

Revolutionizing the Courts: The Rise of Online Dispute Resolution Systems

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As courts recuperate from the chaos of the Covid-19 pandemic, they are turning to innovative solutions to keep pace with modern disputes. One of the most transformative changes is the surge of Online Dispute Resolution (ODR), a digital forum that complements and sometimes replaces traditional courtroom proceedings. ODR uses web-based platforms and digital tools the public can use to resolve conflicts more efficiently. Emerging from similar foundations as alternative dispute resolution (ADR), ODR offers tools that mirror many ADR mechanisms, such as negotiation, mediation, and arbitration.¹ With its potential to streamline processes and expand access to justice, ODR is reshaping how courts handle disputes. This blog post explores the different forms of ODR and examines how courts can integrate these technologies into their systems.

What forms of ODR are available?

All forms of ODR involve some use of the internet, but the delivery varies. ODR methods can be party-driven or adjudicative. Party-driven proceedings rely on ODR technology to automate or assist in negotiating between parties' proposals.² For example, Cybersettle and Modria are two online platforms that facilitate negotiations between parties. Parties can submit confidential offers through the platform, which tries to identify a sum acceptable to both parties.³ Adjudicative proceedings, on the other hand, involve a third person to the dispute. ODR under this approach can include online arbitration, virtual mediation, or online opinion polls and mock juries.⁴

ODR technologies have wide-ranging features depending on whether they are adjudicative or primarily party-facing. ODR technologies correspond to at least one of the following three categories: 1) AI ODR, 2) Blockchain ODR, and 3) Facilitative ODR.⁵

AI ODR

AI ODR uses artificial intelligence or algorithms to support the disputants or neutral third-party.⁶ ODR technologies that use AI or algorithms⁷ have wide application. AI ODR may have a

¹ See e.g. Helen Lohre, *Online Dispute Resolution in Eviction Claims: Considerations for the Inevitable*, 39 Ohio St. J. on Dis. Res. 233 (2024) (discussing the history and context of ODR and its various forms and uses).

² Samuel D. Hodge Jr., "Is the Use of Artificial Intelligence in Alternative Dispute Resolution A Viable Option or Wishful Thinking?" 24 Pepp. Dis. Res. L.J. 91, 103–04 (2024).

³ *Id.*

⁴ See *id.* at 105.

⁵ Oladeji M. Tiamiyu, *The Impending Battle for the Soul of ODR: Evolving Technologies and Ethical Factors Influencing the Field*, 23 Cardozo J. Conflict Resol. 75, 84 (2022).

⁶ *Id.*

⁷ This blog post addresses AI ODR as ODR technologies that use AI or algorithms. Note, however, that "[a]lgorithms are the building blocks that make up artificial intelligence or AI, they are not the same thing." Lohre, *supra* note 1, at 252.

supportive role that assists a mediator, or it may provide a more substantive role by assuming mediator functions.⁸ As a supportive tool, AI ODR often overlaps with other ODR forms, such as facilitative ODR.

AI ODR is perhaps the most visible in the context of family law disputes. It has been used to guide the distribution of marital property and support positive communication between co-parents via an in-app chat feature.⁹ As AI continues to advance, AI ODR technologies may absorb more of the facilitative ODR role. Some suggest that AI ODR that creates child visitation schedules would reduce the need for a mediator or judge to be as involved in the process.¹⁰ Already, some courts are adapting these advanced ODR technologies. In Wisconsin, judges use algorithmic ODR in recommending criminal sentences.¹¹

BLOCKCHAIN ODR

Blockchain ODR employs the same underlying technology as cryptocurrency to resolve disputes through a community decision-making approach.¹² Blockchain technology consists of a decentralized system where transactions are recorded on a shared digital ledger accessible by multiple users that approve them.¹³ This type of technology is most applicable to smart contracts. Smart contracts are self-executing programs that run on a blockchain. They automatically carry out actions, like transferring money, when certain conditions are met, without needing a third party to oversee or enforce the agreement.¹⁴

Typically, blockchain ODR resolves disputes arising from blockchain or smart contracts.¹⁵ Under blockchain ODR, disputes are typically referred to a panel with a large number of individuals, similar to juries, to choose a resolution.¹⁶ For other disputes, blockchain ODR may encourage negotiation and then crowdsource decision-making if not resolved.¹⁷ In some jurisdictions, this decision can be binding in court.¹⁸ However, as blockchain technologies outpace

⁸ Hodge, *supra* note 2, at 109–10.

