imposing an idea on a significant number of people through the Internet. To confirm the occurrence of such negative manifestations on the Internet, we can cite the example

[5] Lindsay Van Gelder, The Strange Case of the Electronic Lover, Ms. Mag. (October 1985), http://lindsyvangelder.com/sites/default/files/Plinkers.org%20-%20Electronic%201.over.htm_.pdf.
[6] SYSOP, NetLingo, mvw.netlingo.com/word/sysop.php.
[7] https://www.lexisnexis.com/community/casebrief/p/casebrief-united-states-v-alkhabaz.

of a student at Virginia Tech University sending messages to websites for homosexuals calling for their castration and slow death. This student was prosecuted for violating a higher education institution's policy that prohibited the use of mail or messaging services to harass, intimidate, or otherwise annoy another person[8]. And as a result, the reaction of the university administration was quite rational, since they believed that the use of the university server causes the presence of certain responsibilities of its users and therefore, all information that is distributed should be associated with the name higher education institution.

It can be seen that all of the above applies to a greater extent to interpersonal relations, the expression of views, a personal attitude to a particular life situation and, as a result, the emergence of disputes arising from these social relations. But still, the first attempts to introduce ODR fell on the development of e-commerce in the world and the emergence of such giants of global online commerce as eBay (originally called AuctionWeb) and Amazon in 1995.

As soon as they began operating, complaints began to come in about the transactions and *eBay founder* Pierre Omiyar was unwilling to resolve these disputes on his own. When receiving complaints via email, Omidyar himself responded to the buyer and seller, encouraging them to figure it out on their own. This approach was very primitive and did not meet the needs of the participants in trade relations, so the next step was to create a 'Feedback Rating' system, where the parties to the transaction could leave positive feedback or criticize each other. This allowed users to gain a reputation by establishing a level of trust in the use of this online platform, reducing the risk of unfair and fraudulent trading transactions and, as an effort, reducing the number of disputed transactions[9]. Unfortunately, these actions did not lead to the desired result, so in 1999 eBay, which already had 700,000 users and 1.5 million products, asked the National Center for Automated Information Research (NCAIR) to conduct a pilot project to test whether disputes between buyers and sellers can be resolved through online mediation. Beginning in mid-March 1999, *a* link was posted on eBay's customer service page informing users that they could get help with transaction-related disputes by clicking on the link and filling out a complaint form that was sent to an experienced mediator at the Center[10].

So, having analyzed the historical origins of ODR, it can be seen that the main disputed online legal relations that were subject to the settlement by a third independent party are commercial relations, and it is through the prism of commercialization of social relations that we will try to analyze the features of the development of ODR in the countries of Europe, Latin America, Africa, Asia. In addition, special attention will be paid to the peculiarities of the legal regulation of this pre-trial dispute resolution mechanism in Canada and proposals for improving Ukrainian legislation.

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[8] Michael D. Shear, Free Speech Gets Tangled in the 'Net; Colleges Try to Balance Rights, Cybersensitivity, Wash. Post (23 October 1995), www.highbcam.com/doc/lP2-861701.html.

[9] Adam Cohen, The Perfect Store: Inside Ebay. Back Bay Books, 2003. p. 27.

[10] Ethan Katsh ct al., E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of 'eBay Law https://www.umass.edu/cyber/katsh.pdf.

2. Legal nature of ODR

2.1. The definitive construction of 'ODR': doctrinal approaches

Online dispute resolution (ODR) has gained significant popularity today, which is manifested in the development of uniform international legal acts, the adaptation of national legislation to the challenges of our time regarding the implementation of ODR in national legal orders. Before proceeding to the analysis of the development of Online Dispute Resolution (ODR) in a comparative legal context, it is worth paying attention to the interpretation of its definitive construction, since the attractiveness of its application borders on uncertainty in its understanding.

Such uncertainty is due to the combination of various elements in dispute resolution processes, such as the type of technology used (synchronous, asynchronous, or mixed), the method of resolution (automated or facilitated resolution), the origin of the dispute (offline or online), and the method of dispute resolution (mediation, negotiation, arbitration, etc.).[11] The presence of these aspects is due to the fact that there is no established normative definition of ODR, and there is no unity of scientific views on ODR. The variety of processes and methods for resolving disputes through information and communication technologies also makes ODR particularly difficult to define.

Thus, an overwhelming number of scholars believe that ODR should be considered in a broad sense as a process that encompasses third-party efforts to resolve or manage disputes using technology[12]. In some cases, technology is empowering and transforming the capabilities of a neutral third party that performs dispute and conflict resolution functions, and thus it effectively begins to act as a 'fourth party'.[13] Colin Rule[14] and Melissa Conley Tyler[15] come to an almost similar conclusion and note that ODR is the use of information and communication technologies to help parties manage, transform and resolve their disputes.

On the one hand, these definitions, although they reveal the essence of the use of online technologies in dispute resolution, but have a rather abstract and formal nature, since it is still necessary to disclose the details and its structural elements.

