

iGLIP Report on ODR

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I. Introduction

1. At the third meeting of the iGLIP on ODR on 8 November 2023, the participating members and experts discussed the latest developments of ODR around the world and the way forward. The meeting noted that there were different ODR realities involving e-commerce platforms providing for dispute resolution with their users, online case management platforms used by existing ADR service providers, dedicated ODR service providers providing their ADR services completely online and possibly other categories of ODR. As such, for mapping of how ODR has evolved under different realities, it is suggested that a more comprehensive study on the standards currently adopted by different platforms or providers would be required and a paper should be prepared in this regard for further deliberation.

2. The meeting also noted the kind offer by the Asian Academy of International Law (AAIL) to assist in the relevant study. The DoJ Project Office for Collaboration with UNCITRAL (which provides support for iGLIP on ODR) has therefore approached AAIL for assistance in obtaining the relevant information from different platforms or providers and to conduct a study on the matter.

II. Characteristics of ODR

3. In this era of digital economy, many service providers, such as arbitral institutions and e-commerce platforms, have provided online dispute resolution services (“ODR”). Yet, ODR encompasses a broad range of features and is sometimes used to cover technology-aided processes. The report sets out below certain characteristics which are commonly considered to be fundamental to ODR.

(1) a central repository for all the information, communications, submissions and evidence related to a particular case, promoting security, accessibility and completeness of information relevant to the case;

(2) an on-demand 24/7 video conferencing system integrated with machine-transcription and -translation, promoting flexibility of hearing schedules and minimizing the cost and time for engaging external service providers attending the hearings;

(3) integration with other tools such as an online, real-time-editable procedural timetable, machine document translation capabilities and digital signature functions.

(4) The use of advanced technologies such as blockchain, Artificial Intelligence (AI) and machine learning.¹

4. These characteristics are of course not exhaustive, nor necessarily accurately reflect the specificity of the platforms. Yet, they provide a starting point by which a study on the legal requirements or good practices of ODR can be formulated.

III. Types of ODR Platforms

5. Many entities have established “ODR platforms”. Broadly speaking, they can be divided at least into 3 types of platforms provided by the private sector. In addition, for this study, we have identified the use of ODR by the Internet Court in China. We have not included any observations relating to their services in this report, but it is

¹ *APEC best practices in using ODR*, p. 6, “Advanced technologies like Artificial Intelligence (AI) and machine learning, which are an integral component of ODR...”, https://www.apec.org/docs/default-source/publications/2023/1/study-on-best-practices-in-using-odr/223_ec_study-on-best-practices-in-using-odr.pdf.

well worth looking into it as a model by which dispute resolution services in the public sector can be enhanced.

The 3 types of platforms, which are not exhaustive, include:

- (1) **Dedicated ODR Platforms:** ODR Platforms that have been set up specifically to provide ODR services (“Type 1 platform(s)”).
- (2) **Platforms by E-Commerce / Other Services Companies:** ODR Platforms that have been set up for e-commerce or other services as part of its “one-stop” services to the customers (“Type 2 platform(s)”).
- (3) **Platforms by Arbitration Institutions:** Arbitral institutions that have set up their own ODR platforms to facilitate, either in whole or in part, arbitrations administered by them (“Type 3 platform(s)”).

6. Service providers for Type 1 platforms usually have specifically designed their own technical solution or software, enabling the whole process of dispute resolution as well as a multi-tier form of dispute resolution process to be conducted entirely online. The attraction is the automation using algorithms with human intervention, only as backup, and usually with a higher level of security. Type 2 platforms are developed to suit the needs of the users on social media platforms as well as e-commerce platforms. Online dispute resolution mechanism is devised, not necessarily by an adjudicative means, but sometimes by way of a recommendation to address the complaints of the users. The main difference between Type 2 on one hand, and Types 1 and 3 on the other is that Type 2 platforms usually adopt a “Jury” system. The platform functions as an intermediary, manages the flow of information and facilitates the exchanges leading to either a recommendation or a decision, depending on the dispute resolution mechanism adopted. As for Type 3, the Arbitration institutions do not necessarily develop their own programmes. Rather, they tend to make use of existing service providers in the market (such as vendors providing video-conferencing facilities: e.g. Zoom) together with email and electronic bundles for information exchanges during the arbitral proceedings. The data and information generated during the proceedings are usually segregated and the security of data and information largely depends on the security provided for by those vendors, and hence more human intervention may be necessary. Some argue that Type 3 platforms are not proper ODR in the sense, but a technology-aided dispute resolution process. Be that as it may, Type 3 platforms have a major share of the market and have been included in this preliminary review.

IV. Standards of ODR

A. Standards of ODR Identified by Some Bodies

7. *ICODR ODR Standards*² lists 9 standards applying to ODR practitioners and to technological platforms, systems, and tools when employed for dispute handling. They are: 1) accessibility, 2) accountability, 3) competence, 4) confidentiality, 5) equality, 6) fairness and impartiality, 7) legality, 8) security, 9) transparency.

8. *Ethical Principles for ODR Initiative*:³ It outlines 16 principles for ODR. These principles designed to enhance the quality, effectiveness, and scope of dispute resolution processes with technological components. They are: 1) accessibility, 2) accountability, 3) competence, 4) confidentiality, 5) empowerment, 6) equality, 7) fairness, 8) honesty, 9) impartiality, 10) informed participation, 11) innovation, 12)

² *ICODR ODR Standards* are available at <https://icodr.org/standards/>.

³ *Ethical Principles for ODR Initiative* are available at <https://odr.info/ethics-and-odr/>.

integration, 13) legal obligation, 14) neutrality, 15) protection from harm; 16) security; 17) transparency.

9. *APEC Study on Best Practices in Using ODR*.⁴ The study lists 5 key elements in designing ODR platforms:

- (1) Include a platform allowing the parties to resolve the dispute electronically;
- (2) All communications should take place via the ODR platform;
- (3) Include algorithmic tools to help parties find a resolution without neutrals;
- (4) Use advanced technology such as artificial intelligence;
- (5) User-Centric. In order to be user-centric, an ODR platform should fulfil these 6 standards: a) Efficiency, b) Accessibility, c) Affordability, d) Usability, e) Empowerment, f) Capacity Building.

10. Additionally, the study outlines 7 basic principles applying to ODR providers and neutrals: 1) accountability, 2) competency, 3) security / confidentiality, 4) equality, 5) fairness and impartiality, 6) legality, 7) transparency.

