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## A comprehensive outline towards conciliation in the contemporary world of E-commerce

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### Abstract

Since the start of the millennial era, technical advancements have led to exponential growth in electronic commerce, or e-commerce. According to the United Nations Conference on Trade and Development (UNCTAD), e-commerce sales reached about US\$25 trillion globally in 2021 [1] and are expected to grow at a compound annual growth rate of 9% through 2027, which is twice as fast as the 4% annual growth rate predicted for traditional in-person retail [2]. Online dispute resolution (ODR) techniques that aim to settle disagreements and lower the likelihood of expensive lawsuits are becoming more and more necessary as both individuals and corporations use online shopping platforms. Due of its legally binding nature, arbitration is the most formal method, as was briefly discussed [3]. Online arbitration is carried out using electronic methods, like email and digital tools designed to make the duties of arbitrators and parties to a dispute easier. It adheres to the same rules and processes as traditional arbitration. On the plus side of e-arbitration, advancements in technology allow for time and cost savings without sacrificing the ease of remote filing. The conclusion of e-arbitration agreements raises several negative issues, including privacy and data protection issues for the consumer signing the agreements and power imbalances between corporate entities and the consumer. The degree to which artificial intelligence (AI) is effectively and sufficiently analysing a dispute between parties is up for debate because it's unclear how new this adjudication process is.

**Keywords:** E- Commerce; Artificial Intelligence; OECD; ODR; Arbitration

### 1. Introduction

Since the start of the millennial era, technical advancements have led to exponential growth in electronic commerce, or e-commerce. According to the United Nations Conference on Trade and Development (UNCTAD), e-commerce sales reached about US\$25 trillion globally in 2021 [1] and are expected to grow at a compound annual growth rate of 9% through 2027, which is twice as fast as the 4% annual growth rate predicted for traditional in-person retail [2]. Online dispute resolution (ODR) techniques that aim to settle disagreements and lower the likelihood of expensive lawsuits are becoming more and more necessary as both individuals and corporations use online shopping platforms. Due of its legally binding nature, arbitration is the most formal method, as was briefly discussed [3]. Online arbitration is carried out using electronic methods, like email and digital tools designed to make the duties of arbitrators and parties to a dispute easier. It adheres to the same rules and processes as traditional arbitration. On the plus side of e-arbitration, advancements in technology allow for time and cost savings without sacrificing the ease of remote filing. The conclusion of e-arbitration agreements raises several negative issues, including privacy and data protection issues for the consumer signing the agreements and power imbalances between corporate entities and the consumer. The degree to which artificial intelligence (AI) is effectively and sufficiently analysing a dispute between parties is up for debate because it's unclear how new this adjudication process is.

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## 2. Arbitration's Digitization

### 2.1. Arbitration in ODR processes

Online ways to seek a settlement, either wholly or partially attained over the Internet, are referred to as online dispute resolutions, or ODRs. To put it another way, ODRs employ the same techniques as alternative dispute resolutions (ADRs), including arbitration, mediation, and negotiation, but they do it via contemporary communication channels and technology platforms. The two most common techniques are mediation and arbitration, however, the former is more often employed because 74% of ODR providers offer mediation services and 40% offer arbitration services [4]. A definition of online or e-arbitration will be given before we continue. "An arbitration in which the central elements of the arbitral procedure are handled online" is how Cortés and Cole described e-arbitration [5]. According to both writers, an e-arbitration is carried out by exchanging papers over an online platform. The arbitrator then receives the documents and, without having to meet with the parties in person, emails them the verdict. As AI has advanced and is being viewed as a potential replacement for the human-led adjudication process, the aforementioned is conventional wisdom. Online arbitration services can be divided into two categories: technologically based, where parties conduct their arbitration entirely through electronic platforms and methods, and technology assistance, where parties use technology to communicate and facilitate communication [6]. Although it excludes online communications, Article 2(2) of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), which broadened the definition of a written agreement by permitting the "exchange of letters or telegrams" as part of an arbitration agreement, is the first step towards the practice of online arbitration. [8] Despite being vague, this section was read to cover email correspondence before moving on to other digital forms of communication. Regarding the European regulation, online and digital communication and its components may be included in an e-arbitration agreement under Article 1(2)(a) of the European Convention on International Commercial Arbitration, provided that the signatory States acknowledge and approve of such formats. Because of technological improvements, the exchange of electronic messages is equal to the transmission of telegrams, which is consistent with Article 2(2) of the New York Convention, meaning that both documents have an inclusive interpretation. It should be noted that an arbitration panel may use electronic methods, like videoconference for witness testimony, even if the parties may not be in favour of electronic arbitration. Before, during, or after an arbitration hearing, some kind of electronic communication will likely be utilized [9].