At the beginning of the 2000s, another point of view emerged, which boils down to the fact that ODR cannot be considered as some kind of stable phenomenon, because in the absence of a clear normative definition of this definition, it is interpreted in

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[11] Lipsky, D. B. and Avgar, A. C. (2006). Online dispute resolution through the lens of bargaining and negotiation theory: toward an integrated model. *University of Toledo Law Review*, 38(1), 47–88.

[12] J. Horlne, 'Online Dispute Resolution', in R. Bernstein, J. A. Tackabcrry and A.L. Marriott, Bernstein's Handbook of Arbitration and Dispute Resolution Practice, Volume 1, 4th ed., London, Sweet & Maxwell, 2003, p. 782.

[13] Katsh, Ethan and Janet Rifkin. Online Dispute Resolution: Resolving Conflicts in Cyberspace. San Francisco: Jossey-Bass, 2001.

[14] Rule, Colin. 'What is ODR?' Presentation made at the 2008 International Forum on Online Dispute Resolution, Victoria, BC, Canada, 18 June 2008.

[15] Melissa H. Conley Tyler & Mark W. McPherson (2006) Online Dispute Resolution and Family Disputes, *Journal of Family Studies*, 12:2, 165–183, DOI: 10.5172/jfs.327.12.2.165.

different ways. Thus, Julia Kornl, trying to reveal the definitive construction of 'ODR' in a general theoretical context, considers it from two doctrinal approaches. The first is that ODRs are exclusively information technology and telecommunications used for alternative dispute resolution. The term 'alternative dispute resolution' (ADR) in this context means dispute resolution that is diametrically opposed to litigation using other dispute resolution methods, such as arbitration, mediation, negotiation, etc. The second approach boils down to the fact that ODR is simply the use of new tools – information management tools and communication tools – to resolve disputes. But, as the author points out, these tools are changing the methods by which disputes are resolved. Thus, ODR introduces a new paradigm of dispute resolution, and in its functional coloring is not a monolithic concept, since it combines a multiplicity of ODR methods. Therefore, the challenge for dispute resolution professionals is to choose the right mix of ODR methods and traditional offline dispute resolution methods that are relevant to a particular dispute.[16]

It is categorically impossible to agree with this point of view, since the possibility of using online mechanisms in no way can replace the trial in its entirety, but can only be an integral part of it. In this context, we should agree with the point of view of Thomas Schulz, who argues that ODRs are those proceedings in which exclusively (or almost exclusively) electronic means of communication are used. Such a hypothesis is related to, firstly, since ODR arose as a result of the penetration of the Internet into territorial, traditional, offline dispute resolution mechanisms, the definition of ODR is opposed not to the judicial remedy of national courts, but to offline dispute resolution mechanisms. And as a result, ODR is only one part of the ADR. Secondly, national courts ensure not only the conduct of court proceedings, but also act to a certain extent as procedural mechanisms for the application of mediation and international commercial arbitration[17].

In the traditional classical scientific field, ODR is understood by foreign scientists as a procedure that uses the Internet as a more effective medium for the parties to resolve their disputes using various ADRs (Alternative Dispute Resolution) methods. Using computer-network technologies, ODR brings together the parties to a dispute online to engage in a dialogue to achieve an optimally effective outcome[18]. In addition, it is impossible to agree with the point of view of V. Palatai, who argued that Electronic Dispute Resolution can also be defined as the development of programs and computer networks for dispute resolution using alternative dispute resolution methods[19], since the content of this approach does not correspond to the main purpose and purpose of dispute resolution.

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[16] Tackaberry, John, and Arthur L. Marriott. Bernstein's Handbook of Arbitration and Dispute Resolution Practice. 4. ed. London: Sweet & Maxwell, 2003, p. 782.

[17] Schultz, T. (2003). An essay on the role of government for ODR: theoretical considerations about the future of ODR [online]. Available at: http://www.odr.info/unece2003.

[18] https://cyber.harvard.edu/olds/ecommerce/disputestext.html#odr.

[19] Polatay, V. Y. Dispute Resolution on the Internet. Polatay//Actual problems of modern international law. Sciences. Century. According to the materials of I Hark. International Law Readings, Dedicated. In memory of Prof. M. V. Yanovsky and V. S. Semenov, Kharkov, November 27. 2015: in 2 parts – Kharkiv, 2015. — Part 1, pp. 241–247.

In addition, the point of view of Tanya Soardine, who believes that ODR is not just the provision of information and access to materials, as the use of purely auxiliary technologies, but the application of the assimilation of ADR with modern information and communication technologies for a possible resolution of a dispute in cyberspace, deserves[20] attention.

Analyzing the numerical approaches to the definition of ODR, it is possible to see a separate vector of scientific approaches to this issue, the essence of which is that ODR is understood as a separate area and procedure for resolving disputes, supported by information and communication technology (hereinafter – ICT) tools. The specificity of this approach is due to the fact that 'ICT tools' do not necessarily mean Internet-based tools, since the use of offline ICTs was created to indicate the use of offline ICTs the terms 'electronic dispute resolution' ('eDR') and 'technology-assisted dispute resolution' ('TMDR'), which have not gained as much popularity as ODR[21].

Some scholars conclude that in order to classify the dispute resolution process as ODR, it is necessary that most of the communication between the parties to the dispute takes place online[22]. Supporting and continuing this view, other scholars also include the possibility of using hybrid processes that include both online and offline elements[23].