11. The *ICODR ODR Standards* represent the greatest common denominator. These elements provide guidance or standards against which the legitimacy, integrity and effectiveness of the ODR platforms are measured. These special features can be summarized as follows:

- (1) Accessibility. By its online nature, ODR makes justice accessible to users anytime and anywhere.⁵ ODR must be easy for parties to find and participate in. ODR should minimize costs to participants. By accessibility, one can include concepts such as affordability and usability used in the reference materials. ODR platforms should be mobile-friendly. The use of it should not require emails, as all information should be transmitted via the platform. The ODR platforms should allow parties to participate in the ODR process on their mobile phones, without resorting to other electronic devices, such as a computer.
- (2) Accountability. An ODR system must be accountable to the institutions, legal frameworks, and communities that it serves. It must be auditable and the audit made available to users. This must include human oversight of: i) traceability of the originality of documents and of the path to outcome when artificial intelligence is employed, ii) determination of the relative control given to human and artificial decision-making strategies, iii) outcomes, and iv) the process of ensuring availability of outcomes to the parties.⁶
- (3) Competence. An ODR administrator may wish to implement comprehensive policies governing selection and training of neutrals. An internal oversight/quality assurance process may help the ODR administrator ensure that a neutral conforms with the standards it has set for itself.⁷ An ODR provider must

⁴ *APEC Study on Best Practices in Using ODR* are available at https://www.apec.org/docs/default-source/publications/2023/1/study-on-best-practices-in-using-odr/223_ec_study-on-best-practices-in-using-odr.pdf.

⁵ *APEC Study on Best Practices in Using ODR*, p. 15, available at https://www.apec.org/docs/default-source/publications/2023/1/study-on-best-practices-in-using-odr/223_ec_study-on-best-practices-in-using-odr.pdf.

⁶ From *ICODR ODR Standards*, <https://icodr.org/standards/>.

⁷ *UNCITRAL Technical Notes on Online Dispute Resolution*, p. 3,

https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf.

have legal, technical execution, language, and culture expertise. ODR services must be timely and efficient.⁸

(4) Confidentiality. ODR providers must maintain the confidentiality of party communications, and controls must be put in place regarding i) who will see what data, ii) how and for what purposes that data can be used, iii) how data will be stored, iv) if, how, and when data will be destroyed or modified or shared, and v) how disclosures of breaches will be communicated.

(5) Equality. ODR providers must treat all participants with respect and dignity, and without bias, and enable often-silenced or marginalized voices to be heard. Often-silenced or marginalized voices can be understood as those belonging to vulnerable groups or individuals being made subject to discrimination, who rarely speak out in public, or even if they do, are seldom listened to or often overlooked. These individuals include but not limited to the elderly,⁹ people being discriminated against based on their sexuality, disability, or minority background, as well as those from communities excluded from corridors of power due to a lack of social capital.¹⁰

(6) Fairness and Impartiality. ODR must treat all parties equitably and ensure due process is observed, without bias or benefits for or against anyone. Conflicts of interest, actual or apparent, must be disclosed. An ODR administrator should adopt a code of ethics for its neutrals to guide neutrals as to conflicts of interest and other rules of conduct and adopt policies dealing with identifying and handling conflicts of interest.¹¹

(7) Legality. ODR providers must abide by, uphold, and disclose to the parties relevant laws and regulations under which the process falls. The parties should also be made known that if the rules or provisions agreed by the parties are in conflict with a provision of the law applicable to the ODR proceedings from which the parties cannot derogate, the mandatory legal provisions shall prevail.

(8) Security. ODR providers must ensure that ODR platforms are secure, and data and communications are not shared with any unauthorized parties. Security emphasizes the software and hardware systems and their operational mechanisms. It underscores that they meet design objectives, are in safe and reliable condition, and can withstand unauthorized access, tampering, destruction, and malicious attacks, without actively or passively exposing data and communication processes to unexpected visitors. Thus, security primarily refers to the ability or competency demonstrated by software and hardware systems and their operational mechanisms. Security is very crucial. Under the APEC ODR Collaborative Framework, if an ODR provider fails to ensure a secure environment for communication, it will be removed from the list of APEC partnering ODR providers.¹²

⁸ From *ICODR ODR Standards*, <https://icodr.org/standards/>.

⁹ From the speech by Mr. UN Secretary-General Mr. Guterres, which is available at <https://www.un.org/fr/desa/marginalized-voices-must-be-%E2%80%98included-and-amplified%E2%80%99-digital-technology-space>.

¹⁰ From *The importance of mainstreaming marginalised voices*, available at <https://www.theguardian.com/sustainability/blog/diversity-sustainability-csr-hr>.

¹¹ *APEC Study on Best Practices in Using ODR*, p. 24, available at https://www.apec.org/docs/default-source/publications/2023/1/study-on-best-practices-in-using-odr/223_ec_study-on-best-practices-in-using-odr.pdf.

¹² *The APEC Collaborative Framework For ODR of Cross-Border B2B Disputes - Removal Procedure*, available at <https://www.apec.org/seli/removal-procedure>.

(9) Transparency. ODR providers must disclose a variety of information, such as the form and enforceability of processes and outcomes, the risks and costs etc.¹³ ODR Platforms should (1) publish anonymized data and statistics on outcomes in ODR processes to enable parties to assess its overall record, and (2) provide all relevant information on its website. Disclosing necessary information does not violate the principle of confidentiality. In an e-commerce context, transparency must be balanced against confidentiality, because transparency underpins an ODR process.¹⁴

V. Examples of ODR Platforms

12. As a preliminary study, we have identified examples that provide services in the three Types of ODR platforms described above. They are by no means exhaustive and there are no doubt other platforms in the market that provide services similar to the ODR platform providers that have been identified in this preliminary study. However, in the interests of time and bearing in mind that this is only a preliminary study, these providers have been identified as examples to explore what measures can be done to harmonise, regulate or enhance the ODR services in the interests of access to justice, and in promoting the legitimacy of these processes. A questionnaire has been provided to those platforms so as to collect information on how they address the ODR standards. A comprehensive study is called for in future to expand the scope of research encompass other ODR platform providers.

A. Type 1: Dedicated ODR Platforms

13. **eBRAM**¹⁵: eBRAM is a non-profit charitable organization established in the Hong Kong SAR, China providing, among others, an ODR platform and LawTech products. With respect to its ODR services, it administers through its ODR platform, mediations / arbitrations referred to by the disputing parties, and/or provide ODR platforms to other arbitration institutions. eBRAM utilizes technical means to automate or streamline some part of the dispute resolution process, but does not use artificial intelligence in making case decisions. It is listed as one of five ODR providers globally under the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes.

14. It is noted that eBRAM, in addition to the ODR platform, operates:

- (1) a Deal-Making Platform for business negotiations and deal-making; and
- (2) the Hong Kong Legal Cloud, a set of LawTech tools for, among others, certain qualified legal practitioners and for the dispute resolution community.

15. These services are entirely online and will complement each other's growth and accessibility. One can also see that the distinction among different Types of ODR is not absolute: where contractual parties use the Deal-Making Platform of eBRAM to conclude their contract, the ODR platform may be seen to be providing a "one-stop" service to handle dispute(s), if any, arising from the contract. However, it remains an important feature of Type 1 ODR that disputes are to be resolved by accredited neutral(s) as opposed to employees of the platform provider or members of the public like the Type 2 ODR providers (see below).

