

## **Impact of Technology on Alternative Dispute Resolution in Nigeria and the Birth and Challenges of Online Dispute Resolution**

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**ABSTRACT:** *Technological advancement has impacted every sphere of human endeavours including the dispute resolution space. Dispute is bound to happen between parties in commercial transactions. Traditionally, such dispute was known to be resolved through the adoption of any of the alternative dispute resolution mechanisms which requires parties meeting physically at an agreed location. However, the advent of Covid-19 in Nigeria hampered the operation of physical meeting for dispute resolution, hence, the adoption of Online Dispute Resolution (ODR) mechanism which is a novel development in Nigeria. It is against this background that this paper seeks to examine how technology may have improved Alternative Dispute Resolution, the origin and challenges of the operation of ODR in Nigeria. This research adopted a qualitative research methodology using doctrinal method of research. It places reliance on library resources. The paper found that there is no specific regulation for the operation of ODR in Nigeria which may pose danger for enforcement ODR agreements or its award. More so, high cost, poor or lack of internet services, inadequate ICT knowledge, poor power supply, amongst others are also potential challenges for smooth operation of ODR in Nigeria. The paper concluded that ODR mechanisms seems to be the most effective means for providing access to justice for online consumer and resolution of disputes without the need for physical contact. It was recommended that the Arbitration and Conciliation Act should be amended to recognise electronic signatures and virtual disputes resolution process and treat issues relating to enforcement of online terms of settlement or agreement.*

**KEYWORDS:** online dispute resolution, Covid-19 and dispute resolution, online arbitration, information communication technology, online settlement

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## **INTRODUCTION**

Dispute arises inevitably in most commercial transactions. When it does, parties often resort not only to litigation but also alternatives commonly referred to as Alternative Dispute Resolution

(ADR) techniques such as arbitration, mediation, negotiation, and conciliation.<sup>1</sup> While these ADR techniques vary in operation, they share common feature of intervention of a third party in the process.<sup>2</sup> Over the years, ADR techniques have been viable for the resolution of both financial and non-financial disputes. The desire for ADR is often encouraged on the basis that it is cost effective, promotes future harmonious relationship between disputants, and less time wasting, amongst other reasons<sup>3</sup>. Therefore, there is increasingly the widespread of ADR across the globe. This traditional way of dispute management has several limitations which are not suitable for the exigencies of modern Information Communication Technology (ICT) driven financial transactions.

Today, the world is moving fast from the whole period of controlled rigidity to a more flexible and open one<sup>4</sup> where people can interact to exchange ideas, culture, values and even contract or engage in commercial transactions without necessarily seeing one another or being at the same place and at the same time. This is possible with the help of technology and developments in telecommunication infrastructures such as internet, mobile phones and computers. Technological advancement through the use of internet has enhanced economic development as most commercial activities are now carried out online<sup>5</sup>. Therefore, the demand for an ICT inclined ADR becomes a

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<sup>1</sup> Steven Shavell, 'Alternative Dispute Resolution: An Economic Analysis' Journal of Legal Studies, [1995] (24) (1) <<https://www.journals.uchicago.edu/doi/abs/10.1086/467950>> Accessed 6<sup>th</sup> June, 2022; Frank A. Cona, 'Application of Online Systems in Alternative Dispute Resolution' Buffalo Law Review, [1997], (45) (3) 979 <<https://digitalcommons.law.buffalo.edu/buffalolawreviews/vol45/iss3/10>> Accessed 9<sup>th</sup> June, 2022; Haitham A. Haloush & Bashar H. Malkawi, 'Internet Characteristics and Online Alternative Dispute Resolution' Harvard Negotiation Law Review, [2008], (13) 327-348 also

<sup>2</sup> Except for negotiation which does not require the involvement of a third party

<sup>3</sup> Miriam R. Arfin, 'The Benefits of Alternative Dispute Resolution in Intellectual Property Disputes' Hastings Communications and Entertainment Law Journal, [1995] 17 (4) 899-901 <<https://www.core.ac.uk/download/pdf/230125151.pdf>> Accessed 6<sup>th</sup> June, 2022 ; Robert Mnookin, 'Alternative Dispute Resolution' Harvard Law School John M. Olin Centre For Law, Economics and Business Discussion Paper Series, Paper 232, 1998, 1-11 <[https://www.researchgate.net/publication/30504345\\_Alternative\\_Dispute\\_Resolution](https://www.researchgate.net/publication/30504345_Alternative_Dispute_Resolution)> Accessed 6<sup>th</sup> June, 2022

<sup>4</sup> Antonio Sanchez-Beyon & Estrella Trincado Aznar, 'Business and Labour Culture Changes in Digital Paradigm: Rise and Fall of Human Resources and The Emergence of Talent Development' *Cogito Multidisciplinary Research Journal*, [2020] Vol. XII, No. 3. 225

<sup>5</sup> A Rangel, 'Privacy-invading Technologies and Recommendations for Designing a Better Future for Privacy Rights' *Intercultural Human Rights Law*, [2013], 8, 204

necessity.<sup>6</sup> The internet has been a very important tool for globalization.<sup>7</sup> It facilitates almost every aspect of modern life.<sup>8</sup>