Analysis of the proposed approaches to the definition of ODR gives us reason to come to logical conclusions that in a broad context, ODR is a purely generalizing concept, since it can include both judicial ODR and alternative dispute resolution procedures (*AODR).* There is a rather lengthy scientific discussion on this issue[24], in which doctrinal approaches to determining the legal nature of ODR are diametrically opposed due to the trends in the modern development of technological processes, legislative regulation, on the one hand, and man-made events on the other.

2.2. Judicial ODR

As for the separation of judicial ODR as its constituent part of a single whole, it should be noted that the trend of using information technologies in the consideration of cases in national courts has become widespread and developed over the past two decades.

First, it has led to the introduction of electronic document management and case management systems to streamline court proceedings. Such digitalization has led to an

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[20] Sourdin, Tania. 2016, Alternative dispute resolution/Tania Sourdin Thomson Reuters (Professional) Australia Ltd. Pyrmont, NSW, p. 386.

[21] Larson, D. A. (2006). Technology mediated dispute resolution (TMDR): opportunities and dangers. *University of Toledo Law Review*, 38(1), 213–238.

[22] Puurunen, T. (2003). International online dispute resolution – caveats to privatizing justice. *Finnish Yearbook of International Law*, 14, 233–270.

[23] Goodman, J. W. (2006). The advantages and disadvantages of online dispute resolution: an assessment of cyber-mediation web sites. *Journal of Internet Law*, 9(11), 1–16.

[24] Rabinovich-Einy, O. and Katsh, E. (2021). Artificial intelligence and the future of dispute resolution. In: Rainey, D. et al. (eds.) (2021). Online dispute resolution theory and practice. 2nd edn. Den Haag: Eleven International Publishing, 471–487.

urgent need for changes in the legislation of many countries in Europe and the world.

The experience of Great Britain is quite interesting, since 1999 one of the active manifestations of civil justice departments, which were enshrined in Art. 1(4) of *the UK Civil Procedure Rules 1998*[25] is the unattended hearing of cases and the use of technology. For example, property claims, in which the amount of the claim does not exceed £100,000 and if neither party is a child or person, who cannot independently participate in the case can be submitted electronically through the *platform http://www.moneyclaim. gov.uk.* Such cases are heard by the County Court Business Centre, which is fully engaged in all issues of ensuring compliance with procedural guarantees regarding the right to a fair trial (sending a claim to the parties to the dispute, providing an opportunity for the defendant to prepare a response to the claim, etc.)[26]. In addition, the rules of civil procedure law allow the court to contact lawyers via mobile communication or e-mail in order to ensure control over the performance of their duties (Article 3.1 – 8 – of the UK Civil Procedure Rules). As for the hearing of the case itself, this definition is interpreted as the adoption of any intermediate or final decision by a judge, during which the person was heard or had the right to be heard in person, by telephone, video or in any other way that allows simultaneous communication (Article 39 – 1 – of the Rules of Civil Procedure).

In support of the development of information technology and its applicability, the 1999 decision of the Civil Chamber of the Court of Appeal in the case of *Morris v Bank of America National Trust*, which stated that 'too often in the past, the parties' lawyers have used their information technology ('IT') know-how and resources to prepare their own case. The challenge of the next ten years is to jointly develop the means by which the enormous power of IT can be harnessed to assist judges in managing these mass cases. The Court also observed that there was no reason why no further effort should be made to ensure that the judge could move quickly, by electronic means, at the appropriate time, from the text of the claim to the case law or the rules of law invoked by a party. Although the first variations in the use of IT were just emerging at the time, as this decision rightly points out with reference to Lord Wolfe's 1996 Access to Justice Report, that smart investment in appropriate technology is fundamental to the future of our civil justice system. Not only will IT help streamline and improve our existing systems and processes, but it's also likely that they themselves will become the catalyst for radical change over time[27].

In addition, Spanish legislation also demonstrates attempts to implement electronic document management and case management systems. In order to ensure flexible, secure and electronic communication between the justice authorities and lawyers, public authorities and ordinary citizens, the Spanish Ministry of Justice has

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[25] The Civil Procedure Rules 1998, https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part03#3.1.

[26] Practice Direction 7e Money Claim Online https://www.justice.gov.uk/courts/procedure-rules/civil/pdf / practice_directions/pd_part07e.pdf.

[27] https://uk.practicallaw.thomsonreuters.com/Document/I5DAD6BA0E4B911DAB61499BEED25CD3B/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=4a94a3bfe588477aac05f5650594aaf9&contextData=(sc. DocLink) & comp=wluk.

created a secure system that encompasses the different possibilities of data exchange between the parties to the dispute, ensuring universal access with maximum procedural guarantees.

On October 5, 2015, Law 42/2015 amending the Spanish Code of Civil Procedure was adopted, which obliged legal professionals (lawyers, lawyers and legal professionals of public administrations) and all judicial bodies and institutions to use existing electronic systems to submit motions and evidence, as well as to notify the parties to the case of court hearings.[28] The mandatory use of electronic means in communication between the judiciary and other participants in court proceedings allows for the expansion of communication services through standard interfaces in a single judicial communication environment. It is based on the development of web services, improving integration with procedure management systems, as well as on the reuse of existing infrastructure and existing services (verification platforms, electronic signature, e-identity management, etc.)[29].