¹³ *ICODR ODR Standards*, <https://icodr.org/standards/>.

¹⁴ *UNCITRAL Technical Notes on Online Dispute Resolution*, p. 2, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

¹⁵ According to *Standards Adopted by or Best Practices Developed by eBRAM International Online Dispute Resolution Centre as an ODR Institution and ODR Solutions Provider*.

B. Type 2: Platforms by E-Commerce / Other Services Companies

16. **Alibaba ODR platform**¹⁶: Alibaba is one of the leaders in the e-commerce industry. It's China's largest e-commerce company, with its Taobao and Tmall platforms.¹⁷ Alibaba's dispute resolution platform serves its e-commerce ecosystem and evolves alongside with its business development. It primarily addresses two types of disputes: consumer disputes and intellectual property (IP) infringement disputes, all of which are handled online.

17. These consumer disputes are handled typically as follows: initially, the disputing parties negotiate directly on the platform, utilizing the Ali Wangwang within the platform for communication and evidence sharing. The vast majority of the disputes are resolved between the consumers and the sellers through voluntary negotiation. If the negotiation is unsuccessful, the consumer can file a complaint at the platform requesting refunds without returns, returns and refunds, exchanges, etc. If a complaint is filed, it will first be addressed by the sellers proactively. If it does not result in a resolution that is acceptable also to the consumers, they can request the platform to intervene. Since all sales-related records, including negotiation logs and evidences, are stored on the platform in accordance with the laws, neither party needs to resubmit anything. The platform will make a decision in favor of the seller or the consumer in accordance with the publicly available rules of the platform. Such decision is to take immediate effect. For instance, if the decision is to return and refund, the platform will facilitate the consumer to arrange for the return of the goods via the relevant web pages, and thereafter for the seller to make the refund. If either party is not satisfied with decision of the platform, they can go to the relevant court to seek judicial relief. The platform will provide the evidence in accordance with the requirement of the law. The entire ODR process, from negotiation, evidence submission, mediation and enforceable decision, takes place online, streamlining dispute resolution in e-commerce transactions.

18. **Sina ODR platform**:¹⁸ Sina, established in March 1999, is a leading online media company serving the communities in China and around the world. Its digital media network consists of portal sites SINA.com, Sina mobile, Sina finance, and social media Weibo.com. It helps users gain access to multimedia content created by professional media, institutions as well as individuals when sharing interests and enjoying social interactions with others. Meanwhile, Sina also provides professional services such as FinTech solutions.

19. Weibo was first established in 2009. It is one of the main social media platform in China, allowing individuals to create, share and discover content online, enabling real-time content sharing and global social interaction. It also offers a social media marketing platform for enterprises.

20. Sina FinTech business comprises an array of services including Internet loan matchmaking, online payments, insurance, Fund, security as well as consumer finance.

21. Sina provides three ODR services for the users of Weibo and community at large:

- (1) Weibo Community Management Center: It caters for all users of the Weibo platform. It aims to resolve disputes or infringement complaints on social

¹⁶ [According to our meeting with legal director of Alibaba.]

¹⁷ *China - Country Commercial Guide*, <https://www.trade.gov/country-commercial-guides/china-ecommerce>. Last accessed on March 8, 2024.

¹⁸ *Sina Brief Introduction*, <https://career.sina.com.cn/social-recruitment/sina/43535/#/page/%E5%8E%86%E5%8F%B2%E6%B2%BF%E9%9D%A9>. Last accessed on April 5, 2024

media. In the Weibo Community platforms, some mechanisms for dealing with complaints have adopted a jury system. Members of the public can volunteer to serve as experts or jurors. They have to meet certain criteria as explained below (see paragraph 48). When a complaint is filed, the “jury” in the relevant platforms involved provides advice or recommendations. Anyone who considers that information on Weibo has infringed his/her right can initiate a complaint, and platform administrators will conduct preliminary formal reviews of the complaint. If the complaint shows that there was a clear infringement of rights, the platform administrator will remove the infringing post. For more serious infringements, the user who posted the content may be penalized, such as being temporarily banned. The accused party also has the right to raise an objection. If the complaint amounts to an abuse of process, the platform administrator will dismiss the complaint. If the complaint does not amount to an abuse of process, and the complaint is not a clear infringement of rights, then both sides will have the opportunity to present evidence. Thereafter, the ‘jurors’ will cast their vote on the complaint.¹⁹

(2) Heimaotousu (literally translated as “Black Cat Complaints”): It serves all consumers and product and service providers. It is a non-profit internet-based platform for consumer feedback and dispute resolution. It boasts a relatively large dataset among similar products in China, primarily addressing product credibility issues. It does not directly resolve disputes but facilitates negotiation between consumers and product providers, and identifies responsibilities. Professionals such as lawyers are allowed to provide advice voluntarily. Its distinctive feature lies in leveraging transparency and peer pressure to encourage product providers to proactively reach settlement agreements with consumers and resolve disputes. Under the Heimaotousu platform, when consumers are dissatisfied with products or services they have purchased, they may file complaints on this platform. Platform administrators will assign these complaints to the corresponding product vendors. Vendors, upon seeing these complaints, may follow up directly with the complainant. The complainant may also select to bring the complaint to a panel of pre-registered jurors.²⁰ They provide recommendations, in the form of neutral expert evaluation for the consumer and the vendor to consider. The platform facilitates communication and negotiation, and then identifies responsibilities. This service is provided free of charge for the public at large. Given the platform's significant influence, responsible providers generally take proactive measures to address complaints resulting in negotiated settlement thereby creating a dispute avoidance effect.

(3) Sina People's Mediation Committee: It serves all parties in need of mediation. This is mainly a court-annexed mediation scheme. Parties have the option to entrust the platform with the task of conducting mediation, and courts can also assign cases to the platform when there is no conflict of interest with Sina. Parties to litigate will be encouraged to attempt mediation, and the court will provide online mediation platform for the parties and the mediation organization. According to the statistics provided, on this platform, approximately 75% of cases involve intellectual property disputes, while about 25% are personal rights disputes. Administrators will contact both parties to collect case materials. Upon receiving these materials, the platform will initiate the mediation process, adhering to the guidelines outlined in the People's

¹⁹ *Weibo personal rights complaint handling process*, <https://service.account.weibo.com/roles/complaint>. Last accessed on April 5, 2024

²⁰ The pre-registered “jurors”, referred to collectively as “Bang Bang Tuan” (literally translated as “*Helping Group*”), are a group of invited third-parties drawn from authoritative institutions, renowned media, legal professionals, and industry experts. They are tasked to provide professional advice to the disputing parties.

