
THE INSTRUMENTALIZATION OF JUSTICE IN THE PLATFORM ERA: REIMAGINING ARBITRATION AND ONLINE DISPUTE RESOLUTION

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ABSTRACT

This paper looks at how online dispute resolution (ODR) is changing in the digital age, especially on big platforms like Amazon, Alibaba, and the BC Civil Resolution Tribunal. It asks whether these systems are really helping users or mostly working in Favor of large private companies. The study focuses on how tools like arbitration and ODR, which were supposed to make justice easier and fairer, might now be increasing power imbalances. Using legal theories and case studies, the paper explores how current ODR systems work and how they may be shaping justice in new ways. It also looks at rules and guidelines, like those from UNCITRAL, and ideas from legal scholars about digital fairness. In the end, the paper argues that online justice needs to be more transparent, fair, and cantered on the people using it, not just the platforms that control it.

Keywords: Online Dispute Resolution (ODR), arbitration, platform economy, digital justice, UNCITRAL, legal fairness, algorithmic governance, power imbalance

I. Introduction

In an era defined by platform capitalism and algorithmic governance, the evolution of dispute resolution has taken a dramatic turn. Online Dispute Resolution (ODR) and arbitration, once heralded as tools of democratized justice, are now increasingly embedded within the commercial logics of dominant digital platforms. What was initially conceived as a mechanism to enhance access to justice has been repurposed to consolidate managerial control, curtail public oversight, and obscure procedural fairness. The very platforms that claim to empower users often deploy dispute resolution tools that prioritize efficiency over equity, scalability over transparency, and private governance over public adjudication.

This paper contends that arbitration and ODR mechanisms in the digital platform economy have become instrumentalized employed not as neutral or equitable tools of justice, but rather as means of institutional self-interest and control. Such instrumentalization is especially evident in the practices of private platform operators like Amazon and Alibaba, where dispute systems are tightly interwoven with proprietary technologies and opaque decision-making structures.

To fully grasp the implications of this shift, it is necessary to first trace the historical evolution of arbitration and ODR. Arbitration has long existed as a form of alternative dispute resolution (ADR), favoured in commercial contexts for its perceived efficiency, privacy, and finality.¹ Over time, it evolved into a standardized mechanism governed by legal doctrines and institutional frameworks, such as those developed by the American Arbitration Association and the United Nations Commission on International Trade Law (UNCITRAL). With the advent of the internet and the rise of e-commerce, traditional arbitration gave way to digital alternatives, culminating in what is now widely referred to as ODR.²

ODR initially emerged in the late 1990s as a visionary experiment in global access to justice using the borderless capabilities of the internet to resolve disputes efficiently, regardless of geography.³ Enthusiasts believed that technology could resolve the limitations of traditional

¹ Judith Resnik, 'Diffusing Disputes: The Public in the Private of Arbitration, the Private in Courts, and the Erasure of Rights' (2015) 124 *Yale Law Journal* 2804.

² Ethan Katsh and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (Jossey-Bass 2001) 11–23.

³ Ethan Katsh and Orna Rabinovich-Einy, *Digital Justice: Technology and the Internet of Disputes* (Oxford University Press 2017) 3–8.

legal institutions, especially in low-value, high-volume disputes common to e-commerce.⁴ However, as platforms grew into transnational behemoths, ODR shifted from its roots in online mediation and negotiation into more centralized, opaque, and platform-driven systems.

This paper engages with three primary theoretical frameworks to examine this shift: legal instrumentalism, which highlights the use of law as a tool of power rather than a neutral arbiter; critical proceduralism, which interrogates the erosion of fairness and due process under efficiency-driven reforms; and algorithmic governance, which explores how automated systems structure and limit legal participation. Together, these theories shed light on how ODR in the platform economy risks undermining core adjudicatory principles transparency, accountability, and user agency.

By analysing doctrinal materials, platform-specific case studies, and soft-law regulatory frameworks, this paper aims to critically assess the current state of digital dispute resolution. It further proposes a reimagining of ODR one rooted in normative commitments to procedural justice and democratic governance.

II. Literature Review: Theories of Instrumental Justice and Digital Governance

The conceptual terrain of digital dispute resolution is traversed by multiple theoretical traditions, each offering distinct critiques of how justice is constructed, mediated, and potentially co-opted in the platform economy. This literature review synthesizes key insights from legal instrumentalism, critical proceduralism, and algorithmic/platform governance, forming a foundation to interrogate the evolving dynamics of arbitration and Online Dispute Resolution (ODR). These frameworks collectively illuminate the shift from a justice-oriented model to a managerial model of dispute resolution, while also revealing enduring tensions between techno-optimism and structural critique.

