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Resolution to Empower Economic Development**

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There's an "App" for That:

Developing Online Dispute Resolution to Empower Economic Development

Amy J. Schmitz*

Traditionally, litigation has been the norm for resolving disputes. It takes place in a public forum and face-to-face. In a global economy, however, such public and face-to-face dispute resolution is not feasible. This is especially true with cross-border purchases through e-commerce. E-commerce requires more efficient and less litigious remedy systems that allow consumers to obtain remedies on their purchases without the cost and travel associated with traditional face-to-face procedures. This has led to development of online dispute resolution ("ODR") processes, especially with respect to business-to-consumer contracts. Accordingly, scholarship and policy papers have advanced ODR for the benefit of consumers. What deserves emphasis, however, is promotion of ODR to empower businesses in developing nations that seek to attract customers globally. Establishment of trusted ODR systems incentivizes consumers to make cross-border purchases because it provides consumers with the comfort of knowing there is a cheap and easy means for obtaining a remedy if the purchase goes awry. This is especially important to assist businesses in developing nations. Although broadband home Internet access is less common in these nations, Internet access is expanding through use of smartphones and similar mobile devices. Such mobile access is narrowing the so-called "digital divide." At the same time, ODR provides a backbone for building e-commerce, which is imperative for economic development and global integration. ODR is a catalyst for consumer trust, thus fueling consumer cross-border sales. This article, therefore, encourages growth of global ODR that is accessible through mobile devices as means for increasing access to remedies and trustworthy e-commerce for companies and consumers in developing nations.

I. Introduction

Dispute resolution once relied on face-to-face interactions, such as litigation or traditional arbitration, mediation or negotiations. Alternative Dispute Resolution (ADR) theorists and practitioners assumed that empathy gained from in-person contact is necessary for resolving conflicts. Furthermore, the norm was litigation, as individuals sought to avail their rights in courts of law. Public justice demanded that dispute resolution be done with full transparency. This has especially been true in the United States (US), where one's "day in court" is sacred.

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Nonetheless, times have changed and public courts are no longer the ultimate venue for resolution of disputes. Litigation is simply too expensive. Individuals want real remedies in real time. Time is money. This is especially true for small dollar claims in business-to-consumer contracts. Consumers simply are not willing to spend the time and money it takes to file a claim in court or arbitration, and travel to an in-person process. For small dollar claims, it is even cost prohibitive to seek redress through face-to-face alternative dispute resolution (“ADR”) processes such as mediation if one must pay for the mediator’s time and bear costs of travel and time off of work.

Meanwhile, we transact online, we socialize online, and we even see a therapist – all online.¹ The Pew Research Center (“Pew”) recently did a study of online shopping and e-commerce, and found tremendous growth in the way our commercial behaviors have changed.² Surveys of US consumers in 2015 indicated that Americans were spending nearly \$350 billion annually online, and 79% of Americans indicated that they make purchases online.³ Additionally, roughly half of Americans reported making online purchases using their cell phones, and many indicated purchases made on social media sites such as Facebook or Twitter.⁴ These percentages have presumably grown since that time.

That said, we continue to express fear regarding trustworthiness of online sellers. It is very important to consumers that they can trust the merchants that sell on these e-commerce websites.⁵ There is a reason why e-commerce sites such as Amazon and eBay have grown and gather steam through loyal patronage. These companies have developed online means for quickly and securely resolving purchase disputes, which has come to be known as online dispute resolution, or “ODR.”⁶ ODR includes automated decision-making, and online negotiation, mediation, arbitration, or community courts. It also includes variations on these processes and new possibilities for ODR continually arise. ODR provides an exciting frontier for access to justice that moves at the pace of technology, thus surpassing current imagination and allowing for innovation.⁷

Furthermore, ODR has special potential in global markets. This is due to its efficiency, convenience and ability to defy jurisdictional limits. ODR allows individuals

¹ See, e.g., Talk Space, at [https://get.talkspace.com/pf-therapy/?utr_source=google&utr_medium=cpc&utr_campaign=SEARCH_GOOGLE_NONBRAND_PAYFIRST_online-therapy&utr_adgroup=exact_online%20therapist_general&utr_keyword=therapist%20online&utr_term={term}&utr_id=100001000100160516000006&utr_matchtype=Exact&utr_network=g&utr_device=c&utr_search={search}&utr_display=&utr_adid=216420737239&utr_mobile=&utr_web=\[not-mobile\]&utr_placement=&utr_position={position}&utr_devicemodel=&gclid=EA1aIQobChMIpdz7r6_91QIViLXAChII-QfjEAAYAiAAEgLiufD_BwE](https://get.talkspace.com/pf-therapy/?utr_source=google&utr_medium=cpc&utr_campaign=SEARCH_GOOGLE_NONBRAND_PAYFIRST_online-therapy&utr_adgroup=exact_online%20therapist_general&utr_keyword=therapist%20online&utr_term={term}&utr_id=100001000100160516000006&utr_matchtype=Exact&utr_network=g&utr_device=c&utr_search={search}&utr_display=&utr_adid=216420737239&utr_mobile=&utr_web=[not-mobile]&utr_placement=&utr_position={position}&utr_devicemodel=&gclid=EA1aIQobChMIpdz7r6_91QIViLXAChII-QfjEAAYAiAAEgLiufD_BwE) (last visited Aug. 29, 2017).

² Aaron Smith & Monica Anderson, *Online Shopping and E-commerce*, Pew Research Center, 1 – 14 (December 19, 2016), <http://www.pewinternet.org/2016/12/19/online-shopping-and-e-commerce/>.

³ *Id.*

⁴ Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future*. Oxford, United Kingdom: Oxford University Press, 2013.

⁵ María M. Albornoz & Nuria González Martín, *Feasibility of Online Dispute Resolution in Developing Countries*, 44 U. MIAMI INTER-AM. L. REV. 39, 41 (2012).

⁶ *Id.* at 51-53.

⁷ *Id.*

to resolve disputes during times that work with their own time zones without need for international travel or legal complexities. An individual in the United States (US) may upload and post facts and arguments during her waking hours, while an individual in Africa may respond and post her facts during times that suit her time zone. Similarly, a mother with three kids and a job is able to post while wearing her pajamas after the children have gone to sleep, while a merchant on the other end of the complaint is able to respond to the arguments during the regular workday. This is the power of asynchronous communication.

Navigating choice of law and enforcement in foreign venues is also problematic for traditional dispute resolution. Imagine again the disputants in the scenario above: the individual in the US may hope for her laws to apply while the African individual argues that her law should govern the dispute. None of this really matters on the Internet, however, if the real dispute is simply about money and can easily and equitably be determined on the facts. Moreover, consumers do not think about their common complaints as legal issues.⁸ They do not think about hiring attorneys or going to courts. That would be too expensive. Businesses also seek to avoid courts—especially if the business is a small merchant struggling to earn customers.

Consider a jewelry maker in Africa. This jewelry maker creates necklaces that would sell very well across the globe if consumers were able to find and purchase the jewelry without concerns. The jewelry maker sets up a website and posts photos of her jewelry for anyone to purchase from across the globe. Meanwhile, the consumer in the US may see the jewelry online, but refrain from purchasing out of fear that if the item is faulty or never sent, then the consumer has no recourse. The US consumer thinks: How do I know I can trust this merchant and get a remedy if this purchase goes bad? This merchant could be fraudulent. The merchant, meanwhile, would never even consider seeking to sue a purchaser in another country who fails to pay for ordered goods.

Now let us change the picture by embedding a reliable and vetted ODR system into the merchant's website. If this ODR system gains a reputation for trustworthiness, then a purchaser in the US may feel encouraged to buy jewelry from the African merchant, thinking: "I know I can trust this merchant will deliver the goods and if the goods are not delivered I can get a remedy through this ODR process." The ODR system could likewise create means for the merchant to pursue redress if the purchaser fails to pay for goods properly delivered.

Of course, ODR is still in its infancy – but momentum is growing. ODR is seen as increasingly important for economic development, and progression in emerging economies. In fact, Non-Governmental Organizations and international groups engaged in ODR have reached out to leaders in developing nations for over ten years due to ODR's importance for economic growth.⁹ Although developing nations generally lack the type of broad access to the Internet and robust infrastructure of more developed

⁸ W.H. Redmond, *Consumer Rationality and Consumer Sovereignty*, 58 REV. SOC. ECON. 177 (2000).

⁹ Doug Leigh & Frank Fowlie, *Online Dispute Resolution (ODR) within Developing Nations: A Qualitative Evaluation of Transfer and Impact*, OPEN ACCESS LAWS OSSLN 2075-471X (Jan. 22, 2014), at 106-116, available at <https://www.mdpi.com/journals/laws> (last visited August 5, 2017).

nations, improvements continue with the expansion of mobile Internet.¹⁰ Furthermore, these nations have great interest in ODR because it has cross-pollinating impact: ODR boosts public trust in cross border purchases, which fuels e-purchases, which fuels improvements in infrastructure -- and on it goes. That makes mobile accessible ODR (meaning that it is accessible via a smartphone or tablet) vital for expanding ODR programs on a global basis.

This Article will therefore explore the expansion of mobile accessible ODR as means for empowering consumers and businesses in developing nations. Part II will discuss the importance of the Internet and e-commerce for economic growth, considering the ubiquity of Internet access versus the developing world. Part III will then explain how ODR has grown alongside e-commerce, as “gripe sites” have expanded into remedy systems. Part IV adds to the picture by describing how developing nations have also begun exploring ODR as the most cost-effective and efficient means for resolving e-commerce claims. Importantly, Part V then dives into the policy proposal for creating mobile-friendly ODR to assist advancement of e-commerce for those throughout the world. Part VI concludes by recognizing that companies, consumers and policymakers must work together to bring an endeavor of this magnitude to fruition. This is therefore merely a first step encouraging further discussion and development for the benefit of all.

II. Expansion of Internet Access as an Economic Booster

A hurdle to equal access to e-commerce has been the so-called “digital divide.” The concern was that only rich people could afford technology and fast Internet connections, so that technology-powered systems would disproportionately benefit the affluent. Many public investments in technology and e-commerce were put off due to this concern. Over the last twenty years, however, the dynamics have changed significantly. The introduction of inexpensive mobile phones has democratized access to the Internet and e-commerce. Buying and selling online is not simply for the rich, and people from every walk of life are connecting socially via the web.

A. Growth of Internet Access Via Mobile Technologies

Despite this optimism for digital equality, access to the Internet is not equally available and safe throughout the world. Hindrances to e-commerce and Internet access remain in developing nations where more pressing needs such as roads, housing and clean water take precedence. Nonetheless, building technological infrastructure remains a priority in these nations and expanding access to the Internet via mobile technologies is rapidly narrowing the digital divide.¹¹ Mobile Internet offers low cost accessibility that leads to greater growth of e-commerce, and hence economic development – especially for entrepreneurs looking to sell on a global level.¹² Internet ubiquity in developed nations is spreading quickly, as some developing nations have skipped basic infrastructure improvements to leap into the Internet age.

¹⁰ *Id.* at 111-12.

¹¹ Philip M. Napoli and Jonathan A. Obar, *Mobile Leapfrogging and Digital Divide Policy: Assessing the Limitations of Mobile Internet Access*, SSRN 1 (May 12, 2013), available at <https://ssrn.com/abstract=2263800>.

¹² *Id.* at 2.

1. Ubiquitous Technology in the US

The US is among the leaders in e-commerce and technological expansion. US consumers have become accustomed to purchasing with just a few swipes of our fingers on a tablet or phone. As a result, we are all cross-jurisdictional. Technology is flattening the world, creating connections that span the globe in milliseconds, bouncing along fiber optic cables at the bottom of the ocean or beaming data between satellites. We are now more globally connected than at any other time in human history, and the pace of that connection is continuing to accelerate.

For example, Pew found, in its 2013 study in the US of broadband use, that approximately 70% of adults had a high-speed broadband connection to the Internet, while 3% had a home dial-up connection.¹³ Despite this growth in Internet access, a divide remained based on race, age and income.¹⁴ Still, access to the Internet has grown tremendously for all adults in the US since that time. Pew found in 2016, that 88% of all adults in the US had Internet access.¹⁵ That means that Internet access in the US went from essentially 7 in 10 to 9 in 10 individuals from 2013 to 2016. That is a significant increase in only three years.

That said, Pew in 2016 also indicated that 12% of Internet users relied on their smart phones as their only means for gaining access to the web.¹⁶ Indeed, Pew has found that smartphone usage has created new means for accessing the Internet, especially for minority groups and those with lower economic means.¹⁷ Pew found in 2013 that smartphones virtually eliminated the digital divide among races and ethnicities, with 80% of “White, Non-Hispanic,” 79% of “Black, Non-Hispanic,” and 75% “Hispanic” having some Internet access once you add smartphone access to home broadband.¹⁸ That said, age remains a factor in the digital divide. That same 2013 study indicated that smartphones widen the divide between 18–29 year olds and those who are over age 65. The gap was 37 percentage points when only considering home broadband access, and the gap increased to 49 percentage points when taking smartphones into account.¹⁹

Furthermore, although smartphones have increased their utility with the advent of new technologies, they may not be as usable as a computer with a home Internet connection—i.e., uploading and editing documents, and costs of data usage under smartphone plans may hinder use of mobile devices for ODR.²⁰ Accordingly, even in the US where Internet access is fairly widespread, policymakers and businesses must consider ways to expand free or low-cost Internet

¹³ Kathryn Zickuhr & Aaron Smith, Home Broadband 2013, Pew Research Ctr. 4–5 (2013), http://www.pewInternet.org/files/old-media/Files/Reports/2013/PIP_Broadband%202013_082613.pdf.

¹⁴ *Id.* at 2–5 (indicating 74% white versus 64% black and 53% Hispanic adults had broadband Internet access in 2013).

¹⁵ Pew Research Ctr., *Internet/Broadband Fact Sheet*, 1-6 (2016), <http://www.pewInternet.org/fact-sheet/Internet-broadband/>

¹⁶ *Id.*

¹⁷ Zickuhr & Smith, *supra* note ____, at 4–5.

¹⁸ *Id.* at 4-7.

¹⁹ *Id.*

²⁰ *See id.* at 4 (noting questions regarding the utility of smartphones for activities such as updating a resume, filing taxes, or viewing educational content because these activities are more challenging on a smartphone operating over a cell phone network than on a broadband-connected home computer).

access.²¹ They also would be wise to adopt educational access programs to assist those over age 65 and those with lower education. Most consumers will need to invest some time and resources in gathering information about new ODR processes. Policymakers also must realize that using ODR will be more difficult for those who are uncomfortable with online processes, which is especially true for those who grew up in a society that relied on discussions and handshakes to ensure the quality of their deals.²²

2. Accelerating Access in Developing Countries

Access to the Internet is not equal throughout the world. Many businesses and individuals in developing countries lack robust Internet access as they understandably focus on paramount concerns such as clean water, electricity, and other basic necessities.²³ This is especially true when one considers only fixed broadband Internet. In contrast to Internet penetration rates in the United States noted above, the 2015 World Bank statistics indicated broadband subscriptions per 100 people at 10.57 for Latin America, 0.38 for Sub-Saharan Africa, and 16.59 for East Asia and the Pacific.²⁴

Such divergent statistics have led to the United Nation's creation of the International Telecommunications Union ("ITU") to advance information and communication technology ("ICT").²⁵ The ITU studied Internet access in 2016 and found that roughly 95% live in an area that is covered by a mobile-cellular network, while access to regular broadband Internet remains highly limited.²⁶ In developing countries, only 41.1% of households have Internet access and only 83 of the 96 developing countries had "affordable" entry-level broadband services, defined as less than 5% of the average monthly income.²⁷ The report showed that stark differences were most apparent in terms of broadband access to the Internet.²⁸ The ITU therefore set an agenda

²¹ See, e.g., Rebecca R. Ruiz, *F.C.C. Chief Seeks Broadband Plan to Aid the Poor*, N.Y. TIMES, May 28, 2015, at A1 (discussing plan to expand access to the Internet for the poor).

