

ONLINE DISPUTE RESOLUTION IN NIGERIA: BENEFITS AND CHALLENGES

Abdullahi Mikailu & Muhammad Nahim Yunusa*

Abstract

Despite the viability of adopting Alternative Dispute Resolution (ADR) mechanisms such as negotiation, mediation, conciliation and other hybrid processes to resolve financial disputes, such effective mechanisms could be daunting and defeated by time and distance. The traditional approach to resolving small claims financial disputes primarily involve a visit to the customer service desk or placing a call to the call centre. The efficacy of the former for a consumer who is restricted by time and space remains while the latter is at the mercy of long queues or being placed on hold to submit a complaint. These two situations have several limitations which are not suitable for the exigencies of modern ICT driven financial transactions. The paper adopted of doctrinal method of research, it was observed that litigation process which is the most recognized and well established form of dispute resolution in Nigeria has not only become stylized, complex, expensive, adversarial in nature and time consuming, recommended that the confidentiality provision of ADR, to a certain extent needs to be relaxed so that members of the public who are aware of application of its mechanisms will be motivated or prompted to adopt the mechanisms to resolve their disputes, concluded that a relatively new ICT driven application is capable of minimizing the administrative frustrations or bottle necks of the courts.

1.1 Introduction

Online Dispute Resolution emerged in the 21st century from developments in the field of Alternative Dispute Resolution (ADR) and its adaptability to peculiarities of the online environment.¹ In addition, it was primarily borne out of the need to deploy cutting-edge information technology innovation to aid access to justice.²

* **Hon. Justice Abdullahi Mikailu**, LLB, FICMC, MC Arb, High Court of Justice, Minna (abdulmika@yhao.com; 08026757817, 08139907824); & **Muhammad Nahim Yunusa**, LLB, MICT Law, FICMC, MC Arb, MICIARB, Department of Liberal Studies, Niger State Polytechnic Zungeru (nahinmuhammad01@gmail.com; 08038715789, 08076670287)

¹Ethan Katsh, M Ethan Katsh, and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (John Wiley & Sons, Inc., 2001).

²Ethan Katsh, "ODR: A Look at History A Few Thoughts about the Present and Some Speculation about the Future," in *Online Dispute Resolution: Theory and Practice A Treatise on Technology and Dispute Resolution*, ed. Mohamed S. Abdel Wahab, Katsh Ethan, and Rainey Daniel (The Hague, Netherland: Eleven International Publishing, 2012), 21-33.

ODR can also be understood from the convergence perspective, i.e., dispute resolution converges with ICT. As part of the fulfillments of the Roscoe Pound³ and Lord Woolf Reforms,⁴ court systems globally have incorporated ADR mechanisms in the administration of justice. Thus, amicable dispute settlement paradigms have found their way into regional and international legal instruments.⁵ Without doubt, ADR has proved to be the most suitable and cost-effective method for resolving disputes arising from commercial and financial transactions in recent years. However, new challenges posed by e-commerce and the growing number of cross-border small claim online disputes call for reform of ADR itself. Lack of a regulatory framework for stringent management of complaint is capable of clogging the justice system with high volume small claims.⁶ Courts are often clogged with expensive, congested, and protracted procedures and formality. This results in long delay as decision may take even years before a judgment sees the light of the day, and the economic or even emotional costs involved can be devastating for consumers.⁷

In the administration of justice system, an effective ODR paradigm has the potential of automating the dispute resolution processes which experts predict may soon threaten the legal profession and change the way lawyers do their businesses.⁸ Indeed, the dispute resolution sector of modern society got its fair share of innovative technology with the emergence of ODR. Richard Susskind⁹ was aptly referring to ODR and the changing role of lawyers when he observed:

³Roscoe Pound, "The Causes of Popular Dissatisfaction with the Administration of Justice," *Annu. Rep. ABA* 29 (1906): 395-417; WD Brazil, "Court ADR 25 Years after Pound: Have We Found a Better Way," *Ohio St. J. Disp. Resol.* 1 (2002).

⁴AAS Zuckerman, "Lord Woolf's Access to Justice: Plus Ça Change," *The Modern Law Review* 59, no. 6 (1996): 773-96; "Farmers and Prostitutes: Twentieth-Century Problems of Female Inheritance in Kano Emirate, Nigeria Author (S): Steven Pierce Reviewed Work (S): Published by Cambridge University Press" 44, no.3 (2013): 463-86; LA Mistelis, "ADR in England and Wales," *Am. Rev. Int'L Arb.* 12 (2001): 167-441

⁵Steven Smith et al., "International Commercial Dispute Resolution," *Int'l Law.* 44 (2010): 113.

⁶C Rule, V Rogers, and L. Del Duca, "Designing a Global Consumer Online Dispute Resolution (ODR) System for Cross-Border Small Value-High Volume Claims-OAS Developments," *UCC LJ*, no. 24 (2010): 221.

⁷Schiaverta S, "Online Dispute Resolution, E-Government and Overcoming the Digital Divide," BILETA Conference, April, 2005.

⁸Rose, "NO WAY BACK: Don't Look Now, but a Technology Revolution Is Changing the Way Lawyers Work."

