

## Juridical Perspective on the Regulation of Online Dispute Resolution in Nigeria

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### Abstract

*Online Dispute Resolution (ODR) is a method of online dispute settlement that utilizes the traditional Alternative Dispute Resolution (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 seems to be lagging behind other developed countries such as United Kingdom and the United States of America in the application of this dispute resolution. Taking the United States of America and the United Kingdom as models, while the United Kingdom favors a government regulatory market for ODR, the United States of America is inclined towards a free market approach and 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 also represent foremost economies with distinct views about how to regulate ODR. Therefore, Nigeria has the potential to catch up with this global trend if she embraces ODR in the manner in which it is practiced in the United States of America or the United Kingdom. There are numerous benefits such as preservation of anonymity, cost and time saving, convenience, flexibility, access to justice and faster case resolution, if Nigeria adopts ODR. In fact, the global reality presented by Covid-19 is such that makes virtual and online dispute resolution imperative. This article employed both the doctrinal and non-doctrinal research methodology. As a result, it adopted ideas and information gathered from primary and secondary sources of legal materials and also obtained comments and opinions from respondents during the just concluded Annual Conference of the Chartered Institute of Arbitrators United Kingdom (Nigeria branch) held in Abuja, Nigeria where participants gathered from different parts of Nigeria and the world to deliberate and brainstorm on emerging issues and challenges in Arbitration and ADR in Nigeria and Africa. ODR is dispute resolution technologically that is keeping pace with the technological advancement in this technological age. The inability to keep pace may render practitioners and service providers to be living in the past that may not enhance growth and development in this technological 21<sup>st</sup> century.*

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

### Introduction

A favorable legal regime on Online Dispute Resolution (ODR) in Nigeria will improve the dispute resolution environment in view of the fact that ODR is the link between the traditional ADR mechanisms such as arbitration, mediation, negotiation etc. and technology.<sup>1</sup> As a matter of fact, these traditional mechanisms of the face to face / physical presence for resolving disputes are now increasingly considered time consuming (in view of the delay/adjournment to achieve physical presence of both parties), expensive, and with jurisdictional problems.<sup>2</sup>

The emergence of ODR can be traced to 1990's,<sup>3</sup> at a time that witnessed the sudden increase in e-commerce.<sup>4</sup> At the beginning, ODR concentrated on problems such as distance as well as nature and size of the dispute<sup>5</sup> but it had further developed recently 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

<sup>1</sup>Aashit S, 'Using ADR to Resolve Online Disputes', (2004) Richmond Journal of Law and Technology, 10(3), 1-14

<sup>2</sup>Todd C. and Albert V., 'Alternative Dispute Resolution: Why It Doesn't Work and Why It Does', (1994) Harvard Business Review Journal, 1(3), 1-23.

<sup>3</sup>Ethan K, 'ODR: A Look at History', <https://www.mediate.com>pdf>katsh> accessed on 15 March 2018.

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

<sup>5</sup>Joint Technology Committee, 'Case Studies in ODR for Courts: A view from the front lines' [www.ncsc.org>pdf>committees>jtc](http://www.ncsc.org>pdf>committees>jtc) accessed on 15 March 2018.

<sup>6</sup>Mohamed S, Ethan K, and Daniel Rainey, 'Online Dispute Resolution: Theory and Practice', (Eleven International Publishing, The Hague, Netherlands 2016) 9-21.

to be the Virtual Magistrate<sup>7</sup> was created in 1995 through grants from the National Centre for Automated Information (NCAIR).<sup>8</sup> However, in recent years, a number of happenings that suggests the beginning of a new era for ODR 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 ultimately exposed 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 in view of the fact that the traditional ADR mechanism(s) for resolving disputes already exists 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 examined how ODR should be practiced in Nigeria, drawing lessons from other countries where ODR is already practiced successfully.

### **The Essence of ODR with Presence of ADR 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 had been argued that Alternative Dispute Resolution (ADR) is a better and more modern way of dispute settlement and in fact seen as a default process than the other right prone mechanisms (like litigation which is an adversary method of dispute resolution) in these contemporary days.<sup>14</sup> Thus, if ADR is already in place then it is pertinent to bear in mind that ODR becomes imperative in Nigeria because it primarily involves ADR processes largely supported by the speed and convenience of Information and Communication Technology (ICT) and the internet which are eminently suited to the needs of e-commerce.<sup>15</sup> The idea of ODR emerged from the 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>

It is pertinent to bear in mind that ADR movement was driven by the shortcomings which specifically bedeviled the traditional court system<sup>17</sup> and ODR has been 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

<sup>7</sup>Robert G, 'A Brief History of the Virtual Magistrate Project: The Early Months', (paper presented during the Online Dispute Resolution Conference, Washington DC 1996) 1-10.