⁹ Tihamiyu, *supra* note 5, at 86. For example, the app OurFamilyWizard has a feature called ToneMeter that uses AI to analyze drafts of messages and marks those that may seem upsetting, aggressive, humiliating, or hurtful. See OurFamilyWizard, *ToneMeter*, <https://www.ourfamilywizard.com/product-features/tonemeter> [https://perma.cc/YW72-ZRM4] (last visited Sep. 21, 2024).

¹⁰ Tihamiyu, *supra* note 5, at 87–88 (illustrating how maximalist versions of AI ODR may perform tasks traditionally reserved for the mediator or judge to increase efficiency in family law disputes).

¹¹ Lohre, *supra* note 1, at 252.

¹² See Tihamiyu, *supra* note 5, at 96; Lohre, *supra* note 1, at 250.

¹³ For an introduction into blockchain technology, smart contracts, and different categories of blockchain ODR, see Cemre Ç. Kadioglu Kumtepe, *A Brief Introduction to Blockchain Dispute Resolution*, 14 J. Marshall L.J. 138, 140–145 (2021).

¹⁴ *Id.* (discussing how blockchain ODR platforms are a decentralized mechanism of enforcement that removes courts from the dispute resolution process).

¹⁵ Lohre, *supra* note 1, at 250.

¹⁶ *Id.*

¹⁷ *Id.* See also Amy J. Schmitz & Colin Rule, *Online Dispute Resolution for Smart Contracts*, 2019 J. Dis. Res. 103, 117 (2019) (explaining that crowdsourced dispute resolution allows anonymous users to vote on “winners” and describing various models including Kleros, Aragon Network, and Jur.io).

¹⁸ Lohre, *supra* note 1, at 250 (discussing off-chain disputes that crowdsource decisions can be binding in court under the New York Convention).

our legal system,¹⁹ the legal status of blockchain contracts and dispute resolution remains unclear. Blockchain technology is complicated and faces limitations in representation in the panels. Thus, the landscape of blockchain ODR is uncertain and constantly changing.

FACILITATIVE ODR / VIRTUAL MEDIATION

Facilitative ODR is the most widely known to the public because it largely resembles traditional mediation. Also known as virtual mediation, facilitative ODR engages videoconferencing platforms such as Zoom to conduct mediation.²⁰ Virtual mediation may occur through synchronous or asynchronous communication. Synchronous communication is when parties actively converse in real time, much like a live mediation. Asynchronous communication is slower and often more controlled, such as emails or text messages.²¹

Virtual mediation became increasingly popular during the Covid-19 pandemic, though likely out of necessity. Still, increased participation in virtual mediation revealed many benefits. Some of these benefits are common to many ODR systems, such as efficiency and cost-saving reasons. For example, virtual mediation is easier to coordinate between parties in different geographic locations. Videoconferencing technology allows participants to participate who may otherwise be unavailable, such as executive decision makers with settlement authority or persons with disabilities.²²

Other benefits to virtual mediation are more unique than other ODR systems. Videoconferencing platforms may allow mediators to divide the mediation into different stages with greater flexibility.²³ A mediator may be able to facilitate virtual mediation sessions as fact-gathering, reflection, or exchange proposals. Further, participants are not in a constrained environment like a courtroom and can be productive when the mediator is only meeting with one party.²⁴

Virtual mediation can level the playing field and facilitate calm communication in domestic disputes, divorce mediations, and other disputes involving a power imbalance.²⁵ Increasing physical distance between parties is often beneficial in tense mediations. Some parties found that virtual mediation was a buffer that minimized other distractions, such as personality conflicts, and allowed them to focus on the issues.²⁶ However, virtual mediation also presents reason for caution. For instance, privacy, internet access, and restrictions in virtual communication (e.g. Zoom fatigue, limited non-verbal communication, etc.) are common concerns with virtual mediation.

¹⁹ See Schmitz & Rule, *supra* note 17, at 112.

