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# Access to Information and Justice: Where does ODR lead us to?

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by *Jie Zheng*

August 2017

From attending this year's ODR conference organized by the ICC in Paris from June 12<sup>th</sup> to 13<sup>rd</sup>, 2017, I have the impression that ODR is becoming broader and encompassing an extensive scope including online court, online ADR, data protection, artificial intelligence, machine learning, algorithm, automated adjudication, etc. The participants of this ODR conference consisted of a wide of professionals: lawyers, arbitrators, magistrates, IT specialist, entrepreneurs, researchers, professors, etc.



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The theme of the ODR conference this year is the access to information and justice. Alexis Mourre, President of the ICC Court made an opening speech on the importance of using ICT in the future dispute resolution. The conference was divided into several sections including ODR in conflict zones, online court, corporate in-house ODR, consumer ODR, technology used by dispute resolution organizations, ethics and standards of ODR, AI and data protection, ODR service providers, and finally the challenge of ODR.

### Various forms of ODR

From the successful story of eBay in dealing with their consumer disputes by using the in-house online mediation, ODR has started to gain the attention of both researchers and entrepreneurs to establish the ODR world. ODR is intended to be used as an efficient dispute resolution which integrates information technology to settle out-of-court disputes. Nowadays, the scope of ODR has been stretched to anything that is related to dispute resolution and technology.

ODR has also been used in international public law to reconcile conflicts of wars, refugees and protection of weaker parties such as women and the poor. François Zimerary, former French ambassador for Human Rights has confirmed the role of ODR in facilitating interlocution between conflicted parties in human rights protection. Sanjana Hattotuwa has illustrated how ICT can be used in peacebuilding, conflict transformation and crisis response.

Online court has become a trend in ODR as well. Last year, the topic of ODR conference in Hague was focused on the role of ODR to help court and access to justice. In England and Wales, Lord Justice Briggs Report has shown the importance to develop the online court to enable civil disputes of modest value and complexity to be justly resolved without incurring the disproportionate cost of legal representation.[1] The Council of Europe has also confirmed the role of ODR in improving parties' access to justice.[2] From the panel discussion, at the current stage, the information technology is helpful in shortening time of proceedings via electronic filing and digital case management.

We have also heard speakers from traditional dispute resolution organizations to illustrate how they handle cases online. ICC is upgrading their Netcase case management system to better serve the document exchange requirement during arbitration proceedings. Shenzhen Arbitration Commission from China has developed an online arbitration platform to online arbitration together with electronic evidence preservation services. It solves the problem of authentication of electronic evidence by using



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online notarization services that are connected with the platform.

There are also new ODR service providers, such as eJust, Rechtwijzer, Modria, AnOliveBranch, which provide various ODR services (online arbitration, online mediation, etc.) to different types of disputes (insurance, online sales, tax, divorce, etc.).

**AI driven ODR: automation vs human beings**

There is a hot debate over whether artificial intelligence will take the place of human beings and what role should ODR play. We have also been informed about how AI helps to predict justice and to analyze data collected from arbitral institutions and arbitrators to allow parties have better understanding of arbitration and select arbitrators.

The discussion from the debate between automation and human beings turned out that, at the current stage, AI is still used to facilitate dispute resolution that involves human beings. Perhaps machine learning and algorithms will make automated dispute resolution possible in the future. However taking into regard that dispute resolution is a complex process consisting of various factors (law, psychology, society, etc.), automated dispute resolution will not be a wonder drug for all.

**Challenges and regulation of ODR**

While it is exciting hear new developments in the ODR industry, I started to wonder whether ODR is packed with too many elements and it becomes harder to understand what is ODR and who it serves to.


Scholars such as Daniel Rainey, Leah Wing, Carre Menkel-Meadow and Nancy Welsh have worked on ethics and standards to regulate ODR. But, as Brian Hutchinson pointed out at the conference, we need to know who should make these ODR ethics and standards, whom should ODR ethics and standards be applied to and who will enforce them in order to ensure justice in ODR and enhance trust in using ODR.

While celebrating the successful development, we should be cautious in what circumstances can ODR be used and control the quality of these ODR services. To build the world of ODR, we need the cooperation between both ODR providers and users, between public regulation and self-regulation of the private sector.

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[1] Judiciary of England and Wales, Civil Court Structure Review: Interim Report by Lord Justice Briggs, December 2015.

[2] Council of Europe, Committee on Legal Affairs and Human Rights, Access to justice and the Internet: potential and challenges Report, < <http://website-pace.net/documents/19838/1085720/20151026-InternetAccess-EN.pdf/8d3c44d4-da6c-4dac-ab15-94dc1fcc5d48>> accessed 15 June 2017.

## Biography

**Jie Zheng** is a PhD researcher with the Department of Interdisciplinary Study of Law, Private Law and Business Law, at the University of Ghent / Universiteit Gent.

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