²² See Jean Braucher, *Cowboy Contracts: The Arizona Supreme Court's Grand Tradition of Transactional Fairness*, 50 ARIZ. L. REV. 191, 192–98 (2008) (explaining how relational sanctions provided sufficient leverage to get ranchers in the first half of the twentieth century to comply with their agreements without need for formalities or litigation).

²³ Robin V. Cupido, *The Growth of E-Commerce and Online Dispute Resolution in Developing Nations: An Analysis*, 10 INTERNATIONAL JOURNAL OF SOCIAL, BEHAVIORAL, EDUCATIONAL, ECONOMIC, BUSINESS AND INDUSTRIAL ENGINEERING, 3254, 3254–3257 (2016).

²⁴ *Fixed Broadband Subscriptions (Per 100 People)*, WORLD BANK, <http://data.worldbank.org/indicator/IT.NET.BBND.P2> (last visited August 6, 2017).

²⁵ International Telegraph Union ("ITU"), *Connect 2020: Setting a Global Agenda for the ICT Sector*, at ITU.INT/EN/plenipotentiary/2014/newsroom (last visited January 31, 2017).

²⁶ INTERNATIONAL TELECOMMUNICATIONS UNION, *ICT FACTS AND FIGURES 2016* (2016), available at <http://www.itu.int/en/ITU-D/Statistics/Documents/facts/ICTFactsFigures2016.pdf>.

²⁷ *Id.* At the same time, the United Nations Conference on Trade and Development (UNCTAD) conducted a study in 2016 analyzing the development of e-commerce across the globe. They relied on four factors to rank 137 countries on e-commerce, including (1) Internet use penetration, (2) secure servers per 1 million inhabitants, (3) credit card penetration and (4) a postal reliability score. The top ten developing countries with the most developed e-commerce included the Republic of Korea, Hong Kong, Singapore, United Arab Emirates, Qatar, Bahrain, Uruguay, Kuwait, Chile, and Malaysia. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *UNCTAD B2C E-COMMERCE INDEX 2016*, 9 (2016), available at http://unctad.org/en/PublicationsLibrary/tn_unctad_ict4d07_en.pdf. Africa, however, ranked the lowest on all indicators. *Id.* at 1. Mobile money is helping facilitate online transactions, but great need remains for enhanced Internet access. *Id.* at 13. Economic development also requires more secure servers, reliable postal delivery, and better means for providing remedies when purchases fail. *Id.*

²⁸ *Id.*

for Connect 2020, identifying four key goals: growth, inclusiveness, sustainability, and innovation and partnership.²⁹ This emphasis on innovation and partnership indicated the importance of public-private collaboration – which seems to be happening as mobile access to the Internet grows in tandem with cellular telephone providers' presence in the developing world.³⁰

The picture is more promising once researchers take mobile access to the Internet into account. The World Bank studied Internet use including both mobile and broadband access, and found that in 2015, East Asia and the Pacific had an Internet penetration rate of 49.8%. This was a significant increase from 34.2% in 2010 and 5.6% in 2000.³¹ In China alone, the Internet penetration rate rose from 34.3% to 50.3% between 2010 and 2015, while it rested at only 1.8% in 2000.³² By contrast, Japan had a much higher Internet penetration rate of 93.3% in 2015, with rates of 78.2% and 30% in 2010 and 2000 respectively.³³ This again was due in large part to significant growth in mobile technology in the Asia-Pacific region. Mobile broadband now makes up the majority of Asia-Pacific's connections to the Internet, having passed that threshold in 2016.³⁴ This is especially true in China, where mobile Internet access rates are higher than they are in Europe.³⁵

With respect to Latin American, the World Bank similarly found higher Internet penetration rates, reaching 54.5% in 2015, when considering mobile as well as broadband Internet access.³⁶ There was a significant increase from 34.7% in 2010 and just 3.9% in 2000.³⁷ In Brazil alone, the Internet penetration rate reached 59.1% in 2015, thereby increasing greatly from 40.7% in 2010 and 2.9% in 2000.³⁸ Mexico's Internet penetration rate for 2015 was only marginally lower at 57.4%, and represented an increase from 31.1% in 2010 and 5.1% in 2000.³⁹ These increases in Internet access in Latin America coincide with the significant growth in Latin

²⁹ International Telegraph Union ("ITU"), Connect 2020: Setting a Global Agenda for the ICT Sector, at ITU.INT/EN/plenipotentiary/2014/newsroom (last visited January 31, 2017).

³⁰ *Id.*

³¹ *Internet Users (Per 100 People)*, WORLD BANK, http://data.un.org/Data.aspx?d=WDI&f=Indicator_Code%3AIT.NET.USER.P2 (last visited Aug. 6, 2017).

³² *Id.*

³³ *Id.*

³⁴ *The Mobile Economy: Asia Pacific 2017*, GSMA INTELLIGENCE, (June 2017), 1-17 available at <https://www.gsmainelligence.com/research/?file=336a9db2ab3ed95bc70e62bf7e867855&download> (last visited August 6, 2017).

³⁵ Hyunmi Yang, *Global Mobile Trends*, GSMA INTELLIGENCE, (October 2016), available at <https://www.gsmainelligence.com/research/?file=357f1541c77358e61787fac35259dc92&download> (last visited August 7, 2017) at 39.

³⁶ *Internet Users (Per 100 People)*, WORLD BANK, http://data.un.org/Data.aspx?d=WDI&f=Indicator_Code%3AIT.NET.USER.P2 (last visited Aug. 6, 2017).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

America's mobile market, which boasts the second-highest number of mobile subscribers of any region outside of the Asia-Pacific.⁴⁰

Although Africa has trailed behind China and Latin America in Internet usage, the Brookings Institute indicated increased Internet access in Africa.⁴¹ This again was due in large part to mobile technologies, which are helping to provide access to the Internet and e-commerce in the developing world.⁴² Even looking at 2011 statistics, the United Nations International Children's Fund (UNICEF) found that the African continent had 620 million mobile connections.⁴³ South Africa was the third largest home to mobile users on the continent, trailing only Nigeria and Egypt.⁴⁴ Mobile telephone usage for South Africans age 15-24 in 2011 was already 72%, which is presumably much higher over five years later. This is in stark contrast to 2009 statistics showing fixed Internet connections reaching only 12.3% of the South African population.⁴⁵ Importance of mobile Internet is no surprise, as it remains steadfastly cheaper than fixed Internet and continues to get even cheaper with new innovations.⁴⁶

That is not to say that Internet access is ubiquitous in the developing world, where many lack basic necessities. Looking more narrowly, one study indicated that in parts of the Least Developed Countries (LDCs as defined by the UN), the number of households with mobile Internet was still lagging at 19.4% in 2014, and rested at less than 1% when it comes to fixed broadband Internet.⁴⁷ Nonetheless, PRC studies indicated somewhat more positive statistics. Pew showed that by 2013, 45% of developing nations reported using the Internet occasionally, compared to 54% by 2015.⁴⁸ The results of their research also confirmed that smartphone ownership is driving an increase in Internet access: Smartphone ownership in the 21 surveyed countries climbed from 21% in 2013 to 37% in 2015.⁴⁹ The highest increases of smartphone ownership were found in Turkey (+42), Malaysia (+34), Chile, and Brazil (+26 each), all of which have accelerating economies.⁵⁰ Nonetheless, smartphone ownership remained lowest in the poorest economies: notably in Tanzania (11%), Uganda and Ethiopia (4% each).⁵¹

⁴⁰ University of Pennsylvania, *Why Latin America is the Next Big Mobile Battleground*, UNIVERSITY OF PENNSYLVANIA, (November 23, 2015), <http://knowledge.wharton.upenn.edu/article/why-latin-america-is-the-next-big-mobile-battleground/> (last visited Aug. 6, 2017).

⁴¹ Fred Dues, *How the Internet and Data Help the Developing World*, Brookings Now, Thursday, February 6 (2014), at [HTTP://www.Brookings.edu/blog/Brookings-now/2014/02/06](http://www.Brookings.edu/blog/Brookings-now/2014/02/06).

⁴² *Id.* Mobile access is what brings the percentage up to 41% in the ITU's report, compared to fixed Internet connections ranging from 5-10%.

⁴³ GERRIT BEGER & AKHAY SINHA, SOUTH AFRICAN MOBILE GENERATION 5 (UNICEF 2012).

⁴⁴ *Id.*

⁴⁵ *Id.* at 11.

⁴⁶ *Id.*

⁴⁷ *See Dues supra* note ____.

⁴⁸ Jacob Poushter, *Smartphone Ownership and Internet Usage Continues to Climb in Emerging Economies*, Pew Research Center (Feb. 22, 2016) <http://www.pewglobal.org/2016/02/22/smartphone-ownership-and-Internet-usage-continues-to-climb-in-emerging-economies/>

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

Smartphone ownership nonetheless correlates with wealth for the most part. PRC's 2015 study of smartphone ownership among twenty-one countries found that the correlation between a country's GDP per capita and smartphone ownership rate was 0.84, only marginally lower than the correlation between per capita income and Internet use (0.87).⁵² Contrary to expectations, however, this correlation dissipates in Asian countries where smartphone ownership tends to outpace GDP expectations. For example, China had a GDP per capita of \$15,534.70 in 2016 (below the global mean),⁵³ but was nearly on par with the United States in terms of smartphone ownership for those under the age of 35 (85 %).⁵⁴ By contrast, Japan had a 2016 GDP per capita of \$41,461.90,⁵⁵ well above the global mean, but had a smartphone ownership rate of 39% in 2015 despite its high rate of Internet penetration.⁵⁶ Curiously, South Korea had the highest smartphone ownership rate of any country studied (88%).⁵⁷

Meanwhile, both ITU and PRC reported that gender and age gaps remain when it comes to Internet usage. Pew goes further to show that the gap reaches into smartphone ownership as well. Pew showed that the largest gap between genders in smartphone ownership is in Mexico and in African states such as Nigeria, Kenya, and Ghana.⁵⁸ ITU reported that in Africa, the rate of Internet use was 21.9% female compared to 28.4% male.⁵⁹ Age also is a determining factor in Internet usage, as older individuals remain less comfortable and adept at using smartphones and computers. At the same time, younger, better educated, individuals are significantly more likely to report smartphone ownership than others.⁶⁰ The only countries with insignificant socioeconomic gaps in smartphone ownership were countries that had exceptionally low rates of smartphone ownership altogether, such as Pakistan and Uganda.⁶¹

This creates a new digital divide.⁶² Many individuals with no prior access to personal computers have not developed the skills necessary to utilize mobile phones.⁶³ Some have also noted that the comparatively weaker memory, speed, and content availability of mobile devices create a comparative advantage for those with broadband Internet.⁶⁴ Although mobile Internet has made it possible for those who cannot afford broadband access to use the web, socioeconomic, age and gender gaps remain.

⁵² Poushter, *supra* note .

⁵³ *GDP Per Capita, PPP (Current International \$)*, WORLD BANK, <http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD> (last visited Aug. 6, 2017).

⁵⁴ Poushter, *supra* note .

⁵⁵ *GDP Per Capita, PPP (Current International \$)*, *supra* note .

⁵⁶ Poushter, *supra* note .; *Internet Users (Per 100 People)*, WORLD BANK, http://data.un.org/Data.aspx?d=WDI&f=Indicator_Code%3AIT.NET.USER.P2 (last visited August 6, 2017).

⁵⁷ Poushter, *supra* note .

⁵⁸ *Id.*

⁵⁹ International Telecommunication Union, *ICT Facts and Figures 2016*, (June, 2016) <http://www.itu.int/en/ITU-D/Statistics/Documents/facts/ICTFactsFigures2016.pdf>

⁶⁰ Poushter, *supra* note .

⁶¹ *Id.*

⁶² Philip M. Napoli and Jonathan A. Obar, *Mobile Leapfrogging and Digital Divide Policy: Assessing the Limitations of Mobile Internet Access*, SSRN, (May 12, 2013), available at <https://ssrn.com/abstract=2263800> (last visited August 5, 2017) at 1.

⁶³ *Id.* at 3.

⁶⁴ *Id.* at 7.

That said, most agree that access to the Internet will expand and grow—reaching all people in every corner of the world. This is due in large part to the growth of mobile technologies. It is also apparent that the Internet is a major platform for international trade, and e-commerce is a springboard for economic development.⁶⁵ This is especially true for developing countries. Indeed, the Internet provides means for businesses in developing nations to sell to millions of consumers worldwide.⁶⁶

B. Centrality of E-commerce in Economic Development

With the growth of mobile access to the Internet throughout the world, and especially in developing nations, it is no surprise that e-commerce has become a central element in boosting economic development. Mobile “apps” and easy access to the Internet have made it easy for individuals in every nation to buy and sell goods online. Consumers crave the vast options and choice on the Internet, while merchants seek customers across borders to boost their bottom lines.⁶⁷ Even those that saw the Internet as a game-changer did not expect the bombshell that the Internet had on commerce.⁶⁸ Brick-n-mortar stores have suffered in the wake of online merchants’ success – ala Amazon and eBay. In response, big box stores such as Walmart have had to step up their online sales and e-commerce portals to compete.⁶⁹

Worldwide, e-commerce transactions as a percentage of total retail transactions grew from 2.4% in 2005 to 6% in 2014.⁷⁰ Since that time, there has been a consistent positive trend towards the adaptation and exploitation of the Internet for selling goods and services. In the United States and abroad, consumers appreciate that they can go to websites such as Amazon.com and browse their inventory, hunt for deals, and make purchases via the Internet. At the same time, businesses are using the Internet for their business-to-business (B2B) transactions. For example, General Electric began buying and selling industrial and commercial products to other businesses in 2000, and B2B transactions occurring over the Internet from 1998 to 2003 grew from \$43 billion to \$1.3 trillion.⁷¹ Even hospitals joined in to purchase supplies online.⁷²

⁶⁵ Fred Dues, *How the Internet and Data Help the Developing World*, Brookings Now, Thursday, February 6 (2014), at [HTTP://www.Brookings.edu/blog/Brookings-now/2014/02/0d](http://www.Brookings.edu/blog/Brookings-now/2014/02/0d).

⁶⁶ *Id.*

⁶⁷ Joshua Beldner, *How Technologically Savvy Do You Have to Be to Apply Zippo?: An Approach to Internet Personal Jurisdiction After Fancaster and Edvisors*, 17 B.U. J. SCI. & TECH. L. 318, 318-323 (2011).