²⁰ Lohre, *supra* note 1, at 253. See also Sarah R. Cole & Amanda Spangler, *Virtual Mediation: The Only Door Needed in the Multi-Door Courthouse?*, 52 Stetson L. Rev. 477, 478 (2023).

²¹ Lohre, *supra* note 1, at 256.

²² See Cole & Spangler, *supra* note 20, at 493–94.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 494

²⁶ *Id.* at 493.

How are courts using ODR?

Over the last decade, courts have embraced facilitative ODR systems the most. Only one court-implemented ODR system existed in 2014.²⁷ At that time, increased access to the internet and smartphones led more courts to implement ODR.²⁸ By 2019, sixty-six courts had implemented ODR systems across the country, all being facilitative ODR.²⁹ This trend continued until the Covid-19 pandemic, when ODR programs experienced a massive uptick. Now, courts continue to engage ODR resources. With courts in at least 40 U.S. states considering ODR programs, the market share of ODR is expected to increase over 350% between 2020 and 2028.³⁰

However, courts are also starting to integrate other ODR technologies. Many jurisdictions are deploying legal help chatbots or self-help portals.³¹ ODR systems in many courts are a result of public-private partnerships. Matterhorn,³² a web-based platform for court management, operates in multiple courts across sixteen states.³³

Regardless of their system, courts must also consider the nature of the dispute. In addition to family law disputes, common types of disputes under court-annexed ODR systems include evictions,³⁴ debt and small claims cases,³⁵ disputes involving pro se litigants,³⁶ and traffic ticket and warrant cases.³⁷ As court systems continue to modernize post-Covid, so too will the ODR systems they integrate.

Conclusion

ODR offers courts a range of tools to streamline and enhance the dispute resolution process. These emerging technologies have the potential to transform how disputes are resolved, offering greater efficiency, accessibility, and flexibility. However, challenges such as privacy concerns, legal uncertainty, and ensuring equitable access remain critical considerations as courts navigate

²⁷ Tiarniyu, *supra* note 5, at 102.

²⁸ Lohre, *supra* note 1, at 248–49.

²⁹ Tiarniyu, *supra* note 5, at 102.

³⁰ Lohre, *supra* note 1, at 249.

³¹ David Freeman Engstrom & R.J. Vogt, *The New Judicial Governance: Courts, Data, and the Future of Civil Justice*, 72 DePaul L. Rev. 171, 181 (2023) (providing examples of chatbots: the “Gavel” chatbot in Arizona, the Judicial Information Assistant in New Jersey, and “Lex” in Mississippi.)

³² Matterhorn, *ODR Solutions*, <https://getmatterhorn.com/odr-solutions/warrants-pleas/plea-online/#:~:text=What%20is%20Matterhorn%3F,See%20Other%20Courts%20Outcomes> [https://perma.cc/5LBA-36WF] (last visited: Oct. 13, 2024) (“Matterhorn is a web-based platform designed to allow courts to handle large volumes of infractions, disputes, warrants, and other cases—all online.”)

³³ Tiarniyu, *supra* note 5, at 103–04.

³⁴ See generally Lohre, *supra* note 1.

³⁵ Jennifer Shack & Donna Shestowsky, *Access to Justice: Lessons for Designing Text-Based Court-Connected ODR Programs*, 29 Dis. Res. Mag. 29, 30 (2023) (describing a Texas pilot program for debt and small claims and a Michigan ODR component for post-judgment family matters).

³⁶ See generally Julianne Dardanes, *When Accessing Justice Requires Absence from the Courthouse: Utah’s Online Dispute Resolution Program and the Impact It Will Have on Pro Se Litigants*, 21 Pepp. Dis. Res. L.J. 141 (2021).

³⁷ See Cynthia Alkon & Amy Schmitz, *Opening the Virtual Window: How on-Line Processes Could Increase Access to Justice in the Criminal Legal System*, 25 Cardozo J. Conflict Resol. 177, 200 (2023).

the integration of these systems. As ODR continues to evolve, it will play an essential role in the future of the judicial system, providing innovative ways to meet the needs of modern disputes. Consequently, legal professionals will need to embrace these technologies to meet the demands of an increasingly digital justice system.