A. Legal Instrumentalism: Law as a Tool of Power

Legal instrumentalism, a jurisprudential tradition rooted in American legal realism, views law not as an abstract embodiment of justice, but as a tool wielded in pursuit of social, political, or economic goals. Oliver Wendell Holmes famously declared that “the life of the

⁴ Amy J Schmitz, ‘Expanding Access to Remedies Through E-Court Initiatives’ (2019) 67 *Buffalo Law Review* 89, 97–101.

law has not been logic; it has been experienced,”⁵ emphasizing law’s responsiveness to prevailing interests and societal pressures.

Building on Holmes, Karl Llewellyn advanced a pragmatic and anti-formalist conception of law, whereby rules were subordinate to outcomes, and legal institutions were shaped by the demands of industrial capitalism.⁶ Within digital contexts, this view problematizes the assumption that legal processes, including arbitration and ODR, are inherently neutral. Instead, legal instrumentalism invites scrutiny of how these mechanisms are structured by powerful actors particularly platforms and used to entrench their commercial imperatives.

This critique undergirds the paper’s core argument: that ODR systems designed by platform operators function less as impartial adjudicatory spaces and more as instruments of institutional governance, privileging efficiency, risk containment, and user compliance over procedural fairness.

B. Critical Proceduralism: Contesting Neutrality in Dispute Systems

While legal instrumentalism critiques the purpose of law, critical proceduralism focuses on the forms through which law is enacted. Scholars like Judith Resnik and Lorne Sossin challenge dominant narratives that celebrate speed and simplicity in dispute systems, emphasizing instead the symbolic and democratic functions of procedure.⁷

Resnik, for example, argues that arbitration and privatized justice mechanisms erode public values embedded in traditional courts transparency, precedent, and equal participation.⁸ Sossin similarly warns that the push for “streamlined” procedures in administrative justice can marginalize vulnerable users under the guise of modernization.⁹ These critiques are particularly salient in the platform context, where procedural safeguards are often traded off in favour of algorithmic efficiency and scalability.

⁵ Oliver Wendell Holmes, *The Common Law* (Little, Brown & Co 1881) 1.

⁶ Karl N Llewellyn, *The Bramble Bush: The Classic Lectures on the Law and Law School* (Oxford University Press 2008) 12–24.

⁷ Lorne Sossin, ‘Designing Administrative Justice’ (2005) 31 *Queen’s Law Journal* 1, 12–17.

⁸ Judith Resnik (n 1) 2810–11.

⁹ *ibid* 2815.

This strand of scholarship problematizes the mainstream ODR discourse that conflates technological innovation with access to justice. Instead, it reveals how procedural formality serves as a counterweight to managerialism, preserving dignity, accountability, and voice in dispute processes even at the expense of speed or convenience.

C. Algorithmic and Platform Governance: Datafied Dispute Resolution

A third strand of critical literature emerges from digital governance and platform studies, examining how platforms govern users through code, interface design, and algorithmic logic. Julie E. Cohen argues that platforms engage in “informational capitalism,” where legal norms are subsumed under computational control.¹⁰ Algorithms do not merely execute policy they shape it, defining access, outcomes, and user behaviour in opaque and non-contestable ways.

Mireille Hildebrandt deepens this concern by identifying the “legal-by-design” shift, wherein technical systems increasingly replace legal reasoning with automated processes.¹¹ In such systems, procedural discretion is displaced by predictive analytics, and the rule of law risks becoming subservient to the logic of optimization.

Tarleton Gillespie similarly explores how platforms curate and manage disputes through content moderation and flagging systems that mimic legal adjudication but evade legal standards.¹² These critiques highlight a fundamental problem in platform-era dispute resolution: the decoupling of dispute mechanisms from constitutional or democratic accountability.

Collectively, this body of work reveals the limitations of techno-legal utopianism. While ODR promises access and efficiency, its current instantiations often reflect a new mode of digital managerialism characterized by opacity, automation, and asymmetry.

III. Methodology and Conceptual Framework

¹⁰ Julie E Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism* (Oxford University Press 2019) 112–35.

¹¹ Mireille Hildebrandt, ‘Law as Computation in the Era of Artificial Legal Intelligence: Speaking Law to the Power of Statistics’ (2018) 68 *University of Toronto Law Journal* 12, 15–17.

