

# **THE IMPERATIVE OF THE REGULATION OF ONLINE DISPUTE RESOLUTION IN NIGERIA**

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## **ABSTRACT**

*Online Dispute Resolution (hereinafter ODR) is an online dispute settlement process that utilizes the traditional Alternative Dispute Resolution (hereinafter ADR) mechanisms such as arbitration, mediation, conciliation and negotiation for resolution of disputes. Presently, ADR practitioners in Nigeria are yet to actively embrace the use of ODR to resolve disputes and by necessary implication, Nigeria is lagging behind other developed countries such as the United Kingdom and the United States of America in the use of this dispute resolution.*

*The United Kingdom favours a government regulatory market for ODR and the United States of America is inclined towards a free-market approach that promotes minimal state regulation. Unlike Nigeria, both countries actively practice ODR and have provisions in their laws that make direct reference to it. Both countries represent foremost economies with distinct views about how to regulate ODR. Therefore, Nigeria has to do more to catch up with this global trend to embrace ODR in the manner in which it is practised in the United States of America or the United Kingdom. If Nigeria embraces ODR, there are numerous benefits to be derived such as preservation of anonymity, cost and time saving, convenience, flexibility, access to justice and faster case resolution.*

*This article has employed both the doctrinal and non-doctrinal research methodology. As a result, it has adopted ideas and information gathered from primary and secondary sources of legal materials and also obtained comments and opinions from respondents during the Annual Conference of the Chartered Institute of Arbitrators United Kingdom (Nigeria branch) held in Abuja, Nigeria on the 24<sup>th</sup> to 26<sup>th</sup> October 2018 where participants gathered from different parts*

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*of Nigeria and the world to deliberate and brainstorm on emerging issues and challenges in Arbitration and ADR in Nigeria and Africa.*

*ODR, as an alternative dispute resolution mechanism, is dispute resolution that is keeping pace with the technological advancement in this technological age. The inability to keep pace will render practitioners and service providers to be living in the past that cannot enhance growth and development in this technological 21<sup>st</sup>-century epoch.*

**Keywords: Online Dispute Resolution, Alternative Dispute Resolution, Information and Communications Technology and Nigeria.**

## INTRODUCTION

A favourable legal regime on ODR in Nigeria will improve the dispute resolution environment since ODR is the link between the traditional ADR mechanisms such as arbitration, mediation, negotiation, and technology.<sup>1</sup> These traditional mechanisms for resolving disputes are now considered time-consuming, (because of the delay/adjournment to achieve physical presence of both parties) expensive, and jurisdictionally problematic.<sup>2</sup>

The emergence of ODR can be traced to the 1990s,<sup>3</sup> a time that witnessed the sudden increase in e-commerce.<sup>4</sup> In the beginning, ODR concentrated on problems such as distance as well as nature and size of the dispute<sup>5</sup> but recently, it has developed further and has continued to improve with the advancement in science and technology.<sup>6</sup> For instance, the first modern ODR system which is believed to be the Virtual Magistrate<sup>7</sup> was created in 1995 through grants from the National Centre for Automated Information (*hereinafter* NCAIR).<sup>8</sup> However, in recent years, several instances that suggest the beginning of a new era for ODR have emerged.<sup>9</sup> One good example is that ODR has gone mobile.<sup>10</sup> Likewise, an application called Youstice<sup>11</sup> has made it easy for consumers and traders to resolve shopping complaints. An e-justice revolution, which

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<sup>1</sup> Aashit S, 'Using ADR to Resolve Online Disputes' (2004) 10(3) Richmond Journal of Law and Technology 1.

<sup>2</sup> Todd C and Albert V, 'Alternative Dispute Resolution: Why It Doesn't Work and Why It Does' (1994) 1(3) Harvard Business Review Journal 1.

<sup>3</sup> Ethan K, 'ODR: A Look at History' in Mohamed Abdel Wahab, Ethan K & Daniel Rainey (eds), *Online Dispute Resolution: Theory and Practice* (Eleven International Publishing The Hague 2013) <<https://www.mediate.com/pdf/katsh.pdf> > accessed 15 March 2018.

<sup>4</sup> Colin R, *Online Dispute Resolution for Business: B2b, E-commerce, Consumer, Employment, Insurance, and other Commercial Conflicts* (John Wiley & Sons 2002) 21.

<sup>5</sup> Joint Technology Committee, 'Case Studies in ODR for Courts: A View from the Front Lines' (adopted 29 November 2017, National Center for State Courts) <<https://ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/JTC%20Resource%20Bulletins/2017-12-18%20ODR%20case%20studies%20revised.ashx>> accessed 15 March 2018.

<sup>6</sup> 'Introduction' in Mohamed Abdel Wahab, Ethan K & Daniel Rainey (eds), *Online Dispute Resolution: Theory and Practice* (Eleven International Publishing The Hague 2013) <<https://www.mediate.com/pdf/katsh.pdf> > accessed 15 March 2018.

<sup>7</sup> Robert G, 'A Brief History of the Virtual Magistrate Project: The Early Months' (Online Dispute Resolution Conference, Washington DC, 1996) 1.

<sup>8</sup> Ethan K and Janet R, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (Wiley Publishers 2001) 56.

<sup>9</sup> Ethan K, 'Online Dispute Resolution: Some Implications for the Emergence of Law in Cyberspace' (2007) 21(2) Journal of International Review of Law, Computers and Technology 97.