The rapid increase in the volume of online commercial transactions that are carried on across the globe every minute and Information and Communication Technology (ICT) has enhanced commerce beyond physical contact<sup>9</sup>. It has become apparent that a new regime is required for the resolution of commercial disputes.<sup>10</sup> The improvement and development of communication technology has contributed enormously to enhance human communication<sup>11</sup> and improve social life.<sup>12</sup>

The nature of disputes which are generated from online financial transactions are low value claims but with high volume of cases which are either too low to pursue in the law court or consumers ignore them due to the cost and time wasting attributed to justice system.<sup>13</sup> Most times, consumers desist from shopping because where disputes arises, they are technically compelled to part with funds resulting from a failed transactions.<sup>14</sup> This implies that trust is lost and the financial institution and the e-commerce platforms lose more potential financial consumers. Unfortunately, the major hindrance to increasing transnational online business transactions include lack of confidence in online transactions and lack of predictable internet commercial laws for the resolution of online disputes.

In Nigeria, technology through the internet has influenced the innovation of so many business organizations doing business online in order to make life easy for people. Today, people can shop

<sup>6</sup> Henry H P, "Dispute Resolution in Cyberspace: Demand for New Forms of ADR" (1999) *Ohio St. J. on Disp. Resol.* 675

<sup>7</sup> Lukman Adebisi Abdulrauf & Adelodun Daibu, 'New Technologies and the Right to Privacy in Nigeria: Evaluating the Tension Between Traditional and Modern Conceptions' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, [2016] 7, 117< <https://www.ajol.info/index.php/nauijlj/article/view/136246>> accessed 6<sup>th</sup> June, 2022

<sup>8</sup> Ibid, n(7)

<sup>9</sup> Buikovic, L. 'International Commercial Arbitration in Cyber Space: Recent Developments' *Northeastern Journal of International Law and Business*, [2002], (22) (3); Epiphany Azinge, 'Information Technology and Legal Practice' *Nigerian Bar Journal*, [2002] Vol. 1(2)11-24; Serena David Dokubo, 'Information Technology and Legal Practice' *The Nigerian Bar Journal* [2002], Vol.1(2), 25-38

<sup>10</sup> OECD, Guidelines for Consumer Protection in the Context of Electronic Commerce (OECD Publishing, 2000)

<sup>11</sup> Aidonoije, P.A. and Agbale. O.P. "E-contract (by mail) and the Clause, 'Subject to Contract': A Case Study of Nigeria and Australia", *Port Harcourt Law Journal*, [2020] Vol. 9 (1) 42

<sup>12</sup> Igale, A., 'Legal And Institutional Framework for E-commerce in Nigeria' being a paper discussed on Wednesday June 9, 2010, Bankers House, PC 18, Adeola Hopewell St. V/I, Lagos cited in Aidonoije, P.A.; Anne, O.O., and Oladele, O.O., 'An Empirical Study Of The Relevance And Legal Challenges of An E-contract Of Agreement In Nigeria' *Cogito Multidisciplinary Research Journal*, [2020] Vol. XII. No. 3, 170

<sup>13</sup> Louis D D, Colin R, and Zbynek L, "Facilitating Expansion of Cross-Border E-Commerce-Developing a Global Online Dispute Resolution System" (2011) 25 (Lessons Derived from Existing ODR Systems-Work of the United Nations Commission on International Trade Law)' *Penn State Law Legal Studies Research Paper*.

<sup>14</sup> Oreniyi A, "Online Disputes Resolution in Nigeria: Intricacies, Challenges and Prospects" <Online Dispute Resolution (ODR) in Nigeria: Intricacies, Challenges and Prospects - DigiLaw> accessed 10<sup>th</sup> April 2022

from various online trade platforms. One may shop for goods within the comfort of his or her home and get the goods delivered as well without lifting a single finger making a single move to a physical store. In some cases, customers who shopped for goods online may have goods delivered to them entirely different from what they paid for. In another circumstances, such goods may be of low standard compared with that which they saw on the internet. These instances result to dispute which may not be conveniently resolved through traditional ADR or litigation in a court of law,<sup>15</sup> hence, the necessity for the adoption of Online Dispute Resolution mechanism.<sup>16</sup>

In Nigeria, ODR remains a novel mechanism for settlement of dispute which is yet to gain momentum considering the unavailability of a legal framework to regulate its operation. Furthermore, while a lot of business organizations lack the information on the existing of such an electronic dispute resolution mechanism, the ones that are aware lack the resources to operate a viable ODR platform. Unfortunately, this has impacted negatively on the wide reception of online commercial services as many Nigerians still cannot trade online due to the fear that if dispute arises, as they may be, they may run at financial loss and be at the mercy of these business organizations. Therefore, this paper examines the operation of ODR in Nigeria and the challenges of its operation. The paper further examines the benefits of ODR and proposed recommendations to tackle the potential threats and challenges to the operation of ODR in Nigeria.