⁶⁸ See Daniel J. Greenwood & Ray A. Campbell, *Electronic Commerce Legislation: From Written on Paper and Signed in Ink to Electronic Records and Online Authentication*, 53 BUS. LAW. 307, 307-308 (1997) (noting importance of the Internet and e-commerce but not to the degree we now see); see Andrew Urbaczewski et al., A MANAGER'S PRIMER IN ELECTRONIC COMMERCE, BUS. HORIZONS 5 (Sept. 1, 1998) (stating that E-commerce has affected way individuals and organizations purchase goods and services).

⁶⁹ Leslie Picker & Rachel Abrams, *Walmart Rewrites Its E-commerce Strategy With \$3.3 Billion Deal for Jet.com*, NEW YORK TIMES (Aug. 8, 2016), <https://www.nytimes.com/2016/08/09/business/dealbook/walmart-jet-com.html?action=click&contentCollection=Technology&module=RelatedCoverage®ion=Marginalia&pgtype=article>.

⁷⁰ Keith Eisenberg & Gaurav Gupta, *Analysis of the Expansion of E-commerce into India and Growth Opportunities for Flipkart*, 14 J. INT'L BUS. & L. 151, 152-160 (2015).

⁷¹ *Id.*

⁷² *Id.* See also, Beldner, *supra* note ___, at 320-323 (2011).

Adoption of e-commerce has been fast and furious as means for gaining an advantage. The main benefits of having an e-commerce platform include increased sales, decreased costs, increasing customer awareness, improved access to new markets, better customer service, and efficient communications.⁷³ Furthermore, merchants with established online communications can easily incorporate ODR methods for preventing and resolving conflicts – and warding off the type of built-up consumer frustration that leads to class actions and costly lawsuits. This was the important lesson that eBay learned in adopting its ODR process.⁷⁴

Similarly, economic growth has come to developing nations via the Internet and e-commerce. For example, researchers expect that by 2019, 151.1 million people in Latin America will buy goods and services online, a dramatic increase from 121.1 million in 2016. Furthermore, e-commerce sales in Latin America are projected to grow from over 57 billion U.S. dollars in 2016 to over 84 billion by 2019.⁷⁵ The most popular online retailer in Latin America in terms of visitors is MercadoLibre.com, which facilitates consumer-to-consumer (C2C) transactions similar to eBay.com.⁷⁶ It is currently present in Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Mexico, Ecuador, Peru, Panama, Portugal, Uruguay and Venezuela, and boasted over 50.5 million unique visitors in June 2016 alone.⁷⁷

Nonetheless, the average number of annual online transactions per capita in Latin America in 2016 paled in comparison with other parts of the world, including Asia.⁷⁸ China, India, and Russia have all enjoyed economic expansion due to e-commerce.⁷⁹ E-commerce has especially thrived in Asia due to a large population base, high population growth, increasing middle class, growth in small businesses seeking customers online, and government strategies seeking foreign direct investment.⁸⁰ This expansion of interest in e-commerce also has thrived beyond India to capture Indonesia, and Myanmar. Again, access to the Internet leads to e-commerce expansion and ultimately economic growth.

Moreover, mobile Internet's expansion is a further catalyst for economic growth, especially in areas where reliable and affordable broadband Internet is lacking. For example, mobile Internet in Sub-Saharan Africa, reaching 26% of its population in 2016, has been a boon for many in the region.⁸¹ Mobile phones in Sub-Saharan Africa have allowed many in rural areas

⁷³ See Eisenberg & Gupta, *supra* note __, at 152-160 (emphasizing how the benefits outweigh costs of e-commerce for any merchant).

⁷⁴ See Schmitz & Rule, *supra* note __, at 33-57 (providing data and explaining how eBay profited by providing ODR for resolving consumer disputes). See also Resolution Center, eBay, <https://resolutioncenter.ebay.com> (last accessed Aug. 30, 2017).

⁷⁵ Statista Inc., *E-commerce in Latin America - Statistics & Facts*, [statista.com, https://www.statista.com/topics/2453/e-commerce-in-latin-america/](https://www.statista.com/topics/2453/e-commerce-in-latin-america/) (last visited Aug. 21, 2017)

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Gary D. Sprague & Rachel Hersey, *Permanent Establishment and Internet-Enabled Enterprises: The Physical Presence and Contract Concluding Dependent Agent Tests*, 38 GA. L. REV. 299, 299-310 (2003).

⁸⁰ See Eisenberg & Gupta, *supra* note __, at 152-160.

⁸¹ Hyunmi Yang, *Global Mobile Trends*, GSMA INTELLIGENCE, (October 2016), available at <https://www.gsmaintelligence.com/research/?file=357f1541c77358e61787fac35259dc92&download> (last visited Aug. 7, 2017) at 36.

to access bank accounts for the first time.⁸² In fact, mobile money accounts now outnumber traditional bank accounts in Sub-Saharan Africa, leading to more efficient money transactions and growth for commercial enterprises.⁸³ This allows individuals to make purchases by mobile device from anywhere in the community. The ability to make purchases by mobile device similarly has created an economic boost in Latin America.⁸⁴ A survey in August 2016, showed that 43% of mobile buyers in Latin America had purchased products via a mobile device on a monthly basis.⁸⁵

These examples show that Internet access and e-commerce are vital to economic growth throughout the world, and especially in developing nations. Meanwhile, mobile Internet in particular is a central actor in both Internet access and e-commerce in these developing parts of the world. At the same time, complaints are inevitable and growth in e-commerce translates into more and more e-disputes that parties cannot practically handle in person. That means it is vital to create “apps” and mobile-friendly means for resolving these e-commerce complaints.⁸⁶ Establishing online mechanisms for resolving disputes boosts transactions among consumers and merchants in all parts of the world. Consumers buy goods from those they trust, and there is no question that merchants in emerging economies are eager to attract those customers. Policymakers, businesses, and consumers should therefore work together to explore ODR to spur innovation and access to e-commerce as an essential component in overall market expansion.

III. Moving Remedy Systems Online

With the growth of e-commerce comes need for simple means of resolving e-purchase disputes. Naturally, online purchasers and sellers are not eager to face travel, lost time, and other costs of litigation or in-person processes to settle these disputes. Traditional means for resolving disputes are nonsensical and cost prohibitive for e-commerce, especially small claims.⁸⁷ This has led to growth of consumer complaint websites and use of chargeback mechanisms. However, these mechanisms generally do not allow for complete remedies or cross-border resolutions. According, there has been a call for greater development of ODR processes that add value by moving complaint and resolution processes online through use of automated and computer mediated negotiation, as well as online mediation and arbitration, aimed to end disputes and resolve complaints.⁸⁸

⁸² Moses K Gahigi, *Mobile Money is Only Beginning to Transform Some of Africa’s Markets*, QUARTZ AFRICA, (July 27, 2017), <https://qz.com/1039896/m-pesa-mtn-orange-others-lead-africas-mobile-money-revolution/> (last visited Aug. 5, 2017).

⁸³ *Id.*

⁸⁴ Statista Inc., *E-commerce in Latin America - Statistics & Facts*, statista.com, <https://www.statista.com/topics/2453/e-commerce-in-latin-america/> (last visited Aug. 21, 2017)

⁸⁵ *Id.*

⁸⁶ See Mathew Dixon et al, *Stop Trying to Delight Your Customers*, HARVARD BUS. REV. 1-5 (July – Aug. 2010) (emphasizing that customers do not seek “perks,” but instead want their problems handled quickly without having to call customer service departments numerous times or deal with long hold times).

⁸⁷ See ETHAN KATSCH AND ORNA RABINOVICH-EINY, DIGITAL JUSTICE: TECHNOLOGY AND THE INTERNET OF DISPUTES 1-25 (2017).

⁸⁸ American Bar Association, Task Force on Elec. Commerce and Alt. Dispute Resolution Task Force, *What is Online Dispute Resolution? A Guide for Consumers* (2002), http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/consumerodr.authcheckdam.pdf.

A. Consumer Complaint Sites

Consumer review and complaint sites are ubiquitous, with 77.3 % of consumers reporting that they look to reviews in deciding which items to purchase.⁸⁹ One study found that reading three reviews could change the minds of 63 % of consumers.⁹⁰ Nonetheless, the veracity and validity of these sites is unclear. Approximately 16 % of restaurant reviews on Yelp and 15 % of all online reviews are fake.⁹¹ This is made worse by companies that hire individuals to post positive reviews of their products,⁹² and/or to post bad reviews of competing companies.⁹³ Samsung, for instance, was subjected to \$340,000 in fines after it paid individuals to write poor reviews for its rival company, HTC.⁹⁴ Incentive systems may inspire false reviews as well. For example, Uber terminates drivers that have rating averages of less than 4.6 stars, which arguably has diminished the meaning of reviews with “five-star” considered almost obligatory.⁹⁵ The Federal Trade Commission (“FTC”) determined that paying individuals to provide reviews without disclosing the individual’s identity amounts to deceptive advertising.⁹⁶

Nonetheless, there are government run sites that have clear legitimacy. In the US, the primary public consumer complaint site is that developed and run by the Consumer Financial Protection Bureau (“CFPB”). The CFPB is the federal watchdog for consumer financial protection created pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”). This law seeks to increase transparency in the market for consumer financial services by requiring additional disclosures in financial dealings and giving the CFPB power to bring enforcement actions against companies that violate consumer laws.⁹⁷ In the same spirit, the CFPB has developed an online Consumer Complaint Database.

Since 2011, the CFPB has handled more than a million complaints from consumers nationwide.⁹⁸ Consumers may access an interactive webpage on the CFPB website that allows them to submit complaints based on particular product groups.⁹⁹ After confirming a complaint’s validity, the CFPB forwards the complaint to the subject company through a web portal.¹⁰⁰ If the subject company does not respond within fifteen

⁸⁹ Tamar Weinberg, *Are Fake Online Reviews Killing Consumer Confidence?*, MARKETING LAND (Oct. 21, 2016), <http://marketingland.com/fake-online-reviews-killing-consumer-confidence-194239>.

⁹⁰ Mike Deri Smith, *Fake Reviews Plague Consumer Websites*, THE GUARDIAN (Jan. 26, 2013), <https://www.theguardian.com/money/2013/jan/26/fake-reviews-plague-consumer-websites>.

⁹¹ Weinberg, *supra* note

⁹² Smith, *supra* note

⁹³ Weinberg, *supra* note

⁹⁴ *Id.*

⁹⁵ Ethan Wolff-Mann, *Here’s Everything Wrong With Online Reviews- and How to Fix Them*, TIME (July 22, 2016), <http://time.com/money/page/online-reviews-trust-fix/>.

⁹⁶ Smith, *supra* note

⁹⁷ Mark Totten, *Credit Reform and the States: The Vital Role of Attorneys General after Dodd-Frank*, 99 IOWA L. REV. 115, 126, 140–41 (2013).

⁹⁸ Pamela Foohey, *Calling on the CFPB for Help: Telling Stories and Consumer Protection*, 80 LAW & CONTEMP. PROBS. 177, 178 (2017). CFPB’s primary functions include collecting, monitoring, and responding to consumer complaints about consumer financial products and services. *Id.* at 177.

⁹⁹ *Id.* at 177-78.

¹⁰⁰ *Id.* at 181.

days, CFPB then prioritizes a complaint for investigation.¹⁰¹ In June 2015, CFPB also began publishing consumers' narratives of problems they are facing as part of this online portal.¹⁰²

Accordingly, the CFPB's website has evidenced consumers' thirst for online means for asserting their complaints. Furthermore, many businesses have responded to CFPB complaints although it is not required. Unfortunately, the CFPB's complaints portal does not go further to provide ODR, leaving many consumers with no real remedy for their complaints. The CFPB simply lacks the resources to help consumers on an individual basis.¹⁰³ This may cause consumers to feel frustrated with the lack of access to remedies, especially in light of costs and complexities of most traditional processes.¹⁰⁴

At the same time, complaint websites do not always cater to those most in need. One researcher focusing on the CFPB's complaints website found that consumers who asserted their complaints on the portal generally enjoyed higher income and education levels than the census overall.¹⁰⁵ She concluded that "the CFPB does not appear to prioritize complaints from low-income consumers."¹⁰⁶ Nonetheless, she found consumers preferred to submit complaints online, with submission percentages of 85% online versus 15% by telephone.¹⁰⁷ Moreover, it does not appear that the CFPB has an "app" or easily accessible mobile means for posting complaints.¹⁰⁸

The CFPB has therefore created a database that shows promise for allowing consumers to vent their concerns, and evidences consumer interest in online means for asserting their claims. Nonetheless, there is no guarantee that disputes will be resolved or that the CFPB will answer the complaints filed. The system also lacks a mobile-friendly platform that is easy to use for those without broadband Internet access. Of course, there are other complaints portals that are accessible via mobile phone, but these again are questionable in terms of veracity and they do not necessarily lead to remedies. Sites that allow individuals to simply complain or post reviews are not ODR. They do not offer or necessarily lead to resolutions.

B. Going Beyond Credit Card Chargebacks

Some consumer advocates have argued that the best model currently available for protecting consumers is the credit card chargeback process.¹⁰⁹ A chargeback is the total

¹⁰¹ *Id.* at 182.

¹⁰² *Id.* at 178.

¹⁰³ *Id.*

¹⁰⁴ Many complaining consumers express sadness and fear, and ask the CFPB for assistance that it will not be able to give because CFPB does not provide assistance with individual problems. *Id.* at 188-207.

¹⁰⁵ Angela Littwin, *Why Process Complaints? Then Now*, 87 TEMP. L. REV. 895, 904 (2015).

¹⁰⁶ *Id.* at 906.

¹⁰⁷ *Id.*

¹⁰⁸ CFPB Consumer Complaints Database, CONSUMER FINANCIAL PROTECTION BUREAU, <https://www.consumerfinance.gov/data-research/consumer-complaints> (last visited Feb. 27, 2017).

¹⁰⁹ Matt Brownell, *Credit Card Chargebacks: Your Secret Weapon in Merchant Disputes*, DAILY FINANCE (July, 31 2012), www.dailyfinance.com/2012/07/31/credit-card-chargeback-merchant-disputes.

or partial reversal of a purchase made on a credit card by the card issuer, thereby saving the consumer from paying for the purchase at issue. In the US, the Truth in Lending Act (“TILA”) and Regulation Z implementing the Act require credit card companies to refund customers for unauthorized charges or for the cost of non-delivered or non-conforming goods.¹¹⁰ Regulation Z does not address remedies regarding pre-authorized payment transactions, such as those for rental cars. It also neglects to discuss ADR or customer remedies in the event of a merchant’s bankruptcy.

In contrast, the EU’s chargeback regulations address merchant bankruptcy and direct member states to create alternative dispute resolution mechanisms to efficiently deal with chargeback disputes.¹¹¹ The EU provides for chargebacks with respect to unauthorized transactions, a merchant’s failure to respect a consumer’s rights, and in the event of merchant bankruptcy.¹¹² A merchant’s failure to respect consumer rights could involve pre-authorized payment transactions, and a customer may be entitled to a chargeback against a creditor when the original authorization differs from the charged amount and exceeds what the cardholder could have reasonably expected.¹¹³ The regulations also provide that a consumer must attempt to resolve disputes directly with a merchant regarding undelivered or non-conforming goods before seeking remedies directly against the credit card issuer.¹¹⁴ Again, this only applies to credit card purchases and not payments by debit card, direct ACH, check or cash.¹¹⁵

While the EU leaves details of the chargeback process to member states, the US regulations specify that a customer must send written notice with detailed information regarding a claim to the credit card issuer no later than sixty days after receiving a contested billing statement.¹¹⁶ If a customer misses that sixty-day window or the bank rejects the claim, her rights become limited. The process is not entirely online, and contemplates other face-to-face processes. As is true in the EU, US customers must make a good faith effort to obtain a refund directly from the merchant before seeking a chargeback from the credit card company.¹¹⁷

Chargebacks are helpful for many consumers, but they are not a panacea for global consumer protection. Constraints and lack of awareness among consumers hinder their use.¹¹⁸ Many consumers do not even know that chargeback rights exist, or understand how to use these rights.¹¹⁹ Furthermore, consumers (perhaps wrongly) may worry that assertion of chargeback

¹¹⁰ 12 C.F.R. § 226.13 (West 2010).

