



Research article

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Features of Online Settlement of Consumer Disputes by e-commerce Platforms in the People's Republic of China

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Keywords

Buyer,
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Internet store,
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seller,
Taobao

Abstract

Objective: to research the features of online dispute settlement by e-commerce platforms in the People's Republic of China, to reveal positive features and drawbacks of ODS technologies applied by the platforms.

Methods: empirical methods of comparison, description, interpretation; theoretical methods of formal and dialectical logic. Specific scientific methods were used: legal-dogmatic and the method of legal norms interpretation.

Results: it was found that the internal ODS model on e-commerce Taobao ODS platforms is a direct, clear and effective means of online resolution of consumer disputes. However, being a non-independent "third party", the internal ODS mechanism of e-commerce platforms will never be able to substitute other external systems of dispute resolution. ODS relies on the data and Internet processes much stronger than traditional dispute resolution. Among the many safety factors emerging as a result of online processes, ODS creates the risk of data leakage, lack of confidentiality and unsafe consumer protection. ODS also causes concerns due to traditional principles of justice such as objectivity, confidentiality and safety of data in the process of dispute settlement. Not only the People's Republic of China but any country introducing the ODS technologies into the procedures of dispute resolution should take serious measures to ensure the ODS processes are just, unbiased and guarantee observance of procedural rights.

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Scientific novelty: consists in a complex research of online dispute settlement by e-commerce platforms in the People's Republic of China, the practice of implementation thereof has its specific features stemming from the model of self-regulation of these relations, further stipulated by normative legal acts of the People's Republic of China and reflected in the activity of private ODS platforms.

Practical significance: is due to the current absence of possibility to apply the legal norms and rules, taking into account the specific features of ODS technologies on private platforms, to the relations using such technologies. The main provisions and conclusions of the research can be used to improve the mechanisms of legal regulation of ODS technologies in the procedural legislation of the Russian Federation.

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Introduction

In 2021, the People's Republic of China (further – China, PRC) possessed over 37% of the global market of e-commerce from the viewpoint of volume of payments (over 50% by the number of transactions). Currently, the Chinese e-commerce market is the largest in the world and is expected to demonstrate a steady growth in 2022 to reach CNY 14.5 trillion (\$23 trillion), as predicted by GlobalData agency. According to statistical reports, Chinese and foreign consumers on Chinese e-commerce platforms more and more often transfer from offline to online. The COVID-19 pandemic accelerated the e-commerce activity in China, as cautious consumers more and more often use online channel for purchases, in order to avoid contacting with transmitters of disease, and this trend persists after the pandemic, as was shown by the GlobalData leading analyst R. Sharma¹. The average annual growth rate of the Chinese e-commerce market is expected to reach 11.3% from 2022 to 2027. The main factors stimulating the growth of e-commerce market in the region are: culture of mobile trade based on smartphones; innovative systems of digital payments and growing platforms for online trade.

The boom of e-commerce has brought dozens of millions disputes on e-commerce sites – Internet platforms. Beyond any doubt, no country of the world has a million of arbitrators or a million of mediators to settle these disputes. Thus, the online trading platforms first in the United States and Europe (eBay, Amazon), then in China (Alibaba) platforms for online dispute settlement started to appear spontaneously, without normative regulation on the part of the state. As was marked by E. Katsh and O. Rabinovich-Einy in 2018, eBay platform, for example, informed that it was considering over 60 million disputes a year via its ODR system; the Chinese e-commerce giant Alibaba informed about hundreds of millions disputes a year. Some of these disputes emerge in relation to the platform, others in relation to other consumers. Most of these disputes will never reach courts or alternative means of dispute resolution: they are associated with small amounts of money and require rapid, accessible and effective settlement. Characteristics of online disputes often make them unsuitable for traditional mechanisms of offline dispute resolution, namely, courts and alternative dispute resolution (ADR). The need to find a relevant means to settle online disputes appeared in the mid-1990s, when the Internet opened for trading (Katsh & Rabinovich-Einy, 2018).

A well-known American expert C. Rule, Director of the ODR Modria Department, as well as eBay and PayPal from 2003 to 2011, wrote: "Technology is also changing people's expectations about how disputes should be resolved. People now believe that they should be able to report a problem at any time of day and get quick, round-the-clock support to resolve it transparently and effectively. Now that society has embraced technology so thoroughly, the key question for dispute resolution professionals is, how can we leverage technology to best assist parties in resolving their disputes?" (Rule, 2015).