<sup>10</sup> Robert A, 'Is There a Future for Online Dispute Resolution for Lawyers' (*Law Sites Publications*, 11 April 2016) <<https://lawsitesblog.com/2016/04/future-online-dispute-resolution.html>> accessed 20 September 2017.

<sup>11</sup> National Center for Technology and Dispute Resolution, 'Youstice' (*The National Center for Technology and Dispute Resolution*) <<http://odr.info/youstice>> accessed 20 September 2017.

ultimately exposes the connection between ODR and ADR, is also ongoing in the United States of America, the United Kingdom and many other parts of the world.<sup>12</sup>

This article considers whether ODR is necessary in Nigeria since the traditional ADR mechanisms for resolving disputes already exist and takes a cursory look at the nexus between ODR and ADR. It assesses how ODR is applied to disputes and reflects on the current state of its legal framework. It also focuses on other areas of interest such as the shortcomings, benefits, arguments in support and against the regulation of ODR in Nigeria and the approach of developed countries to the regulation of ODR within their various jurisdictions. The paper also examines how ODR should be practised in Nigeria, drawing lessons from other countries where ODR is already practised successfully.

## **THE IMPERATIVE OF ODR IN NIGERIA**

Legal systems are now being drawn against a crucial choice of either to adopt the traditional dispute resolution methods of resolving disputes such as arbitration, mediation, conciliation and negotiation that have fared well for hundreds of years or to find a new method which is well thought-out to be better suited to a world not attached or permanently fixed to jurisdiction and identity.<sup>13</sup> It is argued that Alternative Dispute Resolution (*hereinafter* ADR) is a better and more modern way of dispute settlement and seen as a default process in comparison to the other right prone mechanisms (like litigation which is an adversary method of dispute resolution) in contemporary days.<sup>14</sup> ADR is already in place and entrenching ODR becomes imperative in Nigeria because it primarily involves ADR processes largely supported by the speed and convenience of Information and Communication Technology (*hereinafter* ICT) and the internet which are eminently suited to the needs of e-commerce.<sup>15</sup> The idea of ODR emerged from the

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<sup>12</sup> Frank R, 'The E-Justice Revolution' (Annual General Conference of the International Bar Association, Vancouver, 2010) 1.

<sup>13</sup> Pablo C, *Online Dispute Resolution for Consumers in the European Union* (Routledge Publication 2010) 13.

<sup>14</sup> Ayinla L A and Adejare E O, 'Espousing ADR: The Philosophies and its Perpetual Significance in Nigeria' (2017) 1 CLJ LNS (A) xlv, 1-31.

<sup>15</sup> Aashit S, 'Using ADR to Resolve Online Disputes' (2004) 10(3) Richmond Journal of Law and Technology 1.

synergy involving ADR and ICT as a method of resolving disputes arising online and for which the traditional physical means of dispute resolution were inefficient or unavailable.<sup>16</sup>

ADR movement was driven by the shortcomings which specifically bedevilled the traditional court system<sup>17</sup> and ODR is now a broader reaction against the restrictions of the offline world.<sup>18</sup> ODR is often confused with, or seen simply as an online form of ADR<sup>19</sup> with the primary goal of reducing or even eliminating the need for parties' physical presence at a meeting or hearing.<sup>20</sup> However, it is an implementation of existing forms of ADR that enables its use on the internet.<sup>21</sup> Hence, its relevance in Nigeria cannot be glossed over and ODR has enabled a different character of process because of the use of modern forms of communication.<sup>22</sup>

ADR, currently in use in Nigeria, applies to tools and processes that allow parties to resolve their disputes outside of what is typically considered a courtroom and without a magistrate, judge, or other government-provided decision-maker.<sup>23</sup> It is such that private parties agree to work outside the traditional adversarial set-up of the courts by using mechanisms such as arbitration or mediation to resolve issues and engage the assistance of an unbiased intermediary in the resolution process.<sup>24</sup> The ADR movement became popular due to court deficiencies<sup>25</sup> and the adoption and application of ODR will afford the parties different ADR methods such as negotiation, mediation, and arbitration,<sup>26</sup> which is modified for online use and confers several advantages not available through traditional ADR. ODR services closely resemble the

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<sup>16</sup> Ethan K, 'The Online Ombuds Office: Adapting Dispute Resolution to Cyberspace' (*University of Massachusetts*) <<https://umass.edu/dispute/ncair/katsh.htm>> accessed 18 March 2017.

<sup>17</sup> Todd C and Albert V, 'Alternative Dispute Resolution: Why It Doesn't Work and Why It Does' (1994) 1(3) Harvard Business Review Journal 1.

<sup>18</sup> Kaufmann-Kohler G and Schultz T, 'Online Dispute Resolution: Challenges for Contemporary Justice' (2004) 2(5) Journal of Information and Communications Technology Law 5.

<sup>19</sup> Casey L, 'ADR and Cyberspace: The Role of Alternative Dispute Resolution in Online Commerce, Intellectual Property and Defamation' (1996) 5(2) Ohio State Journal on Dispute Resolution 193.

<sup>20</sup> David L and Ariel A, 'Online Dispute Resolution Through the Lens of Bargaining and Negotiation Theory: Toward an Integrated Model' (2007) 38(1) Cornell University Law Review Journal 101.

<sup>21</sup> Ethan (n 3).

<sup>22</sup> Karolina M, *Online Dispute Resolution: The Future of Justice* (3rd edn, Cracow Publications 2015) 76.