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

<sup>9</sup>Ethan K, 'Online Dispute Resolution: Some Implications for the Emergence of Law in Cyberspace', (2007) Journal of International Review of Law, Computers and Technology, 21 (2), 97-107.

<sup>10</sup>Robert A, 'Is there a future for Online Dispute Resolution for Lawyers', (Law Sites Publications, Massachusetts 2016) 1-5.

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

<sup>12</sup>Frank R, 'The e-justice revolution', (paper presented at the Annual General Conference of the International Bar Association, Vancouver 2010) 1-10.

<sup>13</sup>Pablo C, 'Online Dispute Resolution for Consumers in the European Union', (Routledge Publication, USA 2010), pp. 13-17.

<sup>14</sup>Ayinla L.A and Adejare E.O, 'Espousing ADR: The Philosophies and its Perpetual Significance in Nigeria', CLJ (2017) 1 LNS (A) xlv, 1-31. See also Ayinla L.A and Oniyide T, 'The Autonomous Nature of Party Autonomy in Arbitration: An Interrogation of Perspectives, CLJ (2017) 1 LNS (A) lvi.

<sup>15</sup>Aashit S, 'Using ADR to Resolve Online Disputes', (2004) Richmond Journal of Law and Technology, 10(3), 1-14

<sup>16</sup>Ethan K, 'The Online Ombuds Office: Adapting Dispute Resolution to Cyberspace' <http://www.umass.edu> accessed on 18 March, 2017.

<sup>17</sup>Todd C and Albert V, 'Alternative Dispute Resolution: Why It Doesn't Work and Why It Does', (1994) Harvard Business Review Journal, 1(3), 1-23. See also Ayinla L.A, 'ADR: A Global Reversion to Customary Law. In Administration of Justice in the Customary Courts of Nigeria, N.M Jamo and A.M Madaki, 2009 (eds.)299-317, published by Private Law Department, Ahmadu Bello University, Zaria.

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

<sup>19</sup>Casey L 'ADR and Cyberspace: The Role of Alternative Dispute Resolution in Online Commerce, Intellectual Property and Defamation' (1996) Ohio State Journal on Dispute Resolution, 5 (2) 193-222.

primary goal of reducing or even eliminating entirely the need for parties' physical presence at a meeting or hearing.<sup>20</sup> But it constitutes 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. In addition, though the main assumption of alternative methods of dispute resolution which is the presence of a third party during the process of reaching an agreement remains unchanged, ODR has enabled it attain a different character 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 to be 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 in the seventies in reaction to court deficiencies.<sup>25</sup> The adoption and application of ODR will afford the parties a number of different ADR methods such as negotiation, mediation, and arbitration,<sup>26</sup> which is modified for online use and confers a number of advantages not available through traditional ADR. ODR services closely resemble the conventional ADR processes but provide the service in a more convenient online forum.<sup>27</sup> This is because service providers have greatly developed the dispute resolution process through the use of technology.<sup>28</sup>

The pace of traditional mediation and arbitration processes appears often 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 move to develop online resolution platforms and systems to offer resolution options more suitable to this evolving wireless and technologically advancing world.<sup>30</sup> ODR should be adopted in Nigeria due to its ability to operate beyond physical borders in a very far-reaching way<sup>31</sup> which in turn, speeds up the dispute resolution process to reduce all forms of costs directly and indirectly associated with ADR.<sup>32</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>33</sup> It is also its own 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>34</sup> ODR combines the effectiveness of ADR with the comfort of the internet<sup>35</sup> and is neither in

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<sup>20</sup> David L, and Ariel A, 'Online Dispute Resolution Through the Lens of Bargaining and Negotiation Theory: Toward an Integrated Model', (2007), Cornell University Law Review Journal, 38(1), 101-142.