### Online Dispute Resolution: An Overview

Online Dispute Resolution is an improved alternative dispute resolution mechanism which dispenses with physical presence of parties at a location but utilizes Information Communication Technologies such as the internet space, mobile phones or computers for virtual resolution of dispute. It is a deployment of application and computer networks for resolving disputes with ADR methods.<sup>17</sup> It is a class of alternative dispute resolution which is making use of the advantages of increased usage of internet and technological gadgets.<sup>18</sup> In this respect it is often seen as being the online equivalence of ADR.<sup>19</sup> ODR has also been described as a broader term than virtual court hearing. It is the settlement of disputes through online mode of interaction between parties.<sup>20</sup> It is

<sup>15</sup> Thompson, D. 'The Growth of Online Dispute Resolution and its Use in British Colombia' available at <https://darinthompson.ca/about/the-growth-of-online-dispute-resolution-and-its-use-in-british-colombia/> accessed 9th June, 2022

<sup>16</sup>

<sup>17</sup> Esther van den Heuvel, 'Online Dispute Resolution as a Solution to Cross-Border E-Disputes' University of Utrecht, (2000) 8

[https://scholar.google.com/solar?hl=en&as\\_sdt=0%2C5&q=esther+van+den+hauvel+on+line+dispute+resolution&oq=esther+van+den+hauvel+on+online+dispute+resd=gs\\_qabs&t=1654393583912&u=23p%3DHj7QU81Ym-cj](https://scholar.google.com/solar?hl=en&as_sdt=0%2C5&q=esther+van+den+hauvel+on+line+dispute+resolution&oq=esther+van+den+hauvel+on+online+dispute+resd=gs_qabs&t=1654393583912&u=23p%3DHj7QU81Ym-cj) accessed 4<sup>th</sup> June, 2022

<sup>18</sup> Oreniyi A, "Online Disputes Resolution in Nigeria: Intricacies, Challenges and Prospects" <Online Dispute Resolution (ODR) in Nigeria: Intricacies, Challenges and Prospects - DigiLaw> accessed 4<sup>th</sup> June, 2022

<sup>19</sup> Rabinovich-Einy O. and Katsh E., 'Digital Justice: Reshaping Boundaries in an Online Dispute Resolution Environment' *International Journal of Dispute Resolution* [2014] (22) (1) 7

<sup>20</sup> Jimoh Mujib Akanni, 'Advancing Online Dispute Resolution in Nigeria: Opportunities, Legal Challenges and the Ways Forward' *The Journal of Sustainable Development Law and Policy*, [2020] 11(2) 408 <<https://doi.org/10.4314/jsdlp.v10i2.6>> Accessed 6<sup>th</sup> June, 2022.

used as a term to refer to all online dispute resolution. ODR is a form of dispute resolution which uses alternative methods for dispute resolution.<sup>21</sup> It extends to disputes that are partially or fully settled over the internet, having been initiated in a cyber space but with a source outside it. It is worthy of note that ODR evolved from a necessity to resolve disputes that arose in the online community.

ODR mechanism has been adopted by various countries in the resolution of conflicts arising from e-commerce between individuals. The operation of ODR is very essential for any technological inclined nation including Nigeria due to the speed and convenience of ICT and the rise in e-commerce in the country.<sup>22</sup> The use of technology in dispute resolution and justice Administration in the developing economies has been ongoing for close to two decades. Online Dispute Resolution emerged in the 21st Century from developments in the field of ADR and its adaptability to peculiarities of the online environment.<sup>23</sup> Online Disputes Resolution was borne out of the need to deploy cutting-edge information technology innovation to aid access to justice.<sup>24</sup> Furthermore, the lockdown of courts and various ADR centres following the advent of Covid-19 further heightened the uncertainty in the administration of justice system and the inevitability of Online Disputes Resolution.

In the past decades, automation of service delivery was perceived as a threat to labour in the non-legal sectors with job cuts, due to a technological takeover of clerical jobs such as cashier, secretaries and bookkeepers.<sup>25</sup> In the justice delivery sector, experts predict a paradigm shift in the way lawyers perform their jobs towards automation of the dispute resolution processes.<sup>26</sup> This might be seen as threatening the traditional methods of justice delivery. ODR may turn out to be a value to the courts.<sup>27</sup> Most courts globally have incorporated ADR mechanisms in the

<sup>21</sup> Karoline Mania, 'Online Dispute Resolution: The Future of Justice' International Comparative Jurisprudence,[201] 1(1) 76-86 < <https://www.sciencedirect.com/science/article/pii/S2351667415000074>> and <[https://www.researchgate.net/publication/27554565\\_Online\\_Dispute\\_Resolution](https://www.researchgate.net/publication/27554565_Online_Dispute_Resolution)>Accessed 6th June, 2022.

<sup>22</sup> Aishat S., 'Using ADR to Resolve Online Disputes', (2004) *Richmond Journal of Law and Technology*, 10 (3), 1-14 <https://law.richmond.edu/jolt/v/10i3/article25.pdf> accessed 4th June, 2022 cited in Arinze-Umobi and Okonkwo Ifeanyi Tagbo, 'Alternative Dispute Resolution in Nigeria and the Effect of Covid-19 Pandemic' *International Journal of Law and Clinical Education* 2, 2021

<sup>23</sup> Ethan K, Ethan M, and Janet R, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (John Wiley & Sons, Inc: 2001).