Similar legislative regulation of the use of IT in civil cases in courts is inherent in Ukraine. Thus, in accordance with Parts 1, 4 and 8 of Art. 14 of the Civil Procedure Code of Ukraine, the Unified Judicial Information and Telecommunication System (hereinafter referred to as the UJITS) operates in the courts. In accordance with the law, the UJITS ensures the exchange of documents (sending and receiving documents) in electronic form between courts, between the court and the parties to the trial, between the parties to the trial, as well as recording the trial and the participation of the parties to the trial in the court hearing via videoconference. In addition, electronic document management during the consideration of civil cases in Ukrainian courts is also possible by sending a claim and other documents to the official e-mail of the court with an electronic digital signature. Thus, when deciding on the legitimacy of a party to the dispute with an appeal by sending it to the official e-mail address, the Supreme Court noted in its decision that when returning the appeal to the applicant, the court of appeal proceeded from the fact that the plaintiff's appeal was not formed in the 'Electronic Court' system, but was submitted to the e-mail address of the district court. Which is not identical to the electronic form of a procedural document submitted exclusively using the UJITS. The Supreme Court did not agree with this conclusion of the Court of Appeal, since the current procedural legislation does not prohibit a party to the case from submitting procedural documents to the court by sending them to the official e-mail address of the court with the mandatory affixing of the party's own digital electronic signature[30] of the party to the case.

For quite a long time in Ukraine, the introduction of the Unified Judicial Information and Telecommunication System was purely declarative, and one of the key issues was the lack of legislative regulation and technical capabilities, the establishment

[28] Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil, https://www.boe.es/eli/es/l/2000/01/07/1/con.

[29] Electronic Communications Service in Spanish Justice Administration, https://joinup.ec.europa.eu/collection/justice-law-and-security/solution/electronic-communications-service-spanish-justice-administration/about.

[30] Resolution of the Civil Court of Cassation dated 30.03.2021 in case No. 530/544/16-ц, https://reyestr.court.gov.ua/Review/96006089.

of a clear framework for the procedural application of this system. Similar to the Spanish model of implementing IT in the judicial system, on June 29, 2023, the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine Regarding the Mandatory Registration and Use of Electronic Cabinets in the Unified Judicial Information and Telecommunication System or Its Separate Subsystem (Module) Ensuring the Exchange of Documents' was adopted. In accordance with the provisions of this law, the functioning of the 'Electronic Cabinet' is introduced, which is defined as a personal account (web service or other user interface) in the subsystem (module) of the Unified Judicial Information and Telecommunication System, through which a person who has passed electronic identification is provided with access to information and services of the Unified Judicial Information and Telecommunication System or its individual subsystems (modules), including the possibility of exchange (sending and receiving) documents (including procedural documents, written and electronic evidence, etc.) between the court and the parties to the trial, as well as between the parties to the trial.

In addition, the amendments to the procedural legislation (including the Code of Civil Procedure of Ukraine) differentiate the subjects who must voluntarily or imperatively register their own electronic cabinets in order to prevent negative procedural consequences. This must be done by lawyers, notaries, public and private executors, insolvency officers, forensic experts, public authorities and other state bodies, local governments, and other legal entities. As for the voluntary registration of electronic cabinets, Ukrainian legislator does not specify the range of subjects, defining them as 'other persons'.

Persons who have registered an electronic cabinet in the Unified Judicial Information and Telecommunication System or its separate subsystem (module), which provides for the exchange of documents, may submit procedural, other documents, perform other procedural actions in electronic form exclusively with the help of the Unified Judicial Information and Telecommunication System or its separate subsystem (module) that provides for the exchange of documents, using their own electronic signature, equated to a one handwritten signature in accordance with the Law of Ukraine 'On Electronic Trust Services', unless otherwise provided by this Code[31].

Nevertheless, despite the attempts of the Ukrainian legislator to move to the full digitalization of the judicial process by establishing negative procedural consequences for the participants in the case (leaving the statement of claim without action or without consideration, returning the application for interim relief, etc.) due to the lack of registration of the Electronic Cabinet, the law still stipulates that in case of applying to the court through its Electronic Cabinet with a statement of claim and documents, submitted to it, the applicant is obliged to provide proof of sending copies of the documents submitted to the court to other participants – either in electronic form or in paper.

[31] The Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine Regarding the Mandatory Registration and Use of Electronic Cabinets in the Unified Judicial Information and Telecommunication System or Its Separate Subsystem (Module) Ensuring the Exchange of Documents' https://zakon.rada.gov.ua/laws/card/3200-20.

