

The Drafting Idea of UNCITRAL ODR Rules and ODR Enforcement Practice in China

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Abstract

ODR is an important method to solve online transaction disputes in Cross-border Electronic Commerce. On December 13, 2016, the UN General Assembly adopted the UNCITRAL Technical Notes on Online Dispute Resolution. The paper introduces the proposal by the Chinese delegation based on process analysis. Disputes between buyers and sellers in online transactions should first be resolved through trading websites. If not, the ODR process is to be started and negotiation with guidance of the neutral party is done. If there is no solution, the neutral guides the buyer and seller to choose a solution that is suitable for both parties, including arbitration, neutral advice, litigation, etc. China actively implements Technical Notes on Online Dispute Resolution. The paper also summarizes two application models: ODDRP and NAPGAC and highlights their characteristics.

Keywords: ODR; Cross-border e-commerce; China

I. Basic Information on the ODR Rules Drafting

At its forty-third session (New York, 21 June-9 July 2010), the United Nations Commission on International Trade Law (UNCITRAL) agreed that a Working Group should be established to undertake work in the field of online dispute resolution relating to cross-border electronic commerce transactions.¹

UNCITRAL finalized and adopted the “Technical Notes on Online Dispute Resolution” at its forty-ninth session in 2016.² The Technical Notes on Online Dispute Resolution are non-binding, and take the form of a descriptive document, reflecting elements of an online dispute resolution process.

In the former half and three years, American delegation insists that arbitration (track I) is the final solution for both parties to an ODR; But, EU delegation requested that consumers be given a second opportunity to make representations (track II). Two opinions are still unsettled. Although the working group organized many consultations between the two sides, no compromise was reached.

At its forty-eighth session (Vienna, 29 June-16 July 2015), the Commission instructed Working Group III that the Working Group would be given a time limit of one year or no more than two Working Group sessions, after which the work of the Working Group would come to an end, whether a result had been achieved.³

For this reason, on November 2014, the delegation of China put forward a third compromise proposal “A tentative idea on the Integration of track I and track II” (A/CN.9.827).

On January 2015, the delegation of China put forward another proposal, “Online dispute resolution for cross-border electronic commerce transactions: draft procedural rules” (A/CN.9.833).

The draft amended the original text article by article and defined the third stage implementation method of ODR.

1) Report of the U.N. Comm'n on Int'l Trade L., ¶ 251, U.N. Doc. A/65/17 (2010).

2) U.N. Comm'n on Int'l Trade L., Res. 2016/49 (Apr. 2017).

3) Report of the U.N. Comm'n on Int'l Trade L., ¶ 349, U.C. Doc. A/70/17 (2015).

II. Proposal by the Chinese delegation based on Process Analysis

A. Comparative analysis of the advantages and disadvantages of Track I and Track II

In drafting the third proposal, the Chinese delegation made a careful comparison between the Track I proposal put forward by the US delegation and the Track II proposal proposed by the EU delegation, which is shown in Table 1.

Table 1. A comparative analysis of advantages and disadvantages of Track I and Track II⁴

	Track I	Track II
Binding or non-binding	Binding	Non-binding
Application	Subject to consumer protection regulations	Not subject to consumer protection regulations
Degree of settlement	Complete settlement	In case of unsuccessful mediation, an unbinding recommendation
Cost and time of dispute resolution	Requires certain cost and time	In case of unsuccessful mediation, cost and time cannot be estimated, often higher and longer than in arbitration, as shown by current situation