⁹Professor Richard Susskind OBE is an author, and independent adviser to major professional firms and to national governments. He is also the technology advisor to the Lord Chief Justice of England and Wales. His main area of expertise is the future of professional services and, in particular, the way in which the IT and the Internet are changing the work of lawyers. He has worked on legal technology

The future of lawyers could be prosperous or disastrous...lawyers who are unwilling to change their working practices and extend their range of services will, in the coming decade, struggle to survive. Meanwhile, those who embrace new technologies and novel ways of sourcing legal work are likely to trade successfully for many years...¹⁰

The evolution of the use of ICT tools in legal services seems to attest to this assertion. The incorporation of innovative ICT equipment and technology into dispute resolution mechanisms began with taking evidence via video-conferencing, case-management software and online filing applications and admitting electronic copy of documents. This was viewed as a mere aid to the judicial process, which was easier and faster as parties could access justice at a cheaper cost; hence, the emergence of courts facilitated by ICT, where the procedural steps mimic the court systems. Despite the viability of adopting Alternative Dispute Resolution (ADR) mechanisms such as negotiation, mediation, conciliation and other hybrid processes to resolve financial disputes, such effective mechanisms could be daunting and defeated by time and distance. The traditional approach to resolving small claims financial disputes primarily involve a visit to the customer service desk or placing a call to the call centre. The efficacy of the former for a consumer who is restricted by time and space remains while the latter is at the mercy of long queues or being placed on hold to submit a complaint. These two situations have several limitations which are not suitable for the exigencies of modern ICT driven financial transactions. That is, such traditional ways of dispute management of small claims financial disputes are generally offline, slow and may lead to more cost on the part of the consumer. Therefore, the demand for new forms of ICT-backed ADR becomes a necessity.¹¹ It is against this backdrop that this paper examined.

1.2 Nature and Scope of Online Dispute Resolution

As noted in the introduction, online Dispute Resolution (ODR) is an innovative way to resolve grievances, issues or disputes especially with regards to e-commerce.

for over 30 years. He lectures internationally, has written many books, and advised on numerous government inquiries, www.susskind.com

¹⁰Susskind R. *The End of Lawyers?: Rethinking the Nature of Legal Services* (Oxford University Press, 2010), 269.

¹¹Larson D. A, "Technology "Technology Mediated Dispute Resolution (TMDR): Opportunities and Dangers," *U. Tol. L. Rev.*, 2006, 213-38; Henry H Perrittir, "Dispute Resolution in Cyberspace: Demand for New Forms of ADR," *Ohio St. J. on Disp. Resol.* 15 (1999): 675.

Online dispute resolution thus means different things to different people and as such a straightforward definition as to what this concept means has proven difficult. Nevertheless, ODR has been defined as the resolution of disputes that result from online conduct. In giving a simple and precise definition, Morek defined ODR to mean resolving disputes on the internet.

It is fair to state that ODR emanated from traditional Alternative Dispute Resolution ADR. For this reason, many authors have seen ODR simply to mean using the internet to provide ADR. According to Arun,¹² ODR involves the use of information technology to facilitate the application of traditional alternative dispute resolution mechanisms in cyberspace. Being an offspring of ADR, ODR uses the various ADR methods to settle online disputes. Thus, ODR can be defined as the deployment of application and computer networks for resolving disputes with ADR methods.¹³

Online Dispute Resolution is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties.¹⁴ This technology, which is also ICT has been named by Katsh and Rifkin¹⁵ as the "fourth party" because ODR is seen as an independent input to the management of dispute. From the definitions given so far, it can be summarized that ODR is only concerned with internet disputes.¹⁶

Being a contemporary issue in the ADR community, ODR has attracted so many authors. Most of these authors have further described ODR using other names. Some of the names used are:¹⁷

- a. Internet Dispute Resolution (IDR).
- b. Electronic Dispute Resolution (eDR).

¹²Arun R. The Legal Challenges Facing Online Dispute Resolution: An Overview (2007). Available at http://www.galexia.com/public/research/articles/research_articles-art42.html. (Last visited 14-10-2025).

¹³Van den Heuvel E. Online Dispute Resolution as a Solution to Cross-border E-disputes: An Introduction to ODR. Paper presented at Building Trust in the online environment: Business to customer Disputer Resolution, a conference jointly organized by Organization for Co-operative Development (OECD), Hague conference on Private and International Law and International Chamber of Commerce (ICC). The Hague, 16-08-2025. The Hague. Available at <http://www.oecd.org/dataoecd/63/57/1878940pdf> (last visited on 16-10-2025).

¹⁴Petrauskas F and Kybartiene E., Online Dispute Resolution in Consumer Disputes: (2011), P, 922 Available at http://www.mruni.eu/en/mokslo_darbai/jurisprudencija/ (last visited on 16-08-2019)

¹⁵Katsh, E and Rifkin, J. Online Dispute Resolution: Resolving conflicts in cyberspace. Jossey-Bass: San Fransico (2001), P.93.

¹⁶Some authors use cyberspace or online in place of internet.

¹⁷Ibid.

- c. Electronic ADR (CADR).
- d. Online ADR (ADR)

The above names have been used interchangeably by various authors. However, ODR has emerged as the most used term in recent years.

1.3 The Regulatory Framework for ODR in Nigeria

Following the development in the dispute resolution landscape and global surge in cross-border e-commerce transactions, the United Nations (UN) working Group III was commissioned in 2010 to examine possible future works on ODR for cross-border electronic transactions in business to businesses and businesses to consumer dispute.¹⁸ Series of colloquium are being held and still ongoing in order to gather opinion towards producing an acceptable ODR instrument for the resolution of cross-border disputes ODR instrument for the resolution of cross-border disputes in the global market place through ODR.¹⁹

In actualizing the objectives of the UN Working Group III on ODR, the European Union (EU) took the first known step towards a supernatural ODR Legislation. Several directives and regulations were adopted between 2004 and 2013 for the full implementation of practical and binding ODR framework to begin in the year 2016.²⁰ From 15th February, 2016, the ODR platform developed by the European Commission has been made accessible to online consumers and traders.²¹

According to the United Nations Conference on Trade and Development Report of June 2014, Nigeria is the destination for foreign investment in Africa, because of its huge natural/mineral resources, especially oil, huge intellectual base, and most importantly the telecommunications, banking and Nollywood film sectors of the economy which are able to compete on the global stage.²²

On the 14th March 2014, the ADR Directive on Alternative Dispute Resolution of (2013/11/EU) and Regulation on Online Dispute Resolution (534/2013, one which is in line with the UK Law was published, and made available in Nigeria for all contractual disputes between a consumer and a business.²³ This directive was in a

¹⁸Recommendations of the OECD council concerning guidelines for consumers protection in the context of electronic commerce: In Sadiq, O. and Umar, A. (2016)," Toward an Effective Eegal Framework for Online Dispute Resolution Trends, Traditions and Transition, Kalliyah of Laws, International Islamic University. Malaysia, P.275.

