THE ROLE AND SIGNIFICANCE OF ARBITRATION AND ODR IN E-COMMERCE

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The traditional format and conduct of arbitrations are currently being disrupted by technological developments, particularly digitalization, artificial intelligence (AI), and block chain technology. Arbitration market participants are investigating how new technologies and tools can be used to improve the efficiency and quality of the arbitration process. This trend is being accelerated by the COVID-19 pandemic. In this paper, we look at the "Anatomy of Arbitration." We argue that fully AI-powered arbitrations will be both technically feasible and legally permissible at some point in the future.

Arbitration has a prominent place in the world of Alternative Dispute Resolution (ADR). Arbitration is the preferred dispute resolution method when disputing parties need a binding decision but do not want to go to court.

Arbitration is frequently described as a private and consensual method of resolving disputes those results in a binding decision: Instead of state courts, a private tribunal appointed by the parties renders a binding decision—the arbitral award.

Traditionally, the tribunal is made up of human arbitrators who hold in-person hearings. Human-powered arbitration was the only technologically feasible option as modern arbitration, and particularly international commercial arbitration, evolved over the course of the twentieth century. However, technological advancements, particularly digitization, artificial intelligence (AI), and block chain technology, are disrupting the traditional format and conduct of arbitrations. Arbitration market participants are investigating how new technologies and tools can be used to improve the efficiency (lower costs, faster resolution) and quality of the arbitration process.

The state establishes its jurisdiction over a person if there is a specific connection between his territory and that person. A connection to a region is particularly evident when the information is located on a specific server that allows Internet users to access it. Obviously, a state can, at any time, establish its jurisdiction over persons who store information on its territory, and it is inappropriate for a person operating on the Internet to ignore the legislation of the state in which the information is posted. However, this precedent does not mean that other states should abandon their jurisdictions in favor of the jurisdiction of the state in which the server is located.[1]

Rdeferring to the jurisdiction of the country in which the server is located for a person who publishes a relevant item on the Internet is, without a doubt, convenient, as acknowledging the legislation of the 'host' country can resolve vexing issues. However, this also raises a serious concern; the opportunity for a person to create and use a document himself is especially convenient for keeping the level of protection of absolute right slow, and no special legislation on the Internet may decide the jurisdiction described.At the same time, it is important to remember that the domain name of the country in which the server is located may not be

[1]Leanovich, E.B. 'Problems of legal regulation of Internet relations with a foreign element'. Internet resource: http://www.evolution.info

compatible with the country of registration, in which case a user that accesses the Internet from one domain name and switches to another computer thousands of miles away does not pose a problem for the domain name owner.[2]

A variety of dispute resolution methods may be involved in ODR, including negotiation, conciliation, mediation, arbitration and hybrid mechanisms such as final offer arbitration, Medola, mini-trial, med-arb, and neutral evaluation. ODR can be adjudicated or out of court. An example of a litigation is arbitration in which the award by the arbitrator is binding on both parties. In contrast, in a non-adjudicated process, the main goal is to arrive at a settlement of a dispute between parties without ruling on its merits. Mediation by a neutral third party offers options for resolving disputes between the parties and active participation in the dispute resolution process.

Conflicting rules regarding 'law of location', 'law of structured place' and 'law of damaged place', which are usually used to define rights in private international law, have different meanings when applied to legal disputes arising on the Internet in accordance with the criterion 'server location'. Server location is the location of the physical communications system (hardware and software), and the physical location of the server hosting the information (website) cannot be considered as a criterion for this type of dispute. The location of the equipment qualifies as the location of the server if the tools and software installed on it belong to a specific person and are used to perform activities that are critical to legal disputes that arise on the Internet.

In online dispute resolution, many complex issues may arise – including commercial and legal ones – and their consequences follow. As a rule, when accessing the ODR process, mutual consent between the parties is required, whether through an explicit clause in the contract or by mutual agreement of the parties after a dispute that may arise. The service provider must be legally binding or enforceable. Most jurisdictions recognise and enforce the standard ODR clause on a B2B website; however, in the case of B2C contracts, especially in the European Union, consumers cannot be deprived of the additional rights available to them by the law of their place of residence through an agreement restricting the jurisdiction of the court to the country of the ODR service provider if it provides lower standards of protection that the consumer is entitled to in his country of residence. Maintaining the confidentiality and secrecy of negotiations as well as of any subsequent transactions between the parties when resolving disputes is one of the most important tasks of online international arbitration. The Internet is still considered an unsafe medium for arbitration, as cybercriminals have several methods with which to intercept data and messages between parties, and any information passing through Internet networks can be illegally stored or used by cybercriminals. In light of this, increasingly sophisticated methods of security on the Internet are emerging, such as the use of digital signatures. Furthermore, technology can be used to combat any Internet security loopholes and strengthen the ODR process. Stanieri A. and Zeleznikow J. also believed that technology is a fourth party in the ODR process and noted that ODR can be used not only to effectively resolve online disputes but to build trust in virtual spaces as well. The use of cookies often violates Internet users' privacy and increases security concerns. E-litigation employs multiple layers of security, including a sophisticated server, complex passwords and software that backs up the complete data of its servers and stores information provided by parties in a secure environment. Such technical infrastructures are required to address any concerns about confidentiality breaches in the ODR process. Many paralegal rights, such as money back guarantees, buyer protection clauses and authentication stamps, are becoming popular on e-commerce websites.

[2]Kalyatin, V.O. (2004) 'Internet Law'. - M. – S. pp. 62–87.

This only serves to generate more trust in ODR practices and promote consumer confidence in e-commerce.

Another significant concern for most parties is that their disputes should be independent and decisions should be impartial. To this end, they tend to prefer institutional ODR providers, which are more structured and transparent, reducing the chances of bias affecting panelists' decision-making process.

Nevertheless, in most cases of ODR, the parties are not familiar with one another, and a face-to-face meeting between the parties may reduce the likelihood of a dispute resolution. In ODR, multiple technical methods, such as automated software, are used to resolve disputes between the parties, and the parties may not be required to participate in person or even in video conferencing hearings in which the parties can exchange negative comments. If the theory of faces can be correctly applied to ODR, hostility between the parties diminishes, as in many cases, automated online processes help to resolve disputes. Additionally, if any language or cultural barriers exist, it is common practice to use translation and interpretation services during ODR. In terms of enforcement, critics may be of the opinion that when ODR is not binding, it is useless. However, in my opinion, if the optional ODR is successful and results in a binding settlement agreement, it is enforceable in court. ODR also offers fair solutions, as it recognises the principles of fairness and natural justice in addition to statutory rules for resolving a dispute.

Over time, discussions about 'self-regulation versus government interference' in ODR have arisen. Self-regulation has been challenged by consumer groups due to a lack of credibility, leading to the role of government in the ODR process. Initially, the American Arbitration Association, ICC and Better Business Bureau laid out principles for ODR regulation and emphasised the use of the seal of confidence.

In general, states all around world are free to define their level of openness to new technologies in general, and AI applications in particular, when it comes to arbitration statutes. In practice, however, regulatory competition will have an impact on the degree of freedom that states have. International commercial arbitration is a multibillion-dollar industry. States compete with one another for the right to host arbitrations in their respective jurisdictions. If available AI applications can deliver more efficient and qualitatively better arbitration processes and awards than human arbitrators, we should expect arbitration users to demand such services and states to provide the necessary legal infrastructure in order to capture (or avoid losing) market shares.

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