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IS THE USE OF ARTIFICIAL INTELLIGENCE IN ALTERNATIVE DISPUTE RESOLUTION A VIABLE OPTION OR WISHFUL THINKING?

Samuel D. Hodge Jr.*

AI is: neither a fad nor an apocalypse, but a tool in its infancy—and one that could radically change how lawyers work and law firms make money.¹

ABSTRACT

This article delves into the evolving relationship between artificial intelligence (AI) and the legal profession, particularly in the context of alternative dispute resolution (ADR). The introduction sets the stage by highlighting AI's transformative

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¹ *Generative AI could radically alter the practice of law*, THE ECONOMIST (Jun. 6, 2023), https://www.economist.com/business/2023/06/06/generative-ai-could-radically-alter-the-practice-of-law?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=17210591673&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gad_source=1&gclid=CjwKCAiAhJWsBhAaEiwAmrNyq5G4kIw31ce8BecM-YHV5LS1gjL4H5wxutYCAhenX_4GyMcVdSznZxoCQLcQAvD_BwE&gclsrc=aw.ds.

potential in reshaping legal practice through automation, efficiency, and data-driven insights. While acknowledging the uncertainty surrounding AI's long-term impact on the legal landscape, it emphasizes the need for investigation and adaptation as the technology evolves. Key considerations, such as AI technology's limitations, regulatory challenges, and ethical implications, are also addressed. Despite the promises of efficiency and accessibility, questions remain about AI's ability to replicate human reasoning and navigate complex legal nuances. Moreover, legal and ethical concerns, such as privacy, confidentiality, and liability, underscore the need for careful evaluation and oversight in AI-driven dispute resolution.

I. INTRODUCTION

In an era of technological innovation and digital transformation, the legal landscape is changing profoundly with the advent of artificial intelligence (AI).² This cutting-edge technology has emerged as a game-changer by redefining how legal professionals approach their practice and interact with the legal system.³ From streamlining laborious research tasks to revolutionizing contract review and prediction, AI's integration into the legal profession promises unparalleled efficiency and accuracy.⁴

Is this introduction an accurate assessment of the role of artificial intelligence in the practice of law?⁵ While most attorneys have gained some awareness of the potential interplay between AI and jurisprudence, this optimistic appraisal reflects a question posed to ChatGPT about writing an introduction for this article.⁶

² See, e.g., Taylor Burton, *AI and the Law: How Artificial Intelligence Will Reshape the Legal Industry*, PA. BAR INST. (Apr. 19, 2023), <https://go.pbi.org/blog/ai-and-the-law-how-artificial-intelligence-will-reshape-the-legal-industry> (highlighting AI's potential for "greater efficiency and accuracy" in completing legal tasks as well as its risk in further ingraining bias).

³ *Id.*

⁴ *Id.*

⁵ See discussion *infra* Part II.

⁶ The beginning of this article was generated in seconds by ChatGPT on July 18, 2023, when the author asked the software to write an introduction for this article. ChatGPT, <https://chat.openai.com> (last visited July 18, 2023); see also Suzanne McGee, *Generative AI and the Law*, LEXISNEXIS, <https://www.lexisnexis.com/html/lexisnexis-generative-ai-story/#group-section-Learn-more-pBwk9mHQNe> (finding 77% of lawyers believe generative AI will increase their efficiency) (last visited Apr. 10, 2024).

One might say that law is an occupation significantly at peril because of the developments involving AI.⁷ After all, lawyers are wordsmiths, and AI's technology can understand and evaluate terms, creating responses almost immediately.⁸ The technology appears perfectly suitable and capable of completing undertakings that are the mainstay of attorneys.⁹ In reality, no one can predict how lawyers will respond to this technology in the long run.¹⁰ However, the topic is worth investigating while it is still in its infancy.

This article will explore AI's transformative impact, examining its role in shaping legal practice with a focus on its use in alternative dispute resolution (ADR).¹¹ This commentary analyzes the challenges and opportunities posed by AI's integration and offers an overview of the practical considerations arising from its use in ADR.¹²

II. WHAT IS AI?

AI is quickly playing a role in almost every aspect of daily activity by influencing how we work, entertain ourselves, and obtain important information.¹³ The process has been around since the 1950s when it was known for a machine's ability to execute a job that would have formerly mandated human intelligence.¹⁴ While this explanation is rather broad, it has been modified following years of study and technological improvements.¹⁵ AI has many

⁷ Steve Lohr, *A.I. Is Coming for Lawyers, Again*, THE NEW YORK TIMES (Apr. 10, 2023), <https://www.nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* ("The future is coming, but it will not be as fast as some predict.")

¹¹ See discussion *infra* Part III.

¹² See discussion *infra* Part II & III.

¹³ Brian Kennedy, Alec Tyson & Emily Saks, *Public Awareness of Artificial Intelligence in Everyday Activities*, PEW RSCH. CTR. (Feb. 15, 2023), <https://www.pewresearch.org/science/2023/02/15/public-awareness-of-artificial-intelligence-in-everyday-activities/>.

¹⁴ Maria Diaz, *What Is AI? Everything To Know About Artificial Intelligence*, ZDNET (Apr. 21, 2023), <https://www.zdnet.com/article/what-is-ai-heres-everything-you-need-to-know-about-artificial-intelligence/>; see also Christopher Manning, *Artificial Intelligence Definitions*, STANFORD UNIV. HUMAN-CENTERED ARTIFICIAL INTELLIGENCE (Sept. 2020) <https://hai.stanford.edu/sites/default/files/2020-09/AI-Definitions-HAI.pdf>.

