A Global Overview on the Rules for ODR

-Japan, EU, US, UN and APEC-

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I. Introduction

Language Problems

In a dispute, a Buyer in State A cannot communicate with the Seller due to Language.
Introduction

The Buyer in State A cannot easily bring a cross-border lawsuit against the Seller in State B in a low-value case.
II. EU & Japan

A System in EU for the Language Problem

Buyers in State A cannot communicate with Venders in State B due to Language

Buyers in State A can communicate with Venders in State B powered by ECC-Net
II. EU & Japan

State X

Consumer Institute

ECC-Net

E-Commerce

Consumer

Vender

Language X

English

Language Y
II. EU & Japan
II. EU & Japan

CCJ in Japan

Buyers in State A cannot communicate with Vendors in State B due to Language

Buyers in State A can communicate with Vendors in State B powered by CCJ-Net
II. EU & Japan

Inside Rules of the Systems are different!

State A  State C  State B  State D  ECC-Net  State E  State F  State G  State H  CCJ

消費者庁
II. EU & Japan

In a Case of Negotiation Refused

A Buyer in State A

A Seller in State B

A Complain

If the Seller refuses to negotiate, the Buyer cannot do anything more in a low-value case
III. United States

• ODR was originally developed to meet the needs of private sectors, especially platformers like eBay and PayPal.

• eBay ODR resolutions as an example:
  • 60+ million disputes per year
  • 50% resolved amicably
  • 90% resolved in software with no human intervention
  • Extrajudicial process, with 100% private enforcement of outcomes
III. United States

• ODR Process of MODRIA as an example:
  • Negotiation
  • Mediation
  • Arbitration or Adjudication
  • Extrajudicial process, with 100% private enforcement of outcomes

• The technology has been used not only for e-commerce disputes but for various types of disputes including family matters.
• The technology has been used not only in ADR but in Courts.
III. United States

Ohio Court of Claims
- Denial of Public Records Request Appeal
- Go-Live: 7/16/2018

Clark County
- Family – Parenting Plan
- Go-Live: 4/1/2018

Santa Clara County
- Small Claims
- Go-Live: TBD

Los Angeles County
- Family – Parenting Plan
- Go-Live: 8/1/2018

Travis County JP2
- Small Claims
- Go-Live: 8/1/2018

Williamson County JP3
- Small Claims
- Go-Live: 8/30/2018

Fulton County
- Small Claims
- Go-Live: 9/1/2018
- Landlord Tenant
- Go-Live: TBD
III. United States

- According to a statistic, consumers of the platformers who experienced the platformers’ ODR system tend to use much more services of the platformers after the experiences of ODR.

- Now many private ODR service providers has emerged and are providing their services all over the United States.
IV. UNCITRAL ODR WG

Dec 2010  1st Meeting in Vienna
May 2011  2nd Meeting in NYC
Nov 2011  3rd Meeting in Vienna
May 2012  4th Meeting in NYC
Nov 2012  5th Meeting in Vienna
May 2013  6th Meeting in NYC
Nov 2013  7th Meeting in Vienna
Mar 2014  8th Meeting in NYC
Oct 2014  9th Meeting in Vienna
Feb 2015  10th Meeting in NYC
Dec 2015  11th Meeting in Vienna
Mar 2016  12th Meeting in NYC
IV. UNCITRAL ODR WG

At the beginning stage, UN ODR Uniform Rules for B2B and B2C were tried to establish:

1) Three steps approach:
   ①Negotiation (Complains Handlings)
      > ②Mediation
      > ③Arbitration

2) All processes will be basically conducted by On-line based documents

3) Simple & Quick Process for Low Value Disputes
IV. UNCITRAL ODR WG

State X

Buyer

① Negotiation

Mediation

Arbitration

Seller

State Y
IV. UNCITRAL ODR WG

At the beginning stage, UN Online *Arbitration* Rules were tried to established:

1) A *single arbitrator* chosen by ODR Administrator
2) All awards shall or should be *in public* on web-site except private information
3) Substantial *Enforcement* by Trustmark system
4) World-wide *Uniform Rules for the Merits*!
IV. UNCITRAL ODR WG

But ... gradually ... a serious issue appeared:

Validity of the Arbitration Agreement between a Consumer and a Business Corporation

US and other countries: Of course, it’s valid!
EU, Japan and other countries:

Consumer has a cancel right!
Consumers have a cancel right.
IV. UNCITRAL ODR WG

Regulations in EU (and Japan):

Since *A Consumer should not be removed its right to go to Courts*, the Consumer shall have a right to cancel the Pre-Dispute Arbitration Agreement

ex. *ADR Directive 2013/11/EU*

*ODR Regulation 524/2013*
IV. UNCITRAL ODR WG

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Mar 2016  12th Meeting in NYC
Jul 2016  Commission adopted the Technical Notes on ODR
IV. UNCITRAL ODR WG

UNCITRAL Technical Notes on ODR

• No Legal Effect
• Three Steps but No Explanation about the Third Step
V. A New ODR Project at APEC

EU is now establishing its own ODR platform. But others still need uniform rules and schemes for the global ODR platform with negotiation and the third party’s interventions.

APEC was regarded as a desirable forum to establish another global ODR platform without EU.

B to C issues would be avoided, at least, at the beginning stage.
V. A New ODR Project at APEC

[Schedule of the New ODR Project at APEC]

August 2017   A Project of the ODR was proposed at Vietnam
March 2018    An ODR Workshop was held in Papua New Guinea
July 2018     An ODR Workshop was held at Jakarta by Indonesia
August 2018   The Project was discussed at the EC in Papua New Guinea
November 2018 A Two-Days ODR Workshop will be held at Osaka
Spring 2019   Another Workshop & EC Meeting will be held in Chile
V. A New ODR Project at APEC

[Possible Future Products by the New ODR Project at APEC]

A Standard ODR Platform for the Harmonization will be proposed. Uniform ODR Rules will be proposed.

They will be based on or inspired by the UNCITRAL Technical Notes on ODR, other UNCITRAL Legal Instruments and the Discussions and Tentative Drafts which was made at the UNCITRAL ODR WG.

A Pilot Program is supposed to be launched after the Chile Meeting.
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