

Asia: The New Frontier for Online Dispute Resolution

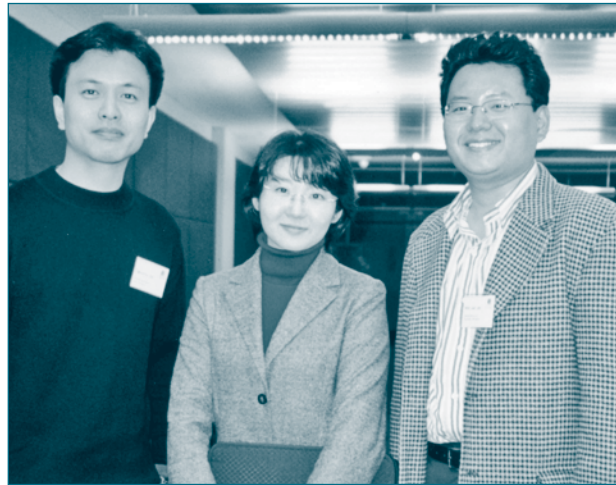
By Colin Rule

It is increasingly clear that Asia is now the most fertile ground for the expansion of online dispute resolution (ODR). Ever since the Third Annual United Nations ODR Working Group in Melbourne in July 2004, the number of ODR providers in Asia has grown steadily. In the last year new providers have emerged in the Philippines, Malaysia, India, Korea and China, joining those already operating in Singapore and Japan. Soon, it seems, Asia's ODR providers may outnumber their predecessors in the West.

These new providers are reaching out to join forces with global ODR networks around the world, such as the Global Trustmark Alliance co-created by the U.S. Better Business Bureau in 2001. They are also helping to refine and evolve the ODR standards and guidelines created during the past six years (such as those created by the ABA e-Commerce Task Force, Consumers International, the International Chamber of Commerce, and the Global Business Dialogue on e-Commerce), so that those best practices documents can better reflect the cultural and political concerns of Asia.

Planting the Seeds: 2000 to 2003

While many of these emerging providers are new to ODR, Asian interest in the field is not, and Asian ODR has been developing for several years. For example, as early



Mr. Timothy Sze, ODRBeijing.com, Ms. Noriko Ogawa, Electronic Commerce Promotion Council of Japan, and Mr. Lee Won Jae, Korea Institute for Electronic Commerce, at the 2004 United Nations ODR Working Group meeting in Melbourne, Australia.

as 2000, several members of the Inter-Pacific Bar Association developed and demonstrated a dispute resolution video-conferencing system as a proof-of-concept, and in 2001 the Korean World Trade Center announced plans to integrate online dispute resolution into its TradePro e-marketplace. Unfortunately, most of these early initiatives failed to take root.

The Asian Domain Name Dispute Resolution Centre

The first real breakthrough came in 2001, when the Internet Corporation for Assigned Names and Numbers (ICANN) realized that all four of the dispute resolution service providers handling domain name disputes under the Uniform Domain-Name Dispute Resolution Policy (UDRP) were located in Europe or North

America. In contrast, domain name disputes were increasingly originating in other areas of the world, like Asia. As a result, pressure grew within ICANN to approve a dispute resolution provider outside of the Atlantic community. In late 2001, the Hong Kong International Arbitration Centre and the China International Economic and Trade Arbitration Commission jointly launched the Asian Domain Name Dispute Resolution Centre (ADNDRC), which became the only ICANN-approved domain name dispute resolution provider in Asia.

ADNDRC was the first project in Asia to offer online filing of disputes and technology-facilitated case evaluations, all according to the established rules of the UDRP. ADNDRC's reach extended throughout Asia, and as such it exposed many to ODR tools for the first time.

DisputeManager.com (Singapore)

The next major step forward happened in Singapore, whose courts had long been interested in dispute resolution. On July 31, 2002, the Honorable Chief Justice Yong Pung How launched DisputeManager.com, the first comprehensive ODR service in Asia. Developed by the Singapore Academy of Law and its subsidiary, the Singapore Mediation Centre (SMC), DisputeManager.com offered three main services: e-Settlement (an automated ADR process in

which the parties make offers and agree to settle once certain conditions are met), Online Mediation, and Neutral Evaluation. DisputeManager.com also supported the Singapore Domain Name Dispute Resolution Service, a service similar to ADNDRC, but focused only on resolving Singapore (.sg) domain name disputes.

As one of the leading Asian dispute resolution centers, SMC's launch of DisputeManager.com was an extremely important legitimizing event for the expansion of ODR into Asia. More than 130 organizations in both the public and private sectors had declared their support for DisputeManager.com at its launch, and administrative fees for the service were waived in 2003 to expand awareness and encourage filings. However, DisputeManager's early caseload was modest, so few other Asian countries rushed to create parallel services.

Waiting for Conditions to be Right

The slow start for many of these Asian ODR experiments was confounding. ODR researchers and proponents around the world questioned why the rapid development of ODR that had taken place in North America and Europe was not playing out similarly in Asia. Soon it became apparent that while enthusiasm for ODR existed in Asia, the timing was not yet right. Conditions, however, were rapidly changing.

The Narrowing Connectivity Gap

Internet access is clearly a pre-requisite for ODR. Several years ago this lack of access was the primary obstacle to the spread of ODR in Asia, but today it is much less of an issue. Several Asian countries have made significant investments in



The Philippine Online Dispute Resolution homepage, accessible at www.disputeresolution.ph

building Internet infrastructure over the last couple years, and as a result they are rapidly gaining access to the Internet and reducing the barriers presented by limited connectivity. In fact, many areas in countries, like India, with a significant portion of the population under the poverty line, are becoming extensively wired, which is leading to the increased business in outsourcing work from more developed countries in the West.