¹⁹Ibid.

²⁰Ibid

²¹Ibid

²²Bill Gates, (2014) "Roles of the Emergence of Online Dispute Resolution in Africa: Pp, 3-4

²³Ibid.

bid to make ADR/ODR mandatory for its users such as providers and one which was required to meet certain quality standards as expected.²⁴

1.4 ODR Methods

As earlier stated, ODR makes use of traditional ADR mechanisms. The only difference here is that these mechanisms are deployed in resolving online disputes. At the moment, there are three major types of ODR systems. These include:

Online Negotiation

Parties can use online negotiation to resolve their disputes. Here, the financial claims can be settled via online negotiation. Online negotiation is currently the most developed form of online dispute resolution in the US.²⁵ Simply put, online negotiation is using an expert system to automatically settle financial claims. One technological platform currently thriving in online negotiation is automated negotiation commonly known as "blind-bidding. This is a negotiation process designed to determine economic settlement for claims which liability is not challenged. This form of ODR is suitable in situations where the liability of the party is not in dispute, but the parties cannot agree on the amount of compensation-payable.²⁶ The entire process is driven by software without the need for human intervention. In blind-bidding, the disputants submit monetary bids for a specified number of rounds. The bids represent the amount one party is demanding and the other is offering in order to resolve the dispute. If at any stage the amount of the offer exceeds the demand, the dispute is considered resolved. If on the other hand, the bids submitted are within the given range of both parties, the dispute is settled for an amount representing the average of the two bids submitted.²⁷

Online Mediation

This is another thriving ODR method used in Europe and US. Online mediation currently being offered by several organisations. Mediation firms have established websites to facilitate the resolution of disputes. These websites make use of online technologies such as email, chat rooms and instant messaging in addition to the

²⁴Ibid.

²⁵Ibid.

²⁶Hornle, J., ODR in Business to Consumer e-commerce Transactions. *Journal of information Law and Technology*, No.2 (2001) P. 5. Available at <http://www2.warwick.ac.uk/fac/soc/law/elj/> (Last visited on retrieved 12/10/2025).

²⁷Conley T.M. and Bretherton D., *Research into Online Alternative Dispute Resolution Exploration report*, International Conflict Resolution Centre, University of Melbourne. (2003), P, 17.

communication methods used in traditional (offline) negotiation process.²⁸ A typical online mediation procedure takes place as follows. The complainant initiates it by completing a confidential form on the ADR provider's website. Then, a mediator contacts the respondent in order for him/her to participate. If the other party agrees to participate, they can fill out their own form or respond to the initial through email. This initial exchange of views may help parties to understand the dispute better and possibly reach an agreement. If the dispute remains unresolved, the mediator will work with the parties to help determine issues, articulate interests, and evaluate potential solutions.²⁹

In online mediation, websites have also provided online mediators with new tools to supplement email in addition to other communication tools including electronic conferencing, online chat, video-conferencing, facsimile and telephone.³⁰

Online Arbitration

Arbitration is the process where a neutral third party (arbitrator) delivers a decision which is final, and binding on both parties. Online arbitration is no different from offline arbitration except that it is a form of ADR that takes place on the internet. Online arbitration, which is also called cyber-arbitration, cybitration, cyberspace arbitration, virtual arbitration, or electronic arbitration has attracted the interest of legal scholars since the middle of the nineties³¹ Online arbitration is capable of resolving both online and offline disputes. Currently, most arbitration providers allow parties in offline disputes to carry out online only part of the arbitration process, for example, parties may download claim forms, the submission of documents through standard email or secure web interface, the use of telephone hearings etc.³² For the purpose of clarity and proper understanding of a typical ODR procedure, online arbitration shall be discussed in detail and adopted as a role model in this chapter.

²⁸Petrauskas F. and Kybartiene E. P. 927.

²⁹Manevy 1, Online dispute resolution: What future? (2001), P. 14. Available at [http://thoumyre.chez.com/uni/mcm/17/odr\)Jpdf](http://thoumyre.chez.com/uni/mcm/17/odr)Jpdf) (Last visited 16-08-2019) Also see Petrauskas F. and Kybartiene E. P. 927-928.

³⁰Manevy L. ibid P. 14.

³¹Schuluz, T. Online Arbitration: Binding or Non-Binding? (Interactive).ADR Online Monthly.UMASS. (2002) Last visited on the 14/10/2025

³²Ibid.

1.5 ODR Procedure: Online Arbitration

The procedure used in online arbitration is quite similar to offline arbitration save for the fact that the former takes place on the internet. One leading online arbitration entity is the "internet-ARBitration".

In internet-ARBitration (net-ARB), parties can file their cases free of charge. It prides itself as a world leader in low-cost arbitration.³³ Typically, online arbitration providers resolve disputes relating to e-commerce, domain issues, intellectual property matters and money claims. This online arbitration site has qualified, and industry experienced arbitrators who can adequately resolve any kind of online dispute between parties.

In online arbitration, a party (also known as the claimant) who intends to resolve the dispute via online arbitration, initiates arbitration by filing a statement of claim with the ODR provider specifying relevant facts and remedies requested. The claim is filed at the website of the chosen ODR provider. Online ARBITRATION.net gives a condition precedent to the party filing the arbitration process to provide the telephone number, contact representative and email address of the adverse party and his representative. Failure to meet this condition may result in the case being dismissed or a decision vacated.³⁴ Filing a statement of claim attracts a fee. Filing fees depends on the ODR provider and also the nature of the claim.³⁵ Where prior to the dispute, parties have agreed to resolve their disputes via online arbitration, the agreement shall also be submitted along with the claim. Also, documentary evidence may also be submitted. The documentary evidence can be scanned and attached to a box provided by the ODR provider when initiating a claim. It can also be sent via email.³⁶ In online ARBITRATION, the claim of the claimant must be at least \$5,000 (five thousand dollars)³⁷ or its equivalent in naira.

