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## Mapping China's Online Consumer Dispute Resolution System *Çin'in Çevrimiçi Tüketici Uyuşmazlık Çözüm Sistemini Haritalandırmak*

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# MAPPING CHINA'S ONLINE CONSUMER DISPUTE RESOLUTION SYSTEM

## ÇİN'İN ÇEVİRİMİÇİ TÜKETİCİ UYUŞMAZLIK ÇÖZÜM SİSTEMİNİ HARİTALANDIRMAK

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### ABSTRACT

The Online Dispute Resolution (ODR) system has been designed as a method to achieve Alternative Dispute Resolution (ADR). According to the UNCTAD, ODR has had significant success in China. China has been especially active in promoting the utilization of ODR systems in resolving consumer disputes. Following a thorough analysis of the current mechanisms and practices of consumer ODR in China, this paper endeavours to present two arguments. Firstly, consumer ODR in China is more than a means of moving ADR online. On the one hand, the "Internet Plus" strategy has facilitated the digitalisation of the public sector, including the development of "Smart Courts" and "Digital Government" services. On the other hand, innovative mechanisms implemented by the private sector, such as Crowdsourced ODR and Platform ODR, have effectively provided alternative channels for resolving consumer disputes, in addition to the public channels. Secondly, this article identifies a number of challenges currently facing China's consumer ODR system. These challenges encompass both legal issues and cultural and linguistic diversity concerns.

**Keywords:** Online Dispute Resolution (ODR), Consumer Protection, Dispute Resolution, China Characteristics.

### ÖZET

Çevrim İçi Uyuşmazlık Çözümü (ODR) sistemi, Alternatif Uyuşmazlık Çözümü (ADR) yöntemine ulaşmak amacıyla tasarlanmıştır. UNCTAD'a göre, ODR sistemi Çin'de önemli bir başarı elde etmiştir. Çin, özellikle tüketici uyuşmazlıklarının çözümünde ODR sistemlerinin kullanımını teşvik etmektedir. Çin'deki tüketici ODR sisteminin mevcut mekanizmaları ve uygulamaları kapsamlı bir şekilde analiz edildikten sonra, bu makale iki argüman sunmayı amaçlamaktadır: İlk olarak, Çin'deki tüketici ODR sistemi, alternatif uyuşmazlık çözümlerini çevrim içi hale getirmekten daha fazlasıdır. Bir yandan "Internet Plus" stratejisi, kamu sektörünün dijitalleşmesini kolaylaştırmış, "Akıllı Mahkemeler" ve "Dijital Devlet" hizmetlerinin geliştirilmesine yol açmıştır. Öte yandan, özel sektör tarafından uygulanan yenilikçi mekanizmalar, Crowdsourced ODR (Kitle Kaynaklı ODR) ve Platform ODR gibi, kamu kanallarına ek olarak tüketici uyuşmazlıklarını çözmek için alternatif kanallar sağlamıştır. İkinci olarak, bu makale, Çin'in tüketici ODR sisteminin şu anda karşı karşıya olduğu bir dizi zorluğa işaret etmektedir. Bu zorluklar, hem yasal sorunları hem de kültürel ve dilsel çeşitlilikle ilgili sorunları kapsamaktadır.

**Anahtar Kelimeler:** Çevrim İçi Uyuşmazlık Çözümü (ODR), Tüketicinin Korunması, Uyuşmazlık Çözümü, Çin'in Özellikleri.

## 1. INTRODUCTION

As one of the largest consumer markets in the world, China has a complex consumer protection system. The rapid acceleration of economic and information and communications technology, coupled with the exponential growth of the e-commerce economy, has led to a surge in China's demand for ODR models. ODR has been promoted in a multitude of domains pertaining to consumer dispute resolution, including digital government affairs, non-litigation dispute resolution, and judicial trials in China.<sup>1</sup> This encompasses a range of services designed to protect consumer rights, including consumer rights protection service stations, green channels for rights protection, third-party dispute resolution mechanisms, and other means of negotiating with operators to resolve consumer rights disputes.<sup>2</sup> Moreover, China's historical tradition of "aversion to litigation"<sup>3</sup> has contributed to the development of ODR. As reported by UNCTAD, ODR has achieved considerable success in China due to the rapid advancement of technology.<sup>4</sup>

Since the beginning of the 21st century, ODR has undergone significant evolution in China. The internal dispute resolution mechanisms of e-commerce platforms represented the earliest and most developed ODR mechanisms. Subsequently, ODR mechanisms have evolved to include the intervention of a neutral third party, and finally to judicial intervention.<sup>5</sup> The advent of the Internet has led to the emergence of private ODR as the primary choice of consumers, in contrast to judicial ODR.<sup>6</sup> As of December 2023, the number of Internet users in China has reached 1.092 billion, representing an increase of 24.8 million from December 2022. The Internet penetration rate has reached 77.5%.<sup>7</sup> In comparison to traditional administrative mediation methods, the ODR mechanism exhibits a faster average processing time of 14 days and a success rate of settlement that is 11.25% higher.<sup>8</sup>

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<sup>1</sup> Han Xuanyao (韩焜尧), 'On China's Online Dispute Resolution Mechanism (ODR) (论中国的线上纠纷解决机制 (ODR))' 2021 (2) *Journal of Capital Normal University (Social Science Edition)* (首都师范大学学报(社会科学版)) 70, 73.

<sup>2</sup> Provisional Measures for the Handling of Complaints and Whistleblowing Reports on Market Regulation (Amended for the Second Time in 2022) (市场监督管理投诉举报处理暂行办法(2022第二次修正)) 2022, art 6.