<sup>24</sup> Ethan (n. 9)

<sup>25</sup> Howard R and Schneider L, "Technological Change as a Social Process: A Case Study of Office Automation in a Manufacturing Plant," (1988) 7(2) *Central Issues in Anthropology* 79-84

<sup>26</sup> Ibid

<sup>27</sup> Ethan K, "ODR: A Look at History A Few Thoughts About the Present and Some Speculation About the Future," in *Online Dispute Resolution: Theory and Practice A Treatise on Technology and Dispute Resolution*, ed. Mohamed S. Abdel Wahab, Katsh Ethan, and Rainey Daniel (The Hague, Netherland: Eleven International Publishing, 2012), 21-33. This is because the courts are often clogged with expensive, congested, and protracted procedures and formality. This results in long delay as decision may take years before a judgment could see the light of the day and the costs involved can be devastating for consumers. See also Schiavetta S, "Online Dispute Resolution, E-Government and Overcoming the Digital Divide," (2005) *BILETA Conference*.



administration of justice. This has therefore made amicable disputes settlement an integral part of the regional and international legal instrument.<sup>28</sup>

Though, ADR has proved to be the most suitable and cost-effective method for resolving disputes arising from commercial and financial transactions in recent years<sup>29</sup>. However, the emergence of Covid-19, e-commerce and the increasing number of cross-border transactions and disputes call for reform of ADR itself and the necessity for the ODR method of dispute settlement. It must be stated that lack of a regulatory framework for stringent management of complaint is the major setback for the ODR justice system even with high volume of small claims complaints.<sup>30</sup> In the administration of justice system, ODR has the potential of automating the disputes resolution processes which according to experts may soon threaten the legal profession and change the way lawyers do their businesses.<sup>31</sup>

In addition to the physical barriers which have been broken down by the ICT revolution, the volume of commercial activities entered into on the web make settling disputes online appealing.<sup>32</sup> Despite the growth of internet enabled financial transactions, the legal regime for the resolution of small claims disputes has been on its lowest ebb. Customer relation management (CRM) deployed for management of complaints lacks the requisite legal framework for neutral, transparent and speedy resolution of financial disputes. The customer relation management model only constitutes a set of remedial measures that are only matters of internal management policy. These policies which are focused on customers, are aimed at maximizing revenue, and serve as customer retention strategies rather than consumer protection.<sup>33</sup>

## Types of Online Dispute Resolution Methods

### *Online Arbitration*

Electronic arbitration or online arbitration is where the arbitration proceedings are conducted wholly or substantially online including filings, submissions, hearings, and awards.<sup>34</sup> However, the modern definition is broad and includes any arbitration that utilizes electronic submissions, or uses teleconferencing or video conferencing to conduct the hearing process.<sup>35</sup> Online arbitration

<sup>28</sup> Steven S et al., 'International Commercial Dispute Resolution' [2010] 44 *Int'l Law* 113.

<sup>29</sup> Joseph Nwazi, 'Assessing the Efficacy of Alternative Dispute Resolution (ADR) in the Settlement of Environmental Disputes in The Niger Delta Region of Nigeria' *Journal of Law and Conflict Resolution*, Vol. 9 (3), 27 available at <<https://academicjournals.org/journal/JLCR/article-full-text-pdf/92A256E65636>> accessed 18th June, 2022

<sup>30</sup> Rule C, Rogers V and Del Duca L "Designing a Global Consumer Online Dispute Resolution (ODR) System for Cross-Border Small Value-High Volume Claims—OAS Developments," (2010) 24 *UCC LJ* 221.

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Becker J U, Goetz G, and Sönke A, "The Impact of Technological and Organizational Implementation of CRM on Customer Acquisition, Maintenance, and Retention," (2009) 26(3) *International Journal of Research in Marketing*: 207–15.

<sup>34</sup> Mohamed S. A. W, "ODR and E-Arbitration," (2013), *Online Dispute Resolution Theory and Practice*, Chapter 18 <http://www.mediate.com/pdf/ebnerl.pdf> accessed 22 February 2022

<sup>35</sup> Ibid

is also called cyber-arbitration, cybitration, cyberspace arbitration, virtual arbitration or electronic arbitration.<sup>36</sup>

It is clear from the above definition that e-arbitration is the same as traditional arbitration in procedure and process, but it involves some form of electronic medium in part or in whole. When this type of arbitration first arose in the U.S, there were questions surrounding its enforceability. The argument was that electronic arbitration clauses were most commonly seen in digital contracts, such as licensing agreements, and due to their solely digital nature, they violated the written provision requirement of the Federal Arbitration Act.<sup>37</sup>

However, this was dealt with by courts that held that under the Federal Electronic Signatures in Global and National Commerce Act, electronic signatures were just as sound as formal signatures and would give legal effect to electronically signed arbitration agreements.<sup>38</sup> E-arbitration appears to be a departure from the traditional arbitration in which all parties and the arbitrators are present in a venue. It has also been noted that e-arbitration gives speedy dispensation within which the entire process can be conducted, it is cost-effective, it is accessible and it is case management efficient.<sup>39</sup>