Mediation Law of China. Communication between parties on the platform can occur real-time or asynchronously. This process can be referred to as an online hearing, and not constrained by time or geographic boundaries, thereby enhancing flexibility. If mediation is successful, an official mediated settlement agreement will be issued. However, if mediation fails, the platform will assist the parties in transitioning the case into formal court proceedings.²¹

C. Type 3: Platforms by Arbitration Institutions

22. With the onset of the use of technology, many if not all arbitral institutions have used technology to enhance their services. Whilst they may be called ODR, one may better understand them as technology aided dispute resolution services as to distinguish them from the types of ODR as described in Types 1 and 2 above. For the present purposes, we would nonetheless include them in this preliminary study as some of them may further develop their ODR platforms to meet the requirements that would advance their services from dispute resolution online to ODR.

23. **SCIA ODR platform**²²: Shenzhen Court of International Arbitration (SCIA) is one of the leading arbitration institutions in China. SCIA utilizes a comprehensive online process for 24/7 case handling. It provides “Wei Zhong Tong” mini-programme (an online communication platform through WeChat) and “cloud arbitration” ODR system services to do arbitration online. The online services provided by SCIA are much closer to ODR than that provided by some other arbitral institutions in that it is a more comprehensive service and data is not fragmentally shared.

24. The said “Wei Zhong Tong” mini-programme integrates arbitration processes with internet technologies, including Tencent Cloud storage, facial recognition, and synchronous multi-party audio and video capabilities. It enables users to manage arbitration online. Its key features include online case filing, identity verification, case inquiries, electronic service, virtual hearings, online payment, and electronic signatures. The parties can import their document of Notice of Arbitration and the system will dynamically generate case details, sparing users from manual data entry. Additionally, parties can select WeChat chat groups and choose relevant chat records to submit as evidence. Identity verification options include mobile verification, basic information validation, and facial recognition, for identity authentication purposes.²³

VI. How Do the ODR Platforms Meet the Standards?

A. Accessibility

27. **eBRAM**²⁴: eBRAM provides a 24/7 and multi-language services. The interface of the ODR Platform itself is available in 2 languages. The translation of documents supports 15 languages, transcription supports 5 languages and the translation of transcriptions supports 2 languages.

28. The commencement of a case is done online to facilitate users and improve accessibility in making a claim.

29. Arbitration cases administered by eBRAM generally include a filing fee and an administrative fee, taking into account the affordability of users. eBRAM services are generally priced based on the amount in dispute, subject to caps for filing fee,

²¹ [According to the Interview Transcription.]

²² [According to SCIA’s feedback to *Questionnaire for ODR Providers*.]

²³ [According to SCIA’s feedback to *Questionnaire for ODR Providers* and its WeChat Official Account, <https://mp.weixin.qq.com/s/bdtthhYX2vbHFiLukv16Hg>]

²⁴ [According to eBRAM’s feedback to *Questionnaire for ODR Providers*.]

administrative fee and neutrals' hourly rates. Fixed fees apply for disputes involving amounts falling under the specified threshold.

30. **Alibaba ODR platform**²⁵: The Alibaba ODR platform primarily caters for the domestic market in China, operating 24/7 and extending their services to all consumers and sellers free of charge. It only offers their services in Chinese.

31. Navigating through the platform is designed to be user-friendly in that users are guided to gain access to the platform and make selections.

32. In accordance with the nature of disputes mediated by this platform, ancillary services such as translation, transcription, or video conferences are considered to be unnecessary, and not provided.

33. **Sina ODR platform**²⁶: Sina ODR platform offers a bilingual interface and service provision in both Chinese and English. According to the information provided, the operational interface is noted for its convenience and user-friendliness, with minimal user feedback issues. Comprehensive entry and process guides are available on the interface. For instance, accessing the 'Complaint' option of any Weibo post redirects users straight to the complaint page. Weibo's public documents provide guidance on the complaint submission process. Regarding the processing time, the Weibo Community Management Center stipulates varying deadlines for different complaint types, typically resolving complaints related to personal rights and interests within five working days.

34. As a free and publicly available platform on the internet, the Heimaotou (Black Cat Complaints) is probably one of the most accessible platforms. At its interface, the 'I want to complain' option serves as the entry point for complaints, complemented by a 'New User Guide' providing detailed instructions on the complaint process. Conversely, the resolution of complaints on the Heimaotou (Black Cat Complaints) platform is contingent upon the responsiveness and actions of the implicated seller, and the platform imposes no fixed deadlines. The complainant and seller joined the process voluntarily and the degree of participation very much leverages on the transparency of this platform.

35. Both these services are available 24/7 and are free of charge for all users.

36. **SCIA ODR platform**²⁷: SCIA's platform provides 24/7 Chinese and English services. There are video conferencing and digital signature functions, and translation and transcription functions can be realized through linking Tencent meetings. It has clear entrance and process guidance. The parties can use its online platform following instructions after registering with the ODR system.

37. After a party has initiated an arbitration process, feedback is given within five days for cases filed remotely (i.e., online) and on the same day for cases filed on-site by appointment. In 2023, it took 95.05 days on average from composition of an arbitral tribunal to conclusion of the case.

B. Accountability

38. **eBRAM**: eBRAM services are divided into the provision of institutional services and the ODR Platform. eBRAM takes responsibility in case there are glitches during the provision of its institutional services or if there are technical bugs or outages with its ODR Platform that are within its control. Users bear responsibility for providing

²⁵ [According to Alibaba's feedback to *Questionnaire for ODR Providers* and our meeting with legal director of Alibaba.]

²⁶ [According to Sina's feedback to *Questionnaire for ODR Providers* and our meeting with legal director of Sina.]

²⁷ [According to SCIA's feedback to *Questionnaire for ODR Providers*.]

accurate information to eBRAM in order for eBRAM to provide its institutional services, for familiarising themselves with the use of the ODR Platform, and for operating the ODR Platform where the ODR Platform is online and performing as designed.

39. Users can contact eBRAM via the eBRAM Platform, via phone, email or or a physical visit to eBRAM offices in case they have complaints or feedback. The complaints or feedback are evaluated by the internal team and if the feedback is to be implemented, it will become part of the general improvement process within eBRAM.

40. Where eBRAM serves as the administering institution for an arbitration case, the arbitral award(s), are subject to supervision of the court of the seat of the arbitration. Insofar as eBRAM's own responsibility is concerned, the Arbitration Ordinance of the Hong Kong SAR, China and the case law provide that an entity exercising or performing a function of an administrative nature in connection with arbitral proceedings is liable in law for the consequences of its act or omission only if it is proved that the act was done or omitted to be done dishonestly.

41. **Alibaba ODR platform:** In cases where consumers or sellers disagree with the decision of the platform's neutral, they retain the option to initiate legal proceedings in court. According to Chinese judicial rulings, as long as the platform adheres to its obligations as a prudent administrator in its determinations, even if the judicial verdict ultimately contradicts the platform's decision, the platform does not bear responsibility. In a way this reflects the feature that the platform's neutral decision is interim and not binding as it is enforced or complied with voluntarily.