¹⁵ Diaz, *supra* note 14.

configurations that have benefited everyday life activities.¹⁶ Siri and Alexa, which act as AI personal assistants, are examples of this technology.¹⁷ Recent developments include AI chatbots, ChatGPT, the new Bing Chat, and Google Bard.¹⁸

Many people remain unfamiliar with AI's varied uses.¹⁹ Still, the technology allows individuals to rethink how to utilize data, analyze information, and employ ensuing insights to improve decision-making.²⁰ No universally accepted definition of AI exists.²¹ However, AI generally refers to "machines that respond to stimulation consistent with traditional responses from humans, given the human capacity for contemplation, judgment and intention."²² For example, ascertaining whether a bear is a panda or a koala is deemed "a classification problem" by AI.²³ Educating the AI system begins with exposing the computer to many examples of pandas and koalas.²⁴ These samples are known as a "training set" and define the type of animal shown to the application for identification.²⁵ The software then constructs a model to distinguish between the two types of bears. This distinction may be premised upon the size, hair color, the shape of the tail, and what the animal eats.²⁶ Following this training, the software can be assessed to determine whether it can correctly identify the mammal.²⁷ If the product performs poorly, the algorithm can be fine-tuned, or the training model may be enlarged to give the AI more information to analyze.²⁸ Once the system is perfected, the algorithm can ascertain what makes a panda a panda and what differentiates it from a koala, allowing it to pick out the panda from an assortment of random bears.²⁹

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Darrell M. West & John R. Allen, *How Artificial Intelligence is Transforming the World*, BROOKINGS (Apr. 24, 2018), <https://www.brookings.edu/articles/how-artificial-intelligence-is-transforming-the-world/>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Lauri Donahue, *A Primer on Using Artificial Intelligence in the Legal Professions*, JOLT DIGEST (Jan. 3, 2018), <http://jolt.law.harvard.edu/digest/a-primer-on-using-artificial-intelligence-in-the-legal-profession>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

AI is usually associated with machine learning and data analytics.³⁰ Machine learning is a form of AI and computer science that examines “the use of data and algorithms to imitate the way that humans learn, gradually improving its accuracy.”³¹ Employing statistical techniques, programmers coach algorithms to create categories and to reveal important insights in data mining schemes.³² These perceptions then inform “decision making within applications and businesses, ideally impacting key growth metrics.”³³

On the other hand, data analytics is a way of exploring data sets to find tendencies and make conclusions about the information they possess.³⁴ Progressively, this task is performed with the help of focused schemes and software.³⁵ Businesses commonly use data analytic technologies to allow them to make better-informed decisions.³⁶ More sophisticated data analytics involve data mining, allowing sizable data sets to be separated into ascertainable tendencies, patterns, and relationships.³⁷ Another example is predictive analytics, which can anticipate “customer behavior, equipment failures, and other future business scenarios and events.”³⁸ For example, e-commerce companies employ clickstream evaluations to track a user’s navigation and page viewing patterns to predict a user’s likelihood of purchasing a good or service.³⁹

III. AI’S USE IN LAW

AI will undoubtedly influence the practice of law.⁴⁰ However, it is difficult to precisely forecast where computerization

³⁰ West & Allen, *supra* note 29.

³¹ *What Is Machine Learning?* IBM, <https://www.ibm.com/topics/machine-learning> (last visited July 19, 2023).

³² Alexandra Twin, *What is Data Mining, How It Works, Benefits, Techniques, and Examples*, INVESTOPEDIA (Apr. 15, 2023), <https://www.investopedia.com/terms/d/datamining.asp> (“Data mining is the method of searching and analyzing a significant amount of raw data to identify patterns and extract useful data”).

³³ IBM, *supra* note 32.

³⁴ Craig Stedman, *Data Analytics*, TECH TARGET (May 2023), https://www.techtarget.com/searchdatamanagement/definition/data-analytics?Offer=abt_pubpro_AI-Insider.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Nicole Black, *How AI Will Change the Practice of Law*, LAW TECH. TODAY (Nov. 1, 2016),

and analytics software will have the most impact and how fast the legal profession will adopt its use.⁴¹ After all, lawyers are notoriously slow to embrace change.⁴²

It is beyond question that AI technology will augment or replace some aspects of legal practice.⁴³ AI can easily automate about 44% of legal tasks, making attorneys more productive and cost-efficient.⁴⁴ In several years, AI will play a significant role in the work lawyers currently perform.⁴⁵ Logic infers that this transition will start with machines undertaking the repetitive chores that are long-established in aspects of practice.⁴⁶ This transition will allow lawyers to focus on the more advanced parts of analytical work.⁴⁷ In this way, lawyers can train software to automatically identify and retrieve documents, freeing time.⁴⁸ For example, eBrevia is a contract analysis software.⁴⁹ It utilizes machine learning to determine the relevance of documents to a search, automatically extracting data from different concepts and data patterns for contract analysis.⁵⁰ Nevertheless, attorneys must appreciate that the outcomes produced by this technology will generate weighty legal and ethical issues, such as tort liability and criminal responsibility.⁵¹

<https://www.lawtechnologytoday.org/2016/11/how-ai-will-change-the-practice-of-law-by-nicole-black/>.

⁴¹ *Id.*

⁴² See Lyle Moran, *Law firms are slow to adopt AI-based technology tools, ABA survey finds*, ABA J. (Oct. 22, 2020), <https://www.abajournal.com/web/article/law-firms-are-slow-to-adopt-artificial-intelligence-based-technology-tools-aba-survey-finds> (finding 23% of firm respondents were “not interested in purchasing AI-based tools” and 34% “did not know enough about AI to answer the question regarding their firms current or planned usage of such tools”).

⁴³ Black, *supra* note 40.

⁴⁴ Dennis Dimka, *AI and Lawyers*, LEXWORKPLACE (Apr. 13, 2023), <https://lexworkplace.com/ai-and-lawyers/>.

⁴⁵ Black, *supra* note 41; see, e.g., Donahue, *supra* note 24 (finding 39% of in-house counsels predict that AI technology will become routine within a decade).

⁴⁶ Black, *supra* note 40.

⁴⁷ *Id.*

⁴⁸ See Horst Eidenmüller & Faidon Varesis, *What is an Arbitration? Artificial Intelligence and the Vanishing Human Arbitrator*, 17 N.Y.U. J. L. & BUS. 49, 57 (2020).

⁴⁹ See *Transform the contract review process with AI by your side*, EBREVIA, <https://ebrevia.com> (last visited Apr. 13, 2024).

⁵⁰ *Id.*

⁵¹ See generally Michael Loy, *Legal Liability for Artificially Intelligent “Robot Lawyers,”* 26 LEWIS & CLARK L. REV. 951 (2022). For instance, the Code of Professional Responsibility implicates several rules of ethics

According to ChatGPT, AI offers several advantages, altering how attorneys perform and enhancing their capabilities.⁵² These benefits include:

- *Improved Efficiency*: The technology can automate repetitive and time-consuming tasks, such as contract review, legal research, and document preparation.⁵³
- *Enhanced Legal Research*: AI can assimilate large quantities of legal data and analyze precedent, court decisions, and statutes much quicker than individuals.⁵⁴
- *Cost-Effectiveness*: By automating and streamlining processes, AI can assist lawyers in reducing operational costs and enhancing resource distribution.⁵⁵
- *Data-Driven Insights*: The technology can review information from past opinions and legal trends to identify patterns and predict potential case outcomes.⁵⁶
- *Enhanced Due Diligence*: AI can help with due diligence processes in mergers and acquisitions, contract negotiations, and other legal matters, allowing for better contract review and management.⁵⁷

in the legal arena, including becoming knowledgeable about the technology, protecting the client's confidentiality, and supervising the work product for accuracy.