<sup>23</sup> Online Dispute Resolution Advisory Group, 'Online Dispute Resolution for Low Value Civil Claims' (Civil Justice Council February 2015) <<https://www.judiciary.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf>> accessed 23 March 2018.

<sup>24</sup> *ibid.*

<sup>25</sup> Kaufmann-Kohler G and Schultz T, 'Online Dispute Resolution: Challenges for Contemporary Justice' (2004) 2(5) Journal of Information and Communications Technology Law 5.

<sup>26</sup> Eunice R, 'Alternative Dispute Resolution' (Annual Delegates Conference of the Nigerian Bar Association, Abuja, 2004).

conventional ADR processes but provide the services in a more convenient online forum.<sup>27</sup> This is because service providers have greatly developed the dispute resolution process with technology.<sup>28</sup>

The pace of traditional mediation and arbitration processes often appears too slow and costly to provide effective resolutions in the world of online transactions<sup>29</sup> and in response to these realities is a global movement to develop online resolution platforms and systems to offer resolution options more suitable to this evolving, wireless and technologically advancing world. ODR should be adopted in Nigeria due to its ability to operate beyond physical borders in a very far-reaching way<sup>30</sup>, which in turn, speeds up the dispute resolution process to reduce all forms of costs associated with ADR.<sup>31</sup> It is commonly perceived as a logical and necessary advancement of dispute resolution that functions more quickly and efficiently than the traditional process.<sup>32</sup> It also has its distinct category of dispute resolution mechanism that encompasses a broad range of artificial intelligence capabilities used to resolve a variety of dispute types and involves artificial intelligence deployed online to resolve dispute.<sup>33</sup> ODR combines the effectiveness of ADR with the comfort of the internet<sup>34</sup> and neither competes with nor acts as a substitute for ADR.<sup>35</sup> Rather, it is a natural response to the emergence of a new area of interest in human activity and consequently, new types of conflict resolution processes.<sup>36</sup>

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<sup>27</sup> Robert J C, 'Online Dispute Resolution: Stinky, Repugnant, or Drab' (2017) 18(1) *Cardozo Journal of Conflict Resolution* 717.

<sup>28</sup> Ethan K and Janet R, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (Wiley Publishers 2001) 56.

<sup>29</sup> Nikola S, 'A Literature Review on Online Dispute Resolution and Application to B2B E-Commerce' (23rd Interdisciplinary Information Management Conference, Podebrady, 2015) 247.

<sup>30</sup> Joseph Nwazi, 'Assessing the Efficacy of Alternative Dispute Resolution (ADR) in the Settlement of Environmental Disputes in the Niger Delta Region of Nigeria' (2017) 9(3) *Journal of Law and Conflict Resolution* 26.

<sup>31</sup> David R P, *Online Dispute Resolution: Overcoming the Problems and Shackles of Territory* (Canadian Forum Publications 2001) 1.

<sup>32</sup> Karolina M, *Online Dispute Resolution: The Future of Justice* (3rd edn, Cracow Publications 2015) 76.

<sup>33</sup> Arno R L and John Z, *Developing an Online Dispute Resolution Environment: Dialogue Tools and Negotiation Support Systems in a Three-Step Model* (Wiley Online Library 2002) 287.

<sup>34</sup> *ibid* 337.

<sup>35</sup> Shekhar K, 'Virtual Venues: Improving Online Dispute Resolution as an Alternative to Cost Intensive Litigation' (2009) 27(10) *John Marshall Journal of Information Technology and Privacy Law* 81.

<sup>36</sup> Joel B E, 'Are We Ready for Mediation in Cyberspace' (2001) 5(4) *Brigham Young University Law Review Journal* 1305.

ODR engages the ADR processes assisted by the speed and convenience of ICT and the internet to suit the needs of e-commerce<sup>37</sup> and engages parties in many different ADR methods, which are adapted for complete online use<sup>38</sup>, which confers a number of advantages not available through the process of traditional ADR to dispute resolution in Nigeria. All the above have assisted ODR to provide a more convenient online forum to dispute resolution service thereby necessitating and influencing the present state of application of ODR in Nigeria.

## **PRESENT STATE OF THE APPLICATION OF ODR IN NIGERIA**

There is no specific legislation on the regulation of ODR in Nigeria till date.<sup>39</sup> Nevertheless, it appears that the legal framework of ADR makes provisions for the use of ICT and the internet to resolve disputes through ADR mechanisms. For instance, while it may be argued that the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has not made express or clear provisions on ODR, it has relevant and useful provisions in the determination of disputes through online means using any of the ADR mechanisms.<sup>40</sup> This is because the combined effect of Section 18(2) and 19(d) of the Constitution shows that there is nothing unconstitutional in resolving disputes through arbitration and conciliation using the internet. Section 18(2) makes it the duty of the government to promote science and technology.<sup>41</sup> This is by way of drawing inference. However, by necessary implication, the current state of development in ADR shows the need to imbibe and inculcate the use of ICT through internet for settlement of disputes. The provision of Section 18(2) is further supported by the provision of Section 19(d) where the government is expected to direct its policy to settlement of international disputes through

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<sup>37</sup> Roland G, 'Online Dispute Resolution and Autism Spectrum Disorder: Levelling the Playing Field in Disputes Involving Autistic Parties' (2015) 6(2) *Western Journal of Legal Studies* 1.