B. Analysis of ODR process

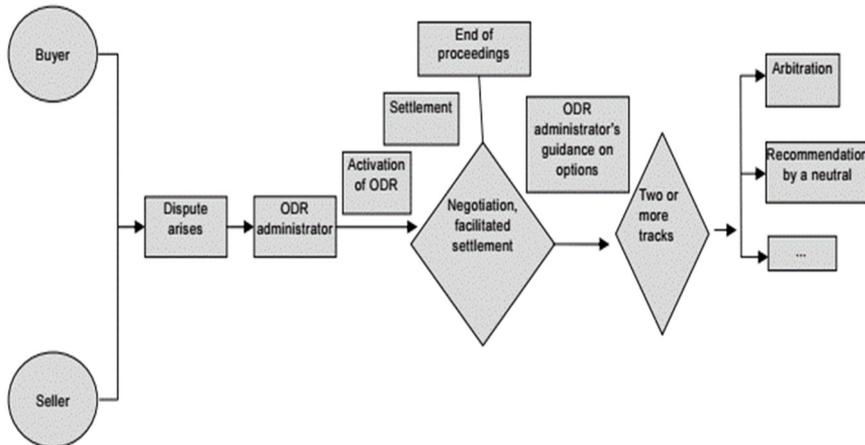
The analysis in the above section shows that Track I and Track II each has its advantages and disadvantages. The new design should maintain their advantages and reasonably integrate them.

On the basis of comparing the US and EU proposals, the Chinese delegation has analyzed the details of the ODR process for cross-border electronic commerce and drawn a new dispute resolution process. The key link and principal contradiction of legal regulation need to be extracted by using fish

4) Report of Working Grp. III(OnlineDisputeResolution),¶72,U.N.A/CN.9/827(2014).

bone chart, and then a new legislative idea to solve the contradiction between Track I and Track II is formed (see Figure 1).

Figure 1: The Process of ODR⁵



C. The proposal of China

The third proposal provided for a three-stage process —Website mediation stage; Negotiated settlement facilitated by a neutral stage; and Guidance selection stage.

In short, disputes between buyers and sellers in online transactions should first be resolved through trading websites. If not, the ODR process is to be started and negotiation with guidance of the neutral party is done. If there is still no solution, the buyer and seller to choose a solution that is suitable for both parties, including arbitration, neutral advice, litigation, etc.

The three stages of legislation is an innovation of the Chinese delegation, which not only solves the contradiction between Track I and Track II, but also provides a good way of thinking for the diversification of online disputes.

On December 13, 2016, the UN General Assembly adopted the UNCITRAL Technical Notes on Online Dispute Resolution.

5) *Id.*

D. The Birth and Development of ODR in China

1. The development of electronic commerce created birth to ODR

By the end of December 2017, the number of Internet users in China had reached 772 million.⁶

The scale of China's e-commerce market has been continuously expanding. In 2017, the volume of e-commerce transactions in China reached 29.16 trillion RMB yuan, an increase of 11.7 % over the same period last year,⁷ of which the online retail sales totaled 7.1751 trillion yuan, an increase of 32.2 yuan over the previous year, and the retail sales of online goods amounted was 5.4806 trillion yuan, an increase of 28.0yuan, accounting for 15.0% of the total retail sales of consumer goods.⁸

China has become the world's largest online retail market. To deal with the growing number of e-commerce disputes, China is actively promoting the application of ODR.

In 2004, the China Electronic Commerce Association set up the “online transaction guarantee Center” and opened an online complaint channel.⁹

E-commerce platforms also actively seek their own online solution mechanism. China's Alibaba has established an online dispute resolution platform - “Honest China” (see Figure 4), which specializes in resolving e-commerce disputes, and has formulated a series of enterprise standards such as “China Alibaba Website Users Honest Rules” and so on.¹⁰

In 2014, a total of 737,204 cases were resolved in Taobao platform, most of which were settled through Honest China.¹¹

6) *The 41st Statistical Report on Internet Development in China*, China Internet Network Info. Ctr 7 (Jan. 31, 2018), <http://cnnic.com.cn/IDR/ReportDownloads/201807/P020180711391069195909.pdf>.

7) Ministry of Commerce, *E-commerce In China 2017* (2018).