### ***Online negotiation***

Online negotiation requires that the parties communicate remotely via phone calls, Fax, E-mails and video conferencing. However, as easy as it is to communicate via Phone calls, it is impossible to evaluate details of documents via phone calls unless video conferencing is done<sup>40</sup>. This may be done using any of the video conferencing software applications such as Zoom, Skype, Netscape Conference, Microsoft Netmeeting and VocalTee's Internet Conference Professional.<sup>41</sup> In the case of Fax and E-mails, these mediums are suitable for exchange of documents between parties better than video conferencing may offer. Online negotiation allows reduction in time as well as enhancing economic savings. It has been considered to be very vital in carrying out a

<sup>36</sup> Nwadem Osinachi Victor, 'Online Dispute Resolution: Scope and Matters Arising' 5 Available at <[https://www.academia.edu/11881903/ONLINE\\_DISPUTE\\_RESOLUTION\\_SCOPE\\_AND\\_MATTERS\\_ARISING](https://www.academia.edu/11881903/ONLINE_DISPUTE_RESOLUTION_SCOPE_AND_MATTERS_ARISING)> accessed 18<sup>th</sup> June, 2022

<sup>37</sup> Jason E.B. & Jerad W.R., "Are Electronic Arbitration Agreements Enforceable?" (2012) *LAW* 360

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Yufei Yuan, 'Online Negotiation In Electronic Commerce' <<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.202.564&rep=rep1&type=pdf>> accessed 10<sup>th</sup> June, 2022; Janice Nadler and Donna Shestowsky, 'Negotiation, Information Technology, and the Problem of the Faceless Other' *Northwestern University Pritzker School of Law*, 145-178 <[https://www.law.northwestern.edu/faculty/fulltime/nadler/Nadler\\_Shestowsky.pdf](https://www.law.northwestern.edu/faculty/fulltime/nadler/Nadler_Shestowsky.pdf)> accessed 10<sup>th</sup> June, 2022

<sup>41</sup> Ozer J. 'Real-Time Internet Collaboration' *PC Magazine Online* <<https://www8.zdnet.com/pcmag/features/groupware/gpws5.htm>> accessed 10<sup>th</sup> June, 2022; David B. Lipsky and Ariel C. Avgar, 'Online Dispute Resolution Through the Lens of Bargaining and Negotiation Theory: Toward an Integrated Model' *University of Toledo Law Review*, [2007] 38(1), 101-142. Available at <<https://www.europarc.org/communication-skills/pdf/Negotiation%20skills.pdf>> accessed 10<sup>th</sup> June, 2022

complete process of negotiation with person around the world regardless of the parties are which in the current situation of globalization is key.<sup>42</sup>

Online negotiation is considered the most developed form of ODR in the United States. There are various negotiation platforms<sup>43</sup> for the resolution of disputes and one of the most thriving of these negotiation platforms is the “blind-bidding” which is an automated negotiation.<sup>44</sup> The platform is designed for economic settlement for claims which liability is not challenged but parties are unable to agree on the compensation payable.<sup>45</sup> Interestingly, this platform is driven by software with no human intervention.

### **Online Mediation**

This is also an ODR method which is not a departure from the traditional mediation method except that unlike the traditional method of mediation which is done physically, this one is done virtually. Online mediation is considered to be thriving increasingly in Europe and US. It is considered to be the most used and improved form of ODR in the US.<sup>46</sup> The online mediation employs the use of technologies such as emails, video conferencing, chat rooms etc in addition to offline communications in dispute resolution. While the role of a mediator in an online mediation remains the same, it has been argued that its selection process may differ<sup>47</sup>. Unlike the offline mediation, it is impossible to rely on facial expressions, gestures and body language of the clients in an online mediation.<sup>48</sup> In certain instances, the mediator may not be human but a pre-programmed algorithm.

### **Advantages of ODR**

#### **a). *It is economically encouraging***

One of the most crucial factors that parties in dispute always consider in determining the option for dispute resolution is the cost effectiveness of the available techniques. Just like litigation, ADR also involves money. In traditional litigation and ADR, parties may have to pay a lot of money to

<sup>42</sup> David Hernandez, Carlos Monne and Maria Luisa Sein-Echaluce, ‘Online Negotiation: Theoretical Proposal’ available at <<http://ceur-ws.org/Vol-3129/paper061.pdf>> accessed 10<sup>th</sup> June, 2022

<sup>43</sup> The first platform or website to offer online negotiation of financial claims was cybersettle followed by clicknsettle. Other platforms include Squartrade portal, Modria (Tyler) Online ombuds office, etc.

