

Kluwer Mediation Blog

Online Dispute Resolution (ODR) in Brazil: a major opportunity for stakeholders

Andrea Maia (Mediar360 – Dispute Resolution) and Daniel Becker (Tauil & Chequer Advogados) · Sunday, September 9th, 2018

The arrival of the internet age has posed many new challenges as a larger part of the economy has started to operate online and transnationally with a new emerging framework. After the spread of the global computer network and the rise of online business activities and operations, it became necessary for disputes between contracting parties to be resolved online – cheaply, quickly and efficiently – thereby culminating in the development of Online Dispute Resolution (ODR) methods.

Online Dispute Resolution (ODR)

While old disputes are vanishing from society (e.g., which neighbor owns the fruit from a tree that falls on the boundary of their properties) new disputes are exponentially being created by the interconnection of the world and the inclusion of more individuals in the world-wide web. The internet age is rapidly increasing the connectivity of society and the number of transactions conducted.

Bearing in mind this frenzy of disputes, the International Chamber of Commerce (ICC) organized in June 2017 a conference titled “Equal access to information and justice, online dispute resolution” in which stakeholders from more than 30 countries discussed the progress of ODR, as Mirèze Philippe, Special Counsel at the ICC International Court of Arbitration and co-founder of ArbitralWomen detailed [commented at a post last year](#) . Due to the new requirements of operations and contracts established on the internet, understanding ODR and its techniques becomes, above all, the new dispute resolution lawyer’s duty. This trend has four pillars, which can be summarized as (i) the virtualization of the courts, (ii) the use of decision-making algorithms, (iii) the use of big data for dispute prevention* and (iv) free access to legal information**.

ODR has been gaining wider acceptance in conflict resolution, especially in the e-commerce context. The early adopters of ODR were e-commerce marketplaces, who created a channel in their websites for resolving the disputes arising from the business held within the company. The American eBay, the Chinese Alibaba and the Brazilian Mercado Livre solve their conflicts in an impersonal, objective and predictable way at an impressive settlement rate of approximately 90%. . An important point in this regard is that the more conflicts they resolve, the more their algorithms collect data that serves to provide more precise responses, improving the settlements.

In the public sector, ODR has also been growing. Fifteen years ago, the Money Claim Online program was set up by the Ministry of Justice of England and Wales in order to allow users to open protocols equivalent to collection actions in the amount of up to GBP 100,000. Virtual court statistics are extremely positive: they are able to resolve more than 60,000 cases a year, according to Prof. Richard Susskind in his book *Tomorrow's Lawyers: an introduction to your future* (Oxford University Press, Oxford: 2012). In the Canadian province of British Columbia, the first online tribunal, the Civil Resolution Tribunal (CRT), has been operating since 2016, accepting claims of up to CAD 5,000, aside from condominium disputes, which have no pre-specified amount.

It is important to note that, although ODR is expanding, its methods are still restricted to simpler controversies that can be adapted to pre-defined parameters. Its use so far is not viable for complex cases with large values at stake, which require extensive evidence production. On the contrary, simple litigation cases involving consumer law, for example, which can overwhelm the judiciary and could easily be resolved, are good candidates for resolution by ODR. Conventional litigation for these cases can be quite costly, time consuming and inefficient, proving ODR to be the most efficient solution.

Brazil: offline crisis, online opportunity

When we look at the implementation of ODR services, there are two factors that must be taken into account: (1) Information and Communications Technologies (ICTs) and (2) the local digital economy. Both give an indication as to how quickly the ODR infrastructure is developing, especially when considering its use to resolve disputes involving online and offline commerce.

According to the [Justice in Numbers 2016](#) report published by the National Justice Council (CNJ), court litigation represents a cost of 1,3% of the Brazilian GDP . Also, a study published in 2016 by Valor Econômico (a leading business newspaper in Brazil), entitled “[The Costs of Court Litigation to Organizations](#)” states that the Brazilian Justice System has about 100 million cases. If we consider that in 2014 companies spent close to BRL 124,81 billion (approximately USD 35 billion) in litigation, it is not difficult to understand why the need for changes and improvements has become mandatory.

Consumer cases rank in third place amongst those faced by Brazilian companies and, in Rio de Janeiro alone, the second most populated state Brazilian State, over five hundred thousand new cases are filed every year.

Notwithstanding that, the Brazilian Judiciary Branch was stagnant in the last century. Although the Law No. 11,419/06 (Electronic Procedure Act) has been enacted more than ten years ago, little has changed in terms of procedural speed since the electronic procedure merely replicated the steps of an offline lawsuit. [Without any cognitive computing devices, case management, document automation and data science to facilitate processing and decision, judges are being flooded with new lawsuits in a number that has grown exponentially since the enactment of this law, according to Daniel Becker and Isabela Ferrari.](#)

Fortunately, in August 2017, during the [Conference on Civil Procedural Law organized by the Brazilian Federal Justice Council \(CJF\)](#), the Statement No. 25 was approved, which provides that conciliation or mediation hearings may be held by videoconference, audio, exchange of messages, online conversation, writing, electronic means telephone or other mechanisms that serve the purpose of self-composition . This measure allows bolder approaches by judges to carry out their

court proceedings with a larger involvement of technology.

In the same sense, aiming to try to decrease such a high demand of pending and new cases, the CNJ (National Justice Council) enacted the Resolution No. 125/2010, which regulates the Judicial Policy for the Treatment of Conflicts, which was recently updated. On its Amendment number 2, as along with several other important adjustments, the Digital Mediation System was introduced to allow a pre-procedural resolution of conflicts as well as a consensual action in ongoing legal proceedings.

However, there is still a strong resistance to ODR methods. The legal industry demand for ODR is only 2% according to [research carried out by the Brazilian Association of Lawtechs & Legaltechs \(AB2L\)](#) on 2017. This happens not only because of a [lack of knowledge about the method itself and the benefits inherent of this type of dispute settlement](#) , but also because of the traditional and old school mindset of many lawyers.

In Brazil, arbitration took approximately fifteen years to go mainstream; mediation is still crawling. ODR cannot afford to evolve and to be popularized in such a slow pace. Otherwise the Brazilian Justice System will simply stop working, while its citizens will be isolated from one of the most fundamental rights of modern societies: access to justice.

Conclusion

Technology has come to the legal field to stay. ODR methods will undoubtedly aid to improve access to justice. These methods are capable of reducing the judicialization of ordinary conflicts of a simpler nature. From a social perspective, it is necessary to question whether investing a large part of the Brazilian limited public resources with judicial courts is, in fact, appropriate when there are faster and less expensive alternatives available.

*Ethan KATSH and Orna Rabinovich-Einy. Digital Justice: technology and the internet of disputes (Oxford University Press, New York 2017, 46-47.

**Richard Susskind and Daniel Susskind. The Future of the Professions (Oxford University Press, Oxford 2015), 43-44.

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