That is, Ukrainian experience of introducing digitalization of civil procedure from the moment of filing a lawsuit to the adoption of a court decision shows that access to the court is not limited in its subject composition and the set of procedural actions. In addition, although the amendments to the law encourage participants in court proceedings to carry out document flow in electronic form, but, in our opinion, this step can be called a 'transitional period of digitalization of the judicial system' and it requires some addition, improvement and changes. It is still considered expedient to exclude from Part 7 of Art. Forty-three of the Code of Civil Procedure of Ukraine provides on the obligation of the parties to the case to submit evidence of sending a statement on the merits of the case, a counterclaim, an application for increasing or reducing claims, an application for changing the subject or grounds of the claim, an application for the involvement of a third party, an appeal, a cassation appeal and documents attached to them to other parties to the case in paper form by a letter with a description of the attachment. It is proposed to exclude this provision gradually, taking into account the exercise of the right to a fair trial and access to court.

It should also be noted that national courts in some countries of the world have a limited opportunity to use IT due to the lack of legislative regulation of the entire galaxy of procedural tools. The Civil Procedure Code of Israel, which entered into force on 01.01.2021, although it does not give the plaintiff the right to file a lawsuit with the court using IT, but in turn, after the registration of the case in court, provides the parties to the dispute with the opportunity to manage electronic files, attorneys have the right to review court cases in which they represent clients for the availability of complete documentary support of the case using the online platform 'Net Ha'Mishpat'.[32]

In our opinion, the main issue influencing the determination of the feasibility of using IT in court is the observance of the right to a fair trial. Analyzing the law enforcement practice of the European Court of Human Rights, we can see the following approaches to resolving this important issue. Thus, in the case of *Marcello Viola v. Italy*, the ECtHR concluded that although the defendant's participation in the proceedings by videoconference does not in itself contradict the Convention, the Court is obliged to satisfy itself that the application of this measure in each particular case serves the legitimate aim and requirements of due process as provided for in Article 6 of the Convention. In addition, the Court found that the right to a trial within a reasonable time and the consequent need for expeditious consideration of cases by the courts must be taken into account in determining the need for a public hearing at the stages of the proceedings following the trial at the first instance[33].

The above analysis of legislation and law enforcement practice shows that the issue of optimizing the consideration of civil cases in compliance with the full range of rights and freedoms of the parties to the dispute was considered through the prism of the use of information technology. We believe that such a given vector of reforming civil justice at that time is reflected in the efforts of European and world countries to adapt their own national legislation to the challenges of modern development of

[32] The 'Net Ha'Mishpat' System https://www.gov.il/en/departments/general/net_law_info1.
[33] Case of *Marcello Viola v. Italy* (application no. 45,106/04) https://hudoc.echr.coe.int/eng?i=001-77246.

information technology. It can be concluded that the use of IT in the course of a case can be considered an integral part of the broader term as ODR.

Secondly, AI-based algorithms can be used in the course of a case to perform various functions – from ordinary information processing to advisory functions and prediction of outcomes. The use of artificial intelligence in civil cases should be carried out quite carefully and prudently, as complications may arise that will harm the participants in the case. But still, you should focus on already proven cases the application of AI and analyze how useful and necessary it can be.

A) Systematization and processing of information. Recognizing patterns in text documents and files can be useful, for example, when sorting through a large number of cases or in complex cases where there is a large amount of information. U.S. national courts use a special platform 'eDiscovery',[34] which, with the help of artificial intelligence, conducts automatic research of document flow and determines an algorithm to isolate potentially relevant information that needs to be reviewed for trial, from information that is probably irrelevant.

B) Formulation of proposals. The introduction of artificial intelligence can help all participants in civil cases not only to systematize information, but also to formulate possible variations of dispute resolution or provide answers to intermediate questions that may arise during the consideration of cases in court. The practical implementation of this option is reflected in the activities of the British Columbia Civil Tribunal[35], which is an integral part of the Canadian judicial system for consideration of minor disputes up to 5000 Canadian dollars, disputes for compensation for damage caused by road accidents and certain housing disputes. On the website of this Tribunal, you can find instructions, interactive questions and answers on dispute resolution or preparation for trial. Having analyzed the legal regulation of the Tribunal's activities, it can be concluded that the artificial intelligence used by it is exclusively informative and advisory in nature.

In addition, the District Court of East Brabant in the Netherlands, in cooperation with Tilburg University, Eindhoven University of Technology and the Jheronimus Academy of Sciences (JADS), is conducting research on the possibilities of artificial intelligence in traffic cases. The purpose of this project is to develop a potentially probable draft court decision based on the array of judicial practice and materials that are laid down in its algorithm. The developers of this project are quite right it is noted that the court's decision is not only the result of rational judgment, but also its coloring with emotions, intuition and a sense of justice[36].

C) Prediction of results. This option of artificial intelligence tools is one of the most anticipated among the legal community, since predictability can be considered an integral part of legal certainty. One of the most successful examples of forecasting is

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[34] David A. Evans, Jason R. Baron, Chris Buckley, and Robert S. Bauer. 2008. E-discovery. In Proceedings of the 17th ACM conference on Information and knowledge management (CIKM '08). Association for Computing Machinery, New York, NY, USA, 1527. https://doi.org/10.1145/1458082.1458167.

[35] https://civilresolutionbc.ca.