<sup>38</sup> Maria L, 'The Role of Alternative Dispute Resolution in Government Construction Contract Disputes' (1994) 23(1) *Hofstra Law Review Journal* 205.

<sup>39</sup> Oreniyi A, 'Online Dispute Resolution (ODR) in Nigeria: Intricacies, Challenges and Prospects' (*Digi Law*) <<https://digilaw.com.ng/2019/02/24/online-dispute-resolution-odr-in-nigeria-intricacies-challenges-and-prospects/>> accessed 7 December 2019; Doug L and Frank F, 'Online Dispute Resolution (ODR) within Developing Nations: A Qualitative Evaluation of Transfer and Impact' (2014) 3(1) *Open Access Law Journal* 106.

<sup>40</sup> Abdulrauf A and Daibu A, 'New Technologies and the Right to Privacy in Nigeria: Evaluating the Tension between Traditional and Modern Conceptions' (2016) 2(5) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 113.

<sup>41</sup> Mashi S, Inkani A and Yaro A, 'An Appraisal of the Role of Science and Technology in Promoting National Development Efforts in Nigeria' (2014) 3(2) *The International Journal of Engineering and Science* 56.

negotiation, mediation, conciliation, arbitration and adjudication.<sup>42</sup> Therefore, the community reading of Section 18(2) and 19(d) of the Constitution imposes a duty on the government of Nigeria to promote settlement of disputes through ADR mechanisms by online means which is an aspect of science and technology referred to in Section 18(2) or by extension having to do with the cyberspace.

Likewise, the Arbitration and Conciliation Act CAP A.18, Laws of the Federation of Nigeria 2004 (*hereinafter* The Act) does not specifically provide for ODR but contains provisions on ADR and dispute resolution generally that appear to support the use of technology to resolve disputes and may, in the long run, serve as guide on the implementation and application of ODR in Nigeria. An example is Section 1 of the Act, which recognizes that an arbitration agreement must be in writing, such written nature may take different forms such as telex, telegrams, e-mail or other means of communication relevant to ODR.<sup>43</sup> The expression ‘writing’ mentioned in Section 1 of the Act has been interpreted to include other channels of telecommunication such as electronic communication generated through data message or by a document transmitted from one party to another.<sup>44</sup>

Furthermore, the High Court Laws and Civil Procedure Rules nowadays encourage litigants to settle their differences by embracing ADR.<sup>45</sup> This is in view of Section 274 of the Constitution that conferred on the Chief Judge the power to make rules to regulate the practice and procedure of courts in each state.<sup>46</sup> By virtue of this power, some State High Courts have included in their rules provisions that favour the use of ADR to promote amicable settlement<sup>47</sup> and these provisions appear to support the use of technology to resolve disputes thereby assisting in the implementation and application of ODR in Nigeria. The courts may with the consent of parties,

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<sup>42</sup> Oyeniyi O, ‘The Legal Framework for the Institutionalization of International Commercial Arbitration in Nigeria: A Critical Review’ (2013) 1(1) Afe Babalola University Journal of Sustainable Development Law and Policy 132.

<sup>43</sup> Chukwunweike O, ‘Expanding the Frontiers of Judicial Review in Nigeria: The Gathering Storm’ (2011) 10(1) Nigerian Juridical Review 1.

<sup>44</sup> Umahi T and Nwano T, ‘Procedural Aspect of Arbitration in Nigeria’ (2012) 1(1) Enugu State University of Science and Technology Law Journal 1.

<sup>45</sup> Ajigboye O, ‘The Concept of Multi-Door Court House in Nigeria: Rethinking Frank Sander’s Concept’ (2014) 1(1) SSRN Electronic Journal 1.

<sup>46</sup> Constitution of the Federal Republic of Nigeria 1999, s 274.

<sup>47</sup> High Court of Lagos State (Civil Procedure Rules) 2004, Order 25, r 1; High Court of Kwara State (Civil Procedure) Rules 2005, Order 33, r 2(c); High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2004, Order 17, r 1(a-d).



refer their dispute to ad-hoc or institutional ADR institutions connected to the court system<sup>48</sup> (court-connected ADR mechanisms) such that if successful, the harmonized terms of settlement will be entered as a consent judgment.<sup>49</sup> For example, Order 3 Rule 11 of the Lagos State High Court (Civil Procedure) Rules 2012 authorizes lawsuits to be checked by the appropriate registry official such that suitably short-listed cases may be assigned for amicable resolution and transferred to the Lagos Multi-Door Courthouse or other suitable ADR Institutions for resolution.<sup>50</sup> Similarly, Order 61 Rules 1–19 of the Borno State High Court (Civil Procedure) Rules 2012 enjoins parties and the Court to resort to the use of ADR in deserving situations.<sup>51</sup> The same position is obtainable under the Kwara State High Court (Civil Procedure) Rules 2005.<sup>52</sup> It should be pointed out that the rule of Court becomes relevant to ODR at the point of filing an application for Recognition and Enforcement of arbitral award obtained in an ODR proceeding. Consequently, the High Court is fundamental to ODR because it provides an avenue for the parties to an arbitration agreement to harness the fruit of the arbitration proceeding.