8) Nat'l Bureau of Statistics, *National Economic and Social Development Statistics Bulletin of the People's Republic of China 2017*, Nat'l Bureau Stat. (Feb. 2, 2018), http://www.stats.gov.cn/tjsj/zxfb/201802/t20180228_1585631.html.

9) The homepage of China Electric Commerce Association's “Online Transaction Guarantee Center”, www.315online.com.cn

10) *Honest China*, Alibaba, <http://view.1688.com/cms/safe/trust/rights.html> (last visited Oct. 31, 2018).

11) Shi Yuhang, *BAT law firm, sooner or later?*, Weixin (Apr. 29, 2017), https://mp.weixin.qq.com/s?__biz=MzA5NTMwMDgzMA%3D%3D&idx=3&mid=2655484312&sn=14535dea55b9407a48bae35200d74eb.

In order to effectively resolve the online transaction disputes between buyers and sellers, Alibaba launched the “User Dispute Judgment Center” on December 30, 2013, which consists of a mass jury of buyers and sellers, and adjudicates online transaction disputes through vote. The both parties, account registration 90 days, having Alipay certification of real name and good credit, can apply to become a public assessor. After a year of trial operation, there were 480 thousand buyers and 330 thousand sellers to participate mass jury, which had completed 340 thousand judgment tasks.¹²

2. Application status of ODR in China

In 2015, the Chinese courts began trial reform and information upgrade, building a data-centered information system—People's Court Information Version3.0.¹³

Zhejiang Province made experiments e-commerce online court and carried out online dispute resolution in Hangzhou Intermediate Court, Xihu District Court, Zhuji City Court. Other district courts were also actively promoting the construction of network courts.¹⁴

The Higher People's Court of Jilin Province has established an “Electronic Court”, which basically has the functions online filing, online trial, online execution, online marking, online management, network interconnection, and so on.¹⁵

Shenzhen Futian District Court popularizes the remote online judicial confirmation and tries to establish a unified information platform of online mediation and online judicial confirmation. The total time of judicial confirmation is shortened from half a day to half an hour.¹⁶

12) Alibaba, *Alibaba Ecosystem Internet Volunteers Research Report 2016*, Doc88 (Apr. 20, 2017). <http://www.doc88.com/p-9932835002798.html>.

13) *The Main Frame of the Court Informationization 3.0 Version has been established*, People's Network (Feb. 13, 2018), <http://legal.people.com.cn/n1/2018/0213/c42510-29821925.html>.

14) The approval of the Zhejiang Higher People's Court for the Approval of the E-Commerce Online Courts of Four Courts Including the Hangzhou Intermediate People's Court (promulgated by the Zhejiang Higher People's Court, Apr. 27, 2015), http://www.pkulaw.cn/fulltext_form.aspx?Db=lar&EncodingName=2691&Gid=ddf783cfc27e4d501d8f629e72253bcdbfdb&Search_IsTitle=0&Search_Mode&keyword (China).

15) *Jilin Province of China E-Court*, E-Court Gov. China, <http://www.e-court.gov.cn/> (last visited Oct. 31, 2018).

16) *Shenzhen Futian Court first promotes long-range judicial confirmation in Shenzhen city*, Legal daily (June 8, 2018), http://www.legaldaily.com.cn/index/content/2017-06/08/content_7197632.htm.

By the end of June 2018, China has approved the establishment of three Internet courts: the Hangzhou Internet Court, the Beijing Internet Court, and the Guangzhou Internet court. Among them, the Hangzhou Internet court has been running for three years.¹⁷

On 15th March 2018, the Chinese Consumers Association's 12,315 Internet Platform II was launched for online operation officially.¹⁸

The second phase of the platform develops the function of online resolution of consumer disputes, promoting the settlement between operators and consumers first. At the same time, some functions were added including recommendation of commercial and industrial diversion units, filtering of sensitive words, repeated complaint identification and so on.

