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# **Other types of ADR regarding domain names and ODR**

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# URS & PDDRP

- URS = Uniform Rapid Suspension  
(<https://www.worldtrademarkreview.com/brand-management/urs-procedure-what-it-and-what-it-does>)
- PDDRP = Trademark Post Delegation Dispute Resolution Procedure ([https://icannwiki.org/Trademark\\_Post-Delegation\\_Dispute\\_Resolution\\_Procedure](https://icannwiki.org/Trademark_Post-Delegation_Dispute_Resolution_Procedure))

# What is ODR

- Definitions:

*dispute settlement which may or may not involve a binding decision being made by a third party, implying the use of online technologies to facilitate the resolution of disputes between the parties*

- 3 aspects:

1. dispute settlement
2. distant exchange of information
3. software assistance

# 8 PARAMETERS OF EFFICIENT ODR SYSTEM

1. the scope of the disputes where ODR is used
2. the position of the ODR provider
3. the use of modern technologies
4. the use of direct or indirect private enforcement mechanisms
5. existence of other dispute resolution provider
6. legal regulation
7. the tradition in alternative dispute resolution
8. the transparency

## 4 CASE STUDIES

1. EU Consumer ODR
2. UDRP (domain name dispute resolution)
3. eBay & PayPal
4. Youstice

# EU CONSUMER ODR

- 1. the scope of the disputes where ODR is used**
  - online consumer disputes (goods & services)
  - quite broad
- 2. the position of the ODR provider**
  - ODR platform is only *clearing house*
  - in fact no dispute settlement
  - dispute settlement is left to the ADR entities
- 3. the use of modern technologies**
  - very limited
  - only exchange of information, no other processing
- 4. the use of direct or indirect private enforcement mechanisms**
  - no use of enforcement mechanisms
  - it is NOT supporting the position of the ODR platform

# EU CONSUMER ODR

5. existence of other dispute resolution provider
  - many other consumer schemes
  - overlapping with other possibilities
6. legal regulation
  - very complicated regulation
  - confusing for consumers
7. the tradition in alternative dispute resolution
  - building on previous experience
8. the transparency
  - No possibility to verify

**RESULT: NOT WORKING SCHEME**

# UDRP

1. the scope of the disputes where ODR is used  
domain name disputes  
very limited
2. the position of the ODR provider  
very strong  
ICANN (national authorities) are controlling the **CODE** (infrastructure)
3. the use of modern technologies  
full possibilities of online communication  
online form to exchange the information
4. the use of direct or indirect private enforcement mechanisms  
ICANN (national authorities) are controlling the **CODE**  
non-binding arbitration



# UDRP

## 5. existence of other dispute resolution provider

N/A

## 6. legal regulation

transparent rules

national legal regulation only very broad and distant

## 7. the tradition in alternative dispute resolution

N/A

## 8. the transparency

Rules, decisions, guidelines available

**RESULT: VERY EFFICIENT SCHEME**

# EBAY & PAYPAL

- 1. the scope of the disputes where ODR is used**  
e-commerce online disputes under eBay platform  
quite broad
- 2. the position of the ODR provider**  
very strong (PayPal does the disputes)  
controlling the behaviour
- 3. the use of modern technologies**  
full possibilities of online communication  
automatization of decision making process
- 4. the use of direct or indirect private enforcement mechanisms**  
Reputation mechanisms (indirect private enforcement)  
modified escrow (direct private enforcement)

# EBAY & PAYPAL

5. existence of other dispute resolution provider  
N/A (not used by other platforms in such broad meaning, others are using only limited potential)
6. legal regulation  
Not transparent & complicated rules  
national legal regulation only very broad and distant
7. the tradition in alternative dispute resolution  
N/A
8. the transparency  
Problematic rules  
Decisions or guidelines NOT available

**RESULT: VERY EFFICIENT SCHEME**

# YOUSTICE

1. the scope of the disputes where ODR is used  
e-commerce online disputes for any online shop  
very broad
2. the position of the ODR provider  
medium
3. the use of modern technologies  
full possibilities of online communication  
VIZUALIZATION
4. the use of direct or indirect private enforcement mechanisms  
Youstice Trustmark