¹¹¹European Consumer Centres Network, *Chargeback in the EU/EEA* 6, http://ec.europa.eu/consumers/ecc/docs/chargeback_report_en.pdf (last visited Sept. 5, 2017).

¹¹² *Id.* at 6.

¹¹³ *Id.* at 8.

¹¹⁴ *Id.* at 9-10 (also noting that consumers are entitled to a chargeback against a bankrupt creditor by EU law, but this and all other rights are subject to national law of EU member states).

¹¹⁵ *Chargeback in the EU/EEA*, ECC-NET 1, 4, available at http://ec.europa.eu/consumers/ecc/docs/chargeback_report_en.pdf.

¹¹⁶ 12 C.F.R. § 226.13(b)(1)-(3).

¹¹⁷*Credit Cards- Disputing a Charge*, CALIFORNIA OFFICE OF THE ATTORNEY GENERAL, https://oag.ca.gov/consumers/general/credit_card_chargeback_rights (last visited Sept. 5, 2017).

¹¹⁸ Neil M. Peretz, *The Single Euro Payment Area: A New Opportunity for Consumer Alternative Dispute Resolution in the European Union*, 16 MICH. ST. J. INT’L L. 573, 580-85 (2008) (noting that chargebacks are seldom used).

¹¹⁹ Mark Furletti & Stephen Smith, *The Laws, Regulations, and Industry Practices That Protect Consumers Who Use Electronic Payment Systems: Credit and Debit Cards*, PHILADELPHIA FED 1 (Jan. 2005), <https://philadelphiafed.org/-/media/consumer-finance-institute/payment-cards-center/publications/discussion->

claims could harm their credit rating or their relationships with their creditors.¹²⁰ This is especially concerning for consumers who already have poor credit and fear that creditors would raise their interest rates or drop a consumer's credit line or limits in the wake of a chargeback request.

The chargeback system also fails to provide means for venting concerns, and does not generally encourage amicable settlement. Although consumers are directed to first seek a remedy directly with the merchant, they may put forth little to no effort in seeking such a solution when they know that a complete chargeback is available.¹²¹ By its very nature, the chargeback process is less a resolution process and more of a liability shift. In fact, merchants have begun to speak out against the process for incentivizing fraud and impeding business success without due process.¹²² Merchants feel that the system gives too much power to the buyers, and places an unfair burden on merchants to defend buyer claims. They complain that the system is set up for one-way remedies, and proves costly to the merchants who not only lose revenues for lost purchases but also suffer high fees that the credit card companies assess for chargebacks as well as the regular processing fees for using the credit card networks.¹²³

Moreover, there is no international chargeback system. In North America, the chargeback process is very generous, with consumers able to file chargebacks for disputes ranging from non-receipt to item quality concerns.¹²⁴ That is not true in regions where chargeback rights are more limited.¹²⁵ In South Africa, for example, the Consumer Protection Act 68 of 2008, established some chargeback rights.¹²⁶ The law is not very effective, however,

[papers/2005/ConsumerProtectionPaper_CreditandDebitCard.pdf](#) (noting that there are misperceptions of credit card chargeback rights, leading consumers to perhaps make poor payment choices).

¹²⁰ *Id.*

¹²¹ *Most Common Chargebacks*, CHARGEBACKS911 (Sept. 29, 2015), <https://chargebacks911.com/common-types-chargebacks/> (“According to a recent Chargeback911 study, 81% of cardholders admitted to filing a chargeback out of convenience. It was easier to contact the bank for a chargeback than call the merchant for a refund.”).

¹²² See e.g., Ben Dwyer, *Credit Card Chargebacks: A Survival Guide*, Card Fellow, at <https://www.cardfellow.com/chargebacks/> (last visited Oct. 11, 2017) (“From a business's perspective, however, chargebacks can often be a costly hassle. The burden of proof to show that a customer has been rightfully charged falls on you, and when consumers successfully dispute charges, you lose both the product sold and the revenue from that sale. Even when a dispute is unsuccessful, the acquiring bank will withhold payment for any chargebacks until the matter is resolved. Add in the fees charged by banks and processors, and even disputes which turn out in your favor can be expensive.”).

¹²³ “On top of all of these fees, both Visa and MasterCard have a strict limit on the total number of transactions that can be charged back before additional fines and penalties are levied. A business whose chargebacks exceed 1% of its total sales volume (the dollar amount, not the number of transactions) becomes subject to a chargeback monitoring program administered by the card brand, which is accompanied by a \$5,000 fine. At this point, there is a very good chance that the account will simply be terminated by the bank or credit card processor.” *Id.* See also, Peretz, *supra* note ___ at 584-90 (noting that “merchants decry the multiple costs of presenting evidence against chargeback, which they might only be losing because they cannot gather sufficient proof of the sale and the delivery of the good or service quickly enough”). Some merchants find that they pay high interchange fees while losing out on payment for goods and bearing arbitration costs if they continue to dispute a chargeback. *Id.* at 588-89.

¹²⁴ *Id.* (noting impediments in the chargeback system).

¹²⁵ *Id.*

¹²⁶ Dan Hernan Guana, *The Code of Banking Practice: A Good Time and Place to Formally Start Recognizing Consumer Chargeback Rights in South Africa*, UNIVERSITY OF PRETORIA 1, 3 (December 2016), https://repository.up.ac.za/bitstream/handle/2263/60046/Gauna_Code_2017.pdf?sequence=1&isAllowed=y.

because the banks are not strictly required to implement the legislation.¹²⁷ At the same time, many merchants are trying to shift their payments onto debit or ACH networks that provide no or limited chargeback rights. In some regions, consumers also rely heavily on mobile payments and alternative means for banking that do not rely on credit accounts that are built for easy means to shift liability.¹²⁸ While we can learn quite a bit from the chargeback system, it is not a viable solution for expanding consumer redress around the world.

Instead, building a platform that allows merchants as well as payment system providers to participate, seems to have greater feasibility in e-commerce on a global level. Merchants upset with fees and structure of credit card chargebacks have even suggested use of robust online customer service as means for warding off the dreaded chargeback.¹²⁹ As exemplified in the next section, ODR platforms driven by merchants, consumers and policymakers are already taking shape. They allow for greater public-private collaboration and flexibility to adapt for various payment systems. Indeed, not all consumers are making e-purchases with credit cards, and not all payment systems will agree to work together across the globe to bless one process. An independent ODR platform, however, allows for merchant and payment system providers to “buy in” and use the platform, while maintaining separate specific systems, in order to gain consumer trust, and loyalty.

C. Global Growth of ODR

Complaints databases and chargeback processes do open doors to some consumer remedies, but do not provide the robust claims resolution needed for a global resolution system. True ODR that is user-friendly allows consumers to quickly fill out standard forms and upload related documents to obtain timely resolutions. They also may use real-time and asynchronous communications for maximum convenience and efficiency.¹³⁰ Furthermore, ODR has gained international acceptance because it transcends borders and escapes the legal constraints of other processes for the resolution of international disputes.¹³¹ Online case management also benefits businesses by enabling them to address issues before they escalate into costly consumer class claims and government enforcement actions. ODR also allows businesses to efficiently gather information to improve their products and services — thus enhancing customer loyalty and attracting new customers along the way. We are at the crossroads for ODR to level the playing field and change the game for economic development throughout the world.

1. ODR Advancements from the Field

¹²⁷ *Id.* at 3.

¹²⁸ Arnold S. Rosenberg, *Better than Cash? Global Proliferation of Payment Cards and Consumer Protection Policy*, 60 CONSUMER FIN. L.Q. REP. 426, 430-38 (2006) (noting how many in Africa rely on mobile payment systems).

¹²⁹ See Dwyer *supra* note ____.

¹³⁰ See generally, AMY J. SCHMITZ & COLIN RULE, THE NEW HANDSHAKE: ONLINE DISPUTE RESOLUTION AND THE FUTURE OF CONSUMER PROTECTION, 5-50 (2017).

¹³¹ See, e.g., *More More More: CPR Meeting Highlights*, 27 ALTERNATIVES TO HIGH COST LITIG. 125, 127–28 (2009) (highlighting technology and ODR as key elements in the future of dispute resolution).

The Internet has continued to change the market “game” in business-to-consumer transactions, as consumers are getting more skilled at using the Internet to organize their lives and navigate purchases. Consumers continue to become savvier in researching and comparing merchants on the Internet, and seeking the best value in terms of price and quality. Furthermore, consumers see trustworthiness as an essential component of value. They want to be sure that they have a remedy if a purchase does not go as promised.

Meanwhile, forward-thinking online merchants have learned that gaining consumer trust is critical to their success. They realized early on that they needed to create next generation systems for handling consumer problems. Large Internet intermediaries, like online marketplaces (eBay), large merchants (Amazon), and payment processors (Paypal), realized that the consumer trust problem was preventing many consumers from moving their purchases from physical to virtual marketplaces. They learned that addressing this trust issue by creating ODR systems could provide a valuable market advantage.¹³² “[G]rouserers are likely to remain loyal” if they are happy with resolution of their complaints, but will harm a company with public “gripping” if a business fails to provide efficient means for settling claims.¹³³

As noted above, eBay has been a forerunner in providing private ODR. In the US, the eBay Resolution Center processes consumer claims related to website purchases free of charge.¹³⁴ The eBay Money Back Guarantee that applies when a buyer does not receive an item or the item is not as promised, gives the buyer the right to file an online complaint within 30 days after the latest estimated delivery date. The seller then has three business days to respond in the Resolution Center.¹³⁵ If the seller does not respond or provide an adequate remedy, the buyer may ask eBay to assign an online neutral to arbitrate.¹³⁶ If necessary, eBay may enforce these determinations via PayPal, eBay’s payment system provider, by setting aside a seller’s funds.¹³⁷

Under its Unpaid Item Policy, eBay allows sellers to submit claims online against buyers who do not pay for purchased items within two days.¹³⁸ If a buyer fails to provide proof of payment or a valid reason for not paying, eBay may grant the seller a final credit and refund the fee for relisting the item.¹³⁹ eBay’s Verified Rights Owner Program (“VeRO”) similarly allows intellectual property rights holders to submit a Notice of Claimed Infringement online with

¹³² Rob Enderle, *EBay vs. Amazon: An Interesting Lesson in Customer Care*, IT BUSINESS EDGE (Jan. 12, 2012) <http://www.itbusinessedge.com/cm/blogs/enderle/ebay-vs-amazon-an-interesting-lesson-in-customer-care/?cs=49557&page=2>. See also, *Resolution Center*, eBay, <https://resolutioncenter.ebay.com> (last visited August 30, 2017); *Disputing Transactions*, AMAZON, <https://pay.amazon.com/us/help/201754740> (last visited August 30, 2017); *Buyer Dispute Program*, AMAZON, <https://pay.amazon.com/us/help/201751580> (last visited August 30, 2017); *Resolving disputes, claims, and chargebacks*, PAYPAL, <https://www.paypal.com/us/webapps/mpp/security/resolve-disputes> (last visited August 30, 2017).

¹³³ Tibbett L. Speer, *They Complain Because They Care*, 18 AM. DEMOGRAPHICS 13 (1996).

¹³⁴ Colin Rule, ‘Making Peace on eBay: Resolving Disputes in the World’s Largest Marketplace’, *ACResolution: The Quarterly Mag. of the Ass’n for Conflict Resolution* 1-10 (Fall 2008).

¹³⁵ ‘Ebay Money Back Guarantee’, *Ebay*, <http://pages.ebay.com/help/policies/money-back-guarantee.html> (last visited 16 July 2017).

¹³⁶ *Id.*

¹³⁷ *Id.* (also giving both parties 30 days to appeal any determinations).

¹³⁸ ‘Unpaid Item Policy’, *Ebay*, <http://pages.ebay.com/help/policies/unpaid-item.html> (last visited 19 June 2017).

¹³⁹ *Id.*

respect to items sold on eBay. Such Notice prompts eBay to remove a listing that arguably infringes intellectual property rights. The seller then has 10 days to seek item reinstatement unless the holder of the intellectual property rights informs eBay that it is seeking a court order to restrain the relisting under the Digital Millennium Copyright Act.¹⁴⁰

Under eBay's Independent Feedback Review policy, a seller may challenge a review posting within 30 days. eBay will then enlist an online neutral from a professional dispute resolution service to examine the challenged posting and determine whether to affirm, withdraw, or take no action regarding the review.¹⁴¹ Similarly, under eBay's Vehicle Purchase Protection program, eBay offers up to \$50,000 with respect to vehicles purchased on eBay to cover payment for a vehicle never received or not as promised if the parties are unable to resolve their disputes through direct discussions.¹⁴² The online payment system, PayPal, also offers ODR for items that are not received or not as described by the seller.¹⁴³ PayPal's policy largely mimics eBay's, and allows for a third party's determination that PayPal enforces by issuing refunds or imposing other consequences.¹⁴⁴

Merchants outside of the US also have embraced ODR for its ability to transcend borders and lower dispute resolution costs. For example, the online retailer Alibaba uses an ODR mechanism for resolution of buyer and seller disputes.¹⁴⁵ It allows parties to submit a dispute to Alibaba's online Dispute Resolution Team if they cannot resolve a complaint after 10 days. The Team will make a determination based on evidence provided. If a party does not comply with a determination, Alibaba may terminate the party from the site on claims over \$300. For claims of less than \$300, Alibaba publishes a complaint case record on the recalcitrant party's webpage on Alibaba.com for ninety days.¹⁴⁶ This exemplifies the type of self-enforcement that incentivizes "good behavior" and trustworthy content in e-commerce where consumers are prone to research and compare merchants as previously noted.

Indeed, forward-thinking merchants have seen ODR as a powerful competitive differentiator, one with a demonstrably positive impact on the bottom line.¹⁴⁷ For eBay, the research showed that they earned more money by making things easier for consumers to get remedies via ODR.¹⁴⁸ Consumers are not looking for perks and giveaways, as much as they simply want to be treated fairly and not "work" to receive remedies they deserve.¹⁴⁹

¹⁴⁰ 'How eBay protects intellectual property (VeRO)', *Ebay*, <http://pages.ebay.com/help/policies/programs-vero-ov.html> (last visited 19 June 2017) (noting how the right for an Ebay member to file a counter notice to reinstate a listing after a notice of claims infringement is rooted in the DMCA.).

¹⁴¹ 'Independent Feedback Review', *Ebay*, <http://pages.ebay.com/help/feedback/feedback-review.html> (last visited 19 June 2017).

¹⁴² If the buyer cannot resolve the issue with the seller, it must request reimbursement no later than 45 days after the listing end date. 'Vehicle Purchase Protection', *Ebay*, <http://pages.motors.ebay.com/buy/purchase-protection/>.