As soon as the claim is lodged at the website of the ODR provider, the ODR provider then contacts the other party (respondent) with the e-mail address provided by the claimant, informing the respondent of the initiated claim and persuading the respondent to consent to online arbitration. Once the respondent

³³Internet-ARBitration: How net-Arbitration Works. Available on <http://www.net-arb.com/how-arbitration-works.php> 14/10/2025.

³⁴Section 1, **Online ARBITRATION Process Rules**. Available on www.onlinearbitration.net.

³⁵Parties initiating claims under net-ARB will file claims free of charge as filing fees under net-ARB has been completely eliminated.

³⁶Ibid

³⁷See Section 2-2 Online ARBITRATION Process Rules.

consents to online arbitration the respondent will then respond to the arbitration claim by filing at the website of the ODR provider, an answer specifying the relevant facts and available defenses to the claim.³⁸ Afterwards, both parties (claimant and respondent) shall select an arbitrator from the list of potential arbitrators accredited by the ODR provider they have agreed to refer their disputes to. The names of these arbitrators are displayed on the website of the chosen ODR provider. The choice of arbitrators will be made by parties and communication as to choice of mediators will be made through exchange of emails. Jaber³⁹ provided three modes on how online arbitration agreement can be concluded.

- a. Opposite parties announce their consent by referring their dispute to arbitration by email.
- b. Websites selling goods and services put an arbitration clause in the 'terms and conditions' section of their websites. In this part consumers can declare their consent by clicking "I agree" or "I accept" button in a pop-up box on computer screen.
- c. The third mode, cited by UNCITRAL Model Law, where parties refer their disputes through a document containing arbitration clause.

In net-ARB, once the other party (respondent) agrees to arbitrate, the claimant is notified immediately. Parties are sent dates set out for hearing as well as instructions for the hearing thereafter.⁴⁰

During the hearing phase, all testimonies and evidence are given either by email or video conferencing depending on the choice of the parties, arbitrators or ODR provider.⁴¹ Use of the video-conferencing is the most common method in online arbitration. By this device (video- conference), parties can be heard and seen easily and also testimonies of witnesses can be taken.⁴² It is important to state that the technology of video-conference is not only used in online arbitration or any of the ODR mechanisms. Litigation has also subscribed to video- conference. For instance,

³⁸FINRA Arbitration Process. Available at [www.finra.org/ArbitrationAndMediation/Arbitration Process/](http://www.finra.org/ArbitrationAndMediation/ArbitrationProcess/) last visited on 12/10/2025.

³⁹Jaber M.S., Online arbitration: A vehicle for dispute resolution in Electronic Commerce, p.4 Available on [www.academic.edu/1842719/online Arbitration A Vehicle for Dispute Resolution in Electronic Commerce](http://www.academic.edu/1842719/online-Arbitration-A-Vehicle-for-Dispute-Resolution-in-Electronic-Commerce) (last visited 12/10/2025).

⁴⁰Internet-AR Bitration: How net-ARBitration Works.

⁴¹Net-ARB recommends evidence and testimony to be given via email.

⁴²Ibid

the rules of civil procedure in England, Wales, and the US, allow for the use of video-conference during hearing under certain circumstances.⁴³

Once hearing (i.e. giving of testimony and evidence) closes, the arbitrator(s) will close the hearing. The arbitrator(s) will then review all the evidence and issue a written binding decision (called an "Award"). The award explains the arbitrator's reason for deciding the case the way they did. Where parties choose an arbitration panel, the majority of the panel must agree on the outcome.⁴⁴ The award will be communicated to the parties involved via email and/or posting it to the website of the ODR provider.⁴⁵ Time limits for awards range between 4 hours to 30 days.

For instance awards made by the Arbitration Court shall be made available to parties on the institution's website for a period of 30 days from the date upon which the arbitral award was submitted.⁴⁶ International Chamber of Commerce (ICC) in addition to the publication of the award on the website of the case at hand within 60 days, makes a hard copy of the electronic award available to parties for more security.⁴⁷

1.6 Benefits of ODR

ODR confers a number of benefits to online users. Most of these benefits relate to the benefits commonly associated with the traditional ADR. However, there are additional benefits to resolving disputes over the internet. These among others include:

Convenience

One of the most significant benefits of ODR is that it permits communication at a distance thus eliminating the need for traveling and substantially reducing cost.

⁴³See Civil Procedure Rules Part 36, Rule 32.3 or PD 23 by leave of the court, or the US Federal Rules of Civil procedure: Fed. R Civ. P. 43(a). The court may for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location. Also see Homle J. 2003; Online Dispute Resolution - The Emperor's New clothes? Benefits and pitfalls of online Dispute Resolution and its Application to commercial Arbitration. International Review of Law 17(1) P. 4.

⁴⁴Ibid

⁴⁵Schultz, T. Kaufmann-Kohler, G. Langer, D; Bannet, "Online Dispute Resolution: The State of the art and the issues. Available at <http://sson.com/abstract-899079> Last visited 12/10/2025

⁴⁶Section 13 ARBITRATION COURT: **Additional procedures for online arbitration (on-line Rules)**. Available at en.soud.cz/rules/additional-procedures-for-on-line-arbitration-1-june-2004 (last visited 24-08-2025).

⁴⁷Jaberi M.S. op.cit.p.5.