<sup>44</sup> Nwadem Osinachi Victor, (n36) 4

<sup>45</sup> Hornle, J., 2002, ‘ODR in Business to Consumer E-commerce Transactions’ Journal of Information Law and Technology’ No. 2, 5 available at <<https://www2.warwick.ac.uk/fac/soc/law/elj/>> accessed 18<sup>th</sup> June, 2022

<sup>46</sup> Van den Heuvel E., ‘Online Dispute Resolution as a Solution to Cross-border E-Disputes: An Introduction to ODR’ being a paper presented at Building Trust in the Online Environment: Business to Customer Dispute Resolution, a conference jointly organized Organization for Co-operative Development (OECD), Hague Conference on Private and International Law and Chamber of Commerce (ICC). The Hague, 11-12 December, 2002. Available at <https://www.oecd.org/dataoecd/63/57/1878940.pdf> accessed 14<sup>th</sup> December, 2014

<sup>47</sup> Cortes P., ‘Can I Afford Not to Mediate? Mandatory Online Mediation for European Consumers: Legal Constraints and Policy Issues’ *Rutgers Computer and Technology Law Journal*, (2008) 35 (1) 75

<sup>48</sup> Victor Terekhov, ‘Online Mediation: A Game Changer or Much Ado About Nothing’ (2018) 38. Available at <[https://ajee-journal.com/upload/attaches/att\\_1569575810.pdf](https://ajee-journal.com/upload/attaches/att_1569575810.pdf)> accessed 18<sup>th</sup> June, 2022



lawyers to represent their interest in the proceeding which makes the process extremely costly.<sup>49</sup> However, ODR best suit the financial demands of both parties. ODR involves electronic transmission (via email) of all the documents necessary to facilitate the proceedings. This is a lot cheaper means of dispute resolution where documentation and transmission of documents are not as costly as litigation.<sup>50</sup>

**b). Convenience**

One of the advantages of ODR is that in the case of an offline ADR or litigation where dispute is between parties who do not reside in the same location, one or both parties will have to travel to the seat of mediation and also make accommodation reservations.<sup>51</sup> These expenses sometimes discourage disputants from pursuing their cause. Most of the times offline ADR or litigation is more favourable to deep-pocketed disputant. However, ODR places all parties on the same level. Where witnesses are required, they are also summoned through video conferencing thereby dispensing with physical contact.

Furthermore, where a dispute arises, parties can settle their do not have to wait for weeks or months before they have their dispute resolved as in the case of litigation or offline ADR. In ODR, parties may commence dispute resolution almost immediately through the exchange of emails.<sup>52</sup> Unlike the challenges that may be occasioned in offline ADR about scheduling of meetings, ODR has no such difficulties as parties may arrange or participate in a meeting whenever they are ready and at convenient time.<sup>53</sup>

**Challenges of ODR in Nigeria**

The operation of ODR in Nigeria may be faced some potential challenges. These challenges are inherently dominant in the country and they do not only affect ODR rather they affect the use and enjoyment technological advancement. These challenges includes but not limited to the following:

<sup>49</sup>George H. Friedman, 'Alternative Dispute Resolution and Emerging Online Technologies: Challenges and Opportunities, Hastings Comm. & Ent. Law Journal [1997] 919) 695, 712

<sup>50</sup> Aashit Shah, 'Using ADR to Resolve Online Dispute' *Richmond Journal of Law and Technology*, [2004] (10) (3)

<sup>51</sup> Robert C. Bordone, 'Electronic Online Dispute Resolution: A systems Approach-Potential , Problems, and a Proposal, 3 Harvard Negotiation Law Review [1998] 175, 192; Lan Q. Hang, 'Online Dispute Resolution Systems: The Future of Cyberspace Law' Santa Clara Law Review [2001] (41) 854 <<https://www.digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1337&context=lawreview&httpsredir=1&referer=>> accessed 10<sup>th</sup> June, 2022; Llewellyn Joseph Gibbons, Robin M. Kennedy, and Jon Michael Gibbs, 'Frontiers of Law: The Internet and Cyberspace: Cybermediation Communications Medium Messaging the Message, N.M.L. Review [2002] (32) 27, 42

<sup>52</sup> Ibid

<sup>53</sup> Jim Melamed & John Helie,

'The World Wide Web Main Street of the Future is Here Today, available at <<http://www.mediate.com/articles/jimmjohn.cfm>> accessed 10<sup>th</sup> June, 2022

**a). High cost, poor or lack of internet services**

The internet is not a facility with equal access rate across the world<sup>54</sup>. While some countries have a considerably high access to internet, some other countries especially developing countries such as Nigeria do not have such a high access to the internet. It is however a common experience that often times this internet services are very poor or even unavailable thereby making it impossible to either start a transaction or to complete it which occasion serious loss<sup>55</sup> or setback to customers and ultimately impacting on the economy of the nation.<sup>56</sup> It has been argued that many businesses and individuals in the developing countries like Nigeria lack robust internet access due to the fact that they focus more on their paramount concerns such as clean water, electricity, housing and other basic necessities of life.<sup>57</sup>

The operation of ODR in Nigeria is impossible without the use of internet services. It is trite that Nigeria is the most populous country in African and with the largest population of internet users.<sup>58</sup> However, the cost of accessing the internet is high thereby not many persons can afford it<sup>59</sup> because online dispute resolution may require being online for hours at each session of the meetings.