42. The platform refines its rules and enhances consumer complaint experiences based on complaint data. Complaints and feedback received from consumers and the general public often provide suggestions to optimize related operations. In cases where consumers challenge the platform's decision and resort to legal action, the platform will provide evidence to assist the court.

43. **Sina ODR platform:**

- (1) Weibo Community Management Center: The platform remains subject to ongoing supervision by regulatory and judicial authorities, as well as public scrutiny. The platform will conduct a user experience satisfaction survey for each complaint handled. Additionally, users will have access to feedback channels where they can share their opinions and suggestions. Users can provide feedback on any issues, such as unclear complaint categories, difficulty finding the complaint submission portal, complex processes, and dissatisfaction with any rules.
- (2) Heimaotousu: The platform is supervised by judicial departments and the public. It provides mailbox for user feedback, on the Heimaotousu platform. Users can also rate the Heimaotousu App on app stores.
- (3) Sina People's Mediation Committee: As mediators, adherence to the *People's Mediation Law of the People's Republic of China* and relevant behavioral norms is required, with corresponding responsibilities in case of issues arising as per relevant laws and regulations.

44. **SCIA ODR platform:** The supervision department of the SCIA carries out periodical supervision and evaluation mechanism. The complaints of the disputing parties will be tracked, and the relevant results will be disclosed to the specific parties. SCIA also have obligation to cooperate with outside supervision.

C. Competence

45. **eBRAM:** Neutrals, arbitrators and mediators who have demonstrated and been vetted for experience and knowledge in dispute resolution are admitted on eBRAM Panels of Neutrals, Arbitrators, and Mediators.

46. Neutrals to be appointed in a case are then selected depending on qualification, expertise, knowledge and other requirements from the parties. Priority in selection is given to those Neutrals who are on eBRAM's Panel of Neutrals. Seminars, workshops, ODR trainings are also arranged to improve administrators' and neutrals' skills and competence in ODR.

47. **Alibaba ODR platform:** The platform not only formulates rules but also serves as an adjudicator during the dispute resolution process. Continuous training is provided to platform employees with a view to provide better services to the users.

48. **Sina ODR platform:** Neutrals encompass various categories, including the Weibo Community Expert Committee, Weibo Community Committee, Weibo Community Volunteers, Black Cat Complaints Help Team, and People's Mediators. The selection criteria for neutrals are as follows:

(1) Weibo Community Experts: Individuals of upstanding character with a strong professional reputation; Recognized expertise in specific fields; Familiarity with status, issues, policies, and regulations within their respective domains; A certain level of understanding of internet ecosystems and digital content governance.

(2) Weibo Community Committee Members: Aged 18 or above; Weibo registration for at least one year; Completion of mobile phone verification; Weibo membership level \geq VIP6 / SVIP1 / VVIP1; A credit history score of 120 points; No violations recorded in the past three months; Passing the Community Committee qualification examination.

(3) Weibo Community Volunteers: Aged 18 or above; Weibo account registration for at least one year with a verified phone number; A credit history score of 120 points; Must provide genuine and valid personal information during registration, possess some experience in complaint handling, and be capable of correctly identifying and reporting violations; Passing the ability test for recognizing violation information.

(4) People's Mediators: Mediation institutions are closely integrated with the courts. Mediators must be certified for their positions, as mandated by China's qualification review mechanism, rather than being selected by Sina. While not necessarily possessing knowledge specifically related to intellectual property, mediators should have a certain background in commerce and mediation skills.

49. Periodic training mechanism for ODR staff and neutrals are provided.

50. **SCIA ODR platform:** To SCIA, third party neutrals are the arbitrators. According to the Arbitration Law of China and SCIA Arbitration Rules, the selection criteria include: at least 8 years of practical experience in the legal field, especially in the field of dispute resolution, and extensive professional knowledge and experience in the relevant industry fields, etc. SCIA will provide regular training for arbitrators.

D. Confidentiality

51. **eBRAM:** New users of the eBRAM ODR Platform are required to agree to the Personal Information Collection Statement which governs the collection, use, processing and handling by eBRAM of personal data of users.

52. eBRAM's ODR Platform is user-account based. User accounts have different permissions with regards to read- and write-access which depends on the role of the user in the arbitration or mediation. For example, all parties to a case will generally be able to view the documents submitted by both parties onto the arbitration record but only arbitrator accounts have additional access to a document repository that is accessible only to the arbitrators of the same tribunal. Third parties do not have access to cases not belonging or associated with them.

53. Data can be used by the parties for their cases. Parties can upload and download documents on demand. Personal data of the parties submitted to eBRAM is used only for the purposes of supporting the dispute resolution process itself. As a matter of policy, eBRAM does not use user data for training any artificial intelligence system.

54. Data is encrypted and stored in data centres based in the Hong Kong SAR with capacity to increase availability and reliability of the system. Data can be removed and destroyed by the parties from the eBRAM ODR Platform on their own accord or upon request. Data submitted on the arbitration record may not be readily modified or destroyed and may be subject to procedural mechanisms as agreed between the parties and the tribunal. Basic data about a case is retained for eBRAM's record for a minimum of 7 years as a matter of the legal requirements.

55. In case there has been a data breach, users will be notified by email. The reason for the breach will be analysed and eBRAM will determine, with recommendations from external security advisors, if necessary, the best way to mitigate the reoccurrence of the breach.

56. **Alibaba ODR platform:** Data collection and utilization adhere to the regulations of Chinese laws, obtaining user consent through legitimate means such as user agreements. All actions involving data access must comply with the relevant laws and the data security provisions of the Alibaba Group through established procedures. Professional customer service personnel directly engaged with inquiries/complaints/reports have access to user information in order to discharge their duties. Other personnel who handles or supervises customer service, may only access relevant content upon authorization. Records of queries and browsing are retained.

57. Unless there are mandatory retention requirements under the law, relevant data within the period necessary to achieve the purpose of data collection will be retained bearing in mind the statutes of limitations. After the retention period expires, it will be deleted or anonymized in accordance with applicable legal requirements.

58. In the event of a breach of confidentiality, the platform follows the investigation and disciplinary procedures outlined in the 'Alibaba Group Employee Disciplinary Regulations (2023 Edition)'.

59. **Sina ODR platform:** Pre-procedural measures are implemented to obtain user consent before collecting, using, or sharing specific data. Some publicly available data is displayed to all users, while other data is kept internal to the ODR platform and not publicly disclosed.

60. In accordance with applicable data protection laws, data is stored within the territory of China. Data is retained only for the period necessary for the purposes described in the 'Weibo Personal Information Protection Policy' and within the time limits required by laws. Upon expiration of the statutory protection period or upon receipt of user requests for amendment or deletion, data is amended or deleted accordingly.

61. **SCIA ODR platform**²⁸: SCIA only collects necessary information for the conduct of the arbitration proceedings. Currently it does not have a procedure for obtaining the consent of the parties to collect their information and data. The data can be only used for the case management, and statistics of SCIA.