<sup>21</sup> Ethan K 'ODR: A Look at History', <https://www.mediate.com>pdf>katsh> accessed on 15 March 2017

<sup>22</sup> Karolina M, 'Online Dispute Resolution: The Future of Justice' ( 3<sup>rd</sup>ed, Cracow Publications, Poland 2015) 76-86.

<sup>23</sup> Ibid at 88

<sup>24</sup> Ibid.

<sup>25</sup> Kaufmann-Kohler G, and Schultz T, n. 17

<sup>26</sup> Eunice R, 'Alternative Dispute Resolution', (paper presented at the Annual Delegates Conference of the Nigerian Bar Association, Abuja 2004), 1-16.

<sup>27</sup> Robert J. C, 'Online Dispute Resolution: Stinky, Repugnant, or Drab', (2017) Cardozo Journal of Conflict Resolution, 18(1) 717-758.

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

<sup>29</sup> Nikola S, 'A Literature Review on Online Dispute Resolution and Application to B2B E-Commerce', (paper presented at the 23<sup>rd</sup> Interdisciplinary Information Management Conference, Podesbrady 2015) 247- 254.

<sup>30</sup> Niki B, 'Online Dispute Resolution' <https://www.cpradr.org/strategy/online-dispute-resolution> accessed on 20 September 2017.

<sup>31</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), Journal of Law and Conflict Resolution, 9(3), 26-41.

<sup>32</sup> David R. P, 'Online Dispute Resolution: Overcoming the Problems and Shackles of Territory', (Canadian Forum Publications, Canada 2001) 1-13.

<sup>33</sup> Karolina M, n. 21

<sup>34</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, USA 2002) 287-297.

<sup>35</sup> Ibid at 337

competition with nor a substitute for ADR.<sup>36</sup> Rather, it is a natural response to the emergence of new area of interest of human activity and consequently, new types of conflicts.<sup>37</sup>

ODR has different forms and engages the ADR processes assisted by the speed and convenience of ICT and the internet to suit the needs of e-commerce.<sup>38</sup> It engages parties in a number of different ADR methods such as negotiation, mediation and arbitration which are adapted for complete online use<sup>39</sup> and by so doing, 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 influencing the present state of application of ODR in Nigeria.

### **The Degree of the Application of ODR in Nigeria Presently**

There is no specific legislation on the regulation of ODR in Nigeria till date.<sup>40</sup> Nevertheless, it appears that the legal framework of ADR makes provisions for the use of ICT and internet to resolve dispute through the 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>41</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>42</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 negotiation, mediation, conciliation, arbitration and adjudication.<sup>43</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 referred to as “The Act”) does not specifically provide for ODR but contains provisions on ADR and dispute resolution generally that appears 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>44</sup> The expression “Writing” mentioned in section 1 of the Act has

<sup>36</sup>Shekhar K, ‘Virtual Venues: Improving Online Dispute Resolution as an Alternative to Cost Intensive Litigation’, (2009), John Marshall Journal of Information Technology and Privacy Law, 27(10), 81-94.

<sup>37</sup>Joel B. E, ‘Are we ready for Mediation in Cyberspace’, (2001) Brigham Young University (BYU) Law Review Journal, USA, 5(4), 1305-1308.

<sup>38</sup> Roland G, ‘Online Dispute Resolution and Autism Spectrum Disorder: Levelling the Playing Field in Disputes Involving Autistic Parties’, (2015), Western Journal of Legal Studies, 6(2), 1-17.

<sup>39</sup> Maria L, ‘The Role of Alternative Dispute Resolution in Government Construction Contract Disputes’, (1994), Hofstra Law Review Journal, 23(1), 205-224.

<sup>40</sup> Doug L and Frank F. ‘Online Dispute Resolution (ODR) within Developing Nations: A Qualitative Evaluation of Transfer and Impact’, (2014), Open Access Law Journal, 3(1), 106-116

<sup>41</sup>Abdulrauf A and Daibu A, ‘New Technologies and the Right to Privacy in Nigeria: Evaluating the tension between Traditional and Modern Conceptions’, (2016), NnamdiAzikiweUniversity Journal of International Law and Jurisprudence, 2(5), 113-124.

<sup>42</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), The International Journal of Engineering and Science (IJES), 3(2), 56-67

<sup>43</sup>Oyeniya O, ‘The Legal Framework for the Institutionalization of International Commercial Arbitration in Nigeria: A Critical Review’, (2013), AfeBabalola University Journal of Sustainable Development Law and Policy, 1(1), 132-147.