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## 3. The origins of e- mediation

Businesses and governments worldwide realised at the height of the dot-com boom that disputes would change with the growth of online purchasing. After the National Science Foundation lifted its ban on online commercial activities in 1992, the necessity for ODRs became apparent in the early 1990s [10]. At a conference titled "Building Trust in the Online Environment: Business-to-Consumer Dispute Resolution" held in December 2000, the Organisation for Economic Co-operation and Development (OECD) placed a strong emphasis on dispute resolution for business-to-consumer (B2C) issues that take place outside of the legal system. To prevent B2C claims, the report that came out of this conference emphasized that online sellers should establish a relationship of trust with customers by "offering crystal clear, trustworthy online dispute settlement mechanisms" [11]. In our opinion, there have been three major stages in the evolution of ODRs, not just electronic arbitration. The first one, which falls between 1990 and 1996, can be referred to as the "amateur stage" in which ODRs were initially investigated and tested. The emergence of the first commercial web platforms is the second stage. The third stage is regarded as the institutional phase, which started in 2001 and included the business development era, which ran from 1999 to 2000 (i.e., the incorporation of ODRs by private institutions and organizations) [12]. Since they established the Online Ombuds Office at the University of Massachusetts' Centre for Information Technology and Dispute Resolution in 1999, Katsh and Rifkin are regarded as the forerunners of ODRs. The Internet Corporation for Assigned Names and Numbers (ICANN) allowed parties to completely settle disagreements online using online arbitration in January 2000. ODR was built on top of ICANN's dispute resolution procedures. Then, in March 2000, eBay and the Online Ombuds Office worked together to develop SquareTrade, a pilot project designed to settle conflicts between eBay's buyers and sellers. The initiative proved to be successful, and eBay continues to employ SquareTrade today. Based on Katsh et al.'s initial pilot project, the US-based platform resolves more than 60 million conflicts yearly [12]. When ODR techniques began to appear in courts and state institutions in 2001, the last phase began [13]. The early online tools were less useful for arbitration and more for mediation and bargaining. Due to a lack of users, the early ODR platforms vanished over time because small claims could not afford the expense of using such services. Then, fresh, creative platforms that leverage the newest technology to draw in new customers took the place of the outdated portals.

#### 4. The benefits of e arbitration

Regarding e-arbitration, there are four main benefits to consider [14]. First, parties can settle their dispute in a "neutral place" on the Internet. In other words, because of its transnational nature, the Internet is a global system that is neutral and not influenced by any one authority. This is because software or any other form of artificial intelligence is unlikely to be partisan or biased. After all, machine programs and software automatically retrieve data and information. However, one can question the methods and the information retrieved and processed by the AI systems. Second, online arbitration saves time because there is no need for travel between the parties and the arbitrator, removing the barrier of distance. When video conferencing is not necessary, parties are not expected to complete tasks like uploading documents or responding to inquiries at the same time. In other words, there is little influence on the parties' day-to-day business operations. We would like to highlight two more benefits: lower costs and simple enforcement of decisions rendered via international arbitration. There are no expenses for document storage or transportation because parties can file and submit their documents online. More significantly, however, consumer-based arbitration proceedings ought to be less expensive than court cases. Lastly, an international arbitration judgment can potentially be enforced more easily than a foreign court judgment according to the New York Convention, however, this is yet to be proved in practice [15]. According to the information that is currently accessible, the American Arbitration Association has had an online case management filing system for dispute resolution proceedings for at least ten years [16]. In response to the COVID-19 epidemic, several organisations have implemented remote hearings, such as the Singapore International Arbitration Centre in August 2020 [17]. Even with technological advancements, it is unclear if parties around the world will make use of them. Mirèze and his colleagues contend that online institutional platforms, like the prosperous ICC web platform NetCase, should be viewed as "support facilities" rather than as "fully fledged online arbitration procedures" [18].

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#### 5. The drawbacks of e-arbitration

Legal practitioners have differing views on e-arbitration. For instance, Katsh and his colleagues contend that in the Virtual Magistrate project, which paved the way for mediation as a more advantageous ODR technique, some parties would be unwilling or would just not acknowledge the legitimacy of the arbiter [19]. Remember that this project was carried out in the early days of ODRs, so it shouldn't be cited as a model. These days, when parties to a disagreement resort to e-arbitration, they may reach an Automated Agent E-Arbitration Agreement (AAEA), a novel and cutting-edge technique in which artificial intelligence collects and tracks data and performs duties without human intervention. Consequently, parties may doubt one another's willingness to employ online arbitration because no human interaction is necessary [20]. Since online platforms use cloud services for transfers and storage, some members of the legal community may be hesitant to adopt e-arbitration because they are concerned about the privacy and confidentiality of sensitive information that could offer an opponent an unfair advantage [21]. Parties may worry about hackers, viruses, and computer malfunctions that could jeopardise their private information, even though confidentiality is a major benefit of arbitration and is unaffected by e-arbitration. Even while there are technological ways to avoid these problems, there is no absolute assurance that they won't arise [22]. Concerns are more severe in transactions with larger financial thresholds than in business-to-consumer conflicts, which typically involve small sums. The digital environment and artificial intelligence could be a possible barrier to parties undergoing online arbitration. One can question how the identical decision that would be decided by a human arbitrator might be affected by digital platforms. Even though online platforms have changed significantly over the past 20 years and parties can choose from a variety of platforms offered by respectable arbitration organizations, it is still unclear how digital platforms access and interpret data and information that is submitted to them. This is something that any party submitting a dispute would reasonably be concerned about. Given that the vast majority of arbitral awards are kept confidential and that the effectiveness of AI systems will depend on the amount of data the system has received from the parties involved as well as the level of training (i.e., exposure to arbitration decisions), one might wonder how much exposure and testing an AI system or software could receive if the majority of the data and information is kept unpublished [23].