<sup>3</sup> Benjamin L. Liebman, 'Ordinary Tort Litigation in China: Law versus Practical Justice?' 13 *Journal of Tort Law* 197 (2020) 222.

<sup>4</sup> 'Consumer Trust in the Digital Economy: The Case for Online Dispute Resolution' (2021) UNCTAD Research Paper No. 72 UNCTAD/SER.RP/2021/15 <[https://unctad.org/system/files/official-document/ser-rp-2021d15\\_en.pdf](https://unctad.org/system/files/official-document/ser-rp-2021d15_en.pdf)> accessed 18 July 2024.

<sup>5</sup> Li Wanlu (李婉露), 'Research on Online Dispute Resolution Mechanism from the Perspective of Consumer Rights Protection (消费者权益保护视角下的线上纠纷解决机制研究)' (2022) *China Foreign Affairs University (外交学院)* 13.

<sup>6</sup> Wang Qi (王琦), 'On the Connection Issues of China's Online E-commerce Dispute Resolution Mechanism (论我国电子商务纠纷在线解决机制的衔接问题)' (2023) *Nanchang University (南昌大学)* 16.

<sup>7</sup> 'The 53rd Statistical Report On China's Internet Development (第53次中国互联网络发展状况统计报告)' China Internet Network Information Centre (22 March 2024) 1 <<https://www.cnnic.net.cn/n4/2024/0322/c88-10964.html>> accessed 18 July 2024.

<sup>8</sup> 'Promoting online settlement of consumer disputes, The average processing time is accelerated by about 14 days' (推进消费纠纷在线解决 平均处理时长提速约14天) *Xinhua News* (15 March 2023) <[https://www.gov.cn/fuwu/2023-03/15/content\\_5746725.htm](https://www.gov.cn/fuwu/2023-03/15/content_5746725.htm)> accessed 18 July 2024.

ODR development has presented the following trends in China. Firstly, ODR platforms have undergone diversification, and greater alignment with legal requirements. Secondly, ODR methods are evolving in a consumer-friendly and innovative manner. Thirdly, ODR is being applied to a growing number of global e-commerce cases. Fourthly, ODR has influenced the reform of the traditional court system and the traditional litigation procedures.<sup>9</sup>

The year 2024 marks the 30th anniversary of the enactment of China's Consumer Rights Protection Law (CRPL)<sup>10</sup> and the promulgation of the Implementation Regulation of the CRPL (IRCRPL).<sup>11</sup> In this historical moment, this article aims to provide a comprehensive examination of China's consumer ODR, focusing on the following key areas. The initial step is to analyse the major participants in current consumer ODR practices. The second aspect to be addressed is the methods to be adopted in consumer ODR mechanisms. The third section of this article is devoted to an analysis of the efficacy of various ODR mechanisms in addressing consumer disputes. The final section will inquire into the challenges and opportunities currently facing China's consumer ODR sector.

## 2. FIVE PARTICIPANTS OF CONSUMER ODR

The objective of this section is to illustrate the manner in which the various participants interact and fulfil their respective roles within the context of consumer ODR mechanisms. In addition to the parties to the dispute, namely the consumers and the business operators, three other participants are illustrated in Chart 1 below: the neutral third parties, the technology, and the ODR platforms with different organizers. The subsequent sections will provide a more detailed analysis of each participant.

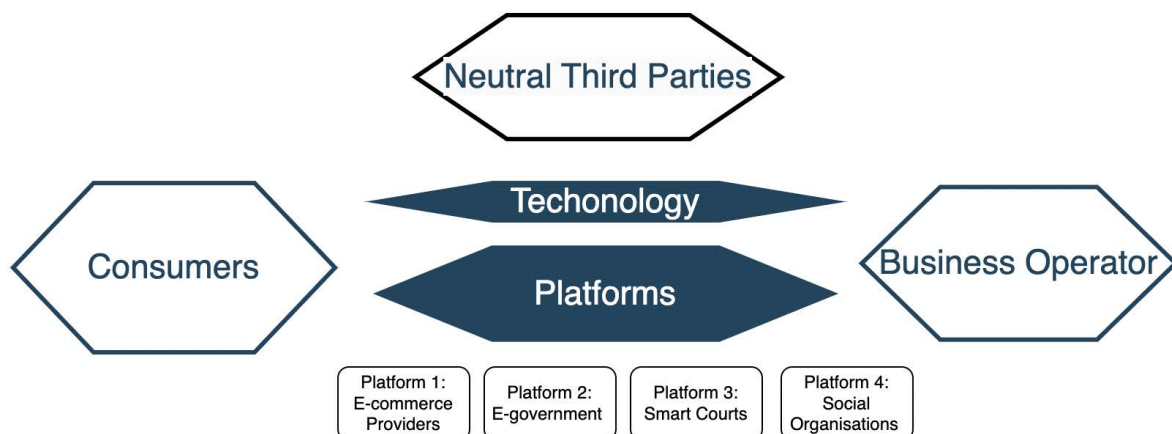


Chart 1: Participants of Consumer ODR in China

<sup>9</sup> Long Fei (龙飞), 'Overseas Comparison and Reference of Alternative Dispute Resolution Mechanism Legislation (替代性纠纷解决机制立法的域外比较与借鉴)' (2019) 1 *Journal of China University of Political Science and Law* (中国政法大学学报) 81, 84.