¹² Tarleton Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media* (Yale University Press 2018) 145–59.

To critically interrogate the evolving architecture of Online Dispute Resolution (ODR) and arbitration in the platform economy, this study employs a multi-method qualitative approach that integrates doctrinal legal analysis, comparative institutional critique, and critical interpretivism. Together, these methodologies enable a holistic analysis of both the formal legal structures that underpin digital dispute resolution and the broader sociotechnical logics that govern its implementation and effects.

A. Doctrinal Legal Analysis

Doctrinal analysis forms the foundational layer of this study. This approach involves a close reading of legal texts, statutory instruments, case law, and regulatory guidelines that shape and define ODR frameworks. The objective is to analyse how legal norms both binding and soft-law structure the legitimacy, scope, and enforceability of digital dispute mechanisms.

Central to this inquiry is the examination of international legal instruments such as the UNCITRAL Technical Notes on Online Dispute Resolution, which provide a non-binding but widely cited framework for implementing ODR in cross-border e-commerce.¹³ Doctrinal analysis also extends to national arbitration laws (e.g., the Federal Arbitration Act in the United States, or Canada's Civil Resolution Tribunal Act) and the arbitration clauses embedded in private platform terms of service.

This method allows for a grounded understanding of the legal status and constraints of ODR systems, while revealing the extent to which current frameworks defer to private governance models over public regulatory standards.

B. Comparative Institutional Critique

Building on doctrinal insights, this paper undertakes a comparative case study analysis of three digital dispute resolution systems:

1. Amazon's arbitration regime, which utilizes mandatory arbitration clauses to channel disputes away from courts and into private fora;
2. Alibaba's ODR platform, which offers structured, multilingual resolution pathways for

¹³ United Nations Commission on International Trade Law (UNCITRAL), *Technical Notes on Online Dispute Resolution*, UN Doc A/CN.9/907 (2016).

cross-border commercial disputes; and

3. The British Columbia Civil Resolution Tribunal (BC CRT), a public-sector digital tribunal positioned as a user-friendly, rights-based model.

These cases have been selected due to their institutional diversity ranging from private, commercial systems (Amazon, Alibaba) to a state-operated ODR tribunal (BC CRT) and their relevance in shaping global perceptions of digital justice. Through comparative institutional critique, the study evaluates these models against normative benchmarks such as procedural fairness, user transparency, appealability, and accountability.

This approach draws from administrative and regulatory law literature, highlighting how governance-by-contract in the private sector is contrasted with more deliberative, rights-oriented design in the public sphere.

C. Critical Interpretivism

Finally, the study adopts a critical interpretivist lens to embed the empirical findings within a broader critique of platform capitalism and regulatory minimalism. This framework is informed by sociolegal theory, critical data studies, and political economy, and seeks to expose the power asymmetries that shape digital dispute resolution architectures.

Critical interpretivism moves beyond surface-level legal analysis to interrogate how platforms utilize dispute systems as infrastructures of control, disciplining users through techno-legal design, opaque algorithms, and clickwrap agreements. It also foregrounds the role of soft-law governance, such as the UNCITRAL notes or OECD principles, in legitimizing these systems without offering enforceable protections.¹⁴

By situating ODR within a context of data extraction, procedural minimalism, and commercial surveillance, the study questions whether current regulatory efforts are capable of safeguarding adjudicatory integrity in an increasingly privatized legal order.

IV. Platform Case Study I: Amazon's Private Arbitration Regime

Amazon, one of the largest and most influential platforms in the global digital economy,

¹⁴ OECD, *Recommendation of the Council on Consumer Protection in E-commerce* OECD/LEGAL/0422 (2016) <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0422> accessed 9 April 2025.

offers a prime example of how arbitration has been co-opted to manage legal exposure while limiting user redress. By embedding mandatory arbitration clauses into its Terms and Conditions, Amazon has engineered a dispute resolution mechanism that privatizes justice, neutralizes collective action, and consolidates control over legal outcomes.¹⁵

A. Contractual Infrastructure and the Erasure of Class Actions

Amazon's arbitration policy mandates that virtually all disputes arising out of its services must be resolved through individual arbitration under the rules of the American Arbitration Association (AAA). These clauses are presented in non-negotiable "clickwrap" agreements, which consumers implicitly accept upon using the platform.¹⁶ Until 2021, Amazon's terms also explicitly waived the right to participate in class actions, a provision that effectively fragmented consumer claims into isolated proceedings.