¹⁴³ 'PayPal User Agreement', PayPal, Section 14, at www.paypal.com/us/webapps/mpp/ua/useragreement-full#14.

¹⁴⁴ *Id.*

¹⁴⁵ 'Alibaba.com', *ALIBABA*, <http://rule.alibaba.com/rule/detail/2060.htm> (last visited 19 June 2017).

¹⁴⁶ *Id.*

¹⁴⁷ *See* Schmitz & Rule, *supra* note , at 70-125.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

At the same time, consumer protection organizations have recognized the importance of developing efficient and fair ODR systems. Organizations have seen that these new ODR platforms were creating next-generation redress systems that were delivering fast and fair resolutions to consumers, all within the private sector. Over fifteen years ago, Consumers International was already cognizant of the potential for ODR to serve as a consumer protection vehicle for consumers in business-to-consumer disputes. It issued a report gathering information on the various ODR systems around the globe and concluded:

“To be useful to consumers, ODR schemes need also to: • cover all types of [business-to-consumer] disputes; • be offered at no or low cost to the consumer; • be available for initiation by consumers; • be visible, accessible, and easy to use; • operate in a timely fashion; and • produce results that satisfy the consumer’s need for redress. And finally, to be optimally effective, ODR services will: • accommodate linguistic diversity; • be scalable and coordinated with each other so as to optimize the “fit” between the dispute and the ODR service; and • offer appropriate levels of security for online communications.”¹⁵⁰

Policymakers and regulators also have become interested in how ODR could help avoid jurisdictional questions around consumer disputes. The American Bar Association (ABA), for example, is currently considering ways to include ODR in the ABA Pro Bono and Public Service Committee’s ABA Free Legal Answers website.¹⁵¹ The website is the backbone for a nationwide program that launched in 2016, and has provided over 2,000 clients with legal service. It is a nationwide program that is expected to be available in over 40 states by the end of 2017.¹⁵²

On an international level, a proposition to legally locate all consumer disputes in the home jurisdiction of the consumer was presented by the Canadian and Brazilian delegations to the Organization of American States (OAS) in 2009, but the concept was met with quite a bit of resistance.¹⁵³ Policymakers saw that Internet merchants would not be able to defend themselves in every jurisdiction around the world with commerce quickly moving online.¹⁵⁴ Accordingly, the US State Department offered a blueprint for the use of ODR to build a global, cross-border system for resolving consumer disputes that would not be reliant on “home state” jurisdiction. The proposal was met with such enthusiasm that UNCITRAL (the United Nations agency responsible for harmonizing global laws) decided to devote a Working Group to the concept, Working Group III,

¹⁵⁰ *Alternative Dispute Resolution Guidelines: Agreement between Consumers International and the Global Business Dialogue on Electronic Commerce* (Nov. 2003), at http://www.gbd-e.org/ig/cc/Alternative_Dispute_Resolution_Nov03.pdf.

¹⁵¹ American Bar Association, Center for Innovation, *In the Spotlight: ABA Free Legal Answers* (January 12, 2017), <http://abacenterforinnovation.org/in-the-spotlight-aba-free-legal-answers>.

¹⁵² *Id.*

¹⁵³ Colin Rule, et al., *Designing a Global Consumer Online Dispute Resolution (ODR) System for Cross-Border Small Value-High Volume Claims—OAS Developments*, 42 UCC L.J. 221, 222-250 (2010).

¹⁵⁴ *Id.*

which met bi-annually in Vienna and New York from 2010 to 2016 in pursuit of creating global ODR.¹⁵⁵

2. UNCITRAL Working Group III

As noted, the UNCITRAL Working Group III began meeting in 2010, with a focus on establishing global online dispute resolution procedures for small value consumer, as well as business – two – business (“B2B”), disputes arising from Internet transactions. The group’s focus was on low value claims, although the limit was never defined. Controversy surrounded the inclusion of binding arbitration procedures through this process. This became known as the debate between Track 1 and Track 2. The US favored Track 1 because it allowed for enforcement of pre-dispute arbitration agreements, whereas the European Union and other countries championed Track 2 because it did not allow for such binding procedures and focused on mediation as the best procedure for these online dispute resolution systems.¹⁵⁶

After continual debate regarding the difference in Tracks, a decision was made to focus on Track 2 before addressing Track 1. This occurred at a meeting in 2014, at the same time that some of the nations were suggesting a global chargeback system.¹⁵⁷ Variations in payment systems and complexities of creating a universal chargeback system laid that proposal to rest. Nonetheless, it was understood that a global system for ODR would assist small businesses and entrepreneurs, especially in smaller and developing nations where those companies might not be able to attract cross-border consumers due to fear that the consumer would not be able to get a remedy in purchase disputes. The hope was that this global ODR system would encourage consumers from around the world to freely purchase from merchants wherever they may be located.¹⁵⁸

Despite this hope, the Working Group never reached consensus on development of a global ODR system. Instead, political wrangling and fundamental disputes about rules for ODR brought an end to discussions. Furthermore, the emphasis on arbitration distracted the conversation from consideration of automated processes, negotiation, and e-mediation that better fit the business-to-consumer context.¹⁵⁹ The conversations at the time focused on complexities of arbitration that would not be necessary for consumer disputes. Again, consumers seek quick redress, and do not have the time or the money for a lengthy process which also requires the consumer to seek enforcement for any reward obtained.¹⁶⁰ Therefore, when the Working Group ended in 2016, it did not denounce ODR, but instead encouraged the nations of the world to

¹⁵⁵ United Nations Commission on International Trade Law (“UNCITRAL”), Working Grp. III, *Online Dispute Resolution for Cross-Border Electronic Commerce Transactions: Draft Guidelines*, U.N. DOC. A/CN.9/WG.III/WP.128 (Nov. 30, 2015).

¹⁵⁶ Noam Ebner & John Zeleznikow, *No Sheriff in Town: Governance for Online Dispute Resolution*, 2016 NEGOTIATION J. 297, 297-310 (2016).

¹⁵⁷ The author was an appointed expert to the Working Group for a meeting during this time.

¹⁵⁸ UNCITRAL, Working Group III, *Online Dispute Resolution for Cross-Border Electronic Commerce Transactions: Draft Outcome*, U.N. DOC. A/CN.9/WG.III/WP.140 (Dec. 22, 2015).

¹⁵⁹ Mirèze Philippe, *ODR Redress System for Consumer Disputes*, 1 INT’L J. OF ONLINE DISPUTE RESOLUTION 57, 59 (2014).

¹⁶⁰ *Id.*

consider more forward-thinking ODR systems. The hope remains that leaders from around the world will continue to discuss ideas and finally bring a global ODR system to fruition.¹⁶¹

3. The European Union's ODR System

A key example of ODR's establishment as a premier means for advancing e-commerce is the new European Union Regulation on Online Dispute Resolution for Consumer Disputes, which took effect in January 2016.¹⁶² This legislative instrument sets up a framework for online dispute resolution to handle national and cross-border issues within the European Union. All merchants established in member states are required to inform European consumers about the availability of ODR on their website and in email communications. The EU has constructed a government-hosted ODR filing page to make case filing simple for consumers. Cases filed on the EU page are immediately routed to national ADR service providers located in the appropriate geographies.¹⁶³

This system was created under the EU ADR Directive and ODR Regulation calling for the establishment of an ODR platform to serve as a single point of entry for the out-of-court resolution of online disputes, through ADR entities which are linked to the platform and offer ADR through quality ADR procedures.¹⁶⁴ Member States also must ensure that ADR entities make publicly available on their websites, and by any other means they consider appropriate, annual activity reports.¹⁶⁵ This EU ODR platform is revolutionary by serving as an interactive website which can be accessed electronically and free of charge in all the official languages of the Union.¹⁶⁶

Importantly, the EU ADR Directive requires that procedures should preferably be free of charge or limited to only a nominal fee for the consumers.¹⁶⁷ This Directive should be without prejudice to the question of whether ADR entities are publicly or privately funded or funded through a combination of private and public funding.¹⁶⁸ The Directive also establishes a set of quality requirements which apply to all ADR procedures carried out by an ADR entity which has been notified to the Commission.¹⁶⁹ In order to ensure that ADR entities function properly and effectively, each Member States should designate a competent authority to perform that

¹⁶¹ *Online Dispute Resolution for Cross-Border Electronic Commerce Transactions: Draft Outcome*, *supra* note

¹⁶² Martini Manna Avvocati, *Regulation (EU) no. 524/2013: The ODR Platform for Online Dispute Resolution Between Consumers and Traders Will Now Go Live*, LEXOLOGY (Jan. 29, 2016), <http://www.lexology.com/library/detail.aspx?g=6e598826-7648-48a4-8bc0-37b9c8f38838>.

¹⁶³ *Id.*

¹⁶⁴ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes, 2013 O.J. (L 165/64) 12.

¹⁶⁵ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes, 2013 O.J. (L 165/73) Article 7, 2.

¹⁶⁶ Regulation No. 524/2013 of the European Parliament and of the Council of 21 May 2013 on Online Dispute Resolution for Consumer Disputes, 2013 O.J. (L 165/6) Chapter II, Article 5, 2.

¹⁶⁷ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes, 2013 O.J. (L 165/67) 41.

¹⁶⁸ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes, 2013 O.J. (L 165/68) 46.

¹⁶⁹ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes, 2013 O.J. (L 165/67) 37.

function.¹⁷⁰ The goal is to ensure that consumers have access to high-quality, transparent, effective and fair out-of-court redress mechanisms no matter where they reside in the Union.¹⁷¹

The EU ODR Regulation seems to be a step forward for consumers in the EU, although there is a lack of empirical data on use and satisfaction.¹⁷² The ODR platform, however, is only available for consumers and merchants within the EU. Consumers outside of the EU do not have an equivalent system and the process is by no means global. All consumers around the world should be eligible for similar redress processes. That is why these advances, and the emerging consensus behind them, are opening a window of opportunity. Now is the time to build the next generation of consumer protection, powered by ODR.

IV. Inviting Emerging Nations to the Table of ODR

A global ODR process must include emerging nations. While ODR systems such as that in the EU assist commerce within a region, they do not help with economic development throughout the world. Of course, developing countries face challenges beyond dealing with disputes (i.e. lack of delivery infrastructure) in establishing e-commerce presence. Nonetheless, businesses and consumers in these regions have expressed great interest in ODR as means for increasing access to justice and economic development.¹⁷³ Consumer trust is a necessary precursor to business success.¹⁷⁴ As one scholar from South Africa explained in promoting ODR: “it is clear that participation in this global online marketplace will boost a country’s economy, as it will bring in money from foreign consumers through trade. It could also stimulate foreign investment in developing nations and promote the growth of an international marketplace.”¹⁷⁵

A. ODR Advances in Asia

ODR is gaining traction in Asia, especially in China, where e-commerce is growing amidst invigorated consumer sales. In fact, some policymakers have called for creation of online arbitration agreements to deal specifically with cross-border consumer small claims between parties in China and the US.¹⁷⁶ This discussion then grew, however, and led to creation of a proposed “Draft Model Law for Electronic Resolution of Cross – Border E-commerce Consumer Disputes” to foster global online arbitration. The proposal was to allow parties to submit claims to a third-party neutral to issue final

¹⁷⁰ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes, 2013 O.J. (L 165/55) 69.

¹⁷¹ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes, 2013 O.J. (L 165/70) Chapter 1, Article 2 “Scope.”

¹⁷² The system is still very new, and hopefully the data will be available soon.

¹⁷³ Leigh & Fowlie, *supra* note __, at 106-115.

¹⁷⁴ Cupido, *supra* note -- at 3256.

¹⁷⁵ *Id* at 3254.

¹⁷⁶ Philip Johnson, *Enforcing Online Arbitration Agreements for Cross – Border Consumer Small Claims in China and the US*, 36 HASTINGS INTERN ’L AND COMPARATIVE LAW REV. 577, 577 – 601 (2013).

and binding decisions that could be enforceable under local and international arbitration law.¹⁷⁷

Although the full-scale online arbitration proposal has not come to fruition, ODR mechanisms have been developed in Asia. For starters, two main governmental entities have implemented ODR for domain name disputes: the Asian Domain Name Dispute Resolution Center (“ADNDRC”) and the Online Dispute Resolution Center at the China International Economic and Trade Arbitration Commission (“CIETAC”).¹⁷⁸ These entities are largely responsible for settling disputes over domain names.¹⁷⁹ CIETAC, headquartered in Beijing, is considered the leading arbitration institution in China, as well as one of the best-known arbitration institutions globally.¹⁸⁰ Working in conjunction with the Hong Kong International Arbitration Center (“HKIAC”), CIETAC began the Domain Name Dispute Resolution Center (“DNDRC”) in 2002. ADNDRC operates as a charitable institution, providing domain name dispute resolution based upon the Internet Corporation for Assigned Names and Numbers (“ICANN”) and the Uniform Domain Name Dispute Resolution Body (UDRP).¹⁸¹ ADNDRC was preceded by Hong Kong International Arbitration Center (“HKIAC”), which was established as an independent non-profit organization in 1985 to moderate Chinese domain name and keywords disputes.¹⁸²

With respect to e-commerce disputes, the China Commercial Arbitration, run by Guangdong Arbitration Commission, offers online arbitration for e-commerce disputes.¹⁸³ Similarly, *Taobao*, a shopping website similar to Amazon, created its own consumer ODR system.¹⁸⁴ Its platform is committed to concluding consumer disputes over sales and deliveries within seven days.¹⁸⁵ *Taobao* initiated the system on January 15, 2010, and has remained committed to strict timelines.¹⁸⁶ After a consumer files a claim in the system, the vendor must contact the consumer and attempt to settle the complaint within forty-eight hours.¹⁸⁷ If no settlement is reached by the end of this period, a consumer rights officer will intervene in the dispute.¹⁸⁸ This systems’ growth evidences an aptitude and interest in ODR in China that is expected to play a large role in Asian dispute resolution.¹⁸⁹

¹⁷⁷ *Id.* at 590 – 601.

¹⁷⁸ Zhao Yun, Timothy Sze, Tommy Li, & Chittu Nagarajan, *Online Dispute Resolution in Asia*, IN 22 ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE 511, 511-12 (Mohamed S. Wahab, Ethan Katsh, & Daniel Rainey ed., 2012).

¹⁷⁹ ADNDRC operates four offices across four regions: Beijing, Hong Kong, Seoul, and Kuala Lumpur. *id.*

¹⁸⁰ Asian Domain Name Dispute Resolution Centre, About ADNDRC, ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (last visited September 10, 2017), <https://www.adndrc.org/mten/AboutUs.php?st=2>.

¹⁸¹ *Id.*

¹⁸² HKIAC was later tapped by DotAsia Organization (“DotAsia”) to preside over ODR for DotAsia’s .asia domain name issues. Yun et al., *supra* note __, at 511-20.

¹⁸³ *Id.* at 514.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* XU Junke, *Development of ODR in China*, Pace Research Papers, at . https://law.pace.edu/lawschool/files/iicl/odr/Xu_Junke.pdf.

¹⁸⁶ Jiping Song & Qisheng, *A Global Online Dispute Resolution System: Is China Ready to Join?* UNCITRAL 7 (November 23-24, 2017), http://www.uncitral.org/pdf/english/whats_new/11_2010/1124_8_HE_paper.pdf.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Yun et al., *supra*. note __, at 516.