<sup>44</sup>Chukwunweike O, ‘Expanding the Frontiers of Judicial Review in Nigeria: The Gathering Storm’, (2011) Nigerian Juridical Review, 10(1), 1-21.

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>45</sup>

Furthermore, the High Court Laws and Civil Procedure Rules nowadays encourage litigants to settle their differences by embracing ADR.<sup>46</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>47</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>48</sup> and these provisions appears 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, refer their dispute to ad-hoc or institutional ADR institutions connected to the court system<sup>49</sup>(court connected ADR mechanisms) such that if successful, the harmonized terms of settlement will be entered as consent judgment.<sup>50</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>51</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>52</sup> The same position is obtainable under the Kwara State High Court (Civil Procedure) Rules 2005.<sup>53</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 avenue for the parties to 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 need for practitioners to embrace the use of ODR in resolving disputes in view of the large numbers 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.

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>54</sup> longer period in resolving disputes,<sup>55</sup> destruction of anonymity,<sup>56</sup> inconvenience,<sup>57</sup> interference from lawyers,<sup>58</sup> increase in the

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<sup>45</sup>Umahi T and NwanoT, 'Procedural Aspect of Arbitration in Nigeria', (2012), Enugu State University of Science and Technology Law Journal, 1(1), 1-28.

<sup>46</sup>Ajigboye O, 'The Concept of Multi-Door Court House in Nigeria: Rethinking Frank Sander's Concept', (2014), SSRN Electronic Journal, 1(1), 1-18.

<sup>47</sup> S. 274 of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>48</sup> Order 25 Rule 1 of the High Court of Lagos State (Civil Procedure Rules) 2004; Order 33 Rule 2 (c) of the High Court of Kwara State (Civil Procedure) Rules 2005; Order 17 Rule 1 (a-d) of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2004. See also Ayinla L.A, 'ADR in Nigeria, the Possibilities and Hindrances: A Critique (Germany: Lambert Publishing, 2016)

<sup>49</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), Arabian Journal of Business and Management Review (Nigerian Chapter), 1(10), 59-69.

<sup>50</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), Covenant Journal of Business and Social Sciences (CJBSS), 6(1), 1-23.

<sup>51</sup> Order 3 Rule 11 Lagos State High Court (Civil Procedure) Rules 2012.

<sup>52</sup> Order 61, Borno State High Court (Civil Procedure) Rules 2012

<sup>53</sup> Order 21 Kwara State High Court (Civil Procedure) Rules 2005.

<sup>54</sup>George H. F, 'Alternative Dispute Resolution and Emerging Online Technologies: Challenges and Opportunities', (Hastings Publications, New York 1997) 695-712.

<sup>55</sup> Ibid

strain on the legal system and wastage of judicial resources,<sup>59</sup> increase in the potential to exploit the 'home court advantage',<sup>60</sup> lack of flexibility,<sup>61</sup> use of strict rules of procedure and evidence in the traditional ADR method,<sup>62</sup> the traditional ADR mechanisms currently in use appears not suited to dispute where parties may not emotionally be able to be in the same room and not also suited to accommodating physical disabilities,<sup>63</sup> decrease in parties access to justice,<sup>64</sup> decline in the flow and quality of information<sup>65</sup> etc. Notwithstanding these shortcomings, there are also arguments in support of ODR includes 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>66</sup> etc. In order to overcome these shortcomings to achieve an effective practice of ODR, it is imperative that Nigeria draws lessons from the practice of ODR in other jurisdictions.

### **Entrenching the Practice of ODR in Nigeria: Making Deductions from other Jurisdictions**

ODR is already in use in jurisdictions<sup>67</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 where relevant into its framework.

eBay is a service provider in the United States of America that utilizes online method to resolve certain types of dispute. It is an American multinational e-commerce corporation based in San Jose, California that facilitates consumer-to-consumer and business-to-consumer sales through its websites<sup>68</sup> and resolves more than 60 million disputes amongst traders every year.<sup>69</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>70</sup> To do this, the online process assists them by giving a clearly 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>71</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>72</sup> The claim must however be escalated to eBay within 30 days from the estimated delivery date and to encourage a full opportunity

<sup>56</sup>Lan Q, 'Online Dispute Resolution Systems: The Future of Cyberspace Law', (Santa Clara Law Publications, USA 2001) 858

<sup>57</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>58</sup>Colin R, 'Technology and the Future of Dispute Resolution', (Dispute Resolution Magazine of the American Bar Association 2015) 6.