This approach gained national attention when more than 75,000 Echo and Alexa users filed arbitration claims following privacy concerns about voice recordings.¹⁷ Faced with the financial cost of individual arbitration fees under AAA rules which Amazon was obligated to pay as per consumer arbitration standards the company abruptly reversed its position. In May 2021, it removed its mandatory arbitration clause, opting instead for litigation in state or federal courts.¹⁸ While this move was interpreted by some as a pro-consumer pivot, it also highlighted the company's instrumental approach to legal design: arbitration was retained as long as it shielded the platform from litigation, and discarded only when it became economically inefficient.

B. Implications for Procedural Justice and User Agency

Amazon's historical use of forced arbitration raises significant concerns regarding procedural justice, especially as defined by accessibility, transparency, and equality of arms.¹⁹ First, the opacity and inaccessibility of arbitration processes diminish users' ability to

¹⁵ Amazon.com, 'Terms and Conditions'

<https://www.amazon.com/gp/help/customer/display.html?nodeId=508088> accessed 9 April 2025.

¹⁶ *ibid.*

¹⁷ Lauren Feiner, 'Amazon Drops Arbitration Clause After Alexa Users Flooded the Company With 75,000 Claims' *CNBC* (1 June 2021) <https://www.cnbc.com/2021/06/01/amazon-drops-arbitration-clause-after-75000-alexa-users-file-claims.html>.

¹⁸ Jeff John Roberts, 'Amazon's Arbitration U-Turn Is a Warning Shot to Big Tech' *Fortune* (2 June 2021) <https://fortune.com/2021/06/02/amazon-arbitration-policy-change-lawsuit-class-action/>.

¹⁹ Jerry L Mashaw, *Due Process in the Administrative State* (Yale University Press 1985) 22–26.

understand or contest outcomes. Unlike public courts, arbitration proceedings are private and largely unreviewable, reinforcing information asymmetries between users and the platform.

Second, the ban on collective redress disempowers consumers by isolating them from solidarity mechanisms. Procedural justice, according to Resnik and others, is not merely about individual fairness but about maintaining a system that visibly and accountably processes disputes within a public legal order.²⁰ In Amazon's regime, the user is transformed from a legal subject into a managed entity, whose rights are subordinated to platform-imposed constraints.

C. Forced Arbitration as a Tool of Platform Capitalism

The strategic deployment and subsequent retraction of Amazon's arbitration clause reflects a broader phenomenon in platform capitalism: the legalization of control through private governance mechanisms. Arbitration is not simply a neutral dispute forum; it becomes a technology of risk management, employed selectively to reduce liability, avert public scrutiny, and channel disputes into economically favourable outcomes.

This aligns with Julie Cohen's theory of "informational capitalism", wherein platforms embed control mechanisms within both technological infrastructures and legal agreements.²¹ by crafting procedural rules into the very architecture of user interaction, Amazon uses arbitration to structure the limits of legal contestation transforming what was once a procedural right into a contractual condition.

Ultimately, Amazon's arbitration model underscores the central claim of this paper: that digital dispute resolution, when embedded within commercial platform ecosystems, becomes a managerial instrument rather than a deliberative legal process. The power asymmetries it enshrines are not incidental, but central to its design.

V. Platform Case Study II: Alibaba and Cross-Border ODR

As a major facilitator of global e-commerce, Alibaba has developed an expansive and highly structured Online Dispute Resolution (ODR) system that plays a central role in resolving international commercial disputes on its platform. Unlike traditional arbitration administered

²⁰ Judith Resnik, 'Fairness in Numbers: A Comment on AT&T v. Concepcion, Wal-Mart v. Dukes, and Turner v. Rogers' (2011) 125 *Harvard Law Review* 78, 90–93.

²¹ Julie E Cohen (n 10) 145–58.

by third-party tribunals, Alibaba's dispute resolution process is internally managed, automated, and integrated into the buyer-seller interface. This case study examines Alibaba's platform-mediated ODR infrastructure, its international implications, and the growing tension between private regulatory ecosystems and public legal orders.

A. Alibaba's Embedded Mediation-Arbitration Mechanism

At the core of Alibaba's ODR system is a multi-tiered process designed to address disputes between cross-border buyers and sellers. The process typically begins with a "Complaint" or "Dispute" stage, where users submit claims through an online portal. Alibaba then initiates internal mediation conducted by customer service agents or dispute specialists who review uploaded evidence (e.g., transaction records, photos, shipping logs).²²

If mediation fails, the system allows either party to escalate the dispute to binding arbitration often administered by third-party entities such as the Hong Kong International Arbitration Centre (HKIAC) or the China International Economic and Trade Arbitration Commission (CIETAC), depending on jurisdictional preferences.²³ However, Alibaba itself retains considerable control over who can escalate, how evidence is evaluated, and which arbitral bodies are recognized.