[36] A. D. (Dory) Reiling, 'Courts and Artificial Intelligence' (2020) 11(2) *International Journal for Court Administration* 8. DOI: https://doi.org/10.36745/ijca.343.

the development of machine-learning software by a group of American scientists, which can predict the outcome of a case in the US Supreme Court (SCOTUS) with the accuracy of 70.2%, and the behavior of individual judges when voting – with the accuracy of 71.9%. Empirical the material for forecasting is not only the case file, but also information about political preferences and past voting behavior of individual judges.[37] Another manifestation of the predictability of court decisions is the use of artificial intelligence to predict the judgments of the European Court of Human Rights through natural language processing and machine learning and algorithmic analysis of information from the HUDOC database, the online database of the ECtHR. Accuracy of forecasting of this software is 79%.[38]

Summarizing the above doctrinal approaches, analysis of the law enforcement practice of national courts and legislative regulation of the legal nature of the use of information technology in the consideration of disputes by courts, the following conclusions can be proposed.

Judicial Online Dispute Resolution is a *set of procedural actions of the parties to the case, on the one hand, and the court on the other, which is aimed at a quick, impartial and fair resolution of the dispute with the possibility of using information technology or artificial intelligence tools. In addition, it is possible to* propose amendments to the current legislation of Ukraine (and as a proposal for other legal systems in Europe and the world) regarding the possible use of artificial intelligence at the stage of filing a claim and opening proceedings in the case. These proposals relate specifically to providing an opportunity for artificial intelligence to carry out a systematic examination of the documents provided by the parties to the case, their analysis and formation of procedural documents at the stage of preparation for consideration of the case on the merits. This will ensure the implementation of procedural economy and effective consideration of the case in a shorter time, as well as saving human resources of the court apparatus and optimization of financing of the possibility of conducting a trial.

2.3. Features of ODR as part of ADR

The analysis shows us the existence of such an extremely relevant issue of the modern doctrine of civil procedural law and the law enforcement practice of national courts – whether judicial ODRs can be considered part of ODR. In our opinion, the answer to this question should follow from the accepted definition of ODR. As noted by some researchers, if we consider that ODR covers exclusively alternative (out-of-court) dispute resolution processes, then the doctrine of judicial ODR should be considered inconsistent and almost illogical. Conversely, if we assume that ODR

[37] Katz, Daniel Martin and Bommarito, Michael James and Blackman, Josh, A General Approach for Predicting the Behavior of the Supreme Court of the United States (January 16, 2017), http://dx.doi.org/10.2139/ssrn.2463244.

[38] Aletras N, Tsarapatsanis D, Preoţiuc-Pietro D, Lampos V. 2016. Predicting judicial decisions of the European Court of Human Rights: a Natural Language Processing perspective. PeerJ Computer Science 2:e93 https://doi.org/10.7717/peerj-cs.93.

mechanisms are based solely on the use of IT, then the idea of judicial ODR becomes[39] reasonable.

However, to a greater extent, the scientific legal community defines ODR as part of alternative dispute resolution (ADR). Based on this point of view, ODR is considered as a derivative of ADR and a way to supplement alternative dispute resolution mechanisms with new, technological capabilities.[40] This approach is based on the synergistic concepts of ODR exclusively as a specially created mechanism for resolving minor disputes, since for the consideration of other disputes in which the value of the claim is significant, the available legally stipulated tools were not suitable for this.

Although ODR is very similar to ADR in its legal nature, the use of IT in this process has initiated the emergence of new types of dispute resolution, which, due to their characteristics and consequences of their application, cannot be attributed to the classic definition of ADR processes. Thus, due to the development of social relations and the emergence of new types of online processes that act as auxiliary tools for resolving disputes between the subjects of such legal relations, it cannot be said for certain that they are the 'successors' of ADR or have similar offline equivalents. And even some online processes, which, although in their essence may contain signs of offline processes, but thanks to the use of IT, are not able to identify with its classical definitive construction. For example, if we analyze 'online arbitration', we can see that it is not endowed with all the properties inherent in traditional international commercial arbitration, the result of which is the adoption of an arbitral award that can be submitted for enforcement to a national court. Namely, when presenting the arbitral award for enforcement, the claimant may be denied this procedural action due to inconsistency with the form of the arbitral award. And that is why it all depends on the national legislation in which such a decision is enforced, since regardless of the existence of uniform rules for the recognition and enforcement of international commercial arbitration awards (New York Convention of 1958), it is the national regimes that are endowed with exclusive discretion.

Thus, some national laws regulating the activities of international commercial arbitration do not impose requirements on the form of the arbitral award or state that the form of the arbitral award must comply with the agreement of the parties, and therefore it is allowed to make an arbitral award in electronic form (Article 52 of the UK Arbitration Act, Article 189 of the Swiss Federal Law Act on Private International Law)[41]). In turn, Art. 1072 (b)(3) of the Dutch Code of Civil Procedure expressly provides for an electronic form of arbitration agreement, which shall be certified by an electronic digital signature[42].

But to a greater extent, national arbitration laws make it mandatory for an

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[39] Vermeys, N.W and Benyekhlef, K. (2012). ODR and the courts. In: Katsh, E. et al. (eds.) (2012). Online dispute resolution theory and practice. Den Haag: Eleven International Publishing, 307–324.