Besides, the comments and opinions gathered from respondents during the annual conference of the Chartered Institute of Arbitrators United Kingdom (Nigeria branch) held in Abuja, Nigeria on the 24<sup>th</sup> to 26<sup>th</sup> October 2018 revealed that although a substantial number of ADR practitioners in Nigeria have heard about ODR, there is still a need for practitioners to embrace the use of ODR in resolving disputes because of the large number of online transactions across borders in Nigeria. It also revealed that ODR is not regulated in Nigeria and there is a high expectation for the regulation of ODR. It revealed that the Arbitration and Conciliation Act and other existing laws on ADR are inadequate to enhance an effective legal regime of ODR in Nigeria but can be effectively reviewed to accommodate ODR. All the above comments and opinions are relevant and will go a long way to assist Nigeria if they are implemented and applied to the legal framework of ADR in Nigeria.

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<sup>48</sup> Olufemi O and Imosemi A, 'Alternative Dispute Resolution and the Criminal Judicial System: A Possible Synergy as Salve to Court Congestion in The Nigerian Legal System' (2013) 1(10) Arabian Journal of Business and Management Review (Nigerian Chapter) 59.

<sup>49</sup> Okpaleke C, Otegbulu C and Emele R, 'Mitigating Risk Impact of Disputes on Real Estate Business and Investment in Lagos: The Alternative Dispute Resolution (ADR) Approach' (2014) 6(1) Covenant Journal of Business and Social Sciences 1.

<sup>50</sup> Lagos State High Court (Civil Procedure) Rules 2012, Order 3, r 11.

<sup>51</sup> Borno State High Court (Civil Procedure) Rules 2012, Order 61.

<sup>52</sup> Kwara State High Court (Civil Procedure) Rules 2005, Order 21.

It should also be pointed out that there are shortcomings in the non-active practice of ODR in Nigeria. These shortcomings include parties incurring more cost in travelling,<sup>53</sup> longer period in resolving disputes,<sup>54</sup> destruction of anonymity,<sup>55</sup> inconvenience,<sup>56</sup> interference from lawyers,<sup>57</sup> increase in the strain on the legal system and wastage of judicial resources,<sup>58</sup> increase in the potential to exploit the ‘home court advantage’,<sup>59</sup> lack of flexibility,<sup>60</sup> use of strict rules of procedure and evidence in the traditional ADR method,<sup>61</sup> the traditional ADR mechanisms currently in use appear not suited to dispute where parties may not emotionally be able to be in the same room and also not suited to accommodate physical disabilities,<sup>62</sup> decrease in parties’ access to justice,<sup>63</sup> decline in the flow and quality of information<sup>64</sup> etc. Notwithstanding these shortcomings, there are also arguments in support of ODR including preservation of anonymity, cost and time saving, convenience, flexibility, access to justice, faster case resolution and compliance with 21<sup>st</sup> century advancement in ICT<sup>65</sup> etc. To overcome these shortcomings to achieve an effective practice of ODR, Nigeria must draw lessons from the practice of ODR in other jurisdictions.

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<sup>53</sup> George HF, *Alternative Dispute Resolution and Emerging Online Technologies: Challenges and Opportunities* (Hastings Publications 1997) 695.

<sup>54</sup> *ibid.*

<sup>55</sup> Lan Q, *Online Dispute Resolution Systems: The Future of Cyberspace Law* (Santa Clara Law Publications 2001) 858.

<sup>56</sup> Maximilian A and Prescott J, ‘Online Case Resolution Systems: Enhancing Access, Fairness, Accuracy, and Efficiency’ (2016) *Michigan Journal of Race & Law* 7(3) 219, 220.

<sup>57</sup> Colin R, ‘Technology and the Future of Dispute Resolution’ (2015) *Winter Dispute Resolution Magazine of the American Bar Association* 4.

<sup>58</sup> Christine H, ‘Online Dispute Resolution and Avoidance in Electronic Commerce: The Uniform Law Conference’ (Uniform Law Conference of Canada, 1999) <<https://ulcc.ca/en/annual-meetings/359-1999-winnipeg-mb/civil-section-documents/356-online-dispute-resolution-and-avoidance-in-electronic-commerce-1999>> accessed 19 September 2017.

<sup>59</sup> Richard M, ‘Internet Dispute Resolution: Bringing ADR into the 21<sup>st</sup> Century’ (2001) 4(4) *Pepperdine Dispute Resolution Law Journal* 279.

<sup>60</sup> Bruce M, ‘Smoothing Some Wrinkles in Online Dispute Resolution’ (2008) 17(1) *International Journal of Law and Information Technology* 83.

<sup>61</sup> Shannon S, ‘Online Dispute Resolution and Justice System Integration: British Columbia’s Civil Resolution Tribunal’ (2017) 34(1) *Windsor Yearbook of Access to Justice* 112.

<sup>62</sup> Robert (n 10).

<sup>63</sup> Roger S, ‘Online Dispute Resolution: Ten Lessons on Access to Justice’ (Courts and Tribunals Judiciary 16 February 2015) <<https://www.judiciary.uk/wp-content/uploads/2015/02/ODR-access-to-justice.pdf>> accessed 19 September 2017.

<sup>64</sup> Orna R and Ethan K, ‘Reshaping Boundaries in an Online Dispute Resolution Environment’ (2014) 1(1) *International Journal of Online Dispute Resolution* 1.

<sup>65</sup> Wahab (n 6) 1.