Critically, this process is designed to be fast and low-cost, often completed entirely online without oral hearings. While efficient, this format limits procedural depth and restricts parties' ability to question evidence, raise jurisdictional challenges, or appeal decisions elements that are foundational to procedural fairness in public legal forums.

B. Cross-Border Enforcement and Legal Ambiguity

The enforceability of Alibaba's ODR outcomes hinges on the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).²⁴ While arbitral awards rendered by HKIAC or CIETAC are generally enforceable in Convention-member

²² Alibaba.com Help Centre, 'Disputes & Refunds – How to File a Complaint' https://service.alibaba.com/buyer/faq_detail/20385931.htm accessed 9 April 2025.

²³ Alibaba.com, 'Rules and Policies: Dispute Terms' <https://rule.alibaba.com/rule/detail/2039.htm> accessed 9 April 2025.

²⁴ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 38.

states, questions persist regarding the procedural integrity of disputes originating from algorithmically managed, platform-centric processes.

Furthermore, Alibaba often positions itself as a facilitator, not a legal party, thereby avoiding direct legal liability for the outcomes it supervises. The company's "Trade Assurance" and "Buyer Protection" programs reinforce this duality blending consumer rights rhetoric with private dispute management mechanisms that lack external accountability.

This hybridity creates legal grey zones. On the one hand, arbitration decisions may qualify for enforcement under international instruments; on the other, they are rendered through quasi-private protocols governed by platform Terms of Service, not state-sanctioned procedural rules. The result is an enforcement regime that privileges contractual coherence over normative consistency, further entrenching platform power in transnational commerce.

C. Private Regulation vs. Public Law: A Normative Collision

Alibaba's ODR system reflects the broader rise of *lex digitalis* a form of private, code-based regulation that parallels but does not necessarily align with public international law.²⁵ the platform's embedded dispute resolution architecture allows it to define rules, control evidentiary standards, and limit legal contestation, all without the oversight of democratic institutions or the judiciary.

This privatization of adjudication poses significant normative challenges. Public legal orders rely on procedural safeguards, rule of law principles, and independent oversight to legitimate outcomes. Alibaba's model, by contrast, replaces deliberative procedures with rule-based automation and user interface constraints, reinforcing user passivity and regulatory opacity.

Scholars such as Shaheeza Lalani and Fabien G  linas argue that this phenomenon signals a shift toward privatized adjudication zones, where platforms become legal governors of their own ecosystems.²⁶ While such models may increase access to quick remedies, they risk

²⁵ Mireille Hildebrandt, *Smart Technologies and the End(s) of Law: Novel Entanglements of Law and Technology* (Edward Elgar 2015) 189–210.

²⁶ Shaheeza Lalani and Fabien G  linas (eds), *International Investment Law and Arbitration: History, Modern Practice, and Future Prospects* (Edward Elgar 2015) 223–45.

eroding the foundational guarantees of justice neutrality, transparency, and rights-based adjudication.

VI. Public ODR: The BC Civil Resolution Tribunal (Canada)

Amidst a digital landscape dominated by privatized Online Dispute Resolution (ODR) systems, the British Columbia Civil Resolution Tribunal (BC CRT) stands out as a public-sector innovation aimed at modernizing justice delivery while maintaining procedural integrity. As Canada's first online tribunal, the CRT offers an instructive model for balancing technological efficiency with legal accountability, positioning itself as a potential "middle path" between traditional courts and platform-driven dispute ecosystems.

A. Overview and Structure: A Hybrid ODR Model

The BC Civil Resolution Tribunal, operational since 2016, was established under the Civil Resolution Tribunal Act (SBC 2012, c. 25) to resolve small claims, strata disputes (condominium governance), and certain motor vehicle injury claims.²⁷ It is government-run, quasi-judicial, and fully online, and offers a structured four-phase process:

1. **Solution Explorer:** A free, interactive tool that guides users through legal information and self-help options.
2. **Negotiation:** A facilitated online exchange between parties.
3. **Facilitated Mediation:** Involving a CRT staff member to assist in resolving the dispute.
4. **Adjudication:** A legally binding decision issued by a tribunal member, enforceable as a court order.