May 31, 2018, Zhejiang Province's "Online Dispute Diversification Resolution Platform (ODDRP)" began online operation.¹⁹

The ODR platform not only moves the offline dispute resolution model to the line, but also promotes dispute resolution through online mediation, online arbitration, and online litigation layer by layer, so the conflict disputes are constantly filtered and diverted farthest to dissolve the disputes and reduce the possibility of entering judicial proceedings.

The statistics of Zhejiang Province's "Online Dispute Diversification Resolution Platform", by the end of Oct. 19, 2018, are shown in Table 2.

Table 2. The statistics of ODDRP (By the end of Oct. 19, 2018) ²⁰

Project		Component	
Registered Users Number	238,712	Mediators Number	30,943
		Counselors Number	1,446
Visitors Number(million Person-time)	395	Intelligent Consultation Number	690,000
		Cases of Manual Consultation Number	3,375

17) Notice on the Establishment of the Beijing Internet Court and Guangzhou Internet Court (promulgated by the Supreme People's Court of China, Aug. 9, 2018), http://www.pkulaw.cn/fulltext_form.aspx?gid=321364 (China).

18) Nat'l Internet Platform of Consumer Disp. Res., <http://www.12315.cn/> (last visited Oct. 31, 2018).

19) Online Contradiction Dis. Diversification Solution, <https://yundr.gov.cn/> (last visited Oct. 31, 2018).

20) These data may be found through the ODDRP Technical Department directly.

Project		Component	
Requests for Mediation Number	12,5017	Cases of Users a Applying for Mediation Number	6,955
		Cases Registered by Institutions Number	118,062
		Cases of Court Registration Number	34,505
		Referral Case Number	21,873
		Grass-roots Units Registered Number	61,684
		Applications for Evaluation Case Number (888 Case generated assessment reports)	1,679
Total Number of Successful Conciliation Cases	100,684		
Arbitration Cases Number	128		
Litigation Cases Number	643		
Case Number of Applications for Judicial Confirmation	4,113		

On July 28, 2018, in the “2018 Guangzhou Rule of Law Show” activity, the Network Arbitration Platform of Guangzhou Arbitration Commission (NAPGAC) won the top ten cases (matters) award.²¹

NAPGAC innovatively adopts the new network information technology and integrates the legal service resources with the help of the Internet technology. Internet arbitration has been used to resolve a large number of disputes in civil and commercial activities.

The total amount of online arbitration cases accepted by the NAPGAC in 2017 was 2.6 billion yuan. In the first quarter of 2018, nearly 80,000 online arbitration cases were accepted.

Based on the construction of the commercial ODR platform, some enterprises also explored the application of the ODR method to the settlement of some special disputes.

21) Legal daily, *Guangzhong Network Arbitration Selected as the Top Ten Cases of the Rule of Business Environment Construction*, People.cn (July 30, 2018), <http://legal.people.com.cn/n1/2018/0730/c42510-30177975.html>.

Beiming Software Co. Ltd. developed China’s first anti-domestic violence online service mobile platform “e Home Peace” online trial run. It allows mobile phones to call the police, take photos and leave fixed evidence, apply directly for asylum and medical identification, and book free psychological and legal advice online.

In China, network solutions have been launched one after another, such as in the fields of inheritance disputes, labor disputes, doctor-patient disputes, financial lending disputes, and so on.