62. The data stored is encrypted. Data is stored permanently and cannot be modified except for extraordinary circumstance. If there are any breaches of data security, notifications will be issued. SCIA has specific and detailed guidelines to cope with these situations. It also provides training and other measures to prevent re-occurrence.

E. Equality

63. **eBRAM**: By being online and cloud-based, the design of the eBRAM ODR Platform inherently is to improve accessibility to all parties regardless of their geographical distance. The minimum requirement is that they have access to a computer, mobile or tablet with an internet connection. eBRAM also provides machine document translation and real-time machine translation for transcriptions, which may be used to overcome language barriers.

64. **Alibaba ODR platform**: The platform will provide ODR service to any consumer using its platform.

65. **Sina ODR platform**: It accepts complaints without considerations of factors such as geographical distance, language barriers, technical proficiency, or economic capacity. Instead, they aim to mitigate potential inequalities by leveraging the unique features of certain mechanisms. For example, the Weibo Community Management Center has established a dedicated DMCA complaint channel for overseas rights holders, while the Heimaotousu (Black Cat Complaints) mechanism inherently reduces potential disparities in status between consumers and sellers.

66. **SCIA ODR platform**: By providing "Wei Zhong Tong" mini-program and "cloud arbitration" ODR system services, it facilitates the submission of arbitration applications and defense opinions and evidence online, as well as online hearings, electronic delivery etc., so as to reduce the impact of different factors such as geographical distance, language barrier, economic ability of parties to participate in arbitration proceedings.

F. Fairness and Impartiality

67. **eBRAM**: eBRAM has published its code of ethics for arbitrators and neutrals. The Hong Kong Mediation Code also covers the ethics and behavioural norms of mediators.

68. Before appointment of an arbitrator, mediator or neutral by eBRAM, arbitrators, mediators and neutrals are required to confirm their availability, independence and impartiality by signing a Statement of Acceptance, Availability, Impartiality and Independence. If an ODR administrator / case manager is conflicted, he or she will need to disclose it to eBRAM, and will not be assigned to take charge of the case. The case will be assigned to another ODR administrator / case manager.

69. As for neutrals, mediators and arbitrators, the Statement of Acceptance, Availability, Impartiality and Independence is circulated to the parties for comments before appointment. In addition, and in accordance with eBRAM's Rules, the neutrals, mediators and arbitrators have a duty to disclose any conflict of interests throughout the proceedings.

²⁸ [According to SCIA's feedback to *Questionnaire for ODR Providers*.]

70. As for ODR administrators / case managers, upon receipt of a new case, or as soon as the administrator / case manager has been made aware of the existence of parties in a new case, they should disclose the circumstance(s) giving rise to the conflict internally and refrain from reviewing and handling the case. The concerned case shall be reassigned to another ODR administrator / case manager.

71. eBRAM also takes two measures to address technological impartiality, namely 1) human supervision over automated systems, and 2) providing technical training to the users.²⁹

72. eBRAM maintains human supervision over automated systems. Practically this means that eBRAM's case team will monitor the progression of cases and at key points during the procedure, the case team is required to review and approve before the automated system can proceed further.

73. The objective of maintaining a level of human supervision is to ensure any arbitration and mediation process remains properly within the legal framework applicable to the said process, e.g. to eliminate or avoid any bias which may lie in automated algorithm itself and comes from the developers.

74. While the disputing parties will generally be responsible for supplying their own technology hardware and internet connection, eBRAM provides training on using eBRAM's systems to help ensure that parties are equally able to access the features of eBRAM's systems.

75. **Alibaba ODR platform:** The platform is independent from both buyers and sellers. The platform sets up a specific team to provide customer service and address consumer disputes in accordance with the publicly available rules of the platform. This customer service team may not be legally trained. However, to improve the customer service to promote efficiency and customer satisfaction, training is provided regularly to the staff involved.

76. The Alibaba ODR platform features a mechanism known as “Da Zhong Ping Shen” which means “Judged by Folks”. This system operates like a “jury”, selecting members automatically and randomly from the platform’s vast user base. A standard “jury” consists of 14 “jurors”, with 7 drawn from among other sellers and another 7 from among other buyers of the platform, all of whom have no connection to the disputing parties. The platform’s sophisticated cloud system leverages various parameters, such as IP address, transaction history, geographical location, business relationships, to verify the independence and integrity of each “juror”, safeguarding against biased or malicious participation. Decisions within this mechanism are reached by majority vote. The composition of the “jury” and the decision-making process may vary a little according to different types of disputes to reflect specific context of each type.

77. **Sina ODR platform:**

- (1) Weibo Community Management Center: Staff and neutrals are required to adhere to various ethical and behavioral standards, such as the 'Weibo Community Code of Conduct', the 'Community Expert Committee Charter', and the 'Community Committee Charter'. Currently, there is no mechanism in place to identify and eliminate conflicts of interest between neutrals and the parties being complained against. If the party complained wishes to raise an objection, it can do so via the

²⁹ According to *Standards Adopted by or Best Practices Developed by eBRAM International Online Dispute Resolution Centre as an ODR Institution and ODR Solutions Provider*.

‘appeal channel’ provided by the platform. The platform will handle such matters in accordance with the law.

- (2) Heimaos Tousu: It does not operate as an ‘adjudicator/arbitrator’. It is merely a platform for consumers to raise their consumer disputes, and for the consumers and the sellers to resolve the disputes through negotiation.
- (3) Sina People’s Mediation Committee: According to the People’s Mediation Law of China, mediators must be certified, and their certificates are issued by the People’s Mediation Committees, not by Sina. Sina does not have regulations specifically targeting the fairness and impartiality of mediators. However, if a case is entrusted to the platform by a judge for mediation, the judge will firstly assess whether there is a conflict of interest with Sina. If there is no conflict of interest, the case will then be assigned to the Sina Mediation Committee.

78. **SCIA ODR platform:** The arbitrators shall abide by the Chinese Arbitration Law, the SCIA Arbitration Rules and the Code of Conduct for Arbitrators. The internal management personnel of the SCIA shall abide by internal norms such as the procedure management regulations.

79. SCIA provides guidelines on conflict of interest for arbitrators to avoid conflicts of interest. When a possible conflict of interests situation is identified, disclosure, recusal and other procedures would be triggered according to the guidelines. If an arbitrator becomes aware of a conflict of interest situation, he/she is required to disclose it immediately to the SCIA and to the parties, which can be disclosed through the ODR system.

G. Legality

80. **eBRAM:** The relevant law and regulations under which the dispute resolution process falls depends on the seat of the arbitration that the parties have chosen. By default, the seat is the Hong Kong SAR, in which case the laws and regulations of the Hong Kong SAR apply. The information on the default seat is included in the eBRAM Rules and is publicly available.