¹ China continues to lead global e-commerce market with over \$2 trillion sales in 2022. (2022, August 9). *GlobalData*. <https://www.globaldata.com/media/banking/china-continues-to-lead-global-e-commerce-market-with-over-2-trillion-sales-in-2022-says-globaldata>

Today, the Chinese legislation and state policy in regard to the Internet are among the most advanced in the world, comprising the detailed and specific provisions determining the relations between e-commerce platforms, business operators and consumers in online transactions. An example of the Chinese state policy in this sphere is establishing of Internet courts in Hangzhou, Beijing and Guangzhou, using the experience of Alibaba company (Taobao ODS platform).

The autonomous ODS platform in Taobao was developed according to the American eBayODR platform. But the developers of Taobao ODS platform went further – the company introduced a new system of making decisions by a quasi jury, namely, Alibaba public jury, which became the company's specific feature and advantage in confirming the characteristics of justice and transparency of the ODS procedure. The stunning success of the ODS system in Taobao facilitated its going beyond other Chinese platforms, such as WeChat and DiDi. It is this aspect that determined the choice of this research topic.

One should mark that the Chinese doctrine distinguishes between the terms “online dispute settlement (ODS)” and “online dispute resolution (ODR)”. This was emphasized by the Chinese, American and German experts (Shang & Guo, 2020; Shi et al., 2021). In their opinion, ODS is performed by state Internet courts and internal e-commerce platforms, while ODR is performed, first of all, by arbitration institutions (arbitration tribunal) and various mediator institutions in China.

The Russian authors do not attach much significance to distinguishing between the notions of ODR and ODS. For example, A. N. Kutovaya and K. R. Khadzhi highlighted: “the term ‘online dispute resolution’, ODR, appeared in the 1990s. According to one of interpretations, this is one of the forms of alternative dispute settlement (ODS), performed (partially or fully) using the Internet. It may also include disputes started in the cyberspace, but with an external source. In literature, the terms ‘electronic ODS’, ‘online ODS’ and ‘dispute settlement in the Internet’ are considered to be synonyms. Modern researchers tend to feature ODS as an absolutely new and distinct method of dispute resolution” (Kutovaya & Khadzhi, 2020).

1. Features of dispute settlement on Taobao ODS platform

The Chinese government developed a structured system to resolve the disputes related to online commerce. In August 2017 in Hangzhou (where Alibaba company is registered), the first Internet court in China opened aimed at settling the disputes related to online commerce and violation of copyright, as well as disputes between users and Internet companies; the whole procedure took place online. In 2018, similar courts were established in Beijing (where Baidu company is registered) and Guangzhou (where Huawei company is registered) (Rusakova, 2021). These courts work autonomously from private platforms for online dispute settlement, but their services still may be used. Nevertheless, only three Internet court exist in China so far, and most of the disputes in the sphere of e-commerce are resolved via private e-commerce platforms, which also provide ODS services (Wei & Tian, 2021).

Notably, the Chinese government consulted with Alibaba about the design of the Internet court of Hangzhou. Besides, Alibaba company provides cloud services to the Internet court of Hangzhou. Alibaba company also created a means to transfer evidences to the Internet court from its e-commerce websites with a mouse click. In 2019, a new project was introduced in the Internet court of Hangzhou – a pilot AI judge assistant (试点AI助理法官), also developed by Alibaba.

In 2019, PRC adopted the E-Commerce Law², which allowed e-commerce operators to create their own online systems for dispute settlement. In June 2021, the Supreme Court of PRC published the “Regulation of online court procedures of people’s court”, and in December of the same year amendments to the Civil-Procedural Code of PRC were adopted regarding the development of online hearings. All normative acts were created based on the studies and summarization of the practice of dispute resolution on Chinese e-commerce platforms.

We agree with the American authors L. Liu (Georgetown University) and B. R. Weingast (Stanford University), who wrote in a 2020 work “Law, Chinese Style: Solving the Authoritarian’s Legal Dilemma through the Private Provision of Law” that the Chinese government consented with the Taobao efforts; moreover, it started to actively cooperate with Taobao (Liu & Weingast, 2020). E-commerce platforms adopted from the state the authorities to ensure law observance within their competence; besides, they helped the state to create formal legislation, experimenting with the character and content of legal norms suitable for managing their platforms. In many respects, this development took place similarly to earlier Chinese reforms (1980s – beginning of 1990s), which created Chinese-style federalism.