<sup>59</sup>Christine H, 'Online Dispute Resolution and Avoidance in Electronic Commerce', (paper presented at the Uniform Law Conference, Canada 1999) 1-10.

<sup>60</sup>Richard M, 'Internet Dispute Resolution (IDR): Bringing ADR into the 21<sup>st</sup> Century', (2001) Pepperdine Dispute Resolution Law Journal, 4(4), 279.

<sup>61</sup> Bruce M, 'Smoothing Some Wrinkles in Online Dispute Resolution', (2008), International Journal of Law and Information Technology, 17(1), 83-112.

<sup>62</sup> Shannon S, 'Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal', (2017), Windsor Yearbook of Access to Justice, 34(1), 112-129.

<sup>63</sup>Robert A, 'Is there a future for Online Dispute Resolution for Lawyers', (Law Sites, Massachusetts 2016) 1-14.

<sup>64</sup>Roger S, 'Online Dispute Resolution: Ten Lessons on Access to Justice' <https://www.judiciary.gov.uk/2015/02> accessed on 19 September 2017.

<sup>65</sup>Orna R and Ethan K, 'Reshaping Boundaries in an Online Dispute Resolution Environment', (2014) International Journal of Online Dispute Resolution, 1(1), 1-15

<sup>66</sup> Mohamed S, Ethan K and Daniel R, 'Online Dispute Resolution: Theory and Practice', (Eleven International Publishing, The Hague 2012) 1-571.

<sup>67</sup> Colon-Fung. I, 'Protecting the New Face of Entrepreneurship: Online Appropriate Dispute Resolution and International Consumer-to-Consumer Online Transactions', (2007) Fordham Journal of Corporate and Financial Law, 12(2), 1 – 256.

<sup>68</sup>Bijal Z and Prashant A, 'Ebay is the World's Online Marketplace', (2014), IOSR Journal of Business and Management, 11(7), 23-29

<sup>69</sup>Civil Justice Council, 'eBay-style online courts could resolve smaller claims' [www.bbc.com](http://www.bbc.com) accessed on 22 September 2017.

<sup>70</sup>Emma D, 'What To Do When an eBay Buyer Opened A Case against You', (Emmadrew Publications, Orlando 2017) 1-10

<sup>71</sup> Peter D, 'The Impacts of eBay on an Information Based Economy', (2007), International Journal of Management and Enterprise Development', 4(6), 609-613

<sup>72</sup>Ibid.

for self-resolution, no earlier than 8 days since the complaint was first raised with the seller.<sup>73</sup> Disputes over feedback are dealt with by an independent company called Net Neutrals.<sup>74</sup> Using a separate 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 four conditions for removal.<sup>75</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 also 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>76</sup> e-Bay technology is relevant and Nigeria can draw valuable lessons by applying it to its dispute resolution legal framework.

Nominet<sup>77</sup> is another method in which ODR is practiced 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>78</sup> It established a Dispute Resolution Service (DRS) to provide a means of resolving .uk domain name disputes without recourse to court.<sup>79</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>80</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>81</sup> 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>82</sup> Nominet technology appears useful in developing and implementing ODR in Nigeria and would enable the resolution of more disputes<sup>83</sup> compared with the traditional/face-to-face ADR mechanisms currently in place if it is adapted into the legal framework.

In the same vein, Cybersettle<sup>84</sup> is an ODR service provider that is based in the United States of America. It developed software that provides 'blind bidding'<sup>85</sup> service which is a process designed to speed up negotiation when all that is in dispute is 'how much is owed'.<sup>86</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>87</sup> The city of New

<sup>73</sup>Alvin E, 'Last-Minute Bidding and the Rules for Ending Second-Price Auctions: Evidence from eBay and Amazon Auctions on the Internet', (2015) *American Economic Review Journal*, 1(3), 1-18.

<sup>74</sup>DeMars and Associates Ltd, 'Online Dispute Resolution' [www.demarsassociates.com](http://www.demarsassociates.com) accessed on 20 May 2017.