Unlike traditional ADR where parties will have to commute over long distances to resolve their disputes, in ODR, parties can resolve their disputes in the comfort of their homes. All that is needed is a computer that is internet-enabled. Once this is available, disputes can be resolved immediately. In Pappas⁴⁸ view, ODR is faster than a typical trial or even ADR because technology can shorten the distances parties might otherwise need to travel. Another factor showing that ODR is convenient is that websites of some ODR providers are available twenty-four hours a day and seven days a week. Most of these websites work around the clock and so once disputes arise, parties can resolve their issues immediately without having to wait for weeks or months before their case goes to trial.⁴⁹

Also important under convenience is that parties can at the comfort of their homes choose a neutral to aid them in resolving their disputes. Currently, most ODR providers have in their websites list of neutrals (either mediators or arbitrators). Parties involved in the process can choose a neutral by simply profiling the neutrals and selecting the one that is suitable in resolving their disputes.

Low-Cost

Litigation can be very expensive. Similarly, international commercial arbitration is expensive and is not particularly a speedy procedure though it is cheaper than litigation. ODR on the other hand may lead to reduced costs. In many instances, parties engaging in ODR will not have to brief a lawyer at all.⁵⁰ This benefit makes ODR more attractive than traditional ADR. In traditional ADR parties bear all costs. In addition to their travel expenses, parties pay the fees and travel cost of the lawyers and arbitrators. They also incur cost of renting rooms for hearing and deliberation of the award, and the travel costs for any third party involved in the proceedings as an expert or as a witness.⁵¹ With ODR, parties incur very little and at the same time obtain a satisfactory settlement. The mere fact that parties, lawyers, and arbitrators can participate from wherever they are, eliminates travel and related costs.

⁴⁸Pappas B.A, Online Court: Online Dispute Resolution and The Future of Small Claims. UCLA Journal of Law and Technology Volume 12, issue 2.(2008) P.6. Available at www.lawtechjournal.com (last visited on 24-10- 2025.)

⁴⁹Hang L.Q., Online Dispute Resolution Systems: The Future of Cyberspace Law: Santa Clara law Review, vol. 41 No.31 Article 4 4-355. Available at <http://digitalcommons.law.scu.edu/lawreview/vol41/iss3/4> (last visited 20-10-2025).

⁵⁰Ibid

⁵¹Biukovic, L., "International Commercial Arbitration in Cyberspace. Recent Development Northeastern Journal of International Law and Business, Vol.22. Issue 3.(2002), P.340.

Encouraging International Trade

ODR especially arbitration aids international trade by eliminating the geographic obstacles to justice. Email discards the extremely cumbersome need for in-person meetings and constant battling with time zone restrictions.⁵²

Speedy Outcome

ODR provides quick results. In most cases, the whole process can be completed within just a few days after both sides sign the Agreement to Arbitrate.⁵³ ODR, in addition to the above benefits, will enable courts to deliver justice that is all of the following:

- i. affordable for all citizens, regardless of their means;
- ii. accessible especially for citizens with physical disabilities, for whom attendance in court is difficult if not impossible;
- iii. intelligible to the non-Lawyer, so that citizens can feel comfortable in representing themselves and will be at no disadvantage in doing so;
- iv. appropriate for the internet generation and for an increasingly online society in which so much activity is conducted electronically;
- v. speedy - so that the period of uncertainty of an unresolved dispute is minimized;
- vi. consistent - providing some degree of predictability in decisions,
- vii. trustworthy - a forum in which honesty and reliability users can have confidence,
- viii. avoidable with alternative services in place, so that involving a judge is a last resort, and
- ix. proportionate - which means that the costs of pursuing a claim are sensible by reference to the amount at issue.⁵⁴

1.7 Challenges

Despite the benefits of ODR, critics have pointed to a number of challenges and limitations. According to them, although ODR is faster, convenient, flexible and

⁵²Internet-ARBitration: "Benefits of Online Arbitration" Available on www.net-arb.com/arbitration_articles/article.php. 12/10/2025

⁵³Ibid.

⁵⁴Trend Report Online Dispute Resolution Draft: Can Online Dispute Resolution really help courts and provide access to justice, Hill Innovating Justice (2016), P. 5.

voluntary, several hitches in the process have questioned the claim that ODR is a suitable alternative to litigation or traditional ADR. These challenges among others include:

Lack of Face-to-Face Encounter

Critiques of ODR have argued that ODR offers no face to face contact.⁵⁵Eisen has argued that ODR (especially mediation and arbitration) through e-mail loses the dynamics of traditional ADR.⁵⁶ Other authors have opined that the essence of face to face encounter in ADR especially via mediation is that parties are able to vent their feelings and emotions in a more formal setting such as a court room and they are able to look directly in the face of the other party and feel the grievance and loss suffered. This would be very difficult to obtain when parties communicate via computer screens.⁵⁷ In the view of Katsh, there is richness in face to face meetings because interaction can occur quickly and spontaneously and often on a non- verbal level.⁵⁸ According to Hornle, lack of face to face encounter makes it harder for the mediator to establish parties' trust and confidence in the procedure.⁵⁹Manvey has also submitted that without face to face encounter (F2F), the parties may not be satisfied with any settlement that is concluded, regardless of the speed and efficiency of the process.⁶⁰

Despite the challenges of face-to-face encounter posed by ODR, proponents of ODR have come up with solution to the loss of the face-to-face contact. One suitable solution to this challenge is the use of video communication through the internet. This is made possible through the video conference device. According to Manvey, 'face to face' communication is replaced by powerful "screen to screen" communication. This, however, requires mediators to adopt their communication skills from face-to-face interaction to screen-to-screen interaction.⁶¹ Currently, video-conferencing is the preferred technology in ODR. It is almost the same with face-to-face encounters as parties can see themselves, take evidence and reach agreement as though it were a face-to-face arrangement.

⁵⁵Ibid

⁵⁶Eisen JB., Are we ready for mediation in cyberspace? *BYU L. Rev.* 1350, 1998, P. 1312-13.