⁵² See John Villasenor, *How AI Will Revolutionize the Practice of Law*, BROOKINGS (Mar. 20, 2023), <https://www.brookings.edu/articles/how-ai-will-revolutionize-the-practice-of-law/>.

⁵³ *Id.*

⁵⁴ See *The Value of AI in Legal Research Technology*, THOMSON REUTERS (Aug. 8, 2023), [https://legal.thomsonreuters.com/blog/what-has-legal-ai-ever-done-for-](https://legal.thomsonreuters.com/blog/what-has-legal-ai-ever-done-for-you/#:~:text=AI%20can%20help%20you%3A&text=Extract%20key%20facts%2C%20arguments%2C%20holdings,main%20points%20of%20each%20document)

[you/#:~:text=AI%20can%20help%20you%3A&text=Extract%20key%20facts%2C%20arguments%2C%20holdings,main%20points%20of%20each%20document](https://legal.thomsonreuters.com/blog/what-has-legal-ai-ever-done-for-you/#:~:text=AI%20can%20help%20you%3A&text=Extract%20key%20facts%2C%20arguments%2C%20holdings,main%20points%20of%20each%20document).

⁵⁵ See, e.g., LEXION, <https://www.lexion.ai/> (last visited Apr. 10, 2024) (assisting attorneys by “automatically extracting key details from contracts”).

⁵⁶ See Prabhjot Singh, *Predictive Analytics for Case Outcomes- A Brief*, LEGAL TECH INSIGHTS (Aug. 16, 2023), <https://www.linkedin.com/pulse/predictive-analytics-case-outcomes-brief-prabhjot-singh/>.

⁵⁷ See *Due Diligence Process*, ANSARADA, <https://www.ansarada.com/due-diligence/process#:~:text=AI%20due%20diligence%20is%20faster,includ%20huge%20volumes%20of%20information> (last visited Apr. 10, 2024).

- *Consistency and Accuracy*: The technology can uniformly employ legal analysis without bias or fatigue common among humans.⁵⁸
- *Access to Justice*: AI can help bridge the gap in equal justice by offering affordable legal services to those of limited means.⁵⁹
- *Innovation and Adoptability*: The legal profession constantly evolves, and AI permits attorneys to stay abreast of emerging technologies and trends.⁶⁰

The legal profession is on the cusp of a new ground-breaking way of performing legal tasks. Many attorneys currently use some form of AI without knowing it, such as performing a Google search or using Westlaw to retrieve a case.⁶¹ Now, lawyers can use AI to draft a contract, predict how a court will decide a case, or determine the outcome of an arbitration.⁶²

IV. AI AND ALTERNATIVE DISPUTE RESOLUTION

Third-party litigation financing, high verdicts, and forum shopping are some of the contributing elements pushing up the cost of litigation in the United States.⁶³ Add lawyer advertising,

⁵⁸ See Chris O’Leary & Raees Nakuhuda, *How AI for M&A due diligence is changing every aspect of the deal process*, THOMSON REUTERS (Apr. 16, 2023), <https://legal.thomsonreuters.com/en/insights/articles/how-ai-and-document-intelligence-are-changing-the-legal-tech-game#how-is-ai-transforming-the-due-diligence-process>.

⁵⁹ See Joel Tito, *How AI Can Improve Access to Justice*, CENTRE FOR PUBLIC IMPACT (Oct. 23, 2017), <https://www.centreforpublicimpact.org/insights/joel-tito-ai-justice>.

⁶⁰ This explanation was based upon an answer provided by ChatGPT in response to the author’s question about the advantages of using AI in the legal profession. The question was posed on July 19, 2023; see also *Why attorneys need to keep up with legal tech advances*, THOMSON REUTERS (Dec. 28, 2022), <https://legal.thomsonreuters.com/blog/why-attorneys-need-to-keep-up-with-legal-tech-advances/>.

⁶¹ See Dean R. Dietrich, *Artificial Intelligence: How Much Do Lawyers Need to Know?* 93 WIS. LAW. 36 (2020).

⁶² See Singh, *supra* note 56; see also Karyna Pukaniuk, *How Does AI Contract Drafting Work in Legaltech*, LAWRINA, <https://lawrina.org/blog/ai-in-legal-contract-drafting/#:~:text=AI%20contract%20drafting%20apps%20are,protection%20from%20potential%20malpractice%20litigation> (last visited Apr. 10, 2024).

⁶³ *The Rapid Rise of Litigation Costs*, TRAVELERS INST. (May 24, 2023), <https://www.travelers.com/travelers-institute/webinar-series/symposia-series/rise-of-litigation-costs>.

contingent fee agreements, and lawsuits perceived as beneficial for society in stopping bad behavior, and it is little wonder why this country is considered litigious.⁶⁴

A. THE DISPUTE RESOLUTION PROCESS

Litigation presents an emotionally challenging experience that can be traumatic, laborious, and costly.⁶⁵ The inability of the courts to resolve cases expeditiously only exacerbates this already negative encounter.⁶⁶ Therefore, litigants pursue other ways to accelerate the dispensing of justice.⁶⁷ Methods such as electronic filings and video hearings have reduced some of the court's backlogs.⁶⁸ COVID also stimulated the legal community to adopt new technologies and increase flexibility in work locations.⁶⁹ Attorneys are now more comfortable with online procedures and value the benefits they offer.⁷⁰

Consequently, many parties use alternative dispute resolution (ADR) as a viable option in resolving controversies.⁷¹ This mechanism is less expensive and provides litigants with ways to uncover inventive resolutions that aid both sides.⁷² ADR enjoys a storied history of use.⁷³ Its origins trace back to England in 1066.⁷⁴ People of the time convened an “informal court” to resolve private

⁶⁴ Alex Berezow, *Blame and Claim: Can We Fix America's Uniquely Litigious Culture?* AM. COUNCIL ON SCI. & HEALTH (Dec. 28, 2019), <https://www.acsh.org/news/2019/12/27/blame-and-claim-can-we-fix-americas-uniquely-litigious-culture-14477>.