Nonetheless, Japanese ODR is still in the experimental stages, and most ODR participants use it for consultation rather than resolution.¹⁹⁰ In 2011, the Consumer Agency in Japan created the International Consumers Advisory Network (“ICA-Net”) to provide cross-border dispute resolution in southern and eastern Asia.¹⁹¹ To that end, ICA-Net allows parties to share documents and participate in discussions through a secure, electronic environment.¹⁹² The parties can communicate with each other through chat rooms, and send private messages to advisors.¹⁹³ At the same time, the Alternative Dispute Resolution Online Modeling System (ADR-OMS) tracks the lifecycle of online disputes and allows parties to predict resolutions, or even attempt to avoid the risk of disputes altogether, by capitalizing on captured data.¹⁹⁴

India’s Internet use has grown, and e-commerce in India has embraced ODR to resolve disputes between buyers and sellers.¹⁹⁵ eBay India was the first consumer site to introduce ODR in India, and it helped to create the Community Court which provides an online forum for resolving e-commerce disputes regarding eBay purchases.¹⁹⁶ This process enables sellers that receive negative reviews they believe to be undeserved to log into Community Court, explain their rationale for why they dispute the review, and ask that the review be removed.¹⁹⁷ The buyer initially posting the negative review also gets an opportunity to explain her viewpoint, and a jury of other eBay users make a final determination.¹⁹⁸ At the same time, the Consumer Coordination Council, supported by India’s Department of Consumer Affairs, runs the Consumer Online Resource Empowerment (CORE) system to provide online resolutions.¹⁹⁹ This system allows users to file claims online, and get a resolution generally within sixty days. The system also allows users to track the resolution of their issues in real time.²⁰⁰ Additionally, the Tamil Nadu Electricity Board provides ODR services for electricity-related claims. It keeps consumers updated on claim status through text messaging.²⁰¹ Such mobile solutions are essential in India, as only one third of the population uses a broadband Internet connection.²⁰² In contrast, mobile access to the Internet is robust and growing in India, making app-friendly court-connected ODR a great option for helping to clear up the courts’ backlogs.²⁰³

B. ODR in Latin America

¹⁹⁰ *Id.* at 517.

¹⁹¹ *Id.*

¹⁹² *Id.* at 520.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 521.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* Colin Rule & Chittu Nagarajan, *Crowdsourcing Dispute Resolution Over Mobile Devices*, IN 8 MOBILE TECHNOLOGIES FOR CONFLICT MANAGEMENT 1, 3 (Marta Poblet ed., 2011).

¹⁹⁷ Marta Poblet, MOBILE TECHNOLOGIES FOR CONFLICT MANAGEMENT: ONLINE DISPUTE RESOLUTION, GOVERNANCE, PARTICIPATION 99 (Springer Dordrecht Heidelberg 2011).

¹⁹⁸ *Id.*

¹⁹⁹ Avinash Saxena, *How to File a Consumer Complaint Online in India (In 3 Easy Steps)*, ABRITATION (April 3, 2017), <http://abritation.com/how-to-file-a-consumer-complaint-online-in-india/>.

²⁰⁰ *Id.*

²⁰¹ Yun et al., *supra* note ___, at 523.

²⁰² *Id.*

²⁰³ *Id.* at 525

Latin America has faced challenges as it seeks to expand e-commerce.²⁰⁴ Lack of broadband Internet access and illiteracy are common in some regions, particularly in rural areas. This means that cyber-illiteracy also hinders e-commerce development.²⁰⁵ Additionally, the inadequacy of basic infrastructure, like roads for deliveries, in some areas suppresses the growth of e-commerce. Policymakers have therefore focused on finding ways to boost e-commerce, as means for furthering economic development overall.²⁰⁶

This has led to the growth in e-commerce and Internet access noted above.²⁰⁷ At the same time, alternative dispute resolution (“ADR”) and ODR have grown in popularity in Latin America as means for addressing the notoriously cluttered courts.²⁰⁸ Latin American has demonstrated great interest in developing best practices for ODR,²⁰⁹ and its openness to innovation led to the first fully online dispute platform in Latin America -- Mexico’s Concilianet.²¹⁰ Concilianet provides online mediation for consumers who have complaints against companies that have registered on the site.²¹¹ By 2010, a total of 18 companies committed to using Concilianet for ODR.²¹² More recent numbers show that over 90 companies have now registered.²¹³ Furthermore, from June 2008 to August 2012, the system has resolved 96% of the 7,000 filed complaints, and it was accomplished in an average of 25 days (as compared with 92 days). Moreover, 93% of the consumers who have used the system report that they trust the system.²¹⁴

ODR systems have also appeared elsewhere in Latin America. In Brazil, an online negotiation platform called Consumidor.gov.br launched in June 2014.²¹⁵ By the end of 2016, the platform, built and managed by the government, already handled more than 560,000 complaints involving suppliers of goods and services that participate in the site. These complaints were mainly launched against merchants in the telecommunications sector (47,5%), followed by banks (23,9%) and companies in the e-commerce segment (9,7%).²¹⁶ The system

²⁰⁴ María M. Alborno & Nuria González Martín, *Feasibility of Online Dispute Resolution in Developing Countries*, 44 U. MIAMI INTER-AM. L. REV. 39, 41 (2012). Although connectivity has increased as noted above, studies had indicated Internet penetration in Latin America was only 48.2%, in contrast to North America’s penetration at 78.6%. *Id.* at 41, n.7.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *See supra* note__ and accompanying text.

²⁰⁸ Gabriela R. Szlak, *Online Dispute Resolution in Latin America*, IN 23 ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE 529, 534 - 37 (Mohamed S. Wahab, Ethan Katsh, & Daniel Rainey ed., 2012).

²⁰⁹ *See* Alborno & Martín, *supra* note __, at 39-42.

²¹⁰ Mex. Gobierno Mexicano, *¿Qué es Concilianet?*, GOB.mx, <https://concilianet.profeco.gob.mx/Concilianet/comoconciliar.jsp> (last visited Aug. 21, 2017); Szlak, *supra* note __, at 534-50.

²¹¹ Szlak, *supra* note __, at 534-54.

²¹² *Id.* at 555.

²¹³ Mex. Gobierno Mexicano, *Proveedores participantes*, GOB.mx, https://concilianet.profeco.gob.mx/Concilianet/proveedores_que_concilian.jsp (last visited Aug. 21, 2017).

²¹⁴ Sergio Daniel Michel Cháves. *Memoria Documental: Conciliación através de medios electrónicos: Concilianet - 2008 a 2012*, 23-4 (2012).

²¹⁵ *Boletim Consumidor.gov.br: 2016*, MINISTÉRIO DA JUSTIÇA, <https://www.consumidor.gov.br/pages/publicacao/externo/> (last visited Aug. 21, 2017).

²¹⁶ *Id.*

has cut down on resolution time versus the courts, and boasts an 80.3% average solution index and average response time of 6.3 days.²¹⁷ Nonetheless, the so-called digital mediation center in Brazil has been rarely used, with only 55 cases filed since its launch in 2016.²¹⁸

Latin America's potential ODR strengths are adaptability and keen interest in economic growth through e-commerce.²¹⁹ Furthermore, e-commerce in Latin America thrives by taking advantage of extensive mobile connectivity and alternative payment systems.²²⁰ Mexican e-commerce site Decompras.com successfully partnered with Telemax, a phone company, to allow consumers to charge their purchases to their phone bill.²²¹ This has allowed ODR providers to use mobile payment systems to facilitate resolutions such as chargebacks in a manner similar to PayPal's role in ODR for eBay. For example, Latin American Institute of Electronic Commerce ("ILCE") is a regional ODR provider that intervenes in disputes arising from online or mobile e-contracts.²²² This provider offers businesses a chance to provide and promote ODR by placing ILCE's eTrust seal on its website.²²³ These businesses must then allow their customers to seek remedies using this ODR system free of charge.²²⁴ Businesses benefit from attracting customers through the eTrust seal while consumers benefit by obtaining remedies using ODR without paying a filing fee like they would in course. ODR also saves all parties from time and hassle of travel, and facilitates easier communications among various regional language differences (namely, Spanish and Portuguese variations).²²⁵

C. Growing ODR Interest in South Africa

With the exceptions of South Africa, Egypt, and Tunisia, the African countries are struggling to build and expand their ICT infrastructure.²²⁶ That said, growth is evident, and further expansion is eminent. Even considering the data from ten years ago: There was a 10% overall increase in the number of computer owners in African countries from 2006 to 2007, and sub-Saharan Africa had thirty-five million Internet users in 2008.²²⁷ Secure servers, which are required for e-commerce and ODR, are also gaining ground in Africa.²²⁸ South Africa is leading the way with Nigeria and Tunisia right behind. Security is not as robust in Egypt, despite the fact that it has the largest Internet penetration rate on the continent.²²⁹ Nonetheless, Egypt's

²¹⁷ *Consumidor.gov.br: Balanço 2016*, MINISTÉRIO DA JUSTIÇA,

<https://www.consumidor.gov.br/pages/publicacao/externo/> (last visited Aug. 21, 2017).

²¹⁸ Regina Bandeira, *Relatório Justiça em Números Traz Índice de Conciliação*, CNJ (Oct. 17, 2016, 4:39 PM UTC-3), - <http://www.cnj.jus.br/noticias/cnj/83676-relatorio-justica-em-numeros-traz-indice-de-conciliacao-pela-1-vez>.

²¹⁹ Albornoz & Martín, *supra* note __, at 49-50.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ Mohamed S. Abdel Wahab, *Online Dispute Resolution for Africa*, IN 24 ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE 561 (Mohamed S. Wahab, Ethan Katsh, & Daniel Rainey ed., 2012).

²²⁷ *Id.* at 564

²²⁸ *Id.* at 565

²²⁹ *Id.*

Internet proliferation has led to the e-commerce disputes, including those among businesses.²³⁰ Egypt also has passed the Digital Signatures Law and created the Information Technology Industry Development Agency.²³¹ Indeed, e-commerce is growing in Egypt and ripe for greater development cross-border with the assistance of ODR to garner trust from purchasers abroad.

Overall, South Africa has shown aptitude for ODR due to greater access to the Internet and e-commerce. South Africa currently has two ODR programs: (1) the ZA Domain Name Dispute Resolution Regulations (“ZADRR”) and (2) the Online Ombudsman. The ZADRR is an online resolution system for domain name disputes. Similar to other programs under the UDRP, it allows complainants to file a dispute with a service provider, who then appoints an adjudicator to deliberate over the matter and issue an opinion.²³² Additionally, ZADRR is similar to other UDRP programs in that it does not provide monetary relief to claimants. ZADRR deals exclusively with cybersquatters, and solely provides binding instructions to domain registries for transfer of the disputed name.²³³ The program is accredited by the South African Institute of Intellectual Property (“SAIIP”), and was the first non-judicial means for claimants to bring domain name complaints.²³⁴

With respect to consumer claims, Online Ombudsman is the chief ODR program in South Africa. It is an online means for implementing and enforcing The South African Consumer Protection Act, and allows consumers to get in touch with mediators through an online platform.²³⁵ It looks at complaints from consumers against service providers, as well as cases where negotiations between the consumer and the provider have failed.²³⁶ Online Ombudsman’s services are limited in that they do not handle complaints exceeding one million SAR (approximately seventy-five thousand USD). The program also excludes claims older than three years, anything pending before another decision-making body, or matters that are outside the scope of the National Credit Act.²³⁷

Despite the growing online presence of African citizens, ODR is mainly provided by services outside of the African states.²³⁸ These ODR providers do not consider African languages or cultures in their procedures.²³⁹ Nonetheless, commentators have hoped that African governments could be incentivized to promote ODR.²⁴⁰ One scholar surmised that “virtual courtrooms” could eventually be established for many areas, including family dispute resolution. This could be significant in promoting public policy by allowing individuals of all economic means to assert their rights more easily. Currently, it is too costly to litigate and courts are backlogged for many years.²⁴¹

²³⁰ *Id.* at 569.

²³¹ *Id.*

²³² 3255.

²³³ *Id.* at 579

²³⁴ Wahab, *supra* note ____, at 574-82.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.* at 580.

²³⁸ *Id.* at 581.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Cupido, *supra* note at 3254 – 56.

Still, there concerns remain with development of ODR in South Africa. The key concern is adequacy of infrastructure to maintain a virtual court. This would rely on a stable data provider and steady electricity, as well as adequate privacy protections. Furthermore, while it is true that mobile Internet usage has increased access to the Internet, it is questionable whether such mobile access is equivalent to broadband Internet access when it comes to ODR. Consider: an individual who accesses the Internet on a laptop at home will have greater ability to upload documents and argue her case than one who is simply swiping and inputting basic information via a cell phone.

That said, ODR systems can be built for mobile technology to assist all users in answering required information and using easy mobile uploads for supporting documentation. Possibilities are endless as technologies progress. Moreover, ODR can itself be a catalyst for e-commerce expansion, which leads to economic development and infrastructure improvement. Indeed, with ODR comes greater e-commerce. With the growth of e-commerce, comes greater investment in the economy and economic growth for all involved. “(T)here is a direct relationship between bridging the digital divide, achieving a higher degree of ICT penetration in the progressive development of e-commerce and ODR” in developing countries. Despite the slow process of introducing ICT and ODR in developing countries, it has been recognized as a necessity for closing the digital divide.²⁴²

V. Creating Mobile-Friendly ODR to Promote E-Commerce Worldwide

Mobile phones have opened new avenues to the Internet and ODR in developing nations.²⁴³ Mobile access to the Internet and technologically assisted communications have become central in connecting the world. Accordingly, mobile friendly ODR methods that can be completed on mobile devices would expand access to consumer remedies for e-commerce claims in developing countries and throughout the world. Mobile ODR would help narrow the digital divide in ODR, while promoting a social aspect of dispute resolution that has emerged in a new generation that increasingly looks to their cell phones for interaction. Moreover, phone users can rely on voice and video recording, rather than text-based interaction, which is far more effective in reaching illiterate users than traditional email systems.²⁴⁴ Mobiles would also allow dispute professionals working with larger groups an easier means for coordinating meetings, and would enable non-present parties to be kept in the loop while away from their computers.²⁴⁵ The key is to develop easy-to-use systems that also assist businesses to attract customers worldwide by providing a trust mechanism for e-commerce.

A. Ideas for Mobile Accessible Global ODR

²⁴² Cupido, *supra* note at 3257.

²⁴³ Flavia de Almeida Montingelli Zanferdini & Rafael Tomaz de Oliveira, *Online Dispute Resolution in Brazil: Are We Ready for This Cultural Turn?* 24 *Revista Paradigma*, Ribeirao Preto-SP 68-80 (Jan./Jun. 2015) (emphasizing how mobile phones have been a game-changer for Brazilian expansion of Internet access and e-commerce).

²⁴⁴ Colin Rule & Chittu Nagarajan, *Crowdsourcing Dispute Resolution Over Mobile Devices*, IN 8 *MOBILE TECHNOLOGIES FOR CONFLICT MANAGEMENT* 1, 3 (Marta Poblet ed., 2011).

²⁴⁵ *Id.* at 5

ODR may include anything from automated case predictions based on data regarding similar cases that promote quick settlement, to fully online arbitration hearings that lead to enforceable awards. The spectrum is wide and evolving. This section notes the creative options for ODR, but suggests automated case predictions leading to quick online settlements as a starting place for a global ODR system for small e-commerce claims. Although the system may evolve in various ways as technology expands, a scalable and efficient ODR process that results in nearly 100% settlement through online negotiations coupled with data-driven case predictions would provide an initial basis for a global platform. Such a simple system would provide means for businesses in developing countries to gather consumer trust on a global level.