⁵⁷Katsh, E, The new Frontier Online ADR becoming a global priority, *Dispute Resolution Magazine*, (2000) p.8.Available at www.umass.edu/cyber/katsh_aba.pdf (last visited 12/10/2025).

⁵⁸Ibid

⁵⁹Ibid

⁶⁰Ibid. P. 8.

⁶¹Ibid.

Issues of Confidentiality and Security

Another major challenge facing ODR is the protection of sensitive materials. Several authors have questioned the ability of ODR to keep confidential parties' deliberations and decisions. The major questions posed are "How can one be sure that the data sent and received will not be tampered with and how can one be sure that no unauthorized third party will have access to the information?" One important feature of ADR is "confidentiality" and so once a process shows a high level of confidentiality, a feeling of trust among the parties is sure. Katsh has opined that protecting trust and the discussion process in ADR is very important because parties are more likely to speak freely when they can be sure that their words will not come back to be held against them.⁶² Thus, if one party does not fully trust the other party, the ADR process is in jeopardy.⁶³

The issue of insecurity in ODR is a serious one. There is no guarantee that documents and information can be kept confidential as someone (internet hackers) could easily break into databases of websites, print out and distribute, for example, e-mail communication without their knowledge and consent. According to Jaber, ⁶⁴ lack of security not only weakens confidentiality, which is one of the main principles of ADR, but also makes people reluctant to use ODR to resolve their disputes. However, to overcome this problem, some security measures have been implemented. One such is the digital signature.⁶⁵ The digital signature plays an important role in ensuring the authenticity, integrity and non-repudiation of data communication thus enhancing trust. It is an authentication method that uses public-key cryptography.⁶⁶ Various countries have enacted a law validating digital signatures. One of such countries is the United States of America. In 2001, President Clinton signed into law the Electronic Signatures in Global and National Commerce Act". The Act gives a

⁶²Katsh E., *Dispute Resolution in Cyberspace*, 28 CONN. L. REV (1995), P.971

⁶³*Ibid.*

⁶⁴*Ibid.*

⁶⁵A digital signature takes the concept of traditional paper-based signing and turns it into an electronic "finger print". This finger print or coded message is unique to both the document and the signer and binds them together. Digital signatures ensure the authenticity of the signer. Any change made to the document after it has been signed invalidates the signature, thereby protecting against signature forgery and information tampering.

⁶⁶The public-key cryptography consists of two keys. Private and public keys which is used to secure data communication. A message sender uses the recipient's public key to encrypt a message, to decrypt the sender's message, only the recipient's private key may be used.

signature or record sent through cyberspace the same legal validity as a written document.⁶⁷

Also, to ensure that issue of insecurity of databases in cyberspace is addressed, several countries have enacted laws criminalizing and prohibiting hacking of databases. For instance, in the US, the Digital Millennium Copyright Act (DMCA) was passed into law in 1998. The Act prohibits the circumvention of technological protection measures undertaken by owners of databases. This means that anyone caught circumventing a database without authorization from the owners will be punished in accordance with the Act. With these laws in place, issues of insecurity in cyberspace are minimized and trust for the ODR process alive. Sadly, Nigeria is still yet to have a law prohibiting circumvention of technological prevention measure works.⁶⁸

Another useful technique especially for online arbitration is the "*electronic file management*" software. This is used for complex, large-scale arbitration. The software was invented as an alternative to email since emails cannot guarantee adequate security for online dispute resolution. The electronic file management means that all documents pertaining to the case in question are stored electronically in a systematic order. Electronic file management software permits individual documents or passages to be easily retrieved, displayed or printed, cross-referenced, compared, noted and searched for keywords. Electronic file management is widely used in practice as it is more secured.⁶⁹

Problems with E-Arbitration Agreements

Basically, in traditional arbitration, an arbitration agreement is a written contract in which two or more parties agree to settle a dispute outside court via arbitration. The arbitration agreement is ordinarily a clause in a larger contract. Thus, by signing an arbitration agreement, a party is simply agreeing to arbitration in case of any future dispute.⁷⁰ This definition is not different from e-arbitration agreement. The only thing that separates e-arbitration agreement from traditional arbitration agreement is that a party agrees on-line to resolve disputes via online arbitration. This is simply done in most cases by clicking either "I agree" or "I accept"

⁶⁷Available at <http://www.nileg.state.ng.us/2000/Bill/Plol/116> PDF (last visited 12/10/2025)

⁶⁸There is currently a proposed legislation for amendment of the Copyright Act called "Copyright Act (Amendment) Bill, SB 03° The bill includes provisions prohibiting circumvention of technological measure works

⁶⁹Ibid

⁷⁰Free-Advice: What is an arbitration agreement? Available at <http://law.freeadvice.com/litigation/arbitration/agreement/arbitration.htm>. (Last visited on 12/10/2025).

while filing a consumer agreement form online.⁷¹ Another difference is that while the traditional arbitration agreement is in writing and is signed by parties, e-arbitration is done via internet and so there is no form of writing but a show of consent made possible by simply indicating "I accept" or "I agree". This form has raised so many queries as to the validity of this form of agreement. The question posed is that since the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards also known as New York Convention gives a strict requirement that an agreement be in writing for it to be valid, can an arbitration agreement made online be considered to be in writing? Can it be said to be valid in line with the provisions of the New York Convention? The Convention in Article 2 provides that:⁷²

"Each contracting state shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which may have arisen or which may arise between them in respect of a defined legal relationship".

The second part of Article 2 further holds that:

"the term agreement in writing shall include an arbitral clause in a contract or an arbitration agreement signed by the parties contained in an exchange of letters or telegrams"

The obvious conclusion here is that the New York Convention has not included electronic form as a method of concluding an arbitration contract. Many authors have argued that the Convention is an outdated document which did not foresee unprecedented development of high technology such as the internet as a means of communication. As a result of this, calls have been made for review of the Convention.⁷³ In an attempt to make the provisions of the New York Convention in line with the emergence of technology, Hill⁷⁴ has argued that since the Convention made mention of fax and telegram, email has the same credibility as a fax or telegram.

