Online Consumer Contract
Dispute Resolution
From Perspective of Jurisdiction and Online Dispute Resolution (ODR)

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General Introduction
Online Consumer Contract
Definition

Contracting Parties

- Consumer
  - Always the weaker party
  - Natural person
  - End-user of the product (two behaviors)

- Seller
  - Natural or legal person
  - Acts within his trade, business and profession (frequency)
  - Others: profit-seeking motive; level of turnover…

Objects of the Contract

- Goods, Services, Digital Contents
- Modest amount of product value
- Fulfill everyday use
Characteristics

01 Non-boundary
Foreign elements; PIL research perspective

02 Virtuality
Risk in absence of physical presence
Protection of the weak (consumer)

03 Intelligence
New subject involved
Electronic agent: liability and identification
Useful tools (e.g. live chat room)
Conclusion

Internet

Application of current criteria on parties’ behaviors

Reconsideration on relationship between parties

Dispute resolution methods
Research Perspective

Jurisdiction

Access to Justice

Substantively (lex fori)

Procedurally (procedural matters)

Applicable Law

Judgment
Contents

02

Selected Topics
Dispute Resolution

Jurisdiction
Modification of these traditional jurisdiction principles

Protection of the weak

Consumer domicile jurisdiction

Party Autonomy

Choice of court clause
Protection of the Weak – Consumer Domicile Jurisdiction

United States
- Long-arm Jurisdiction
- Additional Activities
- Sliding-scale Approach

European Union
- Consumer Domicile (Brussels Convention)
- “Directed Behaviors” (Brussels Regulation I)
“Click Here if you Agree”
Party Autonomy – Choice of Court Clause

Click-wrap Contract

Browse-wrap Contract

Standard Form Contract

A pre-settled clause unilaterally proposed by the seller

Restrictions


U.S.: “Blanket Assent” theory (Karl Llewellyn)

“Law creates presumption assent to standard terms unless unreasonable or indecent are found.”

Time of Conclusion

Art. 19 (1) of Brussels Regulation I (recast): entered into after the dispute has arisen
Dispute Resolution

ODR
**In general**

<table>
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<th>Extension of ADR in Internet age?</th>
<th>Online Alternative Dispute Resolution (cyber courts)</th>
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<tr>
<td>An isolated dispute resolution system?</td>
<td>A parallel one (with ADR and judicial system)</td>
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<td>ICT being as the “fourth party”?</td>
<td>Metaphor that illustrate the significance of ICT</td>
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**Main Challenge**

Lack of trust and diverse perceptions toward it
In specific

Role of ICT

Online Negotiation

- Assisted Negotiation → Better for online consumer contract
- Automated Negotiation → Monetary dispute (Insurance)

Combination: negotiation-mediation process (SquareTrade; Taobao)

Online Mediation

- Evaluative Mediation → Agreement led by mediator (better for online consumer contract)
- Facilitative Mediation → Agreement by contracting parties

Role of mediator
Online Arbitration

Non-binding arbitration → Unilaterally binding arbitration

Accept: binding force
Refuse: alternative methods
Consumer: right to accept

Enforcement

Self-enforcement → Enforcement under New York Convention (article V)

Direct → No party’s willingness
Indirect → Losing party’s willingness

Non-binding arbitration → Self-enforcement

Direct → Non-party’s willingness
Indirect → Losing party’s willingness
Cyber Court

Type of contract under governance

Initiation and conclusion of contract be both conducted by distance communication

Hangzhou Internet Court

Pre-trial online mediation

A collective information platform

Enforcement

Direct apply online

Hangzhou Litigation Platform

Legal basis: Civil Procedural Law of P.R.C.
1. The ideal solution for solving online consumer contract disputes in the future, a unified system?

2. Feasibility and challenges for applying ODR to solve online consumer contract dispute in your country

3. Solutions that help avoiding being sued globally for entities (especially SMEs) when adopting consumer domicile jurisdiction.

4. Restrictions on applying choice of court clause for solving online consumer contract disputes.