1. Considering the Spectrum

ODR need not take any particular form. It may even include crowdsourced determinations. For example, eBay India’s Community Court, noted above, is crowdsourced. This allows the best judgement of the community at large to decide an issue.²⁴⁶ When a seller receives a bad review on eBay that she doesn’t believe she deserves, she may submit a claim to the Community Court. At that point, she and the buyer submit evidence such as photos or explanatory text through an online portal.²⁴⁷ Twenty-one eBay jurors are randomly selected from a pool of applicants, who are eBay users that have met eligibility requirements.²⁴⁸ These jurors all submit impartial votes, and whichever side gets more than half of the votes will win the case.²⁴⁹

Such systems garner legitimacy through the juror selection process in that fellow eBay users are essentially judging each other. Claimants are not at the mercy of an outside entity that may or may not understand how purchases work on eBay. Instead, those determining the case are in the “same boat” with the claimants and respondents. Furthermore, such systems are encrypted and preserve anonymity. They also are particularly apt to be entirely operational via mobile phone.²⁵⁰ Consider: jurors, claimants and respondents, may all access the ODR portal via their mobile devices and submit evidence, arguments, and votes in real time from anywhere in the world.

Crowdsourced ODR was likewise proposed for a mobile ODR application called M-Jirga for use in Afghanistan. Afghanistan struggles with maintaining a credible justice system, and thus it is typical for a community of elders to settle most disputes in an informal and undocumented way, called Jirga²⁵¹ “In essence, Jirga is a tribal assembly of elders which takes decisions by consensus. It operated over the centuries as an important mechanism of conflict resolution among the Pashtuns, Eastern Iranian ethno-linguistic group with populations primarily

²⁴⁶ Rule & Nagarajan, *supra* note ___ at 3 – 6.

²⁴⁷ *Id.* at 6

²⁴⁸ *Id.* at 7

²⁴⁹ *Id.*

²⁵⁰ *Id.* at 8

²⁵¹ Rule & Nagarajan, *supra* note ___ at 6- 10.

in Afghanistan and northwestern Pakistan, and has contributed to the maintenance of social order in the rest of the Afghan society both in direct and indirect ways.”²⁵²

The idea for M-Jirga evolved in light of the growing access to mobile devices in Afghanistan. The US military had built many cellphone towers and distributed free phones in the region. Policymakers therefore designed an “app” for resolving disputes via mobile phone in the region. This brought the tribal process of Jirga to the digital age. In order to solve their disputes through M-Jirga, the parties should call a certain number and initiate the M-Jirga process. Once both sides recorded their arguments, the system could call out to elders in the relevant regions.²⁵³ Elders would then listen to both sides and render their decisions. A vote of the majority would determine the case. However, that determination would remain legally non-binding.²⁵⁴

Some may criticize such non-binding determinations because they leave the door open to subsequent litigation. In reality, however, parties would rarely defy a decision of the elders in a community. Moreover, a process via mobile phone produces wider cost-effective access and greater credibility than courts in the region.²⁵⁵ Furthermore, this online process allowed dispute settlements to be recorded so that users could research outcomes when the same or similar disputes arise again.²⁵⁶ This idea was pitched for special use in land disputes, which are among the most common in Afghanistan due to a lack of a land registry.²⁵⁷ Although the M-Jirga proposal never came to fruition, it sparked policymakers’ interest in such use of ODR for various disputes on a global level.

Interest in the proposal also evidenced how “non-binding” determinations have value. For example, a scholar recently proposed non-binding online arbitration for fraud claims regarding crowdfunded securities.²⁵⁸ Entrepreneurs increasingly rely on crowdfunding to launch start-up businesses.²⁵⁹ However, crowdfunding has opened the door to fraud, and thus a surge in fraud claims. These are generally for small-dollar amounts, leaving defrauded investors without cost-effective remedies. Litigation or even in-person arbitration are prohibitively expensive and especially impractical for parties located in various parts of the world.²⁶⁰ Accordingly, a potential solution would be to establish an online arbitration mechanism for resolution of these fraud claims. Online arbitrators would be experts on crowdfunding and securities law, and would take an active role in the arbitration process by asking questions and obtaining relevant documents.²⁶¹ At the same time, making arbitrators’ opinions public would improve transparency and

²⁵² Association for Progressive Communications, “Crowdsourced Online Dispute Resolution,” at <https://www.apc.org/en/blog/crowdsourced-online-dispute-resolution> (last visited Sept. 14, 2017).

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.* at 12.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ C. Steven Bradford, *Online Arbitration as a Remedy for Crowdfunding Fraud*, SSRN 3 (August 11, 2017), file:///C:/Users/joh11/Downloads/SSRN-id3014148.pdf.

²⁵⁹ *Id.* at 1.

²⁶⁰ *Id.* at 20.

²⁶¹ *Id.* at 32.

credibility.²⁶² These features would converge to improve the efficiency and efficacy of the process, and ward off litigation – although litigation would remain a viable option for investors who seek to pursue a class claim in court.²⁶³

Similarly, a new ODR “app” has been proposed for resolving refugee disputes and issues involving displaced individuals. “ODR 4 Refugees” is a recent proposal for a mobile application that seeks to help refugees resolve disputes ranging from those emanating from sharing space in refugee camps to those dealing with discrimination, poverty & lack of communication with camp administration officials.²⁶⁴ The “app” would be free to use for refugees, and guides them to select their type of dispute from a list and describe the issue in a couple of lines. Claimants then add their contact details and those of the other side.²⁶⁵ The system processes all the data and appoints a mediator based on criteria such as nationality, language, area, topic, and gender. The whole mediation process could be conducted online through the parties’ smartphones by video conference (in joint or separate sessions). It also may be handled via a chat tool, or other means that will evolve with the technology.²⁶⁶ Currently, this is a pilot project proposal targeted to all points of entrance in countries where there is a flow of refugees, and to all refugee camps and communities throughout the world.²⁶⁷

2. Seeking Efficiency

The possibilities for mobile ODR are evolving and exciting. For e-commerce disputes, however, they must remain simple. Efficiency is key for maximizing use and potential for companies and consumers to benefit. To that end, ideas could expand from an ODR design that this author has proposed with Colin Rule, the architect for the ODR system at eBay. This proposal is for a global ODR platform called “NewHandshake.org.” This system would be unified so that it could affordably scale alongside the expansion of global e-commerce.²⁶⁸ This would call for a single hub that powers the overall system. There would be hundreds of routes into this home base, or core platform. These routes would derive from ODR providers, merchants and consumer protection authorities around the world. Merchants would visit the newhandshake.org site and fill out a form to register in the system. Merchants would have to specifically agree to abide by standards of the program, and provide contact information for the individual within their staff who will liaise with any communications from the newhandshake.org administration team.

²⁶² *Id.* at 34.

²⁶³ *Id.* at 1.

²⁶⁴ *ODR for Refugees*, at <http://www.odreurope.com/odr4refugees> (last visited September 11, 2017).

²⁶⁵ *Id.* Developers of the application explain their inspiration as follows: “...our work with refugees a couple of years ago in the context of an international mediation competition. We recruited six young Syrian refugees from a camp, trained them in mediation and formed two teams to participate in the competition. To our surprise, they performed exceptionally well. We had long discussions with them about mediation and the conditions they lived in. Also we have been monitoring the refugee crisis in Greece for the past two years and we have noticed that refugees had no access to easy dispute resolution mechanisms but they had third generation smartphones as they were easy to carry with them. So, we have decided to develop a smartphone application that could create the environment for dispute resolution.”

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ Schmitz & Rule, *supra*. note ___, at 75-150.

Once the merchant completes the registration form, they would be provided with a link to their free Resolution Center. This Resolution Center would be a cloud based system through which the merchant can review any problems reported by that merchant's customers through the newhandshake.org system. The merchant would also be provided with a single line of JavaScript code to place on the home page of their website, which would appear as a “button” for consumers to click when they experience purchase problems. It could look something like this:



This little button would relay information to a merchant’s customer service system or CRM (customer relationship management), as well as newhandshake.org. The submission of this information would be instantaneous when the button is clicked, and all of it would be encrypted to ensure its safety. This button would work on both mobile devices and full-resolution web browsers. Moreover, it would be mobile accessible, and usable on a small or large screen. This, again, is important to make it fully functional on any wireless device and appear with the correct status even from within third party digital code. In other words, it would work with Android and Apple systems.

The design would be simple, and well-suited to resolve e-commerce claims. When a consumer has an issue that is unresolved, the consumer could click the button to submit a complaint at the same place they engaged in the transaction – the point of sale (“POS”). This filing would follow guided questions:

1. What are the details of your transaction?
2. What kind of problem are you experiencing?
3. What resolution would you prefer? (E.g. I want my money back, I want a partial refund, I want a new product, etc.)
4. What email address can we use to contact you about this case?

Convenience will be key. The data captured in the intake form will be primarily structured, meaning that the consumer picks information from lists. There would be only one option to submit free-form text to describe the issue in detail. The buyer would have the ability to upload files or images if, for example, they want to show how an item was damaged in transit, or why they suspect the item may be inauthentic.

Once a case is filed by a consumer, the liaison specified in the merchant's sign up process would receive notice of the complaint, and directions to log into the Resolution Center. Here, the merchant would be able to sort the list as the merchant prefers, and respond as appropriate. The merchant also could export the list into her own computer or system for further integration and functionality. This would allow a merchant to incorporate the NewHandshake.org platform into her own customer service and dispute resolution processes. That means that this process would set a floor and not a ceiling for customer service and claims resolution. Companies would remain free to provide greater protections.

The centrality, or “hub”, design of NewHandshake.org would also allow merchants to keep track of their actions in one place. A merchant could use the platform to easily identify new cases and take action. First, the merchant could enter a response to the buyer's filing,

explaining the matter from the merchant's perspective. Second, the merchant could indicate that she will provide the buyer a full refund to address the concern. Third, the merchant could indicate that she has already resolved the matter directly with the buyer, the buyer is now satisfied, and the case should be closed.

At the same time, data regarding similar cases could be used to suggest settlements where the parties have reached an impasse. For example, consumers and merchants would be able to use a tool on the platform to enter information regarding their claims and see how similar cases have been resolved. They would learn what is “reasonable” under the circumstances, which often leads party to settle. It is common to assume one’s case is “better” than it is in reality, and thus predictions prove powerful in setting reasonable expectations.

All of this functionality could be part of a free or low cost Resolution Center that the merchant would have access to just for signing up to be part of NewHandshake.org, or small fees could be charged based on the volume of disputes. For example, small emerging merchants who have very few disputes would not pay a fee due to low volume, while larger companies with many claims would have a reasonable fee. Access to this ODR platform would be a value-add for the large and small merchants: It saves the costs of establishing another mechanism for resolving e-commerce claims; helps merchants gain consumer goodwill by ensuring means for obtaining remedies; and saves companies a great deal in customer service costs. Costs of a global system could remain low due to economies of scale and various non-profit and governmental grants – geared toward consumer protection, access to remedies, and economic development.

Such a central hub for ODR would provide great value to consumers as well. Currently, consumers are at the mercy of merchants’ privatized and generally uneven customer service measures. Customer service ranges from nothing, to painful phone systems, to in-person arbitration that is prohibitively expensive for consumer claims. Companies currently favor the “squeaky wheels” who are sufficiently proactive in pursuing their complaints to get assistance, remedies, and other benefits that companies are not eager to provide.²⁶⁹ Meanwhile, the majority of consumers remain silent because they lack the knowledge, experience, or resources to artfully and actively pursue their interests.²⁷⁰ As a result, the individuals who already enjoy disproportionate bargaining power due to social or economic status are usually the squeaky wheels that receive the benefits—thus perpetuating the divide between the consumer “haves” and “have-nots.”²⁷¹ A central and user-friendly ODR “app” would help narrow this divide to open access to remedies for all consumers.

Of course, there are many details that would need to be worked out. The platform could start with automated and asynchronous negotiations, but additional features such as online mediation, arbitration and community courts (as noted above) could be added. The key is to create a unified and encrypted system to handle e-commerce complaints on a global level.

²⁶⁹ Amy J. Schmitz, *Access to Consumer Remedies in the Squeaky Wheel System*, 39 PEPP. L. REV. 279, 280 (2012) [hereinafter Schmitz, *Squeaky Wheel System*].

²⁷⁰ *See id.* at 282–83.

271. *See* Peter A. Alces & Jason M. Hopkins, *Carrying a Good Joke Too Far*, 83 CHI-KENT L. REV. 879, 895–96 (2008) (discussing how businesses may discriminate in favor of sophisticated consumers); *see also* Amy J. Schmitz, *Secret Consumer Scores and Segmentations: Separating Consumer “Haves” from “Have-Nots,”* 2014 MICH. ST. L. REV. 1411, 1411–74 (exploring how Big Data has been used by businesses to determine what contracts and benefits to provide to consumers, thereby perpetuating contractual discrimination).

Unification keeps data organized and trigger mechanisms could be added to catch dangerous products (i.e., if there are high levels of claims regarding the same product). An outside system also would prevent merchants from “getting away with” ignoring claims. If a merchant continues to provide no response, he or she could be removed from the system after a certain number of violations. Similarly, a buyer may be “flagged” for filing fraudulent claims.

Such an ODR platform also could be integrated with existing ODR systems. For instance, it could add value to the EU’s current ODR platform, noted above. Some of the cases will be filed by EU citizens against merchants outside of the EU. The newhandshake.org system would provide standard-compliant data exchange interfaces to share information about cases in real time with these other systems. New case filings would come in from consumers reporting issues through the buttons on merchant websites. Nonetheless, other cases may come in via other external ODR systems like the EU framework. Merchants will be notified about these cases in the same way they are notified about cases filed directly from the buttons on their websites.

Again, the platform does not have to be “newhandshake.org” and new ideas will surface as technology continues to surpass imaginations. These are simply some ideas for a system that could work with mobile devices, and create a win-win for consumers and companies. Global ODR systems could help large and small companies seeking customers, as well as consumers who struggle to obtain remedies with respect to e-purchases.

Importantly, this would not be a replacement for courts. However, the ODR “app” would prevent most e-commerce cases from reaching a court. Instead, the process would open new avenues for consumers who would never invest the time and money necessary to pursue an e-merchant, especially across borders. Furthermore, the system would easily present in the users’ native language and include adaptations for various disabilities. This can all be done via ODR, and will become more sophisticated and cheaper as technologies develop.

B. Note on Legal Hurdles to Global ODR

That said, there are legal hurdles to building ODR systems on a global level. As noted above, dissent at the United Nations brought UNCITRAL Working Group III to a halt in its development of global ODR. For starters, various national laws treat e-arbitration agreements and awards differently, with some refusing to enforce any pre-dispute arbitration agreements.²⁷² These clauses are usually buried in clickwrap and browsewrap website agreements.²⁷³ These are agreements consumers generally never read, as they “click” to accept a purchase or are deemed to accept when simply browsing a website.²⁷⁴ One 2013 study analyzed terms of service for the 100 most-visited websites and found that 30% contained arbitration clauses.²⁷⁵ Sixty-three

²⁷² Reinmar Wolff, *E-Arbitration Agreements and E-Awards – Arbitration Agreements Concluded in an Electronic Environment and Digital Arbitral Awards*, IN 7 *ARBITRATION IN THE DIGITAL AGE: THE BRAVE NEW WORLD OF ARBITRATION* 1, 3 (C. Aschauer and M. Piers ed., 2017).