## **ENTRENCHING AN IDEAL PRACTICE OF ODR IN NIGERIA: APPROACH AND LESSONS FROM OTHER JURISDICTIONS**

ODR is already in use in jurisdictions<sup>66</sup> such as the United States of America, United Kingdom and India. This paper argues that Nigeria can draw valuable lessons from these practices by adopting them wherever relevant to its framework.

eBay is a service provider in the United States of America that utilizes an online method to resolve certain types of dispute. It is a multinational e-commerce corporation based in San Jose, California that facilitates consumer-to-consumer and business-to-consumer sales through its websites<sup>67</sup> and resolves more than 60 million disputes amongst traders every year.<sup>68</sup> A specific area of dispute that eBay covers, is non-payment by buyers on the basis that items supplied did not match the description. In this situation, the parties are at first encouraged to resolve the matter amicably by online negotiation.<sup>69</sup> To do this, the online process assists them by giving a structured practical advice on how to avoid misunderstandings and reach a resolution. eBay provides guidance on the standard by which the merit of complaints are assessed.<sup>70</sup> If the dispute cannot be resolved by negotiation, eBay offers a resolution service in which after the parties enter a discussion area to present their argument, a member of eBay's staff determines a binding outcome under its money-back Guarantee.<sup>71</sup> The claim must, however, be escalated to eBay within 30 days from the estimated delivery date and to encourage a full opportunity for self-resolution, no earlier than 8 days since the complaint was first raised with the seller.<sup>72</sup> An independent company called Net Neutrals deals with disputes over feedback.<sup>73</sup> Using a separate

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<sup>66</sup> Colon Fung I, 'Protecting the New Face of Entrepreneurship: Online Appropriate Dispute Resolution and International Consumer-to-Consumer Online Transactions' (2007) 12(2) Fordham Journal of Corporate and Financial Law 1.

<sup>67</sup> Bijal Z and Prashant A, 'E-Bay is the World's Online Marketplace' (2014) 11(7) IOSR Journal of Business and Management 23.

<sup>68</sup> 'eBay-style Online Courts could Resolve Smaller Claims' (*British Broadcasting Corporation*, 16 February 2015) <<https://bbc.com/news/uk-31483099>> accessed 22 September 2017.

<sup>69</sup> Emma D, *What To Do When an E-Bay Buyer Opened A Case against You* (Emmadrew Publications 2017) 1.

<sup>70</sup> Peter D, 'The Impacts of eBay on an Information Based Economy' (2007) 4(6) International Journal of Management and Enterprise Development 609.

<sup>71</sup> Peter (n 70).

<sup>72</sup> Alvin E, 'Last-Minute Bidding and the Rules for Ending Second-Price Auctions: Evidence from eBay and Amazon Auctions on the Internet' (2015) 1(3) American Economic Review Journal 1.

<sup>73</sup> DeMars and Associates Ltd, 'Online Dispute Resolution' (*DeMars and Associates*) <[www.demarsassociates.com](http://www.demarsassociates.com)> accessed 20 May 2017.

discussion space for each dispute, a trained independent neutral reassesses the evidence from both parties, invites fresh arguments, and determines whether the feedback meets one of the four conditions for removal.<sup>74</sup> The process takes seven days and eBay takes out the feedback pending the outcome. After arguments are exchanged, 21 jurors are indiscriminately selected from a volunteer team of experienced users of Marketplaats and shown the details of the dispute. The buyer is given seven days to react and the seller is given two days to rebut after which the jurors have ten days to re-evaluate the dispute and issue a decision as to whether the feedback should be withdrawn. Marketplaats acts in accordance with the majority decision.<sup>75</sup> eBay technology is relevant and Nigeria can adopt this valuable approach by applying it to its dispute resolution legal framework.

Nominet<sup>76</sup> is another method in which ODR is practised in the United Kingdom. It is a domain name registry company, which has run the United Kingdom domain name since 1996 and the Wales domain names since September 2014.<sup>77</sup> It established a Dispute Resolution Service (*hereinafter* DRS) to provide a means of resolving UK domain name disputes without recourse to Court.<sup>78</sup> To pursue a claim under the DRS, complainants are required to show that they have rights in a name that is the same or similar to the disputed domain name and that the registration has been abusive.<sup>79</sup> The first stage of the DRS requires a complainant to complete a form on Nominet's website wherein it would specify the materials submitted and what remedy is being sought. The form is then sent to the registrant of the domain name. Nominet assigns a mediator who contacts both parties by telephone to seek a solution and if the case does not settle via mediation, the complainant then pays to have an independent expert appointed. The expert's decision will be based solely on the materials presented by the complainant and the registrant.<sup>80</sup>

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<sup>74</sup> Milton M, 'Why is eBay the Most Successful Online Auction' (2010) 10(9) Global Journal of Management and Business Research 62.

<sup>75</sup> Group (n 23).

<sup>76</sup> Adrian S, 'Nominet's New Rules on UK Domains Could Mean the End to Users' Privacy' (*The Guardian*, 11 June 2014) <<https://theguardian.com/technology/2014/jun/11/nominet-new-rules-uk-domain-end-privacy>> accessed 22 September 2017.

<sup>77</sup> 'Nominet Confirms Launch of Cymru and Wales in September' (*Nominet*, 12th May 2014)

<<https://www.nominet.uk/nominet-confirms-launch-of-cymru-and-wales-in-september/>> accessed 20 May 2017.

<sup>78</sup> Laurence K, *Guidance Note: Nominet Dispute Resolution Service for Domain Names* (Scribd Publications 2007) 1.

<sup>79</sup> Leigh S, 'Nominet Dispute Resolution Service Decisions Subject to Review by the Courts' (2012) 7(3) Journal of Intellectual Property Law and Practice 164.