⁶⁵ See Aaron Hall, *What Is It Like Emotionally to Go Through a Lawsuit* (Sept. 6, 2023), <https://aaronhall.com/what-is-it-like-emotionally-to-go-through-a-lawsuit/#:~:text=It%20can%20be%20stressful%2C%20time,frustration%2C%20anxiety%2C%20and%20sadness>

⁶⁶ *Id.*

⁶⁷ *How the backlog may reshape the future of the courts*, THOMSON REUTERS, <https://legal.thomsonreuters.com/en/insights/articles/backlog-reshape-future-courts> (last visited Apr. 10, 2024).

⁶⁸ *Id.*

⁶⁹ *Litigation Trends Predicted for 2023*, COMMON LEGAL QUESTIONS (May 1, 2023), <https://commonlegalquestions.com/litigation-trends-predicted-for-2023/>.

⁷⁰ *Id.*

⁷¹ Michael McManus & Brianna Silverstein, *Brief History of Alternative Dispute Resolution in the United States*, 1 CADMUS, 100, 102 (2011).

⁷² Hibah Alessa, *The role of Artificial Intelligence in Online Dispute Resolution: A brief and critical overview*, 31 INFO. & COMMC'N TECH. L. 319, 320 (2022).

⁷³ See McManus & Silverstein, *supra* note 71, at 101–02.

⁷⁴ *Id.* at 100–01.

disputes.⁷⁵ Generally, well-respected community members were the ones to conduct these proceedings.⁷⁶ In the American colonies, this practice became much more popular than traditional litigation.⁷⁷ Initially, arbitration was primarily employed for intellectual property disputes in America, but once legal professionals formed the Federal Mediation and Conciliation Service in the 19th century, arbitration became more widely used.⁷⁸ Following the passage of the Federal Arbitration Act in the 1925 and ADR's increased attractiveness, this alternative way of resolving disputes became a stable element of American jurisprudence.⁷⁹

This surrogate method to court intervention is used extensively by U.S. enterprises to “resolve complex business disputes.”⁸⁰ By the late 1990s, mediation clauses were common elements of commercial contracts.⁸¹ This development “reflect[ed] widespread acknowledgment of the value of mediation and its acceptance as a primary intervention strategy in managing conflict.”⁸² ADR can resolve an endless number of matters, from the division of marital property to determining the salary of a major league baseball player.⁸³

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 101.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Daryl Geddes, *U.S. Corporations now widely use Alternative Dispute Resolution over litigation to solve disputes, national survey shows*, CORNELL CHRONICLE (May 21, 1997), [https://news.cornell.edu/stories/1997/05/survey-also-finds-lack-confidence-qualifications-arbitrators#:~:text=By%20Darryl%20Geddes&text=Alternative%20Dispute%20Resolution%20\(ADR\)%20is,their%20use%20in%20resolving%20disputes](https://news.cornell.edu/stories/1997/05/survey-also-finds-lack-confidence-qualifications-arbitrators#:~:text=By%20Darryl%20Geddes&text=Alternative%20Dispute%20Resolution%20(ADR)%20is,their%20use%20in%20resolving%20disputes).

⁸¹ Elizabeth B. Juliano, *The Evolution, Benefits, and Challenges of Alternative Dispute Resolution and Online Dispute Resolution*, LITIG. MGMT. INC., <https://www.lmiweb.com/article/evolution-benefits-and-challenges-alternative-dispute-resolution-and-online-dispute> (last visited July 20, 2023).

⁸² *Id.* (quoting Thomas Stipanowich & J. Ryan Lamare, *Living with ‘ADR’: Evolving Perceptions and Use of Mediation, Arbitration and Conflict Management in Fortune 1,000 Corporations*, 19 HARV. L. REV. & PEPP. UNIV. L. STUD. RSCH. PAPER NO. 2013/6 1, 12 (2014)).

⁸³ See generally Juliano, *supra* note 81; see also Lucas Waterson, *MLB Salary Arbitration: Basics*, COLUM. SOC’Y FOR BASEBALL RSCH. (Jan. 17, 2023), <https://sbr.studentgroups.columbia.edu/news/mlb-salary-arbitration-basics#:~:text=Arbitration%20is%20the%20process%20by,team%20like>

B. ONLINE DISPUTE RESOLUTION

With technological advances and forms of e-commerce becoming increasingly prevalent, new dispute resolution methods have developed through online dispute resolution (ODR) and AI-guided proceedings.⁸⁴ ODR “refers to a broad set of technologies meant to either supplement or replace ways in which people have traditionally resolved their disputes.”⁸⁵ The technology encompasses various applications and software created to aid in resolving disputes online.⁸⁶ Platforms like Zoom and WebEx accommodate dispute resolution activities by facilitating such meetings.⁸⁷ This online format shares and builds upon the foundation of alternative dispute resolution, underscoring more straightforward and timesaving ways of addressing conflict.⁸⁸

1. EVOLUTION OF ODR IN THE LEGAL COMMUNITY

ODR originated in the United States in the 1990s.⁸⁹ Adopters include eBay, PayPal, the Internet Corporation for Assigned Names and Numbers, SquareTrade portal, CyberSettle, and several other business service providers.⁹⁰ However, it was not until 2001 that governments started to recognize the benefits of ODR, realizing that transferring disputes to an online mechanism diminishes the court’s burden in scheduling hearings and increasing the ability to resolve them.⁹¹ Similarly, at its inception, ODR was not widely welcomed by the legal community; however, in the last

%20free%20agents%20do (discussing collective bargaining process involved in arbitrating baseball players’ salaries).

⁸⁴ Alessa, *supra* note 72, at 321.

⁸⁵ *Online Dispute Resolution*, RESOL. SYS. INST., <https://www.aboutrsi.org/special-topics/online-dispute-resolution> (last visited Apr. 10, 2024).

⁸⁶ *ODR: Online Dispute Resolution Explained*, ADR TIMES (Dec 1, 2021), <https://www.adrtimes.com/online-dispute-resolution/#:~:text=Defining%20Online%20Dispute%20Resolution%3A,used%20during%20in%2Dperson%20resolution.>

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Alessa, *supra* note 72, at 322.

⁹⁰ *Id.*; see generally Colin Rule, *Using Technology to Manage High Volume Caseloads: The eBay/Pay Pal Experience*, NAT’L ARCHIVES (Nov. 1, 2010), <https://www.archives.gov/files/ogis/events-presentations/acus-colin.pdf>.