[40] Farah, Y. (2005). Critical analysis of online dispute resolutions: the optimist, the realist and the bewildered. *Computer and Telecommunications Law Review*, 11(4), 123–128.

[41] Federal Act on Private International Law https://www.unine.ch/files/live/sites/florence.guillaume/files/shared/publications/pil_act_1987_as_from_1_1_2017.pdf.

[42]https://www.uv.es/medarb/observatorio/leyes-arbitraje/europa-resto/paises-bajos-ccp-arbitration-act.pdf.

arbitral award to be in writing in order for it to be recognized and enforced. Thus, in Art. 31 of the Law of Ukraine 'On International Commercial Arbitration', Art. Article 60 of the Rules of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry stipulates that the arbitral award must be made in writing and signed by a sole arbitrator or arbitrators. In the case of collegial arbitration, it is sufficient to have the signatures of the majority of all members of the arbitral tribunal, provided that the reason for the absence of other signatures is indicated.

That is, it can be seen that the significance of the online arbitral award actually depends on the different approach of the national legal order to the issue of the form of the arbitral award, since in the absence of legal regulation of the legitimacy of its existence, its existence loses its relevance and urgency of the application.

The lack of a unified approach to the definition of ODR both at the legislative level and in doctrinal circles is the result of its extensive use and spread over a significant array of social relations. Not an exception to this is the economic activity of business entities on the Internet. The development of business society in the online space has prompted the creation of protective online mechanisms for participants in commercial relations in the event of disputes between them. Therefore, it is necessary to agree with the scientific point of view, according to which such use of IT to resolve disputes (mostly minor) to protect one's rights in online business should not be considered as a certain type of ODR, but is only an 'internal system of working with clients'.[43]

It is also necessary to define the next criterion for classifying ODR into 'soft' and 'hard' – obtaining the desired result as a result of online dispute resolution procedures. 'Soft ODR' refers to instruments and mechanisms that perform a predominantly preventive function in the event of a dispute, since the main focus of which is not to resolve the dispute, but rather to prevent or facilitate its resolution after it has arisen.[44]

The proposed variable approaches to the definition of ODR as a separate part of the ADR and a part of traditional court proceedings cannot be considered stable axioms due to the rapid development of international legal regulation and the emergence of new technologies. Of course, the adaptation of national legislation to international ODR standards and the creation of a unified approach to the legislative definition of this definitive construction is an important and necessary prerogative for the existence of an effective dispute resolution mechanism, but in our opinion, it will not be possible to achieve this goal unanimously precisely because of the peculiarities of the legal systems of the world, the mentality of the legal consciousness of the legislative authorities, the lack of technical feasibility of introducing technological innovations in the dispute resolution process.

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[43] Shackelford, S. J. and Raymond, A. H. (2014). Building the virtual courthouse: ethical considerations for design, implementation, and regulation in the world of ODR. *Wisconsin Law Review*, 615–667.

[44] Edwards, L. and Wilson, C. (2007) Redress and alternative dispute resolution in EU cross-border e-commerce transactions. *Internation Review of Law, Computers and Technology*, 21(3), 315–333. DOI: 10.1080/13600860701701603.

Bibliography

1. Aletras N, Tsarapatsanis D, Preoţiuc-Pietro D, Lampos V. 2016. Predicting judicial decisions of the European Court of Human Rights: a Natural Language Processing perspective. PeerJ Computer Science 2:e93 https://doi.org/10.7717/peerj-cs.93.
2. AOL bought CompuServe in 1998. See Caitlin Dewey, A Complete History of the Rise and Fall – and Reincarnation! – of the Beloved '90s Chatroom, Wash. Post (30 October 2014), https://www.washingtonpost.com/news/the-intersect/wp/2014/10/30/a-complete-history-of-the-rise-and-fall-and-reincarnation-of-the-beloved-90s-chatroom/.
3. Case of *Marcello Viola v. Italy* (application no. 45,106/04) https://hudoc.echr.coe.int/eng? i=001-77246.
4. Cohen, Adam, The Perfect Store: Inside Ebay. Back Bay Books, 2003.
5. Conley Tyler, Melissa H. & Mark W. McPherson (2006) Online Dispute Resolution and Family Disputes, *Journal of Family Studies*, 12:2, 165–183, DOI: 10.5172/jfs.327.12.2.165.
6. Edwards, L. and Wilson, C. (2007) Redress and alternative dispute resolution in EU cross-border e-commerce transactions. *Internation Review of Law, Computers and Technology*, 21 (3), 315–333. (doi:10.1080/13600860701701603).
7. Electronic Communications Service in Spanish Justice Administration, https://joinup.ec.europa.eu/collection/justice-law-and-security/solution/electronic-communications-service-spanish-justice-administration/about.
8. Evans, David A., Jason R. Baron, Chris Buckley and Robert S. Bauer. 2008. E-discovery. In Proceedings of the 17th ACM conference on Information and knowledge management (CIKM '08). Association for Computing Machinery, New York, NY, USA, 1527. https://doi.org/10.1145/1458082.1458167.
9. Farah, Y. (2005). Critical analysis of online dispute resolutions: the optimist, the realist and the bewildered. *Computer and Telecommunications Law Review*, 11(4), 123–128.
10. Federal Act on Private International Law, https://www.unine.ch/files/live/sites/florence.guillaume/files/shared/publications/pil_act_1987_as_from_1_1_2017.pdf.
11. Gelder, Lindsay Van, The Strange Case of the Electronic Lover, Ms. Mag. (October 1985), http://lindsyvangelder.com/sites/default/files/Plinkers.org%20-%20Electronic%201.over.htm.pdf.
12. Goodman, J. W. (2006). The advantages and disadvantages of online dispute resolution: an assessment of cyber-mediation web sites. *Journal of Internet Law*, 9(11), 1–16.
13. Horlne, J., 'Online Dispute Resolution', in R. Bernstein, J. A. Tackabcrry and A.L. Marriott, Bernstein's Handbook of Arbitration and Dispute Resolution Practice, Volume 1, 4th ed., London, Sweet & Maxwell, 2003.
14. Katsh, Ethan et al., E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of 'eBay Law, https://www.umass.edu/cyber/katsh.pdf.
15. Katsh, Ethan, and Janet Rifkin. Online Dispute Resolution: Resolving Conflicts in Cyberspace, San Francisco: Jossey-Bass, 2001.
16. Katz, Daniel Martin and Bommarito, Michael James and Blackman, Josh, A General Approach for Predicting the Behavior of the Supreme Court of the United States (January 16, 2017). http://dx.doi.org/10.2139/ssrn.2463244.
17. Larson, D. A. (2006). Technology mediated dispute resolution (TMDR): opportunities and dangers. *University of Toledo Law Review*, 38(1), 213–238.
18. Lipsky, D. B. and Avgar, A. C. (2006). Online dispute resolution through the lens of bargaining and negotiation theory: toward an integrated model. *University of Toledo*