<sup>80</sup> John D, 'A Place to make Amends' (2008) 21(6) The Journal of the Law Society of Scotland 4.

Though appeals from the Expert's stage are permitted, they are rare and the expert's decision and that of any appeal are published on the Nominet website.<sup>81</sup> Nominet technology appears useful in developing and implementing ODR in Nigeria and would enable the resolution of more disputes<sup>82</sup> as compared to the traditional/face-to-face ADR mechanisms currently in place if it is adapted into the legal framework.

In the same vein, Cybersettle<sup>83</sup> is an ODR service provider that is based in the United States of America. It developed software that provides 'blind bidding'<sup>84</sup> service, which is a process, designed to speed up negotiation when all that is in dispute is 'how much is owed'.<sup>85</sup> The way Cybersettle works is that the claimant and defendant each present the uppermost and lowest possible settlement figures that would be acceptable to them and these amounts are not revealed but if the two ranges overlap, a settlement can be achieved, the final figure usually being a split down the middle.<sup>86</sup> The city of New York has used this system to speed their settlement process for a backlog of more than 40,000 personal injury claims<sup>87</sup> and similar systems have been developed in the past such as 'The Mediation Room' in the United Kingdom.<sup>88</sup> Consequently, Nigeria can also use this valuable approach by adopting the Cybersettle technology, which is an ODR platform within the legal framework of ADR in Nigeria to expedite negotiation and guarantee speedier resolution of disputes<sup>89</sup> compared to the traditional/face-to-face ADR mechanisms currently in place.

It is pertinent to note that in India, parties are allowed to appoint arbitrators, mediators or conciliators and conduct proceedings including giving evidence online. They are also allowed to actively participate in the online ADR process regardless of their locations once the arbitration

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<sup>81</sup> Tony W, 'Dispute Resolution Service – Expert's Overview' (*Nominet*) <<https://media.nominet.uk/wp-content/uploads/2018/09/24124932/expert-overview.pdf>> accessed 22 May 2017.

<sup>82</sup> Patrick K, 'Emerging Patterns in Arbitration under the Uniform Domain-Name Dispute-Resolution Policy' (2002) 17(1) *Berkeley Technology Law Journal* 181.

<sup>83</sup> Diane Levin, *Cybersettle makes the Case for Resolving Disputes Online* (Mediation Channel 2008) 1.

<sup>84</sup> Dinesh S, 'Auctions and Bidding' (1987) 25(2) *Journal of Economic Literature*, American Economic Association 699.

<sup>85</sup> David A, 'Brother, Can You Spare a Dime? Technology Can Reduce Dispute Resolution Costs When Times are Tough and Improve Outcomes' (2011) 11(1) *Nevada Law Journal* 523.

<sup>86</sup> Gavin K, *Strategic Negotiation* (Gower Publications 2018) 1.

<sup>87</sup> Group (n 23).

<sup>88</sup> *ibid.*

<sup>89</sup> Paul K, 'Cybersettle and the Value of Online Dispute Resolution' (2010) 13 *Yale Journal of Commerce and Comparative Analysis* 23.

clause specifies the same.<sup>90</sup> The situation is similar to that in Europe. For instance, the European Commission has an ODR program that allows a customer who has an unsettled dispute with a trader, irrespective of their location within Europe, to enter the ODR platform free of charge.<sup>91</sup> While on the platform, the customer will complete and submit an online complaint form, send the completed form to the relevant trader who then recommends an ADR entity to the customer from the list of ADR providers.<sup>92</sup> Once the customer and trader have agreed upon the use of a certain ADR body to handle their dispute, the ODR platform transfers the complaint to that entity that is required to assess the claim online and to reach an outcome on the complaint within 90 days.<sup>93</sup>

Another ODR program that Nigeria can draw significant lessons from is the Rechtwijzer program<sup>94</sup> in the Netherlands. The program, which earned global approval, was developed by HiiL and the Dutch Legal Aid Board to provide dispute resolution for relational disputes such as divorce and separation, landlord-tenant disputes and employment disputes. Its platform helps people to learn about their legal options and then engage in a dialogue with each<sup>95</sup> other and if they are unable to resolve the dispute on their own, the platform provides mediation, adjudication and neutral review of any agreement.<sup>96</sup> In February 2017, Amazon Alexa got a new technology called ‘My Mediator’ currently available only in California,<sup>97</sup> which is intended to answer questions on how to resolve certain consumer disputes in areas such as Real Estate, Probate and Partnership.<sup>98</sup> Though not quite a robot mediator, that technology is undeniably having an

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<sup>90</sup> Ujwala S, ‘Conciliation as an Effective Mode of Alternative Dispute Resolving System’ (2012) 4(3) IOSR Journal of Humanities and Social Science 1.

<sup>91</sup> Pavel L, ‘Online Dispute Resolution to Resolve Consumer Disputes From the Perspective of European Union Law: Is the Potential of ODR Fully Used?’ (2016) 10(1) Masaryk University Journal of Law and Technology 113.

<sup>92</sup> Pablo C, ‘Accredited Online Dispute Resolution Services: Creating European Legal Standards for Ensuring Fair and Effective Processes’ (2008) 17(3) Information and Communications Technology Law Journal 221.

<sup>93</sup> Gwendoline Davies and Tim Pickworth, ‘Europe’s Online Dispute Resolution Platform: An Update for Retailers’ (*Walker Morris*, 24 January 2018) <<https://walkermorris.co.uk/our-people/tim-pickworth/>> accessed 23 March 2018.