<sup>10</sup> Consumer Rights and Interests Protection Law of the People's Republic of China (Amended) (CRPL) (中华人民共和国消费者权益保护法) 2014.

<sup>11</sup> Implementing Regulation for the Law of the People's Republic of China on the Protection of Consumer Rights and Interests (中华人民共和国消费者权益保护法实施条例) 2024 (IRCRPL).

## 2.1. CONSUMERS AND BUSINESS OPERATORS

For ODR to be effective, it is essential that both parties be identifiable. According to the CRPL, consumers are persons who purchase and use goods or services for daily consumption.<sup>12</sup> Business operators are people who provide consumers with goods or services that they produce or sell.<sup>13</sup> One challenge is that it may be difficult to determine the identity of the defendant due to the concealment of network subjects. In addition, the growth of global e-commerce has made this task more complex.

## 2.2. NEUTRAL THIRD PARTIES

The third party comprises mediators, arbitrators, and judges, among others. They face distinct challenges when compared to ODR. Primarily, they must possess the technical ability to effectively manage online meetings, select the most appropriate communication tools, and guide the parties to focus on the disputed issues. Secondly, the techniques that third parties are accustomed to using in face-to-face conversations may prove challenging to apply in an ODR process. Thirdly, it is difficult to establish and maintain trust with all parties, particularly when the identity of the other party is anonymous.

## 2.3. TECHNOLOGY AS THE FOURTH PARTY

The role of technology in ODR is of great importance. Technology serves not only as a communication tool but also as a means of reconstructing the dispute resolution mechanism based on Internet thinking. For technology to be effective in ODR, it must be impartial and not biased toward one party in a dispute. Unfortunately, in the era of algorithms, technology has been used by business developers as a tool to take advantage of consumers. Due to technological barriers, consumers are unable to discover or challenge the impartiality of the technology. Furthermore, technology should be used in a way that minimizes costs and increases efficiency compared to traditional dispute resolution methods.

## 2.4. ODR PLATFORM AS THE FIFTH PARTY

ODR platforms are classified into the following categories:

### 2.4.1. ODR Platforms Organized by E-commerce Providers

The E-commerce Law (ECL)<sup>14</sup> permits E-commerce platform operators to establish an ODR mechanism, formulate and announce dispute resolution rules, and resolve disputes between e-commerce participants fairly and equitably in accordance with voluntary participation principle.<sup>15</sup> Alibaba has been the pioneer in developing two types of ODR mechanisms. The yellow parts of the diagram below indicate Alibaba-generated ODR mechanisms.

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<sup>12</sup> CRPL art 2.

<sup>13</sup> CRPL art 3.

<sup>14</sup> E-commerce Law of the People's Republic of China (中华人民共和国电子商务法) 2019.

<sup>15</sup> ECL art 63.

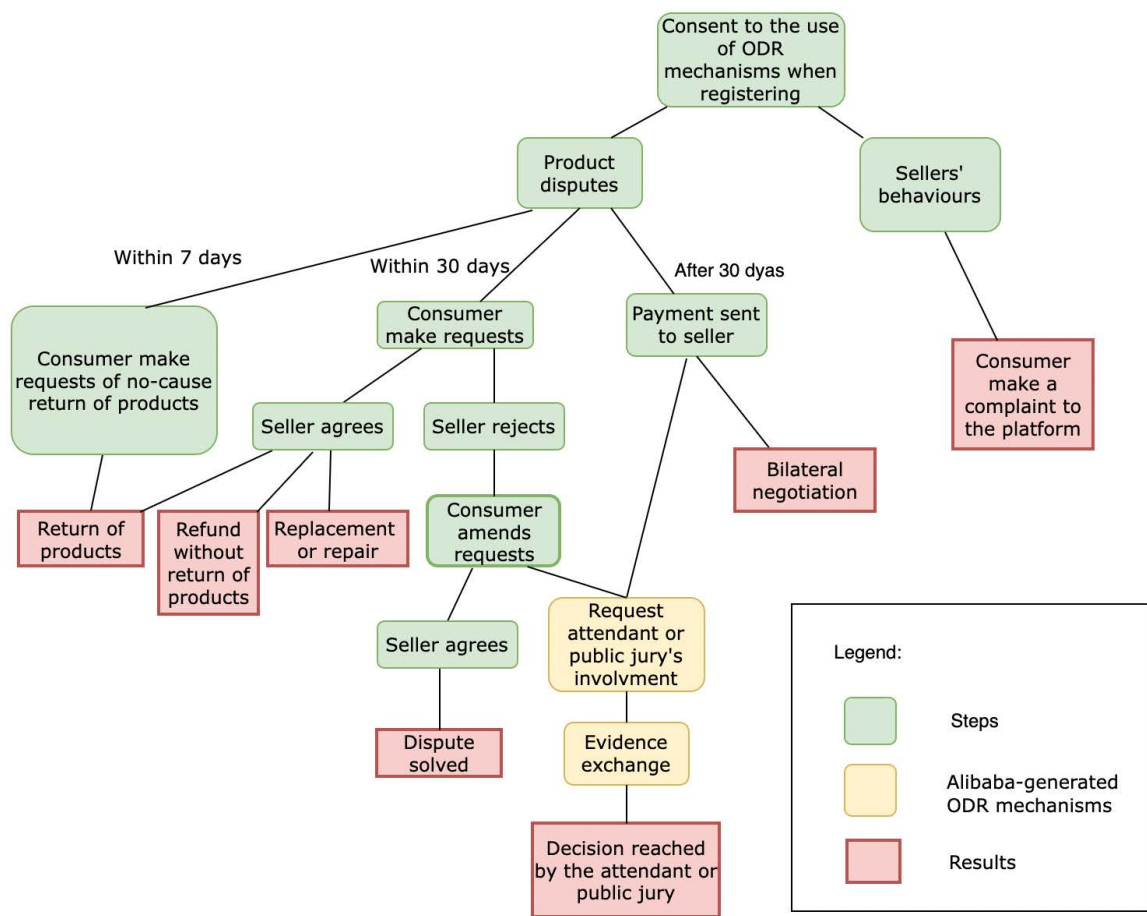


Chart 2: Full procedures for resolving customer disputes with Alibaba<sup>16</sup>