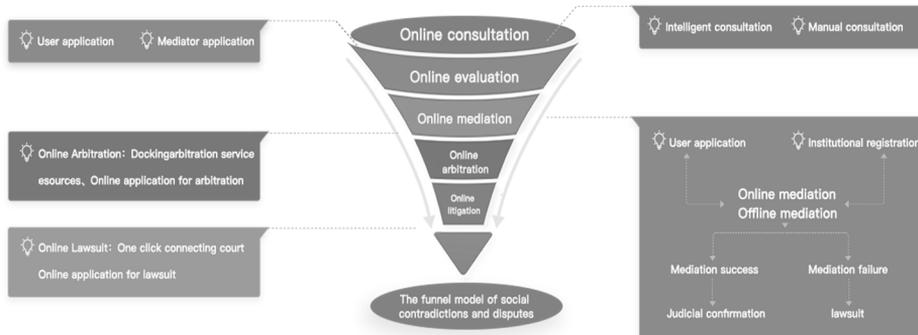
After several years of practice, the idea of resolving online disputes that Chinese delegation had put forward at the United Nations has started to be implemented, and a more mature diversified dispute resolution mechanism has been formed.

E. Application Flow and Characteristics of ODR in China

1. The basic process and characteristics of ODDRP

The basic process of Zhejiang Province “Online Dispute Diversification Resolution Platform” is shown in Figure 2. Figure 2 also shows 5 basic links of solution in online conflict and dispute diversification.

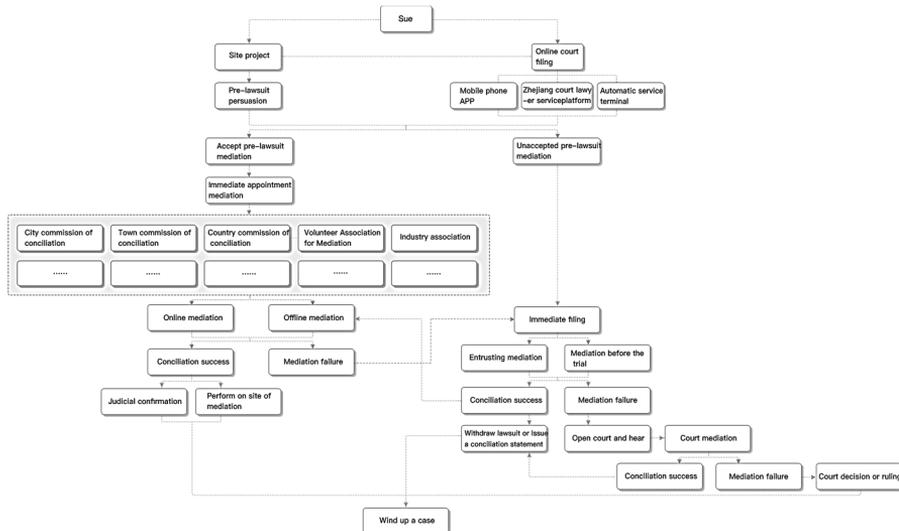
Figure 2: The basic process of Zhejiang Province’s “ODDRP”²²



22) Hangzhou Internet Ct., (lastvisited Oct. 31, 2018).

Figure 3 shows the concrete implementation steps of the online dispute diversification solution.

Figure 3: The concrete implementation steps of ODDRP²³



From Figure 2 and Figure 3, we can see six basic links of online dispute diversification:

(1) Online consultation: Intelligent consultation and manual consultation. Intelligent consultation provides 24-hour intelligent service, manual consultation ensures timely response within 5 minutes.

(2) Online evaluation: According to customer needs, provide a reference pre-evaluation report.

(3) Mediation: It is divided into online mediation and offline mediation. Online mediation can be accessed by computer, APP, small program. the ratio of the two track is generally 5:1.

(4) Online Arbitration: the user can directly apply for arbitration service. At the same time, when the mediation is not successful, the platform will guide the user into the online arbitration stage. Online arbitration accounts for about 2.9 per thousand of the total number of applications for mediation cases.²⁴

23) ODDRP, *supra* note 23.

24) *Id.*

(5) Online litigation: docking court litigation service platform, users can directly apply for litigation services. At the same time, in the unsuccessful mediation, the platform will guide users to online litigation stage. Online litigation accounts for about 1.4% of the total number of applications for mediation.²⁵

(6) Judicial confirmation: Whether it is mediation, arbitration or litigation, whether successful or unsuccessful, there is a final judicial confirmation link. The purpose of setting up this link is to confirm the legal validity of the result of ODR and to improve the effectiveness of law enforcement.