⁹¹ Alessa, *supra* note 72, at 320–22.

decade this has increasingly changed.⁹² In fact, several organizations now see this online service “as a partial answer to the access to justice difficulty confronting people of limited means,” as well as a “wave of the future for most if not all forms of civil dispute resolution.”⁹³

This online process has now gained favor with a number of courts that have launched ODR programs.⁹⁴ The goal of these programs includes enhancing access to justice by reducing obstacles in court processes.⁹⁵ These hindrances consist of things such as (1) the time spent physically attending a proceeding, (2) the intimidation element of being in court, and (3) the perplexing character of the Rules of Civil Procedure to a layperson.⁹⁶ The primary users of this online system include state proceedings against an individual, such as resolving a motor vehicle violation, and private individuals in conflict, such as in small claims or landlord-tenant disputes.⁹⁷

On the other hand, just because an agreement discusses using an online dispute resolution service does not make it the exclusive remedy.⁹⁸ For example, in *Attaway v. Omega*, appellants purchased a Porsche through eBay, paying the sellers by credit card but then rescinding payment claiming the vehicle was not as warranted.⁹⁹ Sellers filed suit, and appellants moved to dismiss, maintaining that eBay required disputes to be directed to its ODR processes in lieu of litigation.¹⁰⁰ The court disagreed, noting appellants failed to show, “any language within [the] documents suggesting that the online

⁹² Robert J. Condlin, *Online Dispute Resolution: Stinky, Repugnant or Drab*, 18 CARDOZO J. CONFLICT RESOL. 717, 717–18 (2017).

⁹³ *Id.* at 718–19 (highlighting potential for increased access to legal services by standardizing and streamlining online options to replace traditional court proceeding or court appearances).

⁹⁴ See *Online Dispute Resolution in the United States*, AM. BAR ASS’N CTR. FOR INNOVATION 1, 2 (Sept. 2020), <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/odrvisualizationreport.pdf> (“At the end of 2019, there [were] 66 active sites of court annexed ODR in 12 states”); see also *How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations*, PEW TRUSTS (Dec. 1, 2021), <https://www.pewtrusts.org/en/research-and-analysis/reports/2021/12/how-courts-embraced-technology-met-the-pandemic-challenge-and-revolutionized-their-operations>.

⁹⁵ See AM. BAR ASS’N, *supra* note 94, at 1.

⁹⁶ *Id.*

⁹⁷ *Id.* at 7–9.

⁹⁸ See generally *Attaway v. Omega*, 903 N.E.2d 73, 75 (Ind. Ct. App. 2009).

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 76, 80.

dispute resolution process is a buyer or seller's sole recourse in the event a dispute arises.”¹⁰¹ The court also added appellants failed to reference any case in which a court dismissed an eBay contest for lack of jurisdiction on this basis.¹⁰²

2. ODR PROCESSES

ODR involves a wide collection of systems, platforms, and programs covering, “education, outreach, and feedback on one end, to mediation, conciliation, arbitration, and adjudication on the other.”¹⁰³ Nevertheless, experts can divide ODR methods into two processes: party-driven and adjudicative.¹⁰⁴ The party-driven procedure relies on adversaries to determine and consent to a solution.¹⁰⁵ In application, this method requires adversaries to agree on a solution or the matter will be transferred to a different dispute resolution format.¹⁰⁶ Sample procedures include:

i. AUTOMATED NEGOTIATION

Automated negotiation accumulates data from parties to help form an agreement.¹⁰⁷ The process can only be utilized when liability is not disputed, and the process is frequently employed in insurance conflicts and commercial activities.¹⁰⁸ This method encourages parties to make an offer premised upon what they want to accomplish, but the offer is kept secret until a compromise is achieved.¹⁰⁹ In this way, parties can reach a common ground without confronting each other in person.¹¹⁰

ii. ASSISTED NEGOTIATION

Assisted negotiation uses computer programs to negotiate and help resolve disputes by offering advice and assisting in

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Condlin, *supra* note 92, at 724.

¹⁰⁴ ADR TIMES, *supra* note 86.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

restating a party's position.¹¹¹ The software aids in mediating disputes between two or more parties.¹¹² It can also bargain on behalf of the mediator or negotiate with different parties.¹¹³

Modria provides an example of this approach.¹¹⁴ The company advertises itself as the “world's most successful online resolution platform.”¹¹⁵ The product claims to be able to merge law, economics, and psychology to help parties handle and solve their disputes.¹¹⁶ This online platform allows parties to engage in discussions, mediation, and arbitration arrangements to garner support for their respective positions.¹¹⁷

In application, the software gathers relevant information from each party about their interests and desires, attempting to foster a mutually satisfying understanding.¹¹⁸ For example, if Party 1 tells the software she wants \$5,000 to settle the matter but confidentially notes she would settle for \$3,500, the software tasks Party 2 if he would pay \$5,000. If Party 2 retorts he would pay no more than \$3,750, the program could then suggest a settlement of \$3,500—a sum acceptable to both sides. This method neutralizes haggling and helps generate an efficient compromise.¹¹⁹

Different ODR products are available and are distinct from other assistive technologies.¹²⁰ For example, the OurFamilyWizard application assists families who co-parent in planning and

¹¹¹ See Katie Shonk, *Advanced Negotiation Techniques: Online Dispute Resolution*, HARV. L. SCH.: PROGRAM ON NEGOT. DAILY BLOG (July 27, 2020), <https://www.pon.harvard.edu/daily/negotiation-skills-daily/advanced-negotiation-techniques-online-dispute-resolution/>; Juliano, *supra* note 81.

¹¹² Shonk, *supra* note 111.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Online Dispute Resolution*, MODRIA, www.tylertech.com/Portals/0/OpenContent/Files/4080/Modria-Brochure.pdf (last visited Apr. 10, 2024).

¹¹⁶ *Id.*

¹¹⁷ *American Arbitration Association Selects Modria to Power New York No Fault Caseload*, PR NEWSWIRE (Mar. 5, 2014), <https://www.prnewswire.com/news-releases/american-arbitration-association-selects-modria-to-power-new-york-no-fault-caseload-248543191.html>.

¹¹⁸ *Online Dispute Resolution: Powered by Modria*, TYLER TECHNOLOGIES, <https://www.tylertech.com/products/online-dispute-resolution> (last visited Apr. 10, 2024).

¹¹⁹ See *id.* (citing Ben Barton, *Modria and the Future of Dispute Resolution*, BLOOMBERG L. para. 3 (2015)) (explaining how Modria offers sophisticated procedures that “resolve disputes fairly as well as economically and efficiently”).