# YOUSTICE

## 5. existence of other dispute resolution provider

N/A (unique solution)

## 6. legal regulation

Not transparent & very simple rules

national legal regulation only very broad and distant

## 7. the tradition in alternative dispute resolution

N/A

## 8. the transparency

Problematic rules

Decisions or guidelines NOT available

**RESULT: MEDIUM EFFICIENT SCHEME**

# RESULTS?

1. the scope of the disputes where ODR is used  
does not matter
2. the position of the ODR provider  
strong position is important
3. the use of modern technologies  
broad implementation of IT is necessary (automatization as well)
4. the use of direct or indirect private enforcement mechanisms  
crucial for effectiveness and success

# RESULTS?

5. existence of other dispute resolution provider

should NOT be overlapping

6. legal regulation

should NOT be limiting and complicated

7. the tradition in alternative dispute resolution

NOT important

8. the transparency

SURPRISE – NOT important

# Online courts

- Online court **X** ODR

- **ODR** – online dispute resolution – tools for settling the disputes (court and out-of-court)
- **Online court** – institution providing the opportunity to resolve disputes using online tools shielded by the public power

- Incorporation of modern technologies:

1. Communication
2. Data processing (file management, big data, open data?)
3. Redesign of current court processes
4. New approaches unknown to current justice (e.g. blind bidding) or facilitation



# Important to realize! (especially for Czechia?)

- Inclusion of out-of-court settlements
- Negotiation / mediation / software assistance in pre-trial proceedings
- Possibility of transition to classical court proceedings
- The whole process is shielded by binding decision-making process (in the case of out-of-court ODR, there was often a problem with the motivation of the parties, unless enforcement mechanisms were set up)
- ***Dworkin - easy X hard cases***

# State of eJustice in Czechia

- An exemplary example of an inappropriate grasp of the electronic justice system
- The inconceivability of the approach to the whole issue is evident from the individual fragmented strategies
- Electronization not mentioned as a separate goal
- One of the worst countries in EU (eGovernment Benchmark 2017)
- OECD statistics – better, but general categories (not mentioning more sophisticated implementation)
- eFile management system is trying to be complexly presented more than 10 years without greater achievement (fragmentation, different systems, different providers)
- But in the moment, strong push on digitalization in general in eGovernment (Act on Digital Services)

# Lessons to be learnt

- Theoretically - Richard Susskind
  - 3 Tiers
- Practically e.g. Civil Resolution Tribunal (Canada)
  1. Negotiation / software assistance
  2. Mediation (mediator) or facilitation (clerk, facilitator)
  3. Online court proceedings
- The area of disputes is usually limited to civil disputes (but this is not the rule); but it is certainly not limited only to online disputes

# Project of Online Court in Czechia

- Not a rocket science – inspiration in Canada:
  - 85% of cases are solved in pre-binding (out-of-court) stages at online court
- In the Czech Republic, a similar construction, involvement within one specific judicial institution – e.g. the Municipal Court in Prague?

# Project of Online Court in Czechia

- Multi-stage process (education, negotiation, software assistance, mediation / facilitation, court decision)
- The need for sufficiently long preparation, otherwise there are a number of risks
- Specialized institution partly cut off from classical court processes (and offered as something extra) is the **KEY** (in our opinion)
- It is not possible to penetrate whole justice with this process model

# Problems

## – Classical challenges

- Resistance
- Constancy
- Fragmentation of systems (different providers, different systems)
- Unwillingness to change something, pessimistic staff, etc.

## – More complex challenges

- Wider use of modern technologies (more complex tools, automatization)
- Open data
- Problems associated with modern technologies in automation (transparency issues, human rights)
- etc.

## – EU regime (ODR platform) is really NOT the inspiration

# Conclusion

- All the problems can be overcome
- Many arguments are faulty and arising from the unwillingness to changes (judge Briggs, legal realism etc.)
- Necessary reaction to nowadays challenges
- No replacement of „classical“ approaches -> upgrade and utilization of the tools we already know (private ODR mechanisms)
- etc.

# Conclusion

Examples of Online courts:

- Civil Resolution Tribunal in Canada
- Singapore eJustice
- Chines Internet Courts



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**Thank you for your attention.**

Any questions?

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