The PRC government is not the only one striving for cooperation with private technological companies with a view of digital reforming of their legal system. Notably, the Thomson Reuters media corporation and the software developer McGirr are the largest suppliers of technologies of Internet courts in Australia, USA and Great Britain³.

TaobaoMarketplace e-commerce platform was created by Alibaba company in 2003 and since then has turned into a giant of online purchases in China and became the eighth most visited website in the world (Liu & Weingast, 2018). Taobao platform is considered to be a Chinese analog of the American eBay platform, founded eight years earlier – in 1995 (Ballesteros, 2021). As of March 2021, monthly active uses of Taobao reached 792 million, ranking the first among Chinese and global e-commerce platforms⁴. According to statistical data, Taobao platform was the most popular e-commerce platform as of August 2022

² E-Commerce Law of the People’s Republic of China (adopted at the Fifth Session of the Standing Committee of the 13th National People’s Congress on August 31, 2018). *IPKey*. https://ipkey.eu/sites/default/files/documents/resources/PRC_E-Commerce_Law.pdf

³ Mingay, A. (2019, October 17). Size matters: Alibaba shapes China’s first “Court of the Internet”. *Merics*. <https://merics.org/en/analysis/size-matters-alibaba-shapes-chinas-first-court-internet>

⁴ You, X. (2018, September 3). Six key features of Taobao – Alibaba’s online shopping platform. *Croud*. <https://croud.com/blog/six-key-features-of-taobao-alibabas-online-shopping-platform>

in China⁵. Like American commercial platforms eBay and Amazon, Taobao is a platform for retail trade from client to client (C2C), therefore, large brands, small enterprises and individuals may open their own Internet stores on Taobao platform.

The platform offers four ways to settle an online dispute in accordance with Taobao ODS regulations:

- a) negotiations between the parties;
- b) intervention of Taobao client service;
- c) public control system;
- d) online report.

An unbiased, rapid and accessible system of dispute settlement may reduce the uncertainty associated with e-commerce and increase trust to online markets. The PRC's experience showed that the construction of internal system of online dispute settlement (ODS) of Alibaba company is scientific, reasonable, cheap and highly effective, as was marked by a researcher from Macao University (PRC) (Juanjuan, 2018).

Taobao ODS model was also extended to solve the problems with ODS systems implementation onto some other Internet platforms in China, such as WeChat (a mobile communication system for sending text and voice messages) and Didi (a platform rendering the services of a taxi aggregator, car sharing and ridesharing). Notably, none of these systems became as popular or successful as Taobao ODS system, as was highlighted by researchers C. S. Shang (California Polytechnic State University, USA) and W. K. Guo (Beiming Software Co Ltd) (Shang & Guo, 2020).

2. Characteristics of Taobao ODS technology

In the opinion of Chinese researchers, the scientific approach to forming the internal Taobao ODS system showed itself in the following factors: a) modular construction of the platform; b) strict observance of the terms stipulated by internal regulations of dispute resolution; c) coinciding characteristics of e-commerce and Taobao ODS platform; d) social participation to create the "e-commerce ecosystem" (Juanjuan, 2018). Below we consider each aspect in detail.

2.1. Modular construction of Taobao ODS platform

Taobao ODS specialists found that in different categories of goods the causes of disputes and the settlement results always coincide. Having made a market research and a statistical analysis, Taobao ODS experts summarized the most popular causes of disputes, including:

- a) the goods is damaged;
- b) the goods is wrongly delivered or not delivered;

⁵ E-commerce in China. (2022, August 3). *Moore MS Advisory*. URL: <https://www.msadvisory.com/ecommerce-in-china>

- c) the goods needs repair;
- d) the goods does not meet the description;
- e) the goods is of poor quality;
- f) the goods is not delivered on time, etc.

The methods of dispute settlement are summarized in the following groups:

- a) change of the price of the goods;
- b) return of the goods;
- c) reimbursement of costs, etc.

When developing the dispute settlement procedure, Taobao specialists used a modular method to provide choice for applicants. For an applicant, on the one hand, this could save time for describing the problem they faced; on the other hand, the result could be predicted. Moreover, this could make consumer protection services be more professional when they intervene in disputes (Juanjuan, 2018).