ODDRP shows the following characteristics:

(1) From a practical point of view, the implementation of the third stage (selection phase) in the United Nations online dispute Resolution Technical guidelines has been resolved, and a diversified dispute resolution mechanism has been formed.

(2) Conflicts and disputes are constantly filtered and diffused through the online resolution funnel, which reduces the number of cases entering arbitration and litigation procedures, and effectively improves the efficiency of mediation.

(3) Explores the basic principles of online diversification resolution of all kinds of contradictions and disputes: efficiency priority, specialty priority, stability priority, humanity priority and convenience priority.

(4) Pre-evaluation report for both contending parties, Mediators, arbitrators and judges have a good reference. to the dispute.

2. The basic flow and characteristics of the NAPGAC

The basic flow of NAPGAC is shown in Figure 12.

The platform is divided into three parts:

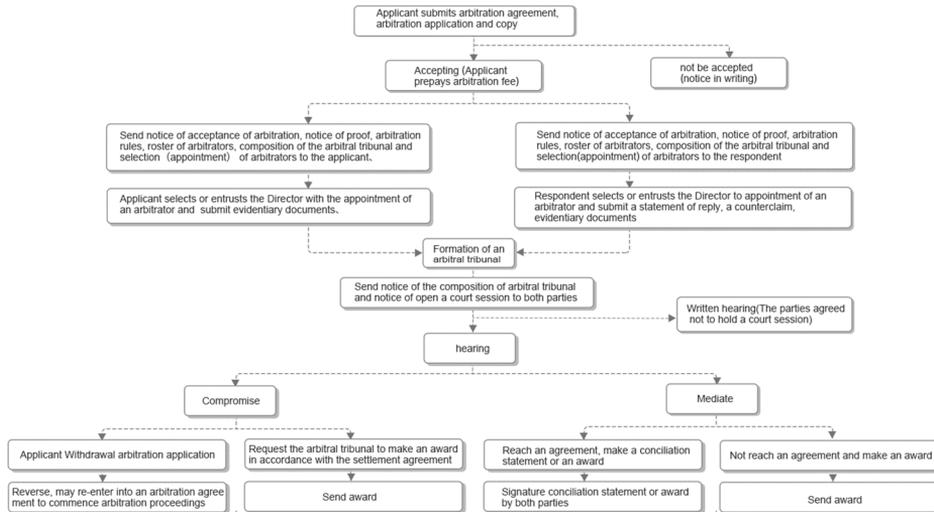
(1) WeChat Public platform, which can provide information for the parties, lawyers and staff;

(2) Network arbitration platform, including online purchase arbitration and online loan arbitration;

(3) Integrated application system, responsible for notification of the progress of the case, network arbitration service, etc.

25) *Id.*

Figure 4: The basic flow of NAPGAC²⁶



There are three main features of NAPGAC:

(1) The cloud platform architecture is implemented. In this cloud platform, there are all kinds of arbitration services and uniform technical standards and service specifications are implemented.

(2) To form a network arbitration ecosystem. From the signing of contracts, the supervision of electronic evidence, the storage of data to the performance of arbitration, a closed ring biosphere is formed.

(3) Formed unified service standard of the network arbitration. Through the establishment of arbitration alliance, it unifies the arbitration service standard, clarifies the arbitration rules, and creates the credibility of arbitration.