Unlike private platforms, the CRT explicitly affirms access to justice as its mission, integrating legal guidance and plain-language explanations throughout the interface. Its interface design reflects user-centric principles rooted in accessibility, procedural transparency, and the minimization of legal complexity.

²⁷ British Columbia Civil Resolution Tribunal, <https://civilresolutionbc.ca> accessed 9 April 2025.

B. Accessibility vs. Algorithmic Streamlining

The CRT's commitment to accessibility is evident in several dimensions. First, it is designed for laypersons, with no requirement for legal representation. Second, it uses asynchronous communication, allowing users to engage in proceedings at their own pace. Third, the Solution Explorer has been lauded for its integration of legal education with dispute triage.²⁸

However, critics have raised concerns about the invisible procedural streamlining embedded in digital justice platforms. For example, the CRT heavily relies on standardized templates, rule-based workflows, and interface-based constraint mechanisms that may unintentionally restrict nuanced legal reasoning and individualized adjudication.²⁹

While the CRT is less algorithmically governed than private platforms like Amazon or Alibaba, it still exhibits features of bureaucratic automation that prioritize throughput and efficiency. These concerns echo broader critiques in administrative law about the trade-offs between personalization and procedural regularity in digital legal systems.³⁰

C. Situating CRT Within Global Regulatory and Normative Contexts

The BC CRT has gained international attention as a model for digital justice reform, aligning with global principles such as the OECD's Recommendation on Access to Justice and the UNCITRAL Technical Notes on Online Dispute Resolution.³¹ The CRT's statutory framework and operational design incorporate public-sector transparency, independent adjudication, and enforceability features often lacking in platform-based dispute systems.

This positions the CRT in stark contrast to privatized ODR regimes. Unlike Amazon's pre-2021 arbitration model, or Alibaba's embedded mediation interface, the CRT is embedded within a public rule-of-law framework, accountable to democratic oversight, and subject to

²⁸ Jane Bailey and others, 'Measuring Fairness in Digital Justice Systems: Lessons from the Civil Resolution Tribunal' (2022) 39 *Windsor Yearbook of Access to Justice* 123, 132–36.

²⁹ Shannon Salter, 'Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal' (2016) 61 *McGill Law Journal* 823, 841–45.

³⁰ Lorne Sossin, 'The Future of Tribunal Justice in a Digital Age' in Colleen M Flood and Lorne Sossin (eds), *Administrative Law in Context* (3rd edn, Emond Montgomery 2018) 451, 462–68.

³¹ OECD, *Recommendation on Access to Justice and People-Centred Justice Systems* OECD/LEGAL/0462 (2021) <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0462> accessed 9 April 2025.

appeal under the British Columbia Supreme Court.³²

At the same time, the CRT's existence raises challenging questions: Can digital justice be scaled without sacrificing deliberative depth? Can governments effectively regulate platform ODR systems, or must they build parallel infrastructures like the CRT to protect procedural rights?

Ultimately, the CRT offers a cautious optimism: it demonstrates that it is possible to integrate the speed and scalability of digital systems with principles of due process and legal legitimacy, but only when those systems are publicly designed, publicly governed, and normatively transparent.

VII. Normative Responses: Soft-Law, Digital Due Process, and Rights-Based ODR

While private platform-led Online Dispute Resolution (ODR) systems have grown increasingly dominant, often circumventing traditional adjudicatory values, a range of normative responses has emerged. These include international soft-law frameworks, such as the UNCITRAL Technical Notes, and the jurisprudential visions of scholars advocating for digitally adapted due process principles. Together, they reflect a growing awareness that digital adjudication must not only be efficient but also just, transparent, and accountable. However, the tools currently available especially in the form of soft-law raise questions about enforceability and normative depth.

A. Critiquing UNCITRAL's Soft-Law Approach: Vagueness and Structural Limitations

The UNCITRAL Technical Notes on Online Dispute Resolution, adopted in 2016, aim to provide guidance for the implementation of ODR in cross-border commercial disputes. Framed as a non-binding soft-law instrument, the Notes emphasize key goals: procedural fairness, user trust, efficiency, and accessibility.³³ However, this generality meant to encourage widespread adoption has had the unintended effect of weakening normative precision.

The Notes offer no concrete procedural requirements, instead urging that ODR systems “should be fair and efficient” without defining what fairness entails or how it can be

³² *Civil Resolution Tribunal Act*, SBC 2012, c 25, ss 55–58 (Canada).