<sup>75</sup>Miltan M, 'Why is eBay the Most Successful Online Auction', (2010), *Global Journal of Management and Business Research*, 10(9), 62-65.

<sup>76</sup>Richard S, 'Online Dispute Resolution for Low Value Civil Claims', (Civil Justice Council, United Kingdom 2015) 1-33.

<sup>77</sup>Adrian S, 'Nominet's new rules on .uk domains could mean the end to users' privacy', *The Guardian Newspaper* (United Kingdom 11 June 2014) <https://www.theguardian.com> accessed on 22 September 2017.

<sup>78</sup>Nominet Council, 'Nominet confirms launch of .cymru and .wales in September' <https://www.nominet.uk> accessed on 20 May 2017.

<sup>79</sup>Laurence K, 'Guidance Note: Nominet Dispute Resolution Service for Domain Names', (Scribd Publications, San Francisco 2007) 1-4.

<sup>80</sup> Leigh S, 'Nominet Dispute Resolution Service Decisions Subject to Review by the Courts', (2012), *Journal of Intellectual Property Law and Practice*, 7(3), 164-165.

<sup>81</sup>John D, 'A Place to make Amends', (2008), *The Journal of the Law Society of Scotland*, 21(6), 4-12

<sup>82</sup>Tony W, 'Dispute Resolution Service – Expert's Overview' <https://www.nominet.uk> accessed on 22 May 2017.

<sup>83</sup>Patrick K, 'Emerging Patterns in Arbitration under the Uniform Domain-Name Dispute-Resolution Policy', (2002), *Berkeley Technology Law Journal*, 17(1), 181-204.

<sup>84</sup>Diane Levin, 'Cybersettle makes the Case for Resolving Disputes Online', (Mediation Channel, USA 2008) 1-4.

<sup>85</sup>Dinesh S, 'Auctions and Bidding', (1987) *Journal of Economic Literature*, American Economic Association, 25(2), 699 – 738.

<sup>86</sup>David A, 'Brother, Can You Spare a Dime? Technology Can Reduce Dispute Resolution Costs When Timea are Tough and Improve Outcomes', (2011), *Nevada Law Journals*, 11(1), 523-559.

<sup>87</sup>Gavin K, 'Strategic Negotiation', (Gower Publications, United Kingdom 2018) 1- 50

York has used this system to speed their settlement process for a backlog of more than 40,000 personal injury claims<sup>88</sup> and similar systems have been developed in the past such as ‘The Mediation Room’ in the United Kingdom.<sup>89</sup> Consequently, Nigeria can also draw valuable lessons by adopting the Cybersettle technology which is an ODR platform within the legal framework of ADR in Nigeria so as to expedite negotiation and guarantee speedier resolution of disputes<sup>90</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 clause specifies same.<sup>91</sup> The situation is similar with 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>92</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>93</sup> Once the customer and trader have agreed on 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 also reach an outcome on the complaint within 90 days.<sup>94</sup>

Another ODR program that Nigeria can draw significant lessons from is the Rechtwijzer program<sup>95</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>96</sup> other and if they are unable to resolve the dispute on their own, the platform provides mediation, adjudication and neutral review of any agreements.<sup>97</sup> In February, 2017, Amazon Alexa got a new technology called “My Mediator” currently only available in California<sup>98</sup> which is intended to answer questions on how to resolve certain consumer disputes in areas such as Real Estate, Probate and Partnership.<sup>99</sup> Though not quite a robot mediator, that technology is undeniably having an enormous impact on mediation and other alternative dispute resolution<sup>100</sup> mechanisms that can assist in the development of ODR in Nigeria.

### **ODR as a Panacea to Enhance Progress in Nigeria**

ODR is necessary for development in Nigeria because it can enable the Nigeria legal system adapt to the changing needs of the society, particularly in the area of dispute resolution. If ODR is incorporated into the legal framework of ADR in Nigeria, it would assist Nigeria meet up with global best practices on the use of ICT to resolve disputes thereby reducing the caseload on the various courts and save precious judicial time. It would further 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

<sup>88</sup>Civil Justice Council, ‘Online Dispute Resolution for Low Value Civil Claims’ <https://www.judiciary.gov.uk> accessed on 23 March, 2018.

<sup>89</sup>Ibid.

<sup>90</sup> Paul K, ‘Cybersettle and the Value of Online Dispute Resolution’, (2010), Yale Journal of Commerce and Comparative Analysis, 13(0), 23-51.

