

# *Intra-platform disputes and democratic adjudication*

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**Abstract:** History has selected and determined the position of the court in reconciling the conflict of rights, but this judicial mechanism is not omnipotent, and the cost of litigation and the complicated procedure have become the first threshold. These preconditions make people with the desire for rights subject to rational guidance to decide whether to continue to maintain rights, especially when the object of dispute is relatively small. Some e-commerce platforms have developed a mechanism to deal with internal disputes through mutual review among users. Whether this can become an ideal means to supplement traditional justice is a topic that needs to be discussed under the Internet economy.

## 1. Introduction

The development of the Internet has a gradual impact on the trading behavior, and the network gradually plays an alternative role. Traditional judicial approaches require high time and efficiency costs, which is not conducive to social unity and cooperation. In contrast, professional ODR platforms provide services to resolve disputes at reasonable prices. Some e-commerce platforms use internal review mechanism instead of private remedy to gain consumers' recognition and confidence to continue e-commerce transactions. This paper will analyze this phenomenon based on the current domestic research on ODR and its compatibility with the judicial system.

## 2. Intra-platform controversy and ODR theory

Online Dispute Resolution is a form of alternative dispute resolution used on the Internet. Due to the change of modern communication methods, mediation, arbitration and other alternative ways to deal with rights disputes have become a trend. These negotiation techniques have advantages that traditional justice does not have. At the end of the last century, the ODR, which originated in the European Union, tried to go further. The medium of the Internet is not only an effective means of building an environment of trust, but also provides greater legal certainty for e-commerce transactions. The theoretical basis of ODR is as follows: on the one hand, the existing legal system is inconvenient or unable to deal with the transaction conflicts in the Internet field due to the special properties of cyberspace and the existence of trans-national and regional jurisdictional disputes. On the other hand, although the traditional judicial methods are stable and effective, the single rules and procedures belong to monopoly to a certain extent. The openness of the Internet space has the inherent anti-monopoly nature, and the parties to the transaction can also choose their own rules. In addition to efficiency reasons, the ODR is also favored because it helps business cooperation

continue. At present, it has become a trend to settle rights disputes by alternative means such as mediation and arbitration, and the academic community generally supports the application of ODR to a wider range of fields, such as the judicial field [1-2]. One problem, however, is the difference with traditional ODR procedures. ODR development so far, can still be seen as immature product. If some people point out that there are not many online arbitration practices and