2.2. Strict observance of the terms stipulated by internal regulations of dispute resolution

Each stage of the dispute settlement procedure at Taobao ODS platform is strictly limited in time. For example, three days after submitting an application on returning money a buyer may turn to the consumer support service which must make a decision on intervention into the dispute during two days, then a final decision during 15 days. The parties must submit evidences, including: photos of the goods, recordings of Aliwangwang chat, a recording on Taobao platform referring to the transaction, etc.⁶ Dispute settlement must correlate with this tempo, which is an important content for provision of justice on Taobao ODS platform. If any party fails to provide evidences during the set period, it will lose.

2.3. Coinciding characteristics of e-commerce and Taobao ODS platform

Taobao ODS platform has characteristics comparable to the rules of e-commerce:

- a) high speed;
- b) simple procedure;
- c) low costs of dispute settlement.

The platform popularity demonstrates that in B2C and C2C disputes, efficiency and cost-effectiveness are more important than justice, neutrality, professionalism and relevancy, which coincide with the characteristics of e-commerce.

⁶ Taobao Rules of Dispute Settlement (2019, June 5). 淘宝平台争议处理规则. <https://rulechannel.taobao.com/?type=detail&ruleId=99&cId=1154&spm=a2177.72311#/rule/detail?ruleId=99&cId=1154&spm=a2177.72311>

2.4. Social participation to create an “e-commerce ecosystem”

Due to the procedures of dispute settlement on Taobao ODS platform – “Public control system” and “Online report” – introduced social powers, including a buyer and a seller, to mutually participate in creating and managing the Ali e-commerce ecosystem. To remove some pressure from its customer support service, the Chinese largest online-market uses a “people’s court” with half a million amateur judges to help regulate common complaints of consumers⁷.

From the viewpoint of justice, Taobao ODS system uses the method of delivering the task to the interviewer at random and the challenge system in order to effectively prevent a reviewer from choosing cases (disputes) in their own interests. Moreover, both the buyer and the seller may participate in the “Public control system” and “Online report” in person, which is a good chance to tell the participants about the cause of the dispute and then to take steps to its peaceful settlement. Foreign authors believe that the most important feature is that the Taobao ODS system is a means of implementing social corporate governance (Iqbal et al., 2022).

3. Comparing the practice of dispute resolution between various ODS platforms (state court, arbitration, private e-commerce platforms)

3.1. Advantages of ODR

An American author C. Rule outlined the following advantages of ODR⁸:

- 1) efficiency and convenience;
- 2) procedural cost-effectiveness;
- 3) satisfaction of dispute participants;
- 4) “cooling distance” (the asynchronous character of ODR creates a “cooling distance” to give time to the contestants to check their answers instead of reacting impulsively)⁹;
- 5) asynchronous interactions;
- 6) preliminary communication reframing (in neurolinguistic programming, reframing is the means of change associated solely with combining the elements of experience, without adding anything from “outside” – reframing allows a different interpretation of the situation)¹⁰;

⁷ Staff, A. (2014, July 17). How Taobao Is Crowdsourcing Justice in Online Shopping. *Alizila*. <https://www.alizila.com/how-taobao-is-crowdsourcing-justice-in-online-shopping-disputes>

⁸ Rule, C. (2010, November 1). *Using Technology to Manage High Volume Caseloads: The eBay/PayPal Experience*. <https://www.archives.gov/files/ogis/events-presentations/acus-colin.pdf>

⁹ Condlin, R. (2017). Online Dispute Resolution: Stinky, Repugnant, or Drab? *Faculty Scholarship*, 1576. https://digitalcommons.law.umaryland.edu/fac_pubs/1576

¹⁰ Lyubimov, A. (2022). *NLP model: reframing*. <https://trenings.ru/entsiklopediya-nlp/modeli/959-model-nlp-refrejmng.html>

- 7) simultaneous conferencing;
- 8) archived messages;
- 9) automated procedures (“fourth party”) (Wing et al., 2021).

As for the last point, it is worth citing the explanations of a Russian mediator M. A. Avdyev that “in online dispute resolution, the role of managing information flows is often played by not only arbitrators and mediators, but also computers and software. ICT participation of dispute settlement is called “the fifth party”, as ODR is viewed as an independent entry point into managing the conflict” (Avdyev, 2015). American authors Ethan Katsh and Janet Rifkin believe that the main advantage of ODR is introduction of technology into the process of dispute resolution as the “fourth party” supporting “the third party” (arbitrator, mediator, expert, etc.) (Katsh & Rifkin, 2001).