<sup>94</sup> Shannon Salter, ‘Online Dispute Resolution and Justice System Integration: British Columbia’s Civil Resolution Tribunal’ (2017) 34 Windsor Yearbook of Access to Justice <[https://www.researchgate.net/publication/321584370\\_ONLINE\\_DISPUTE\\_RESOLUTION\\_AND\\_JUSTICE\\_SYSTEM\\_INTEGRATION\\_BRITISH\\_COLUMBIA’S\\_CIVIL\\_RESOLUTION\\_TRIBUNAL](https://www.researchgate.net/publication/321584370_ONLINE_DISPUTE_RESOLUTION_AND_JUSTICE_SYSTEM_INTEGRATION_BRITISH_COLUMBIA’S_CIVIL_RESOLUTION_TRIBUNAL)> accessed 20 September 2017.

<sup>95</sup> Ethan K and Rabinovich E, *Online Dispute Resolution and Prevention* (Oxford University Press 2015) 25.

<sup>96</sup> *ibid.*

<sup>97</sup> Jim W Hildreth, ‘My Mediator’ (*Amazon*) <<https://amazon.com/Jim-W-Hildreth-My-Mediator/dp/B01N2UC5ZA>> accessed 15 April 2017.

<sup>98</sup> *ibid.*

enormous impact on mediation and other alternative dispute resolution<sup>99</sup> mechanisms that can assist in the development of ODR in Nigeria.

## **WHY ONLINE DISPUTE RESOLUTION IS A PANACEA FOR DEVELOPMENT IN NIGERIA**

ODR is necessary for development in Nigeria because it can enable the Nigerian legal system to adapt to the changing needs of the society, particularly in the area of dispute resolution. If ODR were incorporated into the legal framework of ADR in Nigeria, it would assist Nigeria meet up with best global practices on the use of ICT to resolve disputes thereby reducing the caseload on various courts and save precious judicial time. Further, it would save considerable time, energy, and cost in the dispute resolution field and integrate a technology-oriented strategy capable of meeting high schedule constraints in the dispute resolution process. ODR would bring about a revolution in technology capable of improving the entire justice system and enable Nigeria to manage its legal framework on ADR in such a way that conforms to the present-day social concepts and values to adapt itself to the fast-changing society rather than lag behind. It would pave the way for advancement in science and technology<sup>100</sup> which permits the user to see, hear and talk with someone far away with the same facility and ease as if he and the other party are both present<sup>101</sup> thereby making transactions easier and flexible. It would prevent Nigeria from lagging with respect to the global trend and developments in ICT.<sup>102</sup>

ODR is also necessary for development in Nigeria because it would enable Nigeria to apply its legal framework on ADR in a manner that it becomes accustomed to modern trend; assists in the development of existing law; fits itself to changing or novel circumstances; enables Nigeria to respond to and keep pace with advancement in science and technology as well as societal changes and ensures access to justice. It would also save cost and be beneficial to the efficient, fair and economic disposal of the entire dispute resolution process; enhance improvement in

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<sup>99</sup> Pritika M, *Recent Developments in Online Dispute Resolution* (Mediator Academy Publications 2017) 1.

<sup>100</sup> Isioto N, Philip-Kpae F and Dickson R, 'Factors Affecting Technological Growth in Nigeria and the Way Forward' (2017) 5(5) *International Journal of Mechanical Engineering and Applications* 269.

<sup>101</sup> Kayode Onipede, 'Technology Development in Nigeria: The Nigerian Machine Tools Industry Experience' (2010) 1(2) *Ladoke Akintola University of Technology Journal* 85.

<sup>102</sup> Sani M, Amina I and Abdu Y, 'An Appraisal of the Role of Science and Technology in Promoting National Development Efforts in Nigeria' (2014) 3(2) *The International Journal of Engineering and Science* 56.

technology by enabling evidence to be taken and tested adequately and enhance more access to justice, thereby building confidence in the dispute resolution arena.

## **CONCLUSION**

This article offers an understanding of the concept of ODR including the justification for its use despite the existence of the traditional ADR mechanisms. It also provides discussion on the modalities towards the implementation and application of ODR to dispute resolution in Nigeria. The conceptual analysis is that ODR is neither autonomous nor in competition with the traditional ADR mechanisms but a natural response to the emergence of a new sphere of human activity through the speed and convenience of ICT. The article concludes that there is a need for a legal regulation of ODR in Nigeria. It also shows that the regulation of ODR in Nigeria will promote the development of e-commerce and stimulate the growth of the technology industry.

It is recommended that a law that expressly legalizes ODR through ICT tools should be made or the existing legal frameworks on ADR be amended to incorporate ODR. This is particularly so because the mere fact that the legal frameworks of ADR contain provisions that support the use of technology to resolve disputes does not suggest that it is sufficient for ODR in Nigeria. This article also recommends that ADR practitioners should embrace the use of ODR in resolving disputes because of the large number of online transactions across borders to keep pace with the modern trend. Therefore, Nigeria should prioritize the development of legal standards for ODR. It is not enough to put in place the regulatory framework but to go steps further to embrace the global successful approaches like the adoption of the E-Bay and Cybersettle approach as done in the US or the Nominet mechanism as in use in the UK. The Rechtwijzer program in Netherlands is another better process that is adaptable for the resolution of relational disputes like matrimonial dispute, landlord-tenant issues, as well as employment disputes amicably, faster and online.