¹²⁰ ADR TIMES, *supra* note 86.

coordinating activities in a civilized manner.¹²¹ Other enterprises, such as Cybersettle, Inc., Smartsettle, and VirtualCourthouse, provide other forms of ODR services to facilitate simplified out-of-court processes.¹²²

iii. ADJUDICATIVE METHOD

The adjudicative method technique requires parties to allow a third person to decide the outcome of the dispute.¹²³ The process removes litigant outcome control and permits them to present their side of the story.¹²⁴ The methods under this approach include online arbitration, non-binding arbitration, and chargebacks.¹²⁵ The first two methods are traditional and self-evident.¹²⁶ However, chargebacks are, “a way of challenging payments online to vendors through credit and debit cards.”¹²⁷ The adjudicative method offers parties a previously unconsidered perspective from non-interested parties.¹²⁸ For example, a group of outsiders can participate in the dispute resolution process through an open call for assistance.¹²⁹ This technique can include online opinion polls, online mock juries, or decisions enforced by private authorities.¹³⁰ Vendors of these online services include iCourthouse, SideTaker, AllRise, People’sCourtRaw and Truveli.¹³¹

Not everyone is enamored with ODR.¹³² Traditionalists maintain that an online dialogue cannot replace face-to-face

¹²¹ *Id.*

¹²² Juliano, *supra* note 81. For instance, Cybersettle allows the parties to submit confidential offers and demands from an online device. The software then conveys the submissions to ascertain if they are within the range of a mutually acceptable settlement; *see also* CYBERSETTLE, <https://www.cybersettle.com/#:~:text=Online%20Settlement%20and%20Payment%20Solutions&text=Cybersettle%20instantly%20compares%20the%20parties,yes%2C%20the%20parties%20arrange%20payment> (last visited Sept. 12, 2023).

¹²³ ADR TIMES, *supra* note 87.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *See id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Crowdsourcing Online Dispute Resolution*, ASS’N FOR PROGRESSIVE COMM’N (May 8, 2017), <https://www.apc.org/en/blog/crowdsourced-online-dispute-resolution>.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *See* Joseph W. Goodman, *The Pros and Cons of Online Dispute Resolution: An Assessment of Cyber-Mediation Websites*, 2 DUKE L. & TECH. REV. 1, 9–13 (2003) (discussing various disadvantages of cyber-

conversations and still foster the essential values of mediation.¹³³ The parties also need sufficient technology to contribute to the process.¹³⁴ Those who lack adequate tools may be, “at a disadvantage or unable to fully participate.”¹³⁵ Further, “ODR is a less personal form of dispute resolution as the parties are not in the same room, and often all discussions are in writing.”¹³⁶ This method also disfavors parties with language barriers or those with difficulty communicating.¹³⁷

C. USING ARTIFICIAL INTELLIGENCE TO FACILITATE ADR

AI-assisted dispute resolution products are gaining momentum.¹³⁸ Developers have even devised a term to describe the procedure: AI-DR.¹³⁹ For example, “The Peacebuilders’ Platform” collects success stories from mediators worldwide, showcasing the “significance of mediation as an effective tool for conflict prevention and resolution.”¹⁴⁰ Another organization, Alliance for Peacebuilding, includes more than 180 organizations from over 181 countries to prevent strife and establish sustainable peace around the world.¹⁴¹ One article even notes that AI, “has the potential to

mediation and noting that “mediation cannot easily be reproduced in the online environment because ‘cyberspace is not a mirror image of the physical world’”).

¹³³ *Id.* at 9.

¹³⁴ See, e.g., *Dispute Resolution Reference Guide: Online Dispute Resolution*, DEPT. OF JUST., CAN. (Aug. 25, 2022), <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/10.html>.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Lindsey Wagner, *ODR, Artificial Intelligence & Mediation: A Look to Tomorrow*, MOXIE, (July 28, 2022), <https://www.moxiemediation.com/blog/odr-artificial-intelligence-mediation?rq=Lindsey%20Wagner>.

¹³⁹ *Id.*

¹⁴⁰ *The Peacebuilders Platform*, MEDIATORS BEYOND BORDERS INT’L, <https://mediatorsbeyondborders.org/peacebuilders-platform> (last visited June 26, 2023).

¹⁴¹ *Membership Benefits*, ALLIANCE FOR PEACEBUILDING, <https://www.allianceforpeacebuilding.org/membership-benefits#:~:text=Named%20the%20%E2%80%9Cnumber%20one%20influencer,viole%2C%20and%20build%20sustainable%20peace> (last visited Jan. 7, 2024).

revolutionize the way disputes are resolved.”¹⁴² Whether this is hyperbole or fact remains to be seen.¹⁴³ However, AI can augment dispute resolution mechanisms.¹⁴⁴ The tool particularly applies to “mediation and high-volume consumer disputes.”¹⁴⁵ For instance, AI could assist parties in ascertaining areas of commonality by fostering a quicker and less expensive way to achieve an equally advantageous resolution.¹⁴⁶ EBay and PayPal illustrate this potential by using “algorithm-driven online dispute resolution” methods to resolve millions of cases annually.¹⁴⁷

These algorithms work by accumulating a considerable volume of data involving prior disputes with comparable facts and recommending mutually constructive results.¹⁴⁸ To work properly, these predictive applications require a large dataset with adequate variety.¹⁴⁹ The data must also be unchanging over time.¹⁵⁰ Recently, it has been noted that “a standardised dataset of 100,000 US court cases [can be used] to test AI approaches for analyzing court decisions and predicting case outcomes.”¹⁵¹ This volume of material is needed to provide the training model with sufficient information to develop an accurate prediction system.¹⁵²

While AI is employed to suggest settlement terms, some jurisdictions utilize the technology to render binding decisions.¹⁵³ For instance, China decides millions of disputes through an “Internet court” that does not compel parties to make an appearance.¹⁵⁴ These tribunals incorporate “non-human judges” driven by AI that permit

¹⁴² Audrey Berland, *Artificial Intelligence (AI) and Mediation: Technology-Based Versus Human-Facilitated Dispute Resolution*, MILES MEDIATION & ARB. (Mar. 8, 2023), <https://www.jdsupra.com/legalnews/artificial-intelligence-ai-and-1573917/>.