It should be noted that the question of demarcating between the terms “online dispute settlement” (ODS) and “online dispute resolution” (ODR) was not posed in other countries (except PRC). As a rule, the term ODR is most often used for online dispute settlement systems on private e-commerce platforms (Wing et al., 2021). For example, C. Rule wrote that dispute resolution on e-commerce platforms Modria, eBay and PayPal takes place in the form of ODR¹¹. One may also turn to a well-known 2018 work by the British lawyers J. Barnett and P. Treleaven “Algorithmic Dispute Resolution – the Automation of Professional Dispute Resolution Using AI and Blockchain Technologies”, demarcating online dispute resolution (ODR) into: a) consumer ODR; b) judicial ODR; and c) corporate ODR” (Barnett & Treleaven, 2017).

J. Tan from Montreal University highlighted that the “cooling distance” (the asynchronous character of ODR) reduces the efficiency of communication¹². Thus, one may conclude that asynchronous written communication is considered to be an advantage of ODR technology by some experts (C. Rule, J. Barnett, P. Treleaven, etc.), while other authors (J. Tan) believe it to be a drawback (Iqbal et al., 2022).

A Chinese researcher Z. Juanjuan marked that the advantages of dispute resolution on private ODS platforms are: a) terms of dispute processing; and b) simple dispute resolution. One of the largest achievements of private ODS platforms is a channel of rapid dispute settlement (internal ODS mechanism of the e-commerce platform) (Juanjuan, 2018).

¹¹ Rule, C. (2015). Modria – The Operating System for ODR. *MediatorAcademy*. https://www.judiciary.uk/wp-content/uploads/2015/02/colin_rule_modria_os_for_odr.pdf

¹² Tan, J.(2022, July 19). The Future of ODR: Immersive technology enhancement and underlying technology evolution. *Laboratoire de cyberjustice*. <https://www.cyberjustice.ca/2022/07/19/the-future-of-odr-immersive-technology-enhancement-and-underlying-technology-evolution>

3.2. Terms of dispute processing and decision making on ODS platforms

The terms of dispute processing and decision making on various ODS platforms are:

1) with the intervention of the consumer support service or the public control system of Taobao ODS (Alibaba company) – seven days after making decision on intervening into the dispute;

2) in the China International Economic and Trade Arbitration Commission (CIETAC) under the accelerated procedure – 15 days after forming the Arbitration Court (Article 50 of the CIETAC Arbitration regulation)¹³;

3) in the state court of the People's Republic of China under a summary procedure – three months (Article 161 of the Chinese Civil-procedural Code).

According to Chinese authors, the speed of dispute settlement is closely connected with the procedure complexity. Usually, the simpler the procedure, the less time it takes to solve the problem. If we compare three ODS mechanisms, the Taobao ODS procedure of Alibaba company is the simplest:

the first stage – consultations;

the second stage – intervention of the consumer support service or the public control system;

the third stage – submitting evidences;

the fourth stage – making the final decision (Juanjuan, 2018).

ODR on the platform of any arbitration court in PRC is twice as complicated:

a) although the negotiation and mediation procedure is similar to that of Taobao ODS, it is more difficult for the parties to collect evidences because, as Alibaba is an e-commerce platform, all traces of transactions left can be taken directly as evidences in the ODS procedure. As the ODR platform of arbitration court is an independent third party, all evidences are not transferred automatically to the arbitration but must be collected by the parties and submitted to the platform;

b) the procedure of online arbitration is similar to that of offline arbitration, which is more complex than on the Taobao platform.

Arbitration procedure in China is as follows:

first, if there is an arbitration agreement, the claimant submits an application for online arbitration;

second, an online arbitration tribunal must be formed;

third, the defendant must submit an answer;

fourth, the parties submit evidences;

fifth, the online arbitration tribunal makes a decision.

Finally, the online judicial procedure in a state court must comply with the civil-procedural legislation, which is generally more complex (Juanjuan, 2018).

¹³ Online Arbitration Rules of CIETAC, art 50. Arbitration Law. [https://arbitrationlaw.com/sites/default/files/free_pdfs/CIETAC Online Arbitration Rules.pdf](https://arbitrationlaw.com/sites/default/files/free_pdfs/CIETAC%20Online%20Arbitration%20Rules.pdf)

3.3. Possibility of introduction in the Russian Federation

Given the positive characteristics, the ODR system should be introduced in Russia, first of all, on private platforms of online commerce, such as Wildberries or Ozon. We share the opinion of C. Rule that the main reason of ODR popularity in many countries of the world is convenience (Rule, 2015). For the citizens living in remote regions, ODR may be a great advantage compared to physical attendance to court at a certain time. The second important advantage of ODR is low costs or free provision of such services. The third important factor is accessibility of ODR for all categories of citizens (those who cannot pay to a lawyer; those taking care of children or the elderly, etc.). The fourth advantage is the speedy procedure of ODR.