<sup>91</sup>Ujwala S, ‘Conciliation as an Effective Mode of Alternative Dispute Resolving System’, (2012), IOSR Journal of Humanities and Social Science, 4(3), 1-7

<sup>92</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), Masaryk University Journal of Law and Technology, 10(1), 113-127

<sup>93</sup> Pablo C, ‘Accredited Online Dispute Resolution Services: Creating European Legal Standards for Ensuring Fair and Effective Processes’, (2008), Information and Communications Technology Law Journal, 17(3), 221-237.

<sup>94</sup> Walker M, ‘Europes Online Dispute Resolution Platform: An Update for Retailers’, <https://www.walkermorris.co.uk> accessed on 23 March 2018.

<sup>95</sup>HiiL Committee, ‘Rechtwijzer 2.0: Technology that puts justice in your hands’ [www.hiil.org](http://www.hiil.org) accessed on 20 September 2017.

<sup>96</sup>Ethan K and Rabinovich E, ‘Online Dispute Resolution and Prevention’, (Oxford University Press, USA, 2015) 25-44.

<sup>97</sup>Ibid

<sup>98</sup>Jim W, ‘My Mediator’ <https://www.amazon.com> accessed on 15 April 2017.

<sup>99</sup>Ibid.

<sup>100</sup>Pritika M, ‘Recent Developments in Online Dispute Resolution’, (Mediator Academy Publication, USA 2017) 1-2.

dispute resolution process. ODR would bring about a revolution in technology capable of improving the entire justice system and enable Nigeria manage its legal framework on ADR in such a way that conforms with 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>101</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>102</sup> thereby making transactions easier and flexible. It would prevent Nigeria from lagging behind with respect to global trend and developments in ICT.<sup>103</sup>

ODR is also necessary for development in Nigeria because it would enable Nigeria apply its legal framework on ADR in a manner that it will become accustomed to modern trend; assist in the development of existing law; fit itself to changing or novel circumstances; enable Nigeria respond to and keep pace with advancement in science and technology as well as societal changes and ensure 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 an improvement in technology by enabling evidence to be taken and tested adequately and enhance more access to justice thereby building confidence in the dispute resolution arena.

### **ODR in the Face of the Present Global Reality**

The present reality as presented by the occurrence of the global pandemic, particularly Covid-19 is such that has made physical contact and physical presence in court for the resolution of dispute to appear utopia and impracticable in view of lockdown and social distancing. This is basically to control and eliminate the spread of the deadly virus as humanly possible. The outbreak of the virus has led to the slow pace of legal, social, political and economic life globally. Thus, the reality presented by the scourge is such that makes virtual and online practice to be imperative.

### **Conclusions**

This article provided an understanding of the concept of ODR including the justification for its use despite the existence of the traditional ADR mechanisms. It also provided an understanding of the modalities for the implementation and application of ODR to dispute resolution in Nigeria. The conceptual analyses revealed that ODR is neither autonomous nor in competition with the traditional ADR mechanisms but a natural response to the emergence of new sphere of human activity through the speed and convenience of ICT. The paper also alludes to the fact that the present global reality as presented by the outbreak Covid -19, is such that has made virtual and online dispute resolution to be imperative. The article concluded that there is a need for a legal regulation of ODR in Nigeria. It also concluded that regulation of ODR in Nigeria will promote the development of e-commerce and stimulate the growth of the technology industry.

### **Recommendations**

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 supports the use of technology to resolve disputes does not suggest that it is sufficient for ODR. This article also recommends that ADR practitioners should embrace the use of ODR in resolving disputes in view of large numbers of online transactions across borders in order to keep pace with modern trend. Finally, it is recommended that Nigeria should prioritize the development of legal standards for ODR to keep pace with international best practices.

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<sup>101</sup>Isioto N, Philip-Kpae F and Dickson R, 'Factors Affecting Technological Growth in Nigeria and the Way Forward', (2017), International Journal of Mechanical Engineering and Applications, 5(5), 269-274.

<sup>102</sup>KayodeOnipede, 'Technology Development in Nigeria: The Nigerian Machine Tools Industry Experience', (2010), LadokeAkintola University of Technology Journal, 1(2), 85-90.

<sup>103</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), The International Journal of Engineering and Science (IJES), 3(2), 56-67