³³ Ethan Katsh and Orna Rabinovich-Einy (n 3) 173–90.

procedurally ensured.³⁴ for example, while recommending that parties “should be informed of the process,” the Notes are silent on the scope of such notice, appeal mechanisms, or transparency standards. This vagueness enables platforms to invoke compliance without meeting any enforceable thresholds, effectively decoupling normative language from regulatory substance.

More critically, UNCITRAL’s framework assumes a horizontal relationship between parties, ignoring structural imbalances between platforms and users. It assumes, implicitly, that dispute resolution operates in a neutral, rule-bound space when in reality, the design and administration of ODR are shaped by platform interests, economic constraints, and algorithmic gatekeeping. As such, the UNCITRAL Notes reflect a regulatory minimalism that legitimizes privatized governance while failing to protect adjudicatory integrity.

B. Visions of Digital Due Process: Transparency, Participation, and Accountability

In response to such limitations, scholars have increasingly advocated for a framework of “digital due process”, grounded in procedural values adapted for the algorithmic era. Ethan Katsh and Orna Rabinovich-Einy argue that ODR must not simply mimic traditional legal procedures but should reimagine procedural fairness to meet the unique challenges of digital interaction. They call for systems designed around transparency, informed consent, reasoned decisions, user participation, and appealability.³⁵

This vision seeks to restore what has been lost in privatized systems: the user’s role as an active legal subject, rather than a passive recipient of automated outcomes. According to this model, users should have:

- a. Clear notice of procedural rules and legal consequences.
- b. Explanations of decisions, especially when generated by algorithms.
- c. Opportunities to appeal, revise, or challenge outcomes.
- d. Access to human review in cases of complexity, bias, or error.

³⁴ UNCITRAL (n 13).

³⁵ Katsh and Rabinovich-Einy (n 3) 178–89.

These principles echo the jurisprudential values of due process as dialogic and participatory, rather than merely efficient. They also resonate with public law traditions, including administrative and constitutional procedural fairness.

C. Emerging Principles: Data Ethics, Algorithmic Explainability, and Procedural Integrity

Beyond procedural values, scholars are articulating a new ethical framework for digital justice systems, rooted in data protection, algorithmic accountability, and the politics of design. Three principals have emerged as central to this rights-based ODR paradigm:

1. **Algorithmic Explainability:** As ODR platforms increasingly rely on machine learning and automated triage, users must be able to understand and contest algorithmic decisions. This principle is codified in European data law (GDPR Article 22), which recognizes a right not to be subject to automated decision-making without meaningful human oversight.³⁶ In ODR contexts, this means designing systems that disclose decision logic and allow for meaningful challenge.
2. **Data Ethics and Minimization:** Justice systems must adhere to data minimization, proportionality, and privacy-by-design principles.³⁷ ODR platforms often gather vast amounts of dispute-related metadata for purposes beyond dispute resolution (e.g., predictive analysis, commercial profiling), risking both surveillance creep and undermining trust.
3. **Procedural Fairness by Design:** Borrowing from “legal by design” approaches, scholars emphasize that procedural justice must be built into digital infrastructure not added retroactively.³⁸ This includes interface design that enhances comprehension, timelines that accommodate user diversity, and workflows that reflect deliberative adjudication, not merely automated throughput.

Together, these principles form the foundation of a rights-based ODR system one that re-centres human dignity, agency, and justice values, even as it embraces technological

³⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation), art 22 [2016] OJ L119/1.

³⁷ Julie E Cohen (n 10) 164–72.

³⁸ Mireille Hildebrandt (n 25) 205–16.

innovation.

VIII. Reimagining the Digital Dispute Resolution Paradigm

Given the many flaws and gaps in how platform-based Online Dispute Resolution (ODR) currently works, this chapter offers a new model for digital justice. Instead of focusing only on speed, automation, and platform efficiency, this new approach is built on values like legal diversity, user participation, and digital rights.

This vision stands on four key pillars that work together:

- a. User agency - giving people real choice and control in the dispute process.
- b. Institutional transparency - making rules and decisions visible and understandable.
- c. Regulatory oversight - holding platforms accountable through enforceable standards.
- d. Human-centered design - building systems around the needs, rights, and experiences of users.

This reimagined model aims to make ODR not just fast or convenient but fair, inclusive, and trustworthy in a digital world.

A. Centring User Agency

A fair dispute system starts with people having control over their own process. But most current ODR systems especially on private platforms take that control away. Users are often stuck accepting terms they didn't read, dealing with automated systems they can't question, and following strict, one-size-fits-all processes.