**b). Poor power supply**

Power is one of the basic amenities or infrastructural facility that enhances the growth and development of the economy of a nation. It increases productivity in businesses. Poor power supply affects virtually every sector of the Nigerian economy. ODR requires the use of computer that requires power supply to function. Power supply is very erratic in Nigeria which creates

<sup>54</sup> Amy J. Schmitz, 'There's an "App" for That: Developing Online Dispute Resolution to Empower Economic Development', Notre Dame Journal of Law, Ethics and Public Policy, [2018], (32) (1) available at: <<https://scholarship.law.missouri.edu/fapubs/700>> accessed 10<sup>th</sup> June, 2022

<sup>55</sup> Rob Rachwald, 'Is Banking Online Safer than Banking on the Corner' *Computer Fraud and Security*, 2008(3) P. 11-12 [www.researchgate.net/publication/250726752\\_Is\\_banking\\_online\\_safer\\_than\\_banking\\_on\\_the\\_corner](http://www.researchgate.net/publication/250726752_Is_banking_online_safer_than_banking_on_the_corner) Accessed 9<sup>th</sup> April, 2022

<sup>56</sup> A. Tarhini, C. Mgbemena, Trab MSA and R. Mosa'deh, 'User Adoption of Online Banking in Nigeria: A Qualitative Study' *Journal of Internet Banking and Commerce*, 2015 (20) 132 available at <http://www.icommercecentral.com/open-access/user-adoption-of-online-banking-in-nigeria-a-qualitative-study.php?aid=62486> Accessed 9<sup>th</sup> April, 2022

<sup>57</sup> Robin V Cupido, 'The Growth of E-Commerce and Online Dispute Resolution in Developing Nations: An Analysis', *International Journal of Social, Behaviour, Education, Economics, Business and Industrial Engineering*, [2016] (10) 3254-3257

<sup>58</sup> Uchenna Jerome Orji, 'Technology Mediated Dispute Resolution: Challenges and Opportunity for Dispute Resolution' *Computer and Telecommunication Law Review*, [2012] 18 (5) 131 [https://www.scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5%q=online+dispute+resolution+in+Nigeria+%&coq=d=gs\\_qabs&t=1654285974542&u=%23p%3DpAgppF310uMJ](https://www.scholar.google.com/scholar?hl=en&as_sdt=0%2C5%q=online+dispute+resolution+in+Nigeria+%&coq=d=gs_qabs&t=1654285974542&u=%23p%3DpAgppF310uMJ) accessed 3<sup>rd</sup> June, 2022

<sup>59</sup> E.I. Henry, 'Factors that Influence Customers' Attitude Toward Electronic Banking in Nigeria' *Journal of Internet Commerce*, 2018, Vol. 17, Issue 3 P. 325-328 Available at <http://www.doi.org/10.1080/15332861.2018.1463482> Accessed 9<sup>th</sup> April, 2022

unfavourable environment the use of ICTs.<sup>60</sup> ODR will thrive better if there is an improvement in the power sector of Nigeria.<sup>61</sup>

**c). *Inadequate ICT knowledge and skills***

This is one of the challenges to the wide acceptance of ODR in Nigeria. There is no doubt that Information Communication Technology (ICT) has been embraced by virtually all the countries in the world, developed or undeveloped such as Nigeria. ICT helps to enhance access to information and enables new forms of communication which aids the growth in areas of commerce, culture, entertainment and education. According to World Bank, ICT are computer apparatus used to meet the information and communication needs of individuals and organizations which includes software, hardware, network and media for collection, storage, processing, transmission and presentation of information as well as related services<sup>62</sup>. Unfortunately, there is a poor level of ICT skills in Nigeria. This is due to several factors such as cost of purchase of personal computer, lack of government interest in providing ICT skills to Nigerians, amongst others. The use of ODR requires sufficient knowledge and skills on the use and operation of computer which most Nigerians lack sufficient knowledge of.<sup>63</sup>

In the same breath, many individuals and corporate bodies are not even willing to incur huge expenses to secure the services of skilled ICT personnel. This is challenge is one of the major setbacks to the wide acceptance of ODR in Nigeria.

<sup>60</sup> Uchenna Jerome Orji, (n 58) 131

<sup>61</sup> An average Nigerian goes through a terrible experience on daily basis depending on the public power supply. In many instances there may not be power supply in a city for over one month while in some circumstances it is a low voltage, high voltage or load shedding which results to total frustration. The operation of ODR cannot thrive in a country where there may be total blackout across the nation for weeks. See Ebun-Olu Adegboruwa, 'A Nation in Darkness' <<https://guardian.ng/opinion/a-nation-in-darkness-2>> accessed 13th June, 2022

<sup>62</sup> Wallet Peter, Information and Communication Technology (ICT) in Education in Sub-Saharan Africa: A Comparative Analysis of Basic E-readiness in Schools' UNESCO Institute for Statistics, [2015] 1-30 available at <<https://unesdoc.unesco.org/ark:/48223/pf0000234279>> accessed 13<sup>th</sup> June, 2022 World Bank, Study of ICT and Education in Africa. available at <<https://digitalskills.adeanet.org/en/resources/world-bank-2007-study-of-ict-and-education-in-africa>> accessed 13th June, 2022