¹⁴³ See generally *id.*

¹⁴⁴ Robin Dodokin et al., *Artificial Intelligence and Arbitration: A Perfect Fit?* ADR INST. OF CAN., <https://adric.ca/artificial-intelligence-and-arbitration-a-perfect-fit/> (last visited July 21, 2023).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Eidenmüller & Varesis, *supra* note 48, at 60.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* (citations omitted).

¹⁵² *Id.*

¹⁵³ Dodokin et al., *supra* note 144.

¹⁵⁴ Tara Vasdani, *Robot Justice: China’s Use of Internet Courts*, LEXISNEXIS, <https://www.lexisnexis.ca/en-ca/ihc/2020-02/robot-justice-chinas-use-of-internet-courts.page> (last visited Apr. 10, 2024).

litigants to file their cases online and resolve their grievances through digital court hearings.¹⁵⁵

The Internet court maintains jurisdiction over “intellectual property, e-commerce, financial disputes related to online conduct, loans acquired or performed online, domain name issues, property and civil rights cases involving the Internet, product liability arising from online purchases and certain administrative disputes.”¹⁵⁶ Interestingly, the judges project as avatars or holograms.¹⁵⁷ These computer-generated jurists seem like actual individuals but are synthesized 3D images.¹⁵⁸ The jurists impose trial schedules, ask questions, receive evidence, and issue binding opinions.¹⁵⁹ Courts in Estonia and applications in England also employ AI with some frequency to assist in resolving minor disputes.¹⁶⁰ Even the United States is not immune from using AI in litigation.¹⁶¹ Courts in Utah, Wisconsin, California, Ohio, and Michigan use “algorithm-based ODR” for small monetary disputes, traffic tickets, outstanding warrant issues, and “low-conflict family court cases.”¹⁶²

Databases exist to help parties identify suitable arbitrators for a hearing.¹⁶³ Assuming these selections can be stored in a database, AI can access that information and recommend the most favorable candidate for the proceeding.¹⁶⁴

This arbitrator selection process is only the beginning.¹⁶⁵ It is predicted that parties could permit AI technology to decide their controversy.¹⁶⁶ An algorithm could examine the facts and legal arguments to render a binding decision premised upon similar cases.¹⁶⁷ Basically, “the AI tool would become the arbitrator” and the amount of human intervention would be up to the parties.¹⁶⁸ The gamut of AI participation could range from assisting the human arbitrator, like an expert witness, to allowing the algorithm to make the final determination.¹⁶⁹ To reduce the trepidations of a party from

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Dodokin et al., *supra* note 144.

¹⁶³ Jordan Baskt et al., *Artificial Intelligence and Arbitration: A US Perspective*, 16 DISP. RESOL. INT’L 7, 16 (2022).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

allowing AI to decide a case, the tool could be provided with parameters for an acceptable award range.¹⁷⁰ As a middle ground, AI could determine specific issues, such as a discovery dispute or the amount of damages to be awarded, while leaving the final determination to its human counterpart.¹⁷¹ One can use AI technology in two ways: a supportive or substantive capacity.¹⁷² Looking at conventional dispute resolution methods best explains the disparity between the two approaches.¹⁷³

1. SUPPORTIVE APPROACH

The supportive approach requires parties to engage simultaneously with a mediator or arbitrator.¹⁷⁴ When AI is then interjected into the mix, the neutral utilizes the algorithm as a tool to help resolve the case.¹⁷⁵ This form of AI technology is the most used system in an ODR setting.¹⁷⁶ After all, it is much easier to create a tool that may assist a human rather than replace the person.¹⁷⁷ Therefore, most technological developments involving AI tools have occurred in a supportive role.¹⁷⁸ The ability of AI “to weigh up different factors and compute the optimal outcome or course of action is a clear indication of its efficiency and effectiveness.”¹⁷⁹ The Family Winner system is an example. The system requests each party to enumerate the property they challenge and assign a subjective priority to each item.¹⁸⁰ The algorithm will then present an optimal plan for dividing assets, which parties can rebuff or accept.¹⁸¹ In the event of rejection, the algorithm will permit parties to rank the property whose proposed distribution is contested so that it can assign each party the highest-valued item accordingly.¹⁸²

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Alessa, *supra* note 72, at 326.

¹⁷³ *Id.* at 331.

¹⁷⁴ *See id.* at 327.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 326.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 327.

¹⁸¹ *Id.*

¹⁸² *Id.*

2. SUBSTANTIVE ROLE

When AI takes on a substantive role, the technology assumes the classic functions a mediator or arbitrator performs and renders the final decision.¹⁸³ For instance, the technology can request each side to set forth their best offer.¹⁸⁴ The technology would then explore its database and ascertain which offer is closest to the best solution.¹⁸⁵ This process is constructed to inspire adversaries to set forth their best offers so that the AI selects their proposal over the other party's.¹⁸⁶ This format utilizes the technology's strong points and sidesteps issues that might cause problems.¹⁸⁷

It is not always clear which system AI employs.¹⁸⁸ Oftentimes, there is much crossover between the two approaches based upon the sophistication of the technology.¹⁸⁹ For instance, if the matter involves an athlete's compensation, and the AI creates a spreadsheet used by the neutral to arrive at a decision, the algorithm is acting in a supportive role.¹⁹⁰ However, it could function in a substantive capacity if the system can forge a better financial outcome for the prevailing party.¹⁹¹

D. REASONING SYSTEMS

Various AI platforms exist to help parties reach a resolution, but the two main ones are case reasoning and rule-based systems.¹⁹²

1. CASE REASONING SYSTEMS

Case reasoning relies upon past outcomes and relates them to the matter at issue.¹⁹³ Thus, if the algorithm knows from a prior

¹⁸³ *Id.* at 326.

¹⁸⁴ Pankhuri Bhatnagar, *The Role of Artificial Intelligence in Alternate Dispute Resolution*, BLACK N' WHITE J. (2020) <https://bnwjournals.com/2020/09/06/the-role-of-artificial-intelligence-in-alternative-dispute-resolution/>.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Alessa, *supra* note 72, at 326.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Audrey Berland, *Artificial Intelligence (AI) and Mediation: Technology-Based Versus Human-Facilitated Dispute Resolution*, JD SUPRA (2023) <https://www.jdsupra.com/legalnews/artificial-intelligence-ai-and-1573917/>.