*Platform ODR with professional jury as the third party.* Alibaba has employed professional dispute adjudicators, designated as ‘attendants,’ to address customer-seller disputes in their respective professional capacity. This model has been the subject of criticism on the grounds that the power of the attendants has been abused for personal gain, and that a significant number of sellers have lodged complaints about the results of the handling.

*Crowdsourced ODR with public jury as the third party.* In order to address the issues that arise from the actions of attendants, Alibaba has introduced a public jury system to supplement the role of attendants. The public jury is comprised of Alibaba members who have been selected according to their credit score, membership period, and review quality assessment. This ensures that the jury members possess both strong judgment abilities and high moral standards. The public jury reaches a decision by voting. This model is also referred to as crowdsourced ODR (CODR), which is defined as the transfer of tasks that would otherwise be performed by dedicated personnel to a non-specific group of people to complete them on a voluntary basis.<sup>17</sup>

<sup>16</sup> This chart is drawn based on Taobao Platform Dispute Resolution Rules (淘宝平台争议处理规则) 2023. Taobao is the largest mobile commerce platform in China and is owned by the Alibaba Group.

<sup>17</sup> Zhou Xiang (周翔), ‘Description and Explanation: Dispute Resolution Mechanism of Taobao—China’s Experience and Observation of ODR (描述与解释: 淘宝纠纷解决机制)’ 2021 24(140) Journal of SJTU (Philosophy and Social Science)(上海交通大学学报(哲学社会版)) 97, 102.

### 2.4.2. ODR Platforms Organized by the Government

The State Administration for Market Regulation (SAMR) has established the 12315 platform for collecting violations and facilitating mediation.

*The 12315 Platform.* The SAMR facilitates the establishment of ODR mechanisms through the national 12315 platform.<sup>18</sup> Currently, 114,000 businesses that have implemented ODR have utilized the national 12315 platform to resolve 3.09 million disputes with consumers.<sup>19</sup> The three-in-one model of enforcing ODR—guidance, supervision, and demonstration—has gradually established a new pattern of consumer rights protection co-governance. Shanghai has pioneered the real-time sharing of complaints with pilot ODR enterprises, with the efficiency of ODR operations ranking at the top in China. Fujian has effectively integrated the ODR mechanism with the dissemination of consumer complaints, resulting in a notable reduction in the number of complaints in key industries. Hainan has successfully implemented the ODR mechanism in the field of duty-free goods, addressing key issues such as the return and exchange of duty-free goods, airport pick-up, product quality, and packaging damage.<sup>20</sup>

### 2.4.3. ODR Platforms Organized by Courts

Some local courts have established ODR platforms, including one-stop ODR platforms and Internet courts.

*The 'Internet + Judicial' trial mechanism.* The 'Internet + Judicial' trial mechanism represents a significant reform of the multiple dispute resolution mechanism initiated by the Supreme People's Court (SPC) in 2004.<sup>21</sup> The Jilin Province Internet Court established in 2015<sup>22</sup> represents a significant advancement in the field of litigation, encompassing the entire process from online filing to online execution. This innovative approach represents a key milestone in the evolution of data-centred People's Court Informatization 4.0.<sup>23</sup> The Hangzhou Internet Court, on the other hand, has pioneered the use of digital technology in resolving disputes related to online payments, copyright, and transactions in 2017.<sup>24</sup> As of June 2019, the 'smart court' system that handles all cases online, discloses all proceedings

<sup>18</sup> 'SAMR is Promoting the Establishment of An ODR Mechanism (市场监管总局推进在线消费纠纷解决 (ODR) 机制建设)' CCTV News (22 March 2021) <<http://m.news.cctv.com/2021/03/22/ARTI3BYrgBXoPGUtZP0D-N0nW210322.shtml>> accessed 18 July 2024.

<sup>19</sup> Xinhua News (n 8).

<sup>20</sup> CCTV News (n 15).

<sup>21</sup> Second Five-Year Reform Outline of the People's Courts (2004-2008) (人民法院第二个五年改革纲要 (2004-2008)), 26 October 2005.

<sup>22</sup> 'Dialogue with the President of Jilin High Court: Why E-Court Takes Root in Jilin? (对话吉林高院院长: 电子法院缘何率先在吉林生根)' Jilin Court Website (5 November 2021) <<http://jlfy.e-court.gov.cn/article/detail/2015/11/id/1740982.shtml>> accessed 18 July 2024.

<sup>23</sup> Promoting the Transformation and Upgrading of Smart Court Construction in Jilin (推动吉林智慧法院建设转型升级) Jilin Court Website (24 June 2021) <<http://jlfy.e-court.gov.cn/article/detail/2021/06/id/6107968.shtml>> accessed 18 July 2024.