Interestingly, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce 1996 has resolved this challenge. By virtue of Article 6.1 of the UNCITRAL Model Law on Electronic Commerce, an e-

⁷¹Ibid.

⁷²Article II New York Convention 1958. Available at http://www.arbitration-icca.org/media/0/12125884227980/new-york_convention_of_1958_overview.pdf (last visited 25-08-2025).

⁷³Ibid

⁷⁴Hill R., Online Arbitration: Issues and solutions. 15 ARB Intl (1999) Available at <http://www.umaass.edu/dispute/hill.htm> (last visited 12/10/2025)

arbitration agreement has the same status as the traditional arbitration agreement and thus becomes valid.⁷⁵

As the UNCITRAL made rules to make e-signatures⁷⁶ and e-documents equivalent to paper ones, several countries have followed suit by enacting laws on electronic commerce. For instance, in 1999, US enacted the Uniform Electronic Transaction Act (UETA)) 1999⁷⁷ for e-commerce and the Electronic Signature in Global and National Commerce Act in 2000.⁷⁸ to take care of electronic signatures. Also, Australia enacted the Electronic (Amendment) Act (ETA) 2011 to take care of e-commerce.⁷⁹ New Zealand in 2002 also passed into law the Electronic Transaction Act.⁸⁰ Malaysia followed suit by passing into law the Electronic Commerce Act of 2006⁸¹ to take care of electronic messages in commercial transactions and Malaysia Digital Signature Act of 1997 to take care of e-signature.⁸²

Though Nigeria, currently has no Law on e-commerce or e-signature, however they are accorded recognition by virtue of the Evidence Act 2011 where e-signature falls into the category of computer documents which by virtue of Section 84 of the Nigerian Evidence Act 2011 is admissible in evidence.⁸³ The Act describes a document in Section 258 (1) (d) of the Evidence Act to include "any device by means of which information is recorded, stored or retrievable including computer output". A computer is in turn described to be "any device for storing and processing information and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process" Furthermore, section 86 (3) (d) of the Evidence Act provides that where a number of documents have all been produced by one uniform process as in the case

⁷⁵Article 6(1) of the UNCITRAL Model Law on Electronic Commerce provides: "where the law requires information to be in writing, that requirement is met by a data message if the information contained therein is accessible so as to be usable for subsequent reference"

⁷⁶Article 7 of UNCITRAL Model Law on Electronic Commerce makes e-signatures equivalent to a hand written * signature and admissible as evidence in legal proceedings

⁷⁷Available at <http://www.nileg.state.ng.us/2000/Bills/Plot/116> PDF last visited on 12/10/2025)

⁷⁸Available at <https://www.fdic.gov/regulations/compliance/manual/pdfx-3.1.pdf> (last visited 12/10/2025)

⁷⁹<http://www.comlaw.gov.au/Details/2011A00033> (last visited 12/10/2025).

⁸⁰Available at <http://www.legislation.govt.nz/act/public/2002/0035/latest/whole.html> (last visited 26-08-2025)

⁸¹Available at http://www.commonlii.org/my/legis/consol_act/eca2006_182/longtitle.html (last visited 27-08-2025).

⁸²Digital Signature Act 1997 (ACT 562) Available at http://www.skmm.gov.my/legal/Act_DIGITAL_SIGNATURE-ACT-1997-RIPRINT-2002.aspx (last visited 12/10/2025)

⁸³See Evidence Act 2011.

of printing, lithography, photography, computer or other electronic or mechanical process, each of such documents shall be the primary evidence of the contents of all the documents so produced by this one uniform process. Thus, since electronic signature is made by electronic process, it qualifies as a computer document meaning that it can safely be recognized and accepted in Nigeria as similar to paper documents.

Problems with Enforcement of E-Arbitral Awards

In traditional arbitration, an arbitral award refers to a decision made by an arbitration tribunal in an arbitration proceeding. An arbitral award is similar to a judgment in a court of law.⁸⁴ This definition is similar to electronic arbitral awards save for the fact that in e-arbitral awards, the award is given online (i.e. via electronic means or via the internet). In traditional arbitration, once an award is given, the next step is to enforce the arbitral award. However, an issue lies as to the form of an e-arbitral award. Article 2 of the New York Convention provides that

"To obtain recognition and enforcement, the applicant party shall, at the time of the application, supply duly authenticated originals or duly certified copies of the award and the arbitration agreement"

This simply means that if the original award is not produced, the successful party in the arbitration will not be able to invoke the New York Convention System.⁸⁵ The question now is "How can this requirement of authenticity and originality be reconciled with the online award?" Herboczkowa⁸⁶ suggested that a likely solution to this challenge will be to read Article 4 together with Article 3 of the New York Convention which provides that "the contracting state shall recognize and enforce arbitral awards in accordance with the procedural laws of the territory where the award is relied upon." This simply means that if the state accepts an electronic form of writing there should be no barrier to the enforcement of the electronic award.

Applicable Law and Arbitration Seat

In simple words, the seat of arbitration means place or venue of arbitration. On the other hand, applicable law is the law governing arbitration. Over the years,

⁸⁴USLEGAL: Arbitral Award Law and Legal Definition. Available at <http://definitions.uslegal.com/a/arbitral-award> (last visited on 12/10/2025).