Law Review, 38(1), 47–88.
19. Polatay, V. Y. Dispute Resolution on the Internet. Polatay//Actual problems of modern international law. Sciences. Century. According to the materials of I Hark. International Law Readings, Dedicated. In memory of Prof. M. V. Yanovsky and V. S. Semenov, Kharkov, November 27. 2015: in 2 parts – Kharkiv, 2015, Part 1, pp. 241–247.
20. Puurunen, T. (2003). International online dispute resolution – caveats to privatizing justice. *Finnish Yearbook of International Law*, 14, 233–270.
21. Rabinovich-Einy, O. and Katsh, E. (2021). Artificial intelligence and the future of dispute resolution. In: Rainey, D. et al. (eds.) (2021). Online dispute resolution theory and practice. 2nd edn. Den Haag: Eleven International Publishing, 471–487.
22. Reiling, A. D. (Dory), 'Courts and Artificial Intelligence' (2020) 11(2) *International Journal for Court Administration* 8. DOI: https://doi.org/10.36745/ijca.343.
23. Resolution of the Civil Court of Cassation dated 30.03.2021 in case No. 530/544/16-ц https://reyestr.court.gov.ua/Review/96006089.
24. Rule, Colin. 'What is ODR?' Presentation made at the 2008 International Forum on Online Dispute Resolution, Victoria, BC, Canada, 18 June 2008.
25. Schultz, T. (2003). An essay on the role of government for ODR: theoretical considerations about the future of ODR [online]. Available at: http://www.odr.info/unece2003.
26. Shackelford, S. J. and Raymond, A. H. (2014). Building the virtual courthouse: ethical considerations for design, implementation, and regulation in the world of ODR. *Wisconsin Law Review*, 615–667.
27. Shear, Michael D., Free Speech Gets Tangled in the 'Net; Colleges Try to Balance Rights, Cybersensitivity, Wash. Post (23 October 1995), www.highbcam.com/doc/lP2-861701.html.
28. Sourdin, Tania. 2016, Alternative dispute resolution/Tania Sourdin Thomson Reuters (Professional) Australia Ltd. Pyrmont, NSW.
29. Stacy, Christopher C., Getting Started Computing at the AI Lab 9 (Mass. Inst, of Tech. Artificial Intelligence Laboratory, Working Paper No. 235, 7 September 1982).
30. SYSOP, NetLingo, mvw.netlingo.com/word/sysop.php.
31. Tackaberry, John., and Arthur L Marriott. Bernstein's Handbook of Arbitration and Dispute Resolution Practice. 4. ed. London: Sweet & Maxwell, 2003.
32. The 'Net Ha'Mishpat' System, https://www.gov.il/en/departments/general/net_law_info1.
33. The Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine Regarding the Mandatory Registration and Use of Electronic Cabinets in the Unified Judicial Information and Telecommunication System or Its Separate Subsystem (Module) Ensuring the Exchange of Documents' https://zakon.rada.gov.ua/laws/card/3200-20.
34. The NSFNET Backbone Services Acceptable Use Policy, Cyber Telecom (1995), www.cybertelecom.org/notcs/ nsfnet.htm#aup.
35. Vermeys, N.W and Benyekhlef, K. (2012). ODR and the courts. In: Katsh, E. et al. (eds.) (2012). Online dispute resolution theory and practice. Den Haag: Eleven International Publishing, 307–324.