<sup>63</sup> Adeobi Ifejiofor and Cosmas Nwankwo, 'The Undercurrents of ICT Skill Acquisition in Nigeria: Problems and Prospects' *International of Research in Business and Management*, [2015] (1) (8) 1-7 available at <[https://www.researchgate.net/publication/340721451\\_The\\_Undercurrents\\_of\\_ICT\\_Skills\\_Acquisition\\_in\\_Nigeria\\_Problems\\_and\\_Prospects](https://www.researchgate.net/publication/340721451_The_Undercurrents_of_ICT_Skills_Acquisition_in_Nigeria_Problems_and_Prospects)> accessed 13<sup>th</sup> June, 2022; E.I. Stella, "Strategic Impact of ICT on Modern Day Banking in Nigeria", *International Journal of Strategic Information Technology and Applications*, (2014), Vol. 5, Issue 4, Available at <http://www.igi-global.com/article/strategic-impact-of-ict-on-modern-day-banking-in-nigeria/125028> Accessed 10th April, 2022; P.I. Udobi-Owoloja, B.E. Akhigbe, Ubi, A.E., Gbajumo-Sheriff, M.A., & Umoru, B., "Digital Banking and Bank Profitability in Nigeria", *Nigerian Journal of Management Studies*, Vol. 20, No. 2, 2020, P. 24-34; C. Jayshree, "Internet Banking-Benefits and Challenges in an Emerging Economy" *International Journal of Research in Business Management*, (2013) Vol. 1, Issue 2, P. 19-26

**d). *Lack of specific legislation***

In Nigeria, there is the existence of the Arbitration and Conciliation Act<sup>64</sup> which is the regulatory legislation on dispute resolution. However, there is no provision of the Act on ODR neither is there any specific guidelines or legislation that regulates ODR in Nigeria. The absence of regulatory guidelines for the operation of ODR hinders its general acceptance of its operation. The existence of legislation on the operation of ODR reinforces its credibility and reliability. The enforcement of the award after a successful online arbitration maybe difficult and unrealistic where there is no law which recognizes the procedures adopted for the dispute resolution.

**e). *Confidentiality and security***

One of the most cherished ethics in ADR is confidentiality. Dispute resolution process requires a high level of confidentiality and security of data, information and documents shared during the discussion process. Unfortunately, one of the mostly contested challenges of ODR is confidentiality and security. Parties during ODR are expected to speak freely during deliberations and discussions when they are sure their words will not be used against them<sup>65</sup>. A violation of this trust and confidence jeopardizes the whole process. ODR cannot guarantee the security of data as third parties may hack into some websites and access the documents exchanged between parties thereby printing them out without the consent of the parties and distributing them to the public. Therefore, lack of security weakens the confidentiality of ODR which in turn discourages people from using ODR to resolve dispute.<sup>66</sup>

## **CONCLUSION AND RECOMMENDATION**

Technology has come to ease people's lives therefore electronic transactions are inevitable in the era of technological advancement. It has greatly enhanced cross-border transactions in the 21<sup>st</sup> century. ODR is one of the many impacts of technology in commercial world. Unfortunately, ODR has not received a wide acceptance in Nigeria due to the peculiarity of the challenges that has plagued its acceptance. However, it remains a factual conclusion that ODR is the future of dispute resolution considering the growth of cross border commercial transactions around the world.

ODR mechanisms seems to be the most effective means for providing access to justice for online consumers and it can provide neutral, quick and cost-efficient redress for consumers. However, the recognition and acceptance of ODR in Nigeria remains a mirage unless there is a specific legal framework on ODR in Nigeria. There is no adequate legal framework in Nigeria to regulate Online Alternative Dispute Resolution which basically is one of the germane reasons people do not consider it as a viable option for the resolution of commercial disputes. It is therefore recommended that the Arbitration and Conciliation Act should be amended to accommodate online

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<sup>64</sup> Cap. 18, Laws of Federation of Nigeria, 2004

<sup>65</sup> Katsh, E., "Dispute Resolution in Cyberspace" 28 CONN. L.REV. 971

<sup>66</sup> Jaber M.S. 'Online Arbitration: A Vehicle for Dispute Resolution in Electronic Commerce' 4 available at <[www.academic.edu/1842719/online\\_Arbitration\\_A\\_Vehicle\\_for\\_Dispute\\_Resolution\\_in\\_Electronic\\_Commerce](http://www.academic.edu/1842719/online_Arbitration_A_Vehicle_for_Dispute_Resolution_in_Electronic_Commerce)> accessed 18<sup>th</sup> June, 2022

disputes resolution process. By so doing, issues relating to electronic signatures and enforcement would be adequately dealt with under the Nigerian law and it will be given legal effect.

Furthermore, in order to boost confidence in the whole process of ODR, there is the need for the ODR platforms or websites to be properly secured. Third parties are supposed to be prevented from accessing the information or data exchanged between parties during the ODR sessions in order to guarantee the credibility and integrity of them process. There is also the need for the government to take proactive measures at restoring stable power supply in the nation as well as to strictly monitor the activities of telecommunication companies in Nigeria for low cost and good internet services in order to enhance the growth of commerce and to ensure strict compliance with the security of customer's data and confidentiality of information within their data base.