<sup>24</sup> China's first Internet court settled in Hangzhou (全国首家互联网法院落户杭州) *The Paper* (18 August 2017) <[https://www.thepaper.cn/newsDetail\\_forward\\_1767410](https://www.thepaper.cn/newsDetail_forward_1767410)> accessed 18 July 2024.

in accordance with the law, and provides all-round intelligence services has been largely developed.<sup>25</sup>

#### 2.4.4. ODR Platforms Organized by Social Organisations

Social organisations are actively engaged in providing ODR services.

*China ODR Centre.* The organisation was established by the government in 2004 with the objective of resolving disputes related to e-commerce. Its services encompass online arbitration, online mediation, and online reconciliation. It is the inaugural provider in China to offer a comprehensive range of online dispute resolution mechanisms.<sup>26</sup> Unfortunately, its operations experienced a decline following 2005.

*ODRC of the CIETAC.* The China International Economic and Trade Arbitration Commission (CIETAC) has established an Online Dispute Resolution Centre (ODRC),<sup>27</sup> which has been actively involving ODR. The centre's focus is on domain name disputes. The types of disputes it handles focus on domain name disputes, including cybersquatting disputes over domain names, generic URLs, wireless URLs and SMS URLs.<sup>28</sup> In addition, CIETAC has established an Asia-Pacific Economic Cooperation (APEC) ODR Service Platform to provide ODR services with a fully online process of negotiation, mediation and arbitration to resolve B2B cross-border commercial disputes, especially between micro, small and medium enterprises (MSMEs), in accordance with the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes.<sup>29</sup>

### 3. METHODS OF CONSUMER ODR

Part II offers a static explanation of consumer ODR mechanisms. The objective of this part is to introduce prevalent methods that are utilized in China to achieve consumer ODR.

#### 3.1. ONLINE NEGOTIATION

It is possible for consumers to engage in direct online negotiations with business operators without the necessity of meeting in person. Once a dispute has been identified, the final step is to reach a dispute resolution agreement in order to resolve the dispute.

#### 3.2. ONLINE MEDIATION

Consumers and business operators have the option of engaging a neutral third party to facilitate mediation. The goal of this process is to reach a mutually agreeable resolution to the dispute in question. Third-party platform intervention can be divided into two distinct

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<sup>25</sup> SPC (中华人民共和国最高人民法院) (ed), *Chinese Court and Internet Judiciary* (中国法院的互联网司法), (Beijing: People's Court Press (北京:人民法院出版社) 2019) 4.

<sup>26</sup> People.cn (人民网), 'The construction path of online settlement mechanism for online transaction disputes (网络交易纠纷在线解决机制的构建路径)' <<http://media.people.com.cn/n1/2017/0913/c414310-29533782.html>> accessed 18 July 2024.

<sup>27</sup> ODRC of the CIETAC <<http://odr.org.cn>> accessed 18 July 2024.

<sup>28</sup> CIETAC, <<http://www.cietac.org>> accessed 18 July 2024.

<sup>29</sup> APEC ODR SERVICE, <<https://casettle.odrcloud.cn/CIETAC.html>> accessed 18 July 2024.



models: the traditional third-party mediator management model and the government-authorized mediation model. The former refers to the traditional way of engaging a mutually trusted and respected party as a mediator, such as the China Consumers Association (CCA). The latter refers to the increasingly widespread use of third-party online platforms for online mediation. For example, Sina.com successfully operates a platform to collect consumer complaints and engage in online mediation.<sup>30</sup>

### 3.3. ONLINE ARBITRATION

Online arbitration refers to a process that employs information technology (IT) in conjunction with established arbitration procedures, thereby enabling a majority or even all the arbitration procedures to be completed online. Online arbitration may be divided into two categories according to whether the resulting award can be recognized and enforced by the court. These are binding online arbitration and non-binding online arbitration. The former is an extension of traditional arbitration in the online environment, whereas the latter represents one of the innovations of online dispute resolution mechanisms in the field of dispute resolution.

### 3.4. ONLINE LITIGATION

In online litigation, all court hearings and related litigation actions are conducted through electronic communication methods, including audio, video conferencing, online video conferencing, and network transmission methods, etc. Online litigation platforms may take the form of e-courts and Internet courts.<sup>31</sup> China's Internet Court adheres to the 'online hearing of online cases' approach, emphasizing the non-in-person nature of the litigation method and the Internet as a source of jurisdiction. In addition to emphasizing the non-in-person litigation method, the jurisdiction must also be Internet-based.<sup>32</sup>

## 4. EVALUATIONS OF THE CURRENT CONSUMER ODR

The intrinsic Internet and cross-border characteristics of ODR present a multitude of opportunities and challenges for its development. This section endeavours to analyse the opportunities and challenges that ODR will face in China as a consequence of the country's rapid economic and technological development.

### 4.1. ADVANTAGES

The advantages of ODR are unparalleled when compared to traditional dispute resolution mechanisms.

*Flexibility.* ODR permit parties to participate in the dispute resolution process any-

<sup>30</sup> Black Cat Complaints, Sina. Com, <<https://tousu.sina.com.cn>>, accessed 18 July 2024.

<sup>31</sup> Zhang Xingmei (张兴美), 'Conceptual Basis and Application Path of the Construction of Electronic Litigation System (电子诉讼制度建设的观念基础与适用路径)' 2019 (5) Political and Legal Forum (政法论坛) 117, 121.