²⁷³ Wolff, *surpa* note __ at 2- 3.

²⁷⁴ James R. Bucilla, II, *The Online Crossroads of Website Terms of Service Agreements and Consumer Protection: An Empirical Study of Arbitration Clauses in the Terms of Service Agreements for the Top 100 Websites Viewed in the United States*, 15 *WAKE FOREST L. REV.* 102, 106 (2014) (citing October 2013 figures from Alexa).

²⁷⁵ *Id.*

percent of arbitration clauses were mandatory; the clauses explained only a limited number of the users' rights, and the average clause appeared near the end of these multi-page click-wrap agreements.²⁷⁶ Additionally, 40% of the clauses did not mention that the user was waiving other remedies, 67% contained class action waivers, and 70% did not address how to initiate an arbitration proceeding.²⁷⁷

Due in part to this lack of real consent, these arbitration agreements may not be enforceable in all countries.²⁷⁸ If the United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply, then national law must determine the criteria for enforcement.²⁷⁹ Most European countries, for example, do not enforce these arbitration clauses in consumer contracts.²⁸⁰ Moreover, even the US, which had been a staunch supporter for arbitration under the Federal Arbitration Act (FAA), has a new CFPB rule that prohibits banks and other consumer financial companies from including mandatory arbitration clauses that block group lawsuits in any new contracts after the compliance date.²⁸¹ The rule does not bar arbitration clauses outright, but instead requires them to say explicitly that they cannot be used to stop consumers from banding together to pursue relief as a group.²⁸² The rule also requires companies to submit their claims, awards, and other information about the arbitration of individual disputes to the Bureau.²⁸³

Arbitration agreements also raise the question of 'written form' validity, and some national laws treat electronic communication, including e-mail and e-signatures, as not sufficiently 'in writing' for enforcement.²⁸⁴ Laws and treaties similar to the UNCITRAL Model Law on Electronic Commerce and the Convention on the Use of Electronic Communications in International Contracts state that electronic forms meet 'written form' requirements if the data is available for later reference.²⁸⁵ The Model Law also provides that e-signatures are valid if they provide a reasonably reliable method that can identify the person and indicate the person's consent.²⁸⁶ However, not all countries follow this and arbitration agreements in particular have been controversial.

Foreign agreements for binding arbitration generally fall under the New York Convention.²⁸⁷ Under the New York Convention, 'in writing' includes an agreement signed by

²⁷⁶ *Id.* at 114–20.

²⁷⁷ *Id.* at 120–25. Forty percent did not address responsibility for cost, while another 40% provided that AAA rules govern cost. *Id.* at 126. However, scholars support consumer arbitration clauses. See Stephen J. Ware, The Case for Enforcing Adhesive Arbitration Agreements—with Particular Consideration of Class Actions and Arbitration Fees, 5 J. AM. ARB. 251, 254–64, 292 (2006) (proposing that pre-dispute arbitration clauses benefit companies and consumers).

²⁷⁸ Todd D. Rakoff, Contracts of Adhesion: An Essay in Reconstruction, 96 HARV. L. REV. 1173, 1230–43 (1983) (discussing enforcement of adhesion contracts).

²⁷⁹ Wolff, *surpa* note __ at 2–4.

²⁸⁰ *Id.* at 4–6.

²⁸¹ 12 C.F.R. § 1040 (2017).

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ Wolff, *surpa* note __ at 2–4.

²⁸⁵ *Id.* at 5

²⁸⁶ *Id.*

²⁸⁷ *Id.*

the parties.²⁸⁸ What constitutes as a ‘signature’ depends largely on interpretation, and may be complicated depending on how nations implement the law in their courts.²⁸⁹ Other conventions also may come into play. Therefore, if the Electronic Communications Convention is utilized (e.g. by those states who are a party to it) an electronic signature is valid.²⁹⁰ Again, however, each nation may apply law in its own way.

Accordingly, online arbitration may pose challenges when subsequent enforcement will be necessary. Although e-arbitration agreements and awards are desirable in the international context due to speed and convenience,²⁹¹ this must be balanced with the risk that electronic agreements or awards will not be legally valid.²⁹² This makes self-enforcing ODR systems and online mediation particularly attractive for global e-commerce. Ideally, a global ODR system should operate without need for reliance on choice of law or legal enforcement through the courts. That leads to need for “Trustmarks” and other measures that encourage self-enforcement.

C. Ensuring Confidential, Trustworthy and Ethical ODR

Any dispute resolution system is ineffective if it is unfair. Efficiency should not overshadow fairness. It is therefore essential to build ODR systems for particular contexts in consideration of due-process standards.²⁹³ The importance of ODR due-process standards coincides with the need for specialized ethics rules to address the new and evolving dilemmas ODR creates for systems designers, providers, and third-party neutrals. Some commentators worry that private ODR providers will favor the businesses that hire them and pay the bill for their services.²⁹⁴ Furthermore, even if providers are not in fact biased, consumers may nonetheless remain skeptical that the businesses are repeat players who have mastered use of the ODR systems for their benefit.²⁹⁵

These are valid concerns. Accordingly, some have argued for establishment of an ODR “Trustmark” that indicates that an ODR system meets due process and ethics standards. It would need to be regulated by a government or independent non-governmental authority that has earned the public’s trust.²⁹⁶ In the US, the Better Business Bureau (“BBB”) is one of the most formidable consumer organizations because it offers an accreditation, or “Trustmark,” to

²⁸⁸ *Id.*

²⁸⁹ *Id.* at 10.

²⁹⁰ *Id.*

²⁹¹ *Id.* at 16.

²⁹² *Id.*

²⁹³ See Anjanette H. Raymond & Scott J. Shackelford, *Technology, Ethics, and Access to Justice: Should an Algorithm Be Deciding Your Case?*, 35 MICH. J. INT’L L. 486, 492 (2014).

²⁹⁴ See *id.* at 518.

²⁹⁵ See *id.* at 519–20.

²⁹⁶ Amy J. Schmitz and Colin Rule, *THE NEW HANDSHAKE: ONLINE DISPUTE RESOLUTION AND THE FUTURE OF CONSUMER PROTECTION* (American Bar Assn. 2017) (proposing an online remedy system to expand consumers’ access to remedies and to revive corporate responsibility in consumer contracting). This author has set forth a blueprint with Colin Rule for how a global ODR process would work. Please see the book for further information, as such full discussion is beyond the scope of this article.

businesses that pay a fee and abide by the BBB Code of Business Practices.²⁹⁷ Although the BBB is private, it has gained a strong reputation for its Trustmark system based on consumers' feedback regarding their experiences with listed businesses.²⁹⁸

An ODR Trustmark would therefore take time to gain respect. It would be imperative that merchants agree to abide by due process, privacy, and other agreed standards in order to gain the right to post the Trustmark. Additionally, regulators would have power to "police" the Trustmark by canceling a merchant's right to post it if the merchant's system is biased or otherwise fails to conform to fairness standards. Of course, one may argue that this "policing" would drive merchants away from the ODR platform. Why would a merchant subject itself to this oversight? In actuality, however, the Trustmark also would benefit merchants by attracting customers. An ODR Trustmark would signal that the merchant has an effective and fair ODR system, thus helping the merchant gain trust and loyalty of customers. Consumers would know that the merchant will follow fair procedures to provide a fast remedy if the purchase goes awry.

Such ODR fairness standards are not new. For example, the EU ADR Directive does not establish a Trustmark system per se, but it does safeguard some level of due process by allowing for exclusion of providers who do not abide by prescribed standards. A Trustmark could thus bolster evaluation of compliance with due process standards.²⁹⁹ Standards generally safeguard confidentiality, impartiality, competence, and quality of process.³⁰⁰ This means that practitioners must understand confidentiality risks and communicate those risks to clients, and ODR neutrals must remain impartial and competent for the case at issue. They also must ensure that all parties have an adequate opportunity to participate in the process and that parties can make voluntary and informed choices surrounding the procedures and outcome.³⁰¹

Of course, there is no one set of wholly acceptable standards for all ODR. We learned that in UNCITRAL Working Group III. Representatives from various nations disagreed on what precise procedures are fair or proper. Nonetheless, there has been movement toward creating generally acceptable ethics and fairness standards for e-commerce ODR that could apply on a global level.³⁰² These standards would cover basics noted above such as confidentiality, impartiality, and quality. However, they can be stated in more particularity as follows.³⁰³

²⁹⁷ 'Dispute Resolution Processes and Guides', *The Better Business Bureau*, www.bbb.org/council/programs-services/dispute-handling-and-resolution/dispute-resolution-rules-and-brochures/dispute-resolution-processes-and-guides/, last accessed 30 August 2015.

²⁹⁸ The BBB disclaims responsibility for making a determination as to the business' product quality or competency. 'Get Accredited', *The Better Business Bureau*, www.bbb.org/council/for-businesses/about-bbb-accreditation, last accessed 30 August 2015); Steven J Cole and Charles I Underhill, 'Fifteen Years of ODR Experience: The BBB Online Reliability Trust Mark Program' [2010] 43 No 1 *Uniform Commercial Code L J Article 2*, 443, 446-5.

²⁹⁹ Joasia A. Luzak, 'The New ADR Directive: Designed to Fail? A Short but Hole-Ridden Stairway to Consumer Justice', (Amsterdam Law School Legal Studies Research Paper No. 2015-43, 4-14; Ctr. for the Study of European Contract Law Working Paper No 2015-12, 2015).

³⁰⁰ Daniel Rainey, 'Third-Party Ethics in the Age of the Fourth Party', 1 *International Journal of Dispute Resolution* 37, 56 (2014).

³⁰¹ *Id.* at 45-46.

³⁰² Leah Wing, *Ethical Principles for Online Dispute Resolution: A GPS Device for the Field*, 3 *INTERNATIONAL JOURNAL ON ONLINE DISPUTE RESOLUTION* 12-29, 13 (2016).

³⁰³ National Center for Technology and Dispute Resolution, *Ethics and ODR*, at <http://odr.info/ethics-and-odr/> (last visited Aug. 28 2017).

- Accessible: ODR must be easy for parties to find, and available through both mobile and desktop channels, minimize costs to filers, and be easily accessed by people with different physical ability levels.
- Accountable: ODR systems must be continuously accountable to the institutions, legal frameworks, and communities that they serve.
- Competent: ODR providers must have the relevant expertise in dispute resolution, legal, technical execution, language, and culture required to deliver competent, effective services in their target areas.
- Confidential: ODR must maintain the confidentiality of party communications in line with publicly provided policies around a) who will see what data, and b) how that data can be used.
- Equal: ODR must treat all participants with respect and dignity. ODR should enable often silenced or marginalized voices to be heard, and ensure that offline privileges and disadvantages are not replicated in the ODR process.
- Fair/Impartial/Neutral: ODR must treat all parties equally and in line with due process, without bias or benefits for or against individuals or groups. Conflicts of interest of providers, participants, and system administrators must be disclosed in advance.
- Legal: ODR must abide by and uphold the laws in all relevant jurisdictions.
- Secure: ODR must ensure that communications between participants are not shared with any unauthorized parties. Users must be informed of any breaches in a timely manner.
- Transparent: ODR must explicitly disclose in advance a) the form and enforceability of dispute resolution processes and outcomes, and b) the risks and benefits of participation. Data in ODR must be gathered, managed, and presented in ways to ensure it is not misrepresented or out of context.

Security and confidentiality are essential. However, it is a difficult issue in that most if not all websites and apps gather some sort of information in order to function. This must be done safely and with special protection for any personally identifiable information. For example, the Modria ODR program (operated under Tyler Technology) noted above provides stepped procedures for resolving disputes.³⁰⁴ While accessing Modria, users first receive a quick diagnosis of their situation that helps them determine whether to proceed with their case.³⁰⁵ If a user then decides to proceed forward with the case, Modria collects information from the user and opens an online dialogue between the feuding parties to facilitate negotiation discussions.³⁰⁶

Although Modria, through tylertech.com, collects some general information such as a Modria user's name, email address, IP address, and access times, Modria and Tyler Technologies never sell, rent, or release customer lists to third parties.³⁰⁷ Moreover, tylertech.com protects personal information (e.g., a credit card number) entered into the ODR program through the use of encryption features such as Secure Socket Layer (SSL) protocol.³⁰⁸ Furthermore, users who

³⁰⁴ 'All the Tools You Need for Online Dispute Resolution', *Tyler Technologies*, <https://www.tylertech.com/solutions-products/modria/odr> (last accessed September 6, 2017).

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ 'Privacy Statement', *Tyler Technologies*, <https://www.tylertech.com/Privacy> (last accessed September 6, 2017).

³⁰⁸ *Id.*

choose to customize a resolution flow for their case are also protected, as the Modria resolution flows are backed by a security certified, API-enabled case management system.³⁰⁹

Any Trustmark or other certification measures should insist on such security. Furthermore, policymakers should seek ways to ensure that ODR systems and processes are designed and implemented in ways that enable growth and positive change for individuals and society. The goal should be to increase access to justice and enhancement of choices, as well as effective decision making opportunities. ODR continues to innovate to improve the delivery of dispute resolution services in ways that increase peace, trust and access to justice. Furthermore, ODR processes may be effectively integrated both internally within a system and externally with other systems, networks, and entities. As new technologies develop, ODR will become increasingly cost effective, and it will be implemented with other existing systems and networks. Finally, ODR design and implementation should seek to prevent and minimize harm and risk for those involved in dispute resolution processes, with particular attention to those most marginalized and with least access to justice.

VI. Conclusion

ODR is particularly efficient and effective in global e-commerce disputes. It offers means to a remedy where none exist in the face-to-face world. It therefore offers protection for cross-border deals, and helps garner trust from buyers who may fear purchasing overseas. Bypassing the traditional legal system through ODR also allows parties to reduce or eradicate jurisdictional problems, and helps to expedite participation of emerging economies in the global e-market. Moreover, when e-commerce becomes trustworthy, it strengthens expansion of the digital economy.³¹⁰ ODR therefore creates a win-win for companies and consumers in a world moving to online transactions.

This article therefore seeks to promote ODR to empower businesses in developing nations that seek to attract customers on a global level. Establishment of trusted ODR systems incentivizes consumers to make cross-border purchases because it provides consumers with the comfort of knowing there is a cheap and easy means for obtaining a remedy if the purchase goes awry. Although less developed nations are not as digitally connected as more affluent parts of the world, rates of Internet access are growing in these nations through use of mobile devices, and smart phones. Indeed, use of smart phones and tablets is narrowing the digital divide. This article, therefore, encourages growth of global ODR that is accessible through mobile devices as means for increasing access to remedies and trustworthy e-commerce for companies and consumers in developing nations. Furthermore, this global ODR should be simple and efficient. Such a unified process could create a revolution in e-commerce and consumer protection that would be a catalyst for economic development.

³⁰⁹ ‘All the Tools You Need for Online Dispute Resolution’, *Tyler Technologies*, <https://www.tylertech.com/solutions-products/modria/odr> (last accessed September 6, 2017).

³¹⁰ *Id.*