81. **Alibaba ODR platform:** Two of the platforms of Alibaba, Taobao and Tmall, have developed detailed platform rules based on customary practice and laws relevant to trade. These include the ‘Taobao Platform General Rules’ and the ‘Taobao Platform Dispute Resolution Rules’.³⁰ All these rules are publicly available through the Rules Channel (rule.taobao.com). Platform disputes adhere to the relevant rules. The ODR platform is an integral part of Alibaba’s competitiveness. The platform’s goal is to serve consumers well and continuously improve the business environment for sellers, aligning consumer complaint resolution with platform development.

82. **Sina ODR platform:** Through instruments such as the ‘Weibo Complaint Operational Details’ developed in accordance with the laws, all parties are made aware of the legal obligations that the Sina ODR platform and the parties involved should adhere to. They lay down the framework of the rules by which the platform operates.

83. **SCIA ODR platform:** SCIA send rules to the parties along with case materials.

H. Security

84. **eBRAM:** eBRAM adopts bank-grade encryption for data storage and conforms ISO/IEC 27001:2022 standards for Information Security Management System (ISMS).

³⁰ Platform Rules, <https://rulechannel.taobao.com/#/rules>.

Data input from the user browser is to be transmitted through Secure Real-time Transport Protocol (SRTP) with data encryption, and all data stored in the database hosted in the Hong Kong SAR are encrypted.

85. Application penetration tests have been conducted on all eBRAM systems, by a Big-4 firm to ensure that the cybersecurity risk was on an acceptable level before the system rollout. In addition, eBRAM recently obtained an ISO27001 certificate with respect to its application of the best practices in information security management.

86. The eBRAM platform is cloud-based and is constantly monitored with security updates implementable on-the-fly. Third-party independent security professionals from a Big-4 firm are engaged to evaluate potential security risks. Precautions include conducting penetration tests and preparing for simulations for contingencies.

87. When there are any security issues, breaches involving personal data or loss of security will be notified to users according to relevant privacy legislation such as the *Personal Data (Privacy) Ordinance* (the PDPO) in the Hong Kong SAR, the *Personal Information Protection Law* (PIPL) in Mainland China and the EU General Data Protection Regulation (GDPR) in Europe.

88. **Alibaba ODR platform:** Alibaba ensures security through data classification, permission management, log retention, security audits, and emergency response measures. China's *E-commerce Law* stipulates specific requirement for e-commerce platforms. Alibaba places great emphasis on data protection. It has achieved Level 3 Certification under the China National Standard (*Information Security Technology – Baseline for Classified Protection of Cybersecurity*, GB/T 22239-2019), a level of security equivalent to the requirements for financial systems in China.

89. **Sina ODR platform:** Sina ODR platform employs encryption technologies such as Transport Layer Security (TLS) and provides browsing services through HTTPS to ensure the security of users' personal information during transmission. User's personal information is encrypted and stored using encryption and isolation technologies. When utilizing personal information, such as for personal display or correlation calculations, various data anonymization techniques including content replacement and encryption are utilized to enhance the security of personal information usage. Strict data usage and access policies are established, with rigorous data access control and multi-factor authentication technologies employed to protect personal information and prevent its unauthorized use. Specialized data and technical security audits, along with measures such as log auditing and behavioral auditing, are implemented.

90. It has achieved Level 3 Certification under the China National Standard, meeting the requirements of domestic authoritative certification standards in terms of information security, and has obtained corresponding certifications. Regular security checks and updates are conducted. In the event of accidents or force majeure leading to information leakage, the platform will try to contain the situation and promptly inform users of the cause of the incident, the security measures taken by the platform, and relevant information on proactive security measures users can take.

91. **SCIA ODR platform:** SCIA takes security measures in accordance with *PRC Data Security Law*, other laws and regulations. It has implemented firewalls for external blocking and alerts and have technicians for troubleshooting and alerts when needed. It's security of encryption measures for data and communication processes has undergone and passed authoritative security assessments and tests, thereby meeting the requirements set forth by relevant regulatory authorities.

92. SCIA conducts biannual comprehensive security checks on the ODR platform and update the system from time to time. Should any substantial security issues arise, the system will alert users via SMS or email.

I. Transparency

93. **eBRAM:** eBRAM publishes its rules and guidelines which include information on fees, but it does not currently publish on a regular basis statistics regarding its service operation. eBRAM also shares general knowledge of enforceability issues on its website, leaflets, seminars etc. eBRAM does not publish anonymized data and statistics on outcomes in ODR processes regularly.

94. eBRAM does not implement artificial intelligence or machine automation to form or affect any decision. Human arbitrators and neutrals remain solely responsible for making decisions on cases.

95. **Alibaba ODR platform:** Alibaba has publicly disclosed various rules and dispute resolution processes, but as ODR is an internal operational measure of the platform to serve consumers, related case statistics are not made public.

96. **Sina ODR platform:** Sina ODR platform publishes its operating norms, collected personal information categories, compliance with laws, etc., through documents such as the ‘Complaint Handling Process Disclosure’³¹, ‘Personal Information Collection List’³², ‘Weibo Personal Information Protection Policy’³³, ‘Community Expert Committee Charter’³⁴.

97. Regular publication of various data will also be conducted. The homepage of the Weibo Community Management Center displays the ‘Number of Reports Received’ and ‘Number of Completed Decisions.’ The official Weibo account ‘Weibo Administrator’ regularly publishes processing data for certain types of disputes, including the number of complaints received each month for insults and defamation, privacy breaches, and the corresponding effective resolution. The homepage of the Heimaotousu (Black Cat Complaints) platform displays ‘24-Hour Effective Complaints’ and ‘Total Effective Complaints.’ All cases on the Black Cat platform, along with their negotiation processes and content, are publicly available. Even completed cases are not deleted and remain in the public domain.

98. **SCIA ODR platform:** SCIA lists the ODR services, service fee, time arrangement, service quality, effect, and the result of supervision and evaluation on its website. It also discloses the form and enforceability of dispute resolution processes and outcomes in advance in accordance with the Arbitration Law and the SCIA Arbitration Rules. If there is a jurisdictional risk, it will be notified at the time of filing, and the costs incurred and fee standards will be released according to the SCIA Arbitration Rules.

99. Statistics such as the number of cases accepted, the amount in dispute and relevant analysis are published annually, through its WeChat official account and official website.

VII. Observations

A. Self-Regulation and Government Intervention

³¹ <https://service.account.weibo.com/roles/complaint>

³² <https://m.weibo.cn/c/privacy/personalInfoList>

³³ <https://weibo.com/signup/v5/privacy>

³⁴ <https://service.account.weibo.com/council/professorcouncilrule>

100. **Self-Regulation and Government Intervention:**³⁵ There is a discussion about allowing online communities to autonomously resolve disputes through mechanisms like online jury proceedings in addition to the traditional form of dispute resolution processes such as mediation or arbitration. While self-regulation is important, it is acknowledged that guidance or best practice from governmental or intergovernmental intervention is also necessary. UNCITRAL may be well equipped to provide guidelines.