<sup>32</sup> Hu Shihao (胡仕浩), He Fan (何帆) & Li Chengyun (李承运), 'Understanding and Application of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases by Internet Courts (《最高人民法院关于互联网法院审理案件若干问题的规定》的理解与适用)', (2018) 4 People's Court News (人民法院报) 28, 30.

mously. This allows the parties to engage in dispute resolution even when there is a lack of trust and a willingness to have face-to-face contact. In addition, dispute resolution professionals have the flexibility to consider the social impact and needs of both parties and to choose a solution that is acceptable to both parties and to the general public who may face similar situations. In this way, ODR could reduce the rigidity of applying legal procedures.<sup>33</sup>

*Cost-benefit efficiency.* ODR strives to achieve efficiency while maintaining fairness. As the lag, complexity, and high cost of traditional dispute resolution mechanisms become increasingly inadequate in meeting the public needs for dispute resolution, ODR frees a significant number of people from the constraints of traditional procedures, thereby enhancing the efficiency of case handling. Because of its cost-saving and time-saving benefits, ODR has increasingly raised the level of satisfaction among deposed parties.<sup>34</sup>

*Sharing of resources.* ODR platforms can facilitate the reasonable allocation and resource sharing of legal and non-legal resources, official and private resources. First, ODR can actively mobilize the participation of social forces, such as private mediation organisations, administrative mediation organisations, industry experts, lawyers, psychologists, and social workers, to provide parties with more options of dispute resolution channels. Secondly, it has become evident that the dispute resolution functions of businesses and independent third parties can be optimally utilized. Thirdly, the advent of smart courts has become a significant component of ODR. The overarching six-in-one ODR construction objective of ‘online mediation, online case filing, online judicial confirmation, online court hearings, electronic supervision, and electronic service’<sup>35</sup> has facilitated the sharing of resources.

## 4.2. DEFECTS

The intrinsic qualities of technology and the nascent state of ODR legislation have resulted in a number of inherent defects in the current ODR mechanisms.<sup>36</sup>

*Lack of uniform standards.* Currently, only ODR mechanisms established by courts and the ODRC of CIETAC are accompanied by normative guidance. However, other ODR platforms develop in reliance on private entities, with their rules varying with regard to normative standards.

*Concerns about information security and confidentiality.* ODR systems automatically record and collect information on online disputes. Furthermore, the use of online communication channels has the potential to exacerbate existing levels of distrust between parties.

<sup>33</sup> Xu Qing yong (许庆永), ‘An Expression of Justice in Online Dispute Resolution (在线纠纷解决的正义表达)’ 2024 (2) *Journal of East China University of Political Science and Law* (华东政法大学学报) 83, 84.

<sup>34</sup> Chen Yifan (陈怡帆) & Nie Hongtao (聂洪涛), ‘China’s Dispute Resolution Mechanism in the Age of Digital Intelligence—From ADR to ODR (数智时代我国纠纷解决机制—从ADR到ODR)’ 2024 (4) *Technology Think Tank* (科技智囊) 54, 58.

<sup>35</sup> SPC, Provisions on Several Issues Concerning the Online Handling of Cases by People’s Courts (Draft for Comment) (关于人民法院在线办理案件若干问题的规定(征求意见稿)) 2021.

<sup>36</sup> Huang Mengyi (黄梦仪), ‘Operation Mechanism and Features of ODR (ODR的运行机制与特点)’ (19 January 2021) <<http://lti.ruc.edu.cn/sy/xwdt/wlfdsh/3cc7b32dd95a4d0c847368a49cf88bd6.htm>> accessed 18 July 2024.

*Weak efficacy.* The majority of agreements formed under this process are not legally binding, which is in stark contrast to the *res judicata* and enforceability of court judgments.

## 5. THE FUTURE OF CONSUMER ODR

The intrinsic Internet and cross-border characteristics of ODR present a multitude of opportunities and challenges for its development. This section endeavours to analyse the opportunities and challenges that ODR will face in China as a consequence of the country's rapid economic and technological development.

### 5.1. OPPORTUNITIES

#### 5.1.1. Cross-border E-commerce

ODR is inextricably linked to the advancement of cross-border e-commerce, which has demonstrated a sustained and robust growth trajectory. In the first quarter of 2024, the value of cross-border e-commerce imports and exports reached 577.6 billion yuan, representing a 9.6% increase compared to the same period in 2023.<sup>37</sup> In 2019, the United Nations Conference on Trade and Development (UNCTAD) and the China Silk Road Group entered into an agreement to facilitate ODR for consumers in Southeast Asia.<sup>38</sup> The agreement stipulates that the two parties will collaborate to develop an ODR mechanism tailored to cross-border e-commerce. Additionally, they will utilize blockchain technology to construct a platform for evidence storage and production for cross-border e-commerce.

#### 5.1.2. Application of Artificial Intelligence.

The rapid development of artificial intelligence (AI) has led to more opportunities for ODR. AI can assist in describing disputes using structured data and matching them with appropriate ODR methods based on the type of dispute. Additionally, advances in technology enable faster and more accurate predictions of dispute outcomes. Furthermore, technology can be utilized to guide consumers in future transactions by providing risk warnings, case references, legal opinions, and dispute resolution services.<sup>39</sup>

#### 5.1.3. The Consumer Protection Co-Governance Strategy

The recently implemented *Consumer Protection Co-Governance Strategy* will facilitate the advancement of consumer ADR. To enhance the system of socialism with Chinese characteristics, the CPC has recently prioritized *Co-Governance* in its policy goals. In 2022, President Xi Jinping has stressed the need to improve the *Social Co-Governance System* through the leadership of the Party, the responsibility of the government, the coordination of society,

<sup>37</sup> 'Developing Rapidly! China's Cross-border E-commerce Imports and Exports Increased by 9.6% In the First Quarter (发展迅速! 一季度我国跨境电商进出口增长9.6%)' CCTV News (17 April 2024) <<https://news.cctv.com/2024/04/17/ARTI87aoxh5JQUPFAH2VRMar240417.shtml>> accessed 18 July 2024.