4. Drawbacks in the functioning of Taobao ODS platform

Researchers like C. S. Shang, W. Guo, Z. Juanjuan, J. Tan, P. Fu, A. Nikitkov, D. Bay and others marked that the drawbacks of Taobao ODS mechanism are obvious (Shang & Guo, 2020; Juanjuan, 2018; Zheng, 2016; Fu et al., 2013). These are the same reasons why other means of dispute resolution are necessary, such as arbitration, mediation, etc. They are:

- a) uncertainty of dispute settlement rules;
- b) no legal force of Taobao ODS platform decisions¹⁴;
- c) limited methods of establishing facts on the platform;
- d) the third party, which helps to settle the dispute, may be related to one or both parties and have its own interests in the case;
- e) no mechanism of supervision and regulation of dispute resolution on the platform;
- f) doubtful justness of dispute resolution on the Taobao ODS platform (Cheng, 2022);
- g) finally, there is an ungrounded immunity of the platform itself from liability.

4.1. Non-independence of a third party in dispute resolution on a private ODR platform

Being a non-independent third party, the internal ODS mechanism of e-commerce platforms will never be able to substitute other external systems of dispute resolution. Considering the issue of independence and neutrality of the jury (arbitrators), Chinese authors state that the neutrality of arbitrators in ODR in arbitration and that of judges in ODS in a state court is much higher than that of a private ODS platform of Alibaba company. The internal ODS mechanism is provided by the e-commerce platform itself (Taobao Marketplace), the consumer support service consists of the platform employees,

¹⁴ Tan, J. (2022, July 19). The Future of ODR: Immersive technology enhancement and underlying technology evolution. *Laboratoire de cyberjustice*. <https://www.cyberjustice.ca/2022/07/19/the-future-of-odr-immersive-technology-enhancement-and-underlying-technology-evolution>

and a reviewer of the public control service of the platform is also a buyer or seller of the platform. Inevitably, the said third party may have a more or less interest or relations with the platform, which may influence its neutrality.

On the contrary, in ODR in arbitration or ODS in a state court, a mediator, arbitrator, or judge are an independent and more neutral third party. Neutrality and independence influence the justness of the final decision of an arbitrator or a judge (Juanjuan, 2018).

In practice, in China (and other countries) there are many complaints about unjust servicing of the Taobao ODS platform clients. Even more serious is the problem of corruption in the sphere of customer services: from early disguised means, such as fake reputation of a company on the platform and removal of bad comments to direct violations, such as bribe-taking (Fu et al., 2013). Since 2012, Taobao Marketplace platform has closed many e-commerce stores and launched a judicial procedure in which the platform's consumer support service is suspected of bribery. In May 2012, after an internal anticorruption investigation, Alibaba company announced that it sued some of its employees working on the Taobao platform. As reported, the internal investigation showed that several Taobao platform employees helped some online sellers remove negative comments of the clients in order to increase the rankings of suppliers. For unlawful access to the website of comments, the employees obtained illegal payments from the sellers¹⁵.

One of the reasons why the consumer support service could be easily involved into the bribery affair was the absence of any special qualification requirements to the employees of this service. On the contrary, Taobao platform created some requirements for the reviewers of the public control service: a buyer (or a seller) could apply for the position of a reviewer only if they are a Taobao platform participant and their term of registration is up to one year, and the Alipay system confirms the real identification (ID) of the reviewer. At the same time, the buyer (seller) was to comply with other preliminary requirements, such as no debts on the platform, a certain amount of deals on the platform, and observing the rules of the platform, etc., which, in the opinion of the platform employees, was to help the reviewer make more grounded decisions (Qin, 2017).