¹⁹³ *Id.*

incident or data input that a specific pathway results in a negative consequence, it can shun that action plan.¹⁹⁴ The case reasoning system is used in many of our daily activities.¹⁹⁵ For instance, Google Maps employs this system to plot how long a trip will take by looking at the patterns of prior drivers to ascertain how long it took to go from one location to another.¹⁹⁶ In a mediation context, AI would know not to instruct parties in a contested divorce to give away all of their assets to avoid a contentious settlement process.¹⁹⁷ Thus, where an ODR dispute contains similar facts and issues as prior cases, a mediator can incorporate established precedent in resolving the issue.¹⁹⁸ As an illustration, Split-Up AI is a system involving divorce and property settlements.¹⁹⁹ The algorithm examines ninety-four different elements, from child care arrangements to income, before offering solutions premised upon prior cases with similar fact patterns.²⁰⁰

2. RULE-BASED SYSTEMS

A rule-based system employs predefined laws and regulations to direct the AI in its decision-making process.²⁰¹ These rules are often stated in human-friendly language, such as, “if a party broke a contract term, then apply the relevant penalty” or, “if both parties have agreed upon a settlement value of greater than 90%, then provide a conclusion settlement agreement.”²⁰² Using this method to assimilate data and offer solutions results in these systems becoming a meaningful way to resolve complicated situations.²⁰³

¹⁹⁴ *Case Based Reasoning*, THE DECISION LAB, <https://thedecisionlab.com/reference-guide/philosophy/case-based-reasoning> (last visited Apr. 10, 2024).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Alessa, *supra* note 72, at 329.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Berland, *supra* note 192.

²⁰² Alessa, *supra* note 72, at 319, 342.

²⁰³ See Kerem Gülen, *Expert Decision-Making: A Closer Look at Rule-Based Approach in AI*, DATA CONOMY (Apr. 25, 2023), <https://dataconomy.com/2023/04/25/rule-based-system-in-artificial-intelligence/>.

E. LIMITATIONS

AI technology and its employment in arbitration may not be ready for prime-time use at this stage in its development.²⁰⁴ AI bases the ability to predict the outcome of a dispute upon the aptitude to assess judgment patterns specific to the arbitrators.²⁰⁵ Some jurisdictions, however, are resistant to the technology's use, worrying that data mining would involve privacy and confidentiality issues.²⁰⁶ An additional concern hampering the tracking of arbitration findings is that only parties to the dispute know most awards.²⁰⁷

Another consideration is that AI cannot fully process the intangible, intricate, and variable aspects of arbitration.²⁰⁸ After all, an arbitrator must decide credibility issues, "which involves reasoning and recognition."²⁰⁹ Decision-making is a human phenomenon.²¹⁰ Therefore, one must question whether AI can reason as required to reach a determination.²¹¹ Algorithms can make predictions premised upon prior recognized patterns, but can they reason as humans do or resolve novel issues involving complex matters?²¹²

AI awards may encounter hostile regulatory schemes that prohibit employing algorithms to determine arbitration disputes.²¹³ Such a limitation hinders innovation involving AI in dispute resolution.²¹⁴ For instance, France and the Netherlands mandate the use of human arbitrators.²¹⁵

²⁰⁴ Luis Perez et al., Commentary, *International Arbitration Experts Discuss The Impact Of Artificial Intelligence On International Arbitration*, 38 MEALEY'S INT. ARB. REPORT 1 (2023).

²⁰⁵ Dodokin et al., *supra* note 144.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *See id.*; *see also* Azael Socorro, Master Thesis, *Are We Ready for Artificial Intelligence to Decide International Commercial Arbitration Cases?*, TILBURG INST. FOR LAW, TECH., & SOC'Y (2020) for a more detailed discussion on the use of artificial intelligence in an international commercial setting.

²¹⁴ *See* Dodokin et al., *supra* note 144.

²¹⁵ Bask et al., *supra* note 163, at 17. Some courts in the United States are receptive to using technology as part of the litigation process. *See e.g.*, *Moore v. Publicis Groupe*, 287 F.R.D. 182, 193 (S.D.N.Y. 2012), adopted sub nom. The *Moore* court approved the use of a computer-assisted review as noted: "What the Bar should take away from this Opinion is

Another question that must be examined is whether AI technology is subject to a product liability claim if something goes wrong.²¹⁶ This law requires using a product to trigger responsibility.²¹⁷ If the algorithm causes harm at an arbitration, will regulators classify it as a product or a service under the law?²¹⁸ The answer to this question will most likely be determined on a case-by-case basis, with the result premised upon who employed what AI tool for what purpose, and whether immunity is an available defense.²¹⁹

V. CONCLUSION

The practice of law is changing, and AI will play a significant role in this metamorphosis.²²⁰ AI can easily automate many legal tasks, making attorneys more productive and cost-efficient.²²¹ In fact, experts predict technology use will become routine within a decade.²²² ADR is not immune to this transformation, as AI is being used with more frequency.²²³ In the fast-developing age of innovation, dispute resolution discovers new and novel methods of resolving conflict through ODR and AI-guided proceedings.²²⁴ It is too early to tell if these unique approaches will be sustainable in the long term.²²⁵ However, the growth of ODR is real, and AI developments have advanced to resolve disputes online. Predicting what will happen to the field within the next decade is difficult. After all, it is hard to conceptualize a computer replacing arbitrators and mediators, especially when credibility issues are involved.²²⁶ But then again,

that computer-assisted review is an available tool and should be seriously considered for use in large-data-volume cases where it may save the producing party (or both parties) significant amounts of legal fees in document review.” See also Bart-Adriaan de Ruijter, *International Arbitration Law and Rules in the Netherlands*, CMS, <https://cms.law/en/int/expert-guides/cms-expert-guide-to-international-arbitration/netherlands>, (last visited Apr. 10, 2024).

²¹⁶ See Baskt et al., *supra* note 163, at 18.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* at 19.

²²⁰ *Id.* at 7.

²²¹ See Dimka, *supra* note 44.

²²² See Donahue, *supra* note 23.

²²³ See Ryan Abbott & Brinson S. Elliott, *Putting the Artificial Intelligence in Alternative Dispute Resolution: How AI Rules Will Become ADR Rules*, 4 AMICUS CURIAE 685, 685 (2023).

²²⁴ See Alessa, *supra* note 72, at 322–24.

²²⁵ *Id.* at 335.

²²⁶ See Dodokin et al., *supra* note 144.

who would have thought the Internet would replace record stores, maps, filing cabinets, and brick-and-mortar premises? Hopefully, this article has provided a primer for online ADR and algorithm-based awards and introduced the reader to some of the legal issues involved with this new way of resolving disputes.