<sup>38</sup> 'Partnership to Deliver Online Dispute Resolution to Consumers' UNCTAD (11 July 2019) <<https://unctad.org/news/partnership-deliver-online-dispute-resolution-consumers>> accessed 18 July 2024.

<sup>39</sup> Long Fei (龙飞) (n 9).

the participation of the public and the safeguarding of the rule of law.<sup>40</sup> In 2024, the newly promulgated IRCRPL mandates that *Consumer Protection Co-Governance* should involve business operators' compliance with the law, industry self-discipline, consumer participation, government supervision, and social supervision.<sup>41</sup>

China's co-governance strategy is characterized by the dominance of public powers, with the CPC leadership preceding government enforcement. Consequently, the quasi-government status of consumer associations can play a pivotal role in linking public powers and private participants. They are able to utilize administrative resources that are backed by state coercion, forming a powerful deterrent to the interests of both parties to the dispute, particularly the operators. Consumer associations may facilitate more effective information-sharing when private powers are unable to resolve disputes. This is particularly beneficial for non-judicial ADR award enforcement, as consumer associations can leverage the potential threat of administrative power to persuade operators to accept mediation plans when one party is unwilling to compromise due to its superior position.<sup>42</sup>

## 5.2. CHALLENGES

The current challenges facing the use of ODR in China can be classified into two distinct categories. This section presents an analysis of these issues from both a legal and a social science perspective.

### 5.2.1. Addressing Legal Issues in Implementing Consumer ODR

*Unguaranteed right to safety.* Unguaranteed right to safety. The current scope of the ODR mechanism mainly covers monetary disputes between consumers and operators. However, it does not cover violations of personal health and safety.

*Risk of lack of impartiality of third-party platforms.* Unfairness is mainly concentrated in non-judicial ODR, where the platform offers small profits to consumers in exchange for positive reviews by unfairly resolving disputes in order to remain attractive to consumers. Although a small number of consumers are actually protected in the process, the fundamental value of fairness and impartiality is at stake.<sup>43</sup>

*The application of artificial intelligence.* First, AI has a weak foundation due to the inadequacy, objectivity, and lack of structure of legal big data. The inadequacy of legal data is due to the fact that published judgments do not include all the judgment documents of completed cases, resulting in incomplete data analysis. Second, the emphasis on "algorithms" and machine evaluation can lead to errors in judgment. There is a risk of problems such as algorithmic black boxes, algorithmic divisiveness, and algorithmic dictatorship if all judicial decisions are left to algorithms. Third, the excessive pursuit of technological substi-

<sup>40</sup> Xi Jinping, *The Governance of China IV* (Beijing: Foreign Languages Press, 2022).

<sup>41</sup> CRPL art 3.

<sup>42</sup> Wu Weijun (吴卫军) & Wang Jianping (王建萍), 'Consumer Associations in the Perspective of Dispute Resolution-Analysis From An Empirical Perspective (纠纷解决视域中的消费者协会)' (2008) 4 *Journal of Yunnan University (Law Edition)* (云南大学学报 (法学版)) 90, 94.

<sup>43</sup> Li Wanlu (n 5).

tution can lead to technological obscurantism. The result of logical calculation deprives the parties of their right to know and their right to choose, and weakens the sense of participation in the process.<sup>44</sup>

*Determination of Arbitration Agreements for Online Transactions.* First, traditional arbitration agreements must be in writing. However, arbitration agreements are signed in online formats during online transactions and there is no guarantee that consumers actually know the content and effectiveness of the arbitration agreement. This leads to difficulties in determining the validity of an arbitration agreement.<sup>45</sup> Second, the parties to an arbitration agreement must have the full capacity to act in civil law. However, online operators establish contact with consumers through electronic data exchange, and they cannot guarantee that their consumers have full civil capacity. Third, a large number of consumer disputes are kept out of the courts through the use of standard arbitration clauses. Although consumers question the inequality created by standard arbitration clauses that make the dispute un-arbitrable, courts have upheld the validity of standard arbitration clauses.<sup>46</sup> Forcing consumers out of court and into arbitration would impose unreasonable costs on consumers.

*Difficulty in promoting small claims arbitration.* There is presently an absence of awareness among consumers as regards arbitration procedures for minor disputes. Although the CCA data indicates a rapid increase in consumer consultations and consumer complaints, small claim consumers tend to remain silent due to the high costs and procedural complexity involved, which ultimately results in the infringement of their rights. On the one hand, China lacks a mature system for the efficient resolution of small-claim disputes. On the other hand, although relevant systems have been explored and the system construction has been generally improved, there has been a lack of sufficient and effective explanations and publicity.<sup>47</sup>

*Legal enforceability of non-judicial ADR awards.* As previously discussed in Part IV, it is important to note that, with the exception of awards reached through judicial ADR mechanisms, all other ADR mechanisms provide non-legally binding outcomes. The enforcement of non-judicial ADR awards ultimately depends on the voluntariness and ethics of business operators. This creates a certain level of uncertainty and distrust among consumers regarding non-judicial ADR.