4.2. Bias of artificial intelligence technologies in ODR systems

Researchers C. S. Shang and W. Guo marked that another obstacle for a due legal procedure in using ODR technologies occurs because of the biases inherent in the algorithm-based solutions. Such biases undermine the use of algorithms by the Chinese judicial system and ODR system. These biases include result accuracy, "algorithm black

¹⁵ Colwell, G. (2012, June 11). Monthly China Anticorruption Update Report– May 2012. *Squire Patton Boggs*. <https://www.anticorruptionblog.com/china/monthly-china-anticorruption-update-report-may-2012/#:~:text=Monthly%20China%20Anticorruption,June%2011%2C%202012>

boxes” of ODR codes and conflicts of interests in public-private partnerships when creating ODR systems (Shang & Guo, 2020). The general problem of ODR systems is that the results of algorithm-based decisions are not always accurate. Artificial intelligence and other types of well constructed algorithms may help people make decisions; however, the usefulness of these algorithms in more complex cases is not absolutely clear. Besides, the mechanisms of algorithm-based decision making have systemic errors, and coding mistakes and distortions may also lead to distorted results (Katsh & Rabinovich-Einy, 2018). The use of algorithms and data analysis may also make the ODR system less reliable, as the reasons for decisions made by these automated tools are subject to weak public control. The artificial intelligence systems which learn to recognize regularities in data to make decisions are often described as “black boxes”, because even their developers may not know how they come to conclusions. As the algorithm running the ODR are secret and are only known to their owners and creators, the participants of such systems cannot know how the algorithms understand the correct result or whether the information used by the algorithms in decision making is accurate.

Other lawyers are of the same opinion. For example, an Australian researcher T. Ballesteros marked that the advantages of ODR must be weighed against the background of digital environment traps. Among the many safety factors, emerging as a result of online processes, ODR creates the risk of data leakage, lack of confidentiality and unsafe consumer protection. Due to these reasons, ODR can be successful in settling minor claims, but is not always suitable for more complex ones. Using technology-based ODR can be the most relevant means for settling disputes over minor claims, first of all, in B2C and C2C segments. However, more complex and individual cases, associated with B2B (business-to-business), and potentially collective suits, related to B2C disputes, the discretionary authorities of court will be still extremely relevant (Ballesteros, 2021).

4.3. Data safety

ODR relies on the data and online processes much stronger than traditional dispute resolution. This causes additional problems with data safety. The two issues of data safety and security, which are especially vivid in ODR, are:

- 1) information protection in private cases against the external parties striving to hack the system to get obtain this information (“external protection”);
- 2) information protection in private cases against the undue disclosure or unlawful use by the persons managing the system (“internal protection”).

External protection refers to the integrity of the platform or the system, when it is used to generate, send, receive, store, exchange or otherwise process information. In China, despite rapid pace of ODR development, actually not changes have occurred to provide safety of systemic data. Only limited scientific research focus on this sphere, as was marked by the Chinese authors (Shang & Guo, 2020).

The issue of data protection against internal unlawful use or undue disclosure of information was somewhat better studied. In the recent years, the Chinese government toughened regulation of cybersecurity, data safety and personal information protection. Since 2016, three important laws were adopted:

- a) the PRC law on cybersafety of 2016 (中华人民共和国网络安全法);
- b) the PRC law on data safety of 2021 (中华人民共和国数据安全法);
- c) the PRC law on personal information protection of 2021 (PIPL) (中华人民共和国个人信息保护法)¹⁶.

It is worth highlighting that the Chinese system of regulating cybersecurity, data safety and personal information protection is still dynamically developing, and many issues of its implementation are to be clarified¹⁷. Today, many types of dispute prevention technologies developed by the Chinese ODR forums are based on broad collection, analysis and exchange of large amounts of consumer information and data, related to court proceedings; however, this generates hidden dangers associated with internal data safety (Simkova & Smutny, 2021).

Despite all the above mentioned drawbacks and taking into account the features of rapid, large scale and low cost transactions in B2C (business-to-consumer) and C2C (consumer-to-consumer) sectors, the internal ODS model on Taobao ODS e-commerce platforms is undoubtedly the most direct and effective means of online dispute resolution, as was stated by several researchers (Juanjuan, 2018; Simkova & Smutny, 2021; Liu, 2022).

4.4. Necessity of strict legislative regulation

Given the drawbacks of ODR procedures revealed during the functioning of the Taobao ODS platform, the ODR procedures must be strictly regulated. The Russian legislator should borrow the experience of the PRC, where such regulation is stipulated by the PRC Law on e-commerce of 2019. This law toughly stipulated that e-commerce platforms must disclose the channels of submitting claims, as well as other original information about transactions, to courts, arbitration and mediation bodies. The platforms also must timely accept and consider any claims. The platforms are subject to punishment for altering, destroying, falsifying or refusing to submit such information. These provisions were aimed at consumer rights protection.