F. Directions for further development

1. Improve the recognition of the whole society towards ODR

ODR is a new resolution for dispute, whose mechanism and role are still not clearly learned by Chinese society. People are more familiar with traditional

26) Guangzhou Arbitration Comm'n, *Case Acceptance Flow Chart*, Guangzhou Arb. Comm'n (Apr. 2, 2013), http://www.gzac.org/WEB_CN/GuideInfo.aspx?GuideType=1.

judicial procedures. They are skeptical about the enforcement of online dispute resolution. In order to promote the new model of online dispute resolution in China, Article 60²⁷ of the “E-commerce Law of the People’s Republic of China” passed by the Standing Committee of the National People's Congress of the People’s Republic of China on August 31, 2018 stipulates that e-commerce disputes can be negotiated and settled, be mediated by consumer organizations, industry associations or other legally established mediation organizations, complain to relevant departments, bring to arbitration, or file a lawsuit to resolve. It clarifies the legal status of ODR. Therefore, the e-commerce disputes can be solved effectively by increasing the publicity of the UN's "Technical Guidelines for Online Dispute Resolution", combining with the implementation of China's "E-Commerce Law”.

2. To issue the “Detailed Implementation Rules for Technical Guidelines for Online Dispute Resolution”

From the perspective of China's practice, although the UN's "Technical Guidelines for Online Dispute Resolution" gives the basic ideas for e-commerce dispute resolution, there are still a lot of problems in the specific operation process. On the one hand, there are many details that need to be specified in the process of prosecution, neutral or mediator selection, material delivery, platform acceptance, evidence exchange, neutral assessment, mediation agreement formation, mediation termination conversion other settlement methods, mediation agreement implementation, supervision and management, etc. On the other hand, it is necessary to certify information on their expertise, educational experience, work experience, etc. to protect the neutral status of neutrals, mediators, and arbitrators. It also needs to be evaluated by the parties after mediation and arbitration. The links need to be specified through the implementation rules. Only when those tasks are standardized, the actual promotion of ODR has a solid foundation, and can be seamlessly integrated with existing legal norms.

27) The E-commerce Law of the People's Republic of China (promulgated by the Standing Comm. of the Nat'l People's Cong. of the People’s Republic of China, Aug. 31, 2018), http://www.npc.gov.cn/npc/lfzt/rlyw/node_31834.htm (China).

3. Improve the technical level of the online dispute resolution platforms

E-commerce online dispute resolution relies on the online solution platforms, and the efficient operation of an online solution platform relies on the support from latest information technology. In the dispute resolution process, the most advanced network information technology needs to be applied in the identification of the identity of the party, the application of the electronic signature, the confidentiality of the mediation process, the application of big data in the pre-trial and scenario simulation, the support of the ODR software system, the promotion of cloud storage technology, and the application of blockchain technology. Although there are several online dispute resolution platforms in China that have been implemented in practice, the core application modules independently developed by Chinese companies or vendors are still immature, and the ODR mechanism is not in good agreement with the actual situation in China. They all need to be further improved in the future practice.

4. Strengthen the training of neutrals and mediators

From the perspective of status quo of online mediation in China, the overall level of neutrals or mediators at the mediation center is relatively low, and their understanding of online transaction disputes is not thorough enough. The opinions of both parties to the dispute cannot be fully heard, and the speed of resolving disputes is relatively slow. This situation needs to be improved through various types of training. China needs to set up training courses which combine the characteristics of contradictions and disputes in the industry and professional fields, enrich the content and form of training, and focus on training in social situations, legal policies, professional ethics, professional knowledge and mediation skills. It is necessary to establish and improve the ODR network training platform and the ODR mediation experiment platform, to develop mediator training courses and teaching materials, and to promote the in-depth integration of information technology and ODR training.

III. Conclusion

One and half a year after the publication of United Nations Technical Notes on Online Dispute Resolution, the implementation of this notes will be conducive to the healthy development of e-commerce.

China has actively explored the practice of e-commerce and formed diversified dispute resolution mechanism. The experience of Zhejiang Province and Guangzhou Arbitration Commission has typical popularization value.

The promotion of ODR is only the beginning. China will implement the organizational guarantee actively, mobilize all forces, and form a good application atmosphere for ODR, and make own contribution for the world of e-commerce.

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