##### 5.1. International Agreements' limitations

There are no jurisdictional clauses about e-commerce in the UN Convention on the Use of Electronic Communications in International Contracts or the UNCITRAL Model Law [24]. Similarly, neither agreement names any jurisdictions or a selection of applicable laws [25]. As was already noted, there are two types of online e-commerce arbitration: B2B and B2C transactions. B2C online buying accounts for the majority of situations involving ODR methods. As extraterritorial disputes, domain name disputes are very frequent [26, 27]. Despite being the primary law governing ODRs, including online arbitration, the UNCITRAL Model Law is devoid of significant legal provisions to further govern intricate issues and challenges related to online arbitration. Furthermore, a further layer of judicial challenges is created by the disparity in laws across numerous nations regarding the regulation of electronic arbitration [28]. The New York Convention has been silent on electronic arbitration since it entered into force in 1959 [29], which has led to some ambiguity or a *laissez-*

faire approach. As a result, the UNCITRAL Model Law was modified in 2006 to acknowledge the legality of arbitration agreements reached online [30]. Both technology and the people who supply it are essential to the development and viability of online arbitration [31]. A party may doubt the legitimacy of the arbitrators, negotiators, or mediators as a whole if the UNCITRAL Draft Procedure Rules, which serve as the reference document for arbitration processes, do not provide specific requirements for them. To put it another way, parties may not be aware of the arbitrators' credentials or professional backgrounds.

Commercial software systems that specialize in different areas of law are available to forecast a case's outcome [32]. In a speech, Scherer made the seemingly unexpected claim that "AI programs are rational, while humans are not" [33]. Race is an illogical yet pervasive issue in determining an accused person's sentence in the United States. Judges in Israel are less inclined to issue parole close to the end of the day or just before a break [34]. The change in daylight may also play a role; judges might impose harsher penalties after the shift that resulted in less sleep [35]. Professionals in the field are debating whether a fully functional "e-arbitrator" is feasible

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## 6. Conclusion

In the end, international e-commerce arbitration is utilised all over the world as a cutting-edge alternative to traditional dispute resolution for both consumers and businesses. Given the steady growth in retail e-commerce sales, it becomes fair to assume that disputes will increase. E-arbitration has a lot of promise and opportunities because it can only grow as a result of ongoing technology advancements that have already been introduced. As we have shown, arbitration is not the most popular option among ODR providers or users alike. Schmitz is among the academics who think that arbitration and the rules that surround it benefit corporations at the expense of customers. As a result, practitioners and arbitral institutions ought to address the actual problems that parties using this dispute-resolution process encounter. This would particularly be the case if it were promoted and developed further within arbitral institutions and legal communities. Online consumers now have more options for resolving their issues thanks to ODRs. As we've shown above, e-arbitration makes dispute resolution processes more accessible and efficient, but it also has disadvantages because parties could not be sure how much an AI platform will take into account their case. E-arbitration procedures can be made possible in a variety of ways, but among other things, a winning party may encounter difficulties digitally enforcing an award. Since artificial intelligence (AI) outperforms the human intellect, legal practitioners are likely to rely more on it as technology advances in the field of e-arbitration. The following fundamental question must be addressed by legal experts and arbitration organisations: would they have complete faith in automated software that is advanced enough to handle arbitration processes on its own? A "well-advised" practitioner should receive a paper copy of the arbitral decision with the arbitrators' signatures, according to UNCTAD, so arbitral procedures cannot entirely eliminate human involvement, even with the benefits of e-arbitration. "Online arbitration still lacks a sense of reality while reconstructing the offline world," as Łągiowska said. It implies that supporters of in-person (i.e., conventionally based) arbitration procedures will always exist.

In contrast to B2B arbitration, where the financial sums at stake are more significant, e-arbitration may be used more frequently in B2C cases due to its low financial thresholds because human presence and participation would increase the parties' sense of confidence and reassurance. To fully understand the subject, the aforementioned can only be evaluated in the medium term, if not longer.

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## Compliance with ethical standards

### *Disclosure of conflict of interest*

No conflict of interest to be disclosed.

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