¹⁶ Sadovnikov, D. (2021, September 17). Review of the PRC law on personal information protection (Personal Information Protection Law of the People's Republic of China (PIPL)). "Zakon" Publishing group. https://zakon.ru/blog/2021/09/17/obzor_zakona_knr_o_zaschite_personalnoj_informacii_personal_information_protection_law_of_the_peoples

¹⁷ Si, J. et al. (2022, January 3). Overview of Chinese Cybersecurity, Data and Privacy Laws. *ZhongLun Law Firm*. <https://www.zhonglun.com/Content/2022/03-01/1621106430.html>

Conclusion

1. One may agree with the opinion of Chinese researchers that the internal ODS model on Taobao ODS e-commerce platforms is, undoubtedly, a direct, clear and effective means of online resolution of consumer disputes. However, being a non-independent third party, the internal ODS mechanism of e-commerce platforms will never be able to substitute other external systems of dispute resolution. ODS relies on the data and Internet processes much more than the traditional dispute resolution. Among the many safety factors emerging during online processes, ODS creates the risks of data leakage, lack of confidentiality and unsafe consumer protection.

2. Thus, the rapid growth of online dispute settlement on e-commerce platforms in China should be treated with caution. Online dispute settlement on the platforms has changed the traditional concepts of justice. The broad use of ODS technologies in creating Internet courts in China has changed the relations in courts between practicing lawyers and contestants, transformed judicial results, and ultimately changed the overall experience of justice. Chinese experts emphasized that the political incentives leading to the more rapid introduction of ODS technologies in courts will continue to stress the positive aspects of ODS, including accessibility, efficiency, predictability and prevention of disputes. However, ODS also causes serious concerns with regard to the traditional principles of justice, such as objectivity, confidentiality and data safety in dispute settlement.

3. Not only in China but in any country introducing ODS technologies into dispute resolution procedures should take important measures to ensure that the ODS processes are just, unbiased, and guarantee observance of procedural rights.

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Особенности онлайн-урегулирования потребительских споров платформами электронной торговли в Китайской Народной Республике

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Ключевые слова

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онлайн-разрешение споров,
онлайн-урегулирование
споров,
покупатель,
право,
продавец,
суд,
цифровые технологии,
электронная торговля

Аннотация

Цель: исследование особенностей онлайн-урегулирования споров платформами электронной торговли в Китайской Народной Республике, выявление положительных черт и недостатков технологий ODS, применяемых платформами.

Методы: эмпирические методы сравнения, описания, интерпретации; теоретические методы формальной и диалектической логики, а также частно-научные методы: юридико-догматический и метод толкования правовых норм.

Результаты: выявлено, что внутренняя модель ODS на платформах электронной торговли Таобао ODS является прямым, ясным и эффективным способом онлайн-разрешения потребительских споров. Однако, будучи не независимой «третьей стороной», внутренний механизм ODS платформ электронной торговли никогда не сможет заменить другие внешние системы разрешения споров. ODS полагается на данные и интернет-процессы гораздо больше, чем традиционное разрешение споров. Среди многих факторов безопасности, возникающих в результате онлайн-процессов, ODS создает риски утечки данных, отсутствия конфиденциальности и небезопасной защиты потребителей. ODS также вызывает серьезную озабоченность в связи с традиционными принципами правосудия, такими как принципы беспристрастности, конфиденциальности и безопасности данных в процессе урегулирования споров. Не только Китайской Народной Республике, но и любой стране мира, внедряющей технологии ODS в процедуры разрешения споров, необходимо предпринять важные шаги для обеспечения того, чтобы процессы ODS были справедливыми, непредвзятыми и гарантировали процессуальные права.

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Научная новизна: состоит в комплексном исследовании онлайн-урегулирования споров платформами электронной торговли в Китайской Народной Республике, практика применения которых имеет свою специфику, вытекающую из модели саморегулирования указанных отношений, закрепленной впоследствии нормативными правовыми актами Китайской Народной Республики и отражающейся в деятельности частных платформ ODS.

Практическая значимость: обусловлена отсутствием в настоящее время возможности применения к отношениям, использующим технологии ODS на частных платформах правовых норм и правил, учитывающих их специфику. Основные положения и выводы исследования могут быть использованы для совершенствования механизмов правового регулирования технологий ODS в процессуальном законодательстве Российской Федерации.

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