⁸⁵Ibid

⁸⁶Herboczkowa J., Certain aspects of online arbitration. Journal of American Arbitration, vol. 1, No.1, available at <http://www.law.muni.ezishorniky/dp08/files/mezinaro/herboerkovapdf> last visited on 12/10/2025).

there have been difficulties in determining a seat of online arbitration and the applicable law in online arbitration. As regards seat of online arbitration, a solution to this is that parties can determine the seat of arbitration in their agreement. According to Article 20(1) of the Model Law on Arbitration, parties are free to choose the seat of arbitration. Where they fail to reach an agreement as to choice of seat of arbitration, the seat of arbitration shall be determined by the arbitral tribunal.⁸⁷

The solution to the problem of applicable law in online arbitration is similar to that of place of arbitration. What works under here is the principle of party autonomy. By the principle of party autonomy, the parties are free to choose the law applicable to the substance of their dispute. It is only when they fail to make a choice that the arbitration panel can now choose the applicable law. This is virtually the same with international commercial arbitration. In Biukovic's view, international commercial arbitration gives parties the opportunity to shop around for the most favourable law.⁸⁸ Since online arbitration is also by its nature an aspect of international commercial arbitration, it will be safe to adopt the view of Biukovic to online dispute resolution.

Culture and Language Barrier

Being a unique creation of technology, the internet commands interaction between different ethnic groups and race. This is the same for example when it comes to commercial transactions on the internet. Since dispute arising out of e-commerce transactions are inevitable, there comes a challenge with respect to language and culture especially when the dispute is between parties originating from different cultural backgrounds.

For instance, some expressions or idioms may not translate correctly from one party in one country to same in another. According to Helie J. "somebody may dash of quickly an email message without thinking but, recipient can take the message very seriously. This can create misunderstanding and even full-blown arguments.⁸⁹ One solution to this challenge is the use of professional translators and interpreters to assist in communication. The job of interpreter and translator is simply to convert information from one language to another. Another technology used to aid communication here is the use of the "Communication Access Real-time Translation

⁸⁷Please note that seat of arbitration is also called place or venue of arbitration.

⁸⁸Ibid

⁸⁹Helie J. Technology creates opportunities and risks. Cited from Petrauskas.F. and Kybartiene E., 2011 p.

(CART) The CART is a "speech-to-text" device that has emerged in the past decade. With the assistance of this device, spoken words are transcribed into text, either by a live person or by a computer program.⁹⁰ However, writers have criticized this device as been unable to provide accurate translation and contextual interpretation, meaning messages can easily be misunderstood. Any periphery noise, secondary speakers, or unusual inflections can easily lead to confusion. Thus, human interpreters and translators have been recommended as the most suitable.⁹¹

Lack of Regular Supply of Electricity in Nigeria

The epileptic supply of electricity is one of the major challenges to the utilization of ODR in particular and ICT in general in Nigeria.

1.8 Use of ODR by Online Retail Providers

ODR in most Africa states is at initial stage, however Nigeria has taken the first step by the introduction of a UK ADR directive, which is in line with ODR usage, as well as the collaboration of the Lagos Arbitration court, with an online dispute resolution platform for the ease and convenience of filing documents and resolving matters quickly.⁹² The collaboration of the Lagos Arbitration Court with an online dispute resolution platform, no doubt, is an attempt to regulate ODR or to implement it in the judicial process.⁹³

This is against the backdrop that since ODR procedures are broadly considered to be a subcategory of ADR mechanisms, they must meet the existing national regulations for the respective ADR procedures. As arbitral proceedings are subject to domestic arbitration Laws, an Online arbitration would have to comply with these regulations, if the parties were to enjoy the advantages of an arbitral award, i.e. state recognition and international enforcement under the 1958 New York Convention, which currently has 158 parties.⁹⁴Nigeria inclusive. The same applies

⁹⁰L.C. Interpreting Services: Can Digital Devices Replace devices-replace-interpreters. Available at <http://signlanguagenyc.com/can-digital-devices-replace-interpreters> (last visited 12/10/2025).

⁹¹Ibid.

⁹²Ibid

⁹³Ibid.

⁹⁴As at September 2019, the Convention has 161 states parties, which include 158 of the 193 United Nations member states plus the cook island and the state of Palestine: in Dickson Poon, A, Gralf-Peter, C. and Simon, JH. (2019), "Online Dispute Resolution: Conceptual and Regulatory Framework, TL1 Think!, Transnational Law Institute, Kings College, London Research Paper series. TL1 Think paper 22, P. 12

where there are national regulations concerning, for example, mediation or ombudsman schemes.⁹⁵

1.9 Observation

The paper noted that litigation process which is the most recognized and well established form of dispute resolution in Nigeria has not only become stylized, complex, expensive, adversarial in nature and time consuming, but also grossly inadequate to meet every day modern conflicts or disputes, hence, the gradual developments of ADR methods as another window in the sphere of dispute resolution in Nigeria which would offer the public and in particular the businessmen and women the means by which their differences are amicably settled in business-like manner by experts that are experienced and knowledgeable in the subject matter of the dispute in private rather than in the glare of public proceedings in a court of Law

1.10 Recommendation

Need for a comprehensive and independent legal and institutional framework for ODR:

Though, Nigeria had introduced a U.K. Directive, which is in line with ODR usage as well as in collaboration with the Lagos State Arbitration Court with an online dispute resolution platform, the need for a comprehensive and independent legal and institutional framework for ODR to efficiently and effectively regulate its operations cannot be overstressed.

Need for additional clinical instructions;

Legal education, no doubt, is shifting towards more experiential learning. Students can gain valuable real-life experience when they work in a legal clinic. Although some Law schools are starting to make strides in the area, additional clinical instruction in ADR would increase access to justice by providing ADR services to the indigent.

Need to relax the confidentiality provision of ADR:

The confidentiality provision of ADR, to a certain extent needs to be relaxed so that members of the public who are aware of application of its mechanisms will be motivated or prompted to adopt the mechanisms to resolve their disputes.

⁹⁵Ibid

1.11 Conclusion

A relatively new ICT driven application is not only capable of minimizing the administrative frustrations or bottle necks of the courts, standardize, simplify and humanize the legal procedures but also empowers people seeking access to justice to negotiate first and only then to submit unresolved issues to courts, hence, the need to independently clothe the application with legislative framework to effectively regulate its operation in order to effectively enhance access to justice in Nigeria.