B. Challenges to Type 2 Platforms

101. **Challenges to Type 2 Platforms:**³⁶ However, this type of ODR platforms face some challenges, such as:

- (1) **Conflict of Interest:** The potential conflict of interest arising from platform operators having main businesses, such as e-commerce, while also providing ODR services, requires attention. There may be a problem of fairness and impartiality. Balancing the interests of different stakeholders in such scenarios is crucial.
- (2) **Recognition of Decisions:** Determining the legal nature of decisions made within the platforms, and their recognition and enforceability beyond the platform, poses a significant challenge. This involves understanding how these decisions fit within existing legal frameworks.
- (3) **Role of Platform Policies:** An ODR platform is a tool for the parties to resolve their disputes and the consensual nature remains the cornerstone of the success of the tool. It is therefore important to strike the right balance on parties' autonomy in managing their own dispute resolution process on one hand; and the internal policies of the platform (such as terms and conditions) governing the said process. There is a need to address questions about which procedural and substantive laws apply within the platforms, and whether platform policies should serve as the applicable law for these decisions.
- (4) **Incorporation of AI and Automation:** Integrating artificial intelligence systems and automation into an ODR platform raises several challenges. These include determining the extent to which AI can be used to make legally effective decisions and enforce them automatically, as well as developing standards for such AI-driven processes.

102. Addressing these challenges is essential for the effective and fair operation platforms and ensuring their acceptance and legitimacy within legal contexts.

C. Use of AI to Facilitate Settlement

103. Given that AI is naturally incorporated in ODR platforms, the use of AI should not be overlooked. AI can automatically predict the success rate of current cases, as well as the possible outcomes. This way, parties may be more inclined to negotiate a settlement, before entering into more confrontational form of dispute resolution such as arbitration.

104. In 2022, Brazilian researchers conducted an investigation, training their system with a massive number of cases and using it to predict the outcomes of other cases.

³⁵ Comments by Professor Yun ZHAO, at the conference of 2024 Tokyo Forum on Dispute Resolution, held on 13 March 2024.

³⁶ Comments by Professor Teresa Rodriguez de las Heras Ballell, at the conference of 2024 Tokyo Forum on Dispute Resolution, held on 13 March 2024.

They trained three deep learning (a kind of machine learning technology) architectures on 612,961 Brazilian Federal Small Claims Courts appeals within the Brazilian 5th Regional Federal Court to predict their outcomes. They compared the predictive performance of the models to the predictions of 22 highly skilled experts. All models outperformed human experts. They concluded that the results demonstrate that natural language processing and machine learning techniques provide a promising approach for predicting legal outcomes.³⁷

105. Alibaba company has introduced a platform called Tongyi Farui, where users need not use professional legal terminology. Based on the user's description of scenarios the platform provides relevant laws and similar case precedents according to the facts and legal demands of the user's case. It can also offer legal-based viewpoints, similar cases, and strategic advice. Moreover, it analyzes whether and if so how one claim meets the legal requirements. Although it does not directly provide the odds of winning for the parties, this approach essentially allows them to have a better understanding of their chances of success in the case.³⁸

D. Nature of “decisions” provided by platforms

106. Apart from Types 1 and 3, it can be seen that the “decisions” that are provided by the Type 2 platforms are not, strictly speaking, a legally binding decision with which the parties are mandated to comply. The role of the Type 2 platforms is mainly that of a facilitative nature. Yet, the use of the “jury” system as part of the facilitation services by these Type 2 platforms has a lot of benefit that are akin to the jury system in criminal matters and in fact even more apt in resolving social media platform disputes, as well as consumer type disputes. However, the exact nature of the decisions made by the neutrals when the initial recommendation, opinion or evaluation is not accepted will have to be better characterized. It may well be interim in nature yet they in fact often become the final decision which is enforced by the platforms or complied with voluntarily. It is easy to try and use the terminology or concepts of existing dispute resolution mechanisms to characterize their nature but one may wish to be more innovative in this exercise so as not to prohibit the development of ODR.

E. Enforceability of the recommendations or decisions

107. Given that the “decisions” made by the neutrals in the Type 2 platforms are not, on its face, legally binding, one would have thought that the enforceability of such decisions would be a matter of concern. However, from the experience of the Type 2 platform providers, that is not the case. It appears that the transparency of the platforms, in particular, the “Hei Mao Tou Su” (Black Cat Complaints) platform, provides a great incentive, or some may call peer pressure, for the parties to comply with these recommendations or decisions. This may have shed light on how one has viewed the private and confidential nature of alternative dispute resolution as compared to the court systems. It may be useful to explore how such transparency can be used to develop dispute avoidance measures through conflict resolution before differences crystallised into formal disputes.

F. Degree of Human intervention

108. Once the algorithms that are used to devise the automated system is established and verified, where possible, as being without bias and neutral, it is advantageous that human intervention be kept to a minimum. Whilst supervision and backup are necessary, breaches of IT systems are often a result of human errors. Therefore, a

³⁷ Details are available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9333285/>.

³⁸ Details are available at <https://tongyi.aliyun.com/farui/chat>.

well-developed, automated with AI, encrypted and secured system may be seen as more desirable than one that constantly necessitates human intervention for its operation. Both Types 1 and 2 platforms tend to have a reduced level of human intervention during the operation of the processes. For Type 3 platforms, given that it is generally more of a technology aided process, human intervention is inevitable and indeed essential. The desirability of the level or degree of such intervention may be a matter to be reviewed to ensure that a fair and impartial system is being established to resolve disputes.

VIII. Way Forward

109. The ODR platforms that have been interviewed reveal that they have taken steps to ensure their processes are legitimate and accessible, some better than others. The nine standards identified above have provided general guidance for plenty. Yet they may be further refined, particularized and harmonized. How the theoretical standards can be turned into materiality that can be adopted by those willing may necessitate the adoption of what some may call a “sandbox” approach. In that way, the practices of the platforms can be used as a measure to see if the guidelines or good practices to be formulated can be realistically implemented or if they are too high-sounding or ideal and therefore may stifle the development of ODR. Such good practices or guidelines should address the challenges already raised in the Observations set out above and perhaps as well as to enhance and harmonize the measures that are taken by various platforms these days. With the impending development of technology and in the use of AI, there are many challenges and opportunities for businesses and in ODR service providers. Further with the inevitable use of ODR to solve the disputes for small and medium sized enterprises in particular in a way speedy, cost-efficient and environmentally friendly manner, it may be useful that some guidance and framework for the larger community can be developed.

110. Finally, the Asian Academy of International Law must thank iGLIP for inviting us to do a report and to the four ODR platform service providers who helpfully provided answers to the questions raised and unselfishly sharing their experience with us to facilitate us in completing this study. We hope this report will provide a preliminary overview of the matters that deserve more detailed study and analysis.