Other nations, like Malaysia, have made the decision on a political level to deploy high speed Internet access throughout the country at the government's expense as a way to stimulate the economy. Korea is now the most wired country in the world, with approximate 25 broadband lines for every 100 people. Wireless access is also much more developed in Asia than in the United States, which has aided Internet penetration. Because Asian nations can skip intermediate technologies (like ISDN) and move straight to cutting-edge technologies like Wi-Max (long range wireless Internet access) they may have an advantage over western nations that have over-invested in now obsolete legacy technology.

The Expansion of eCommerce
The development of online dispute resolution has always followed the expansion of e-commerce. ODR can be used for many disputes outside of e-commerce, but the pressing need to resolve disputes in thriving e-commerce marketplaces has usually served as the primary incentive for companies and governments to invest in ODR networks. In 2000 and 2001 e-commerce exploded in the United States and Europe, but penetration

into the main population centers in Asia has taken more time. Asia's early adopters like Japan and Singapore had the most e-commerce volume, and ODR took root in those countries first. The larger countries, like China and India, have taken longer, but when their ODR markets get underway, the impact will be extremely significant, not only for ODR but for the world economy as a whole.

The company that gets in early and establishes itself as the de facto payment standard and retail infrastructure, stands to place itself at the heart of the developing Asian market for consumables, which may prove to be far more lucrative in the long run than similar penetration in Western societies. The only way to assume that role as the de facto standard is to have a streamlined, efficient way to resolve the transaction problems that will arise—hence the exploding interest in Asian ODR.

The New Providers

As ODR expands to Asia, new websites are cropping up on almost a monthly basis. While the exact cast of providers is sure to change with the competitive landscape, a few promising ODR centers have emerged

that underscore the current innovation and activity throughout Asian ODR.

The Philippines

One of the most technologically impressive of the new ODR websites is the Philippine Online Dispute Resolution service, which was launched by Justice Artemio Panganiban on November 8, 2004. Claro Parlade and the Cyberspace Policy Center for Asia-Pacific spearheaded the creation of the site, and they envisioned that it would become a web-based multidoor courthouse offering several services: “neutral evaluation, for an unbiased assessment of the case by a neutral expert; mediation, for assistance in forging a settlement; arbitration, for a binding ruling of the case; and blind bidding, an automated bidding program that allows parties to a purely monetary dispute to identify the optimal settlement amount.”

This ODR service suite can be accessed at www.disputeresolution.ph, or via instant messages over cell phones for features such as notification and case status checker (with automated negotiation over cell phones coming soon). The project had some powerful backers, as financial support came from the Asia Foundation, and technological development was provided by Microsoft Philippines and the CyberNet Group. Among those that will be encouraging use of the service are the Philippine Department of Trade and Industry, the Philippine Franchise Association and the Philippine Retailers Association.

Malaysia

One of the newest and most ambitious private ODR providers in Asia is ODR-World (www.odrworld.com), started by Chittu Nagarajan in 2004. Ms. Nagarajan became interested in ODR during the

course of her academic research where the need for ODR in societies expanding their e-commerce volume became increasingly clear. Providers are originally drawn to ODR by the opportunity it offers to address social injustice, providing redress to individuals denied access to justice because of their geographic location or their inability to pay for traditional legal recourse. Ms. Nagarajan quickly realized that this presented a particularly compelling value proposition in many regions in Asia, where the courts are simply not a realistic redress option for many members of Asian societies. As a result, she designed ODRWorld to provide people who have a dispute even for a negligible sum or for non-monetary transactions looking for satisfaction to get what is rightly owed to them. Her motto in developing the site was “Justice is paramount and should be available to all.”


Culturally it is clear that ODR in particular, and dispute resolution more generally, has a longer row to hoe than in the West. As Ms. Nagarajan has observed, it is often “hard to find people who see the value in it... in these countries ADR itself is not widely used. Mediation and negotiation are practically unheard of. People are still very conservative and feel that justice can be delivered only at the doors of the courts.” As a result, it will take time for public attitudes to warm to ODR. “As for now,” concludes Ms. Nagarajan, “it is just a patient waiting game.”

China

The situation in China is somewhat different, mainly as a result of rapidly expanding e-Commerce in the country. By 2007 e-Commerce in China is expected to be growing approximately four times as fast as global e-Commerce. The need for a well-established and effective ODR service

is clear and compelling. As a result, Beijing Deofar Consulting Ltd. launched the China Online Dispute Resolution Center (ChinaODR) in June 2004, at www.odr.com.cn. ChinaODR is the first full-service online dispute resolution provider in China, providing online negotiation, online mediation, online arbitration, online notarization and online lawyer witness services. All the panelists associated with the site have several years of offline experience providing mediation and arbitration services.

Timothy Sze, founder of ODRBeijing, is very optimistic about the potential of e-Commerce ODR in China. He foresees the development of many “independent dispute resolution services for the tremendous volume of transactions that will soon be taking place through the Internet.” A major step forward was the launch of ChinaODR’s online arbitration and online mediation services in December 2004. To date, all services are available in Chinese only. ChinaODR has announced its plans to introduce online negotiation and online evaluation in the near future.

“At present,” Dr. Sze explains, “ChinaODR provides ODR services for the members of China E-commerce Good Faith Alliance, which consists of 18 business-to-business (B2B) and business-to-commerce (B2C) companies. Additionally, ChinaODR is negotiating a service agreement with the China Quality Promotion Association to be completed in March 2005. This will be the first example of official collaboration with governmental agencies on the development of ODR in China.” 



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