To fix this, a better system needs to give that power back. That means:

- a. Letting users speak up and be heard whether they're talking to a person or a machine.
- b. Giving them real choices, like saying no to automation or taking their case to a public court.
- c. Making sure people especially those without legal knowledge can get help and advice

when they need it.

User control shouldn't be an add-on it should be part of how ODR systems are built, run, and improved. Tech should support people, not just manage them.

B. Ensuring Institutional Transparency

Most ODR platforms today are not transparent. Algorithms make decisions behind the scenes, users can't see how evidence is judged, and the rules are often buried in confusing interfaces. To change this, digital justice systems need to become more open and clearer by³⁹:

- a. Explaining how decisions are made especially when algorithms are involved.
- b. Publishing regular reports that show patterns, system performance, and any signs of bias.
- c. Making the rules and procedures easy to find, along with clear ways to file complaints or ask for a review.

When platforms are transparent, they can be held accountable. People can understand how the system works, question it when needed, and trust that it's improving over time not just hiding behind tech.

C. Regulatory Oversight of Platform-Driven Justice

Because there are no binding legal rules for how platforms run their ODR systems, they've been able to act like legal authorities without being held publicly accountable. To fix this and rebuild trust, we need independent oversight that sets real, enforceable rules for things like:

- a. Basic procedural protections, such as clear notice, fairness, and the right to appeal.
- b. Strong rules for how data is used and how algorithms make decisions.
- c. Options for users to challenge decisions outside the platform's control.

³⁹ Julie E Cohen (n 10) 148–52.

This kind of oversight could come from partnerships between governments and private companies, new digital courts backed by the state, or even international legal agreements. The bigger aim is to bring back balance making sure corporate systems don't replace public justice, but work alongside it under shared legal values.

D. Integrating Human-Centred Design

To truly change how digital justice works, we need to build systems using human-centered design (HCD) a method that shapes technology around people's real needs, feelings, and legal abilities. As Frank Pasquale points out, systems that hide how decisions are made take away transparency and dignity.⁴⁰

HCD offers a better path by focusing on:

- a. Building interfaces that are easy to understand and fair, especially for people from marginalized communities.
- b. Creating flexible tools that adjust based on who the user is their language, background, or the kind of dispute they have.
- c. Involving actual users in designing and testing these systems, so they work in real-life situations.

When we treat fairness and usability as essential parts of design not afterthoughts ODR systems can support justice in a real way, both for individuals and for the system as a whole.

E. Implications for Global Governance and Legal Pluralism

Rethinking ODR this way means we also need to rethink how law works in the digital world. Big platforms that operate across borders are acting like legal systems themselves. So, global rules and institutions need to catch up and recognize that today's legal world blends public laws, private tech rules, and international standards.

To move forward, we need a few key things:

⁴⁰ Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press 2015) 211–29.

- a. Clear and consistent digital due process rules that apply across platforms and countries.
- b. Strong systems for enforcing decisions across borders that still protect fairness.
- c. Constant communication between tech experts, legal scholars, and regulators to guide how ODR should evolve.

The goal isn't to get rid of platform-based ODR it's to rebuild trust in it. We need to shift it from being just a business tool into something that supports real justice on a global scale.

IX. Conclusion

This paper looked at how platforms today are using arbitration and Online Dispute Resolution (ODR) not to improve access to justice, but to keep control. Tools that were once meant to help people resolve issues fairly are now being used by big companies to manage risks and avoid accountability. The case studies of Amazon, Alibaba, and the BC Civil Resolution Tribunal show how different models handle justice some rely on private control, while others come from the public sector trying to innovate.

Big platforms often talk about fairness, speed, and user empowerment. But in reality, they use ODR systems that repeat existing power imbalances. These systems aren't neutral. They're built to Favor efficiency, automation, and cost-cutting sometimes at the expense of fairness and careful decision-making.

To respond to this, the paper laid out some solutions based on legal theory, design thinking, and global policy trends. These ideas push for a digital justice system built around clear rules, user rights, ethical use of data, and systems that can be held accountable. These values need to be baked into the way platforms work not just written into laws, but built into the tech and the way decisions are made.

We need to act fast. ODR is quickly becoming the go-to way to resolve disputes. If we don't fix the system now, we risk trading away fairness for convenience. We have to make sure that moving from courts to platforms doesn't strip away basic rights. If we design these systems right with fairness, transparency, and real user control then ODR can serve justice instead of just serving the companies that run it.