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<sup>44</sup> Long Fei (龙飞), 'Application and Development of Artificial Intelligence in the Field of Dispute Resolution (人工智能在纠纷解决领域的应用与发展)' (2019) 37(1) *Legal Science (Journal of Northwest University of Political Science and Law)* (法律科学(西北政法大学学报)) 54, 55.

<sup>45</sup> Huang Hong (黄弘), 'Research on the Effectiveness of Online Consumer Arbitration Agreements (网络消费仲裁协议效力研究)' (2022) *South China University of Technology* (华南理工大学) 15.

<sup>46</sup> Beijing Fourth Intermediate People's Court (2019) Jing 04 Min Te No. 21 Civil Ruling (北京市第四中级人民法院 (2019) 京04 民特21 号民事裁定书) (dismissal of a claim of invalidity of a standard arbitration clause relating to shared housing); Beijing Fourth Intermediate People's Court (2020) Jing 04 Min Te No. 557 Civil Ruling. (北京市第四中级人民法院 (2020) 京04 民特557 号民事裁定书) (dismissal of claim of non-arbitrability of dispute over shared bicycles).

<sup>47</sup> Xu Yan (徐燕), 'Dilemmas and Solutions for Small-claim Arbitration (小额消费仲裁的困境与出路)' (2021) *Southwest University of Political Science and Law* (西南政法大学) 28.

*Design and construction of the top-level system for judicial ADR.* The current judicial ADR model is primarily a one-stop, all-encompassing approach. However, it lacks a more refined and categorical approach for consumer-related disputes, such as those pertaining to commercial, medical, financial securities, and intellectual property rights.<sup>48</sup>

### **5.2.2. Addressing Cultural and Linguistic Diversity Issues in Consumer ADR**

In light of the accelerated growth of online consumer markets and cross-border e-commerce, it is becoming increasingly clear that addressing cultural and linguistic diversity issues in ADR is of paramount importance.

#### **5.2.2.1. Cultural Diversity**

The dispute resolution process is influenced by a number of factors, including individualism and collectivism, high-context and low-context cultures. These factors affect the feelings and choices of the parties involved, which in turn affects the final outcome.<sup>49</sup> This assertion is particularly relevant in the context of international trade, where the diverse cultural and social backgrounds of participating parties and their varying interpretations of marketing and transitions present unique challenges.

#### **5.2.2.2. Linguistic Diversity**

It is of the utmost importance that the parties in dispute resolution communicate effectively. However, linguistic diversity can often present a challenge in this regard. This is not a technical issue, as it also arises in traditional dispute resolution mechanisms. This is particularly pertinent in cross-border e-commerce disputes. Fortunately, this problem can be effectively addressed through technology in ODR. Cross-border e-commerce platforms, mediation institutions, arbitration institutions, and ODR platforms typically offer technical support for the free switching between different languages, as well as automatic translation to facilitate online communication.<sup>50</sup>

## **6. CONCLUDING REMARKS**

In conjunction with the rapid growth of the Chinese economy and technology, consumer ODR in China has undergone considerable development. ODR has achieved considerable success in China due to the rapid advancement of technology, as reported by

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<sup>48</sup> Fan Yu (范愉), 'Chinese Characteristics and Features of the Times in the Reform of Diversified Dispute Resolution Mechanisms (多元化纠纷解决机制改革的中国特色与时代特征)' (29 March 2021) <<https://www.chinacourt.org/article/detail/2021/03/id/5915355.shtml>> accessed 18 July 2024.

<sup>49</sup> Daniel Rainey, 'ODR and Culture', in Mohamed Abdel Wahab, Ethan Katsh & Daniel Rainey (eds.), *Online Dispute Resolution Theory and Practice* (Hague: Eleven International Publishing, 2013).

<sup>50</sup> Li Jiale (李佳乐), 'Research on the online dispute resolution mechanism of cross-border e-commerce under RCEP (RCEP下跨境电商在线争议解决机制研究)' (2023) 4 *Logistics Research (物流研究)* 68, 70.

UNCTAD.<sup>51</sup> Social enterprises have been actively providing avenues for consumer ODR, including e-commerce providers, government agencies, social organisations, and the judiciary. This article analyses the Chinese consumer ODR in the context of the information age and the use of artificial intelligence.

China has established a comprehensive system comprising non-judicial ODR and judicial ODR channels. The non-judicial ADR channels have been adopted with the greatest frequency, with a variety of options available for consumers, including negotiation, mediation, administrative appeals, and arbitration.

Despite the successful development of consumer ODR in China, the legal system is facing a number of challenges that are difficult to address in light of the vast need arising from China's large consumption market. These challenges include, but are not limited to, the determination of arbitration agreements, the promotion of small claims arbitrations, the enforcement of non-judicial ODR awards, and the design of an ODR system that addresses the specific needs of consumers. The recently implemented *Consumer Protection Co-Governance Strategy* is anticipated to facilitate the resolution of these issues. In conclusion, China has been striving to mobilize the collective efforts of society to develop consumer ODR, with the objective of safeguarding consumers from domestic and cross-border transactions.

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<sup>51</sup> 'Consumer Trust in the Digital Economy: The Case for Online Dispute Resolution' (2021) UNCTAD Research Paper No. 72 UNCTAD/SER.RP/2021/15 <[https://unctad.org/system/files/official-document/ser-rp-2021d15\\_en.pdf](https://unctad.org/system/files/official-document/ser-rp-2021d15_en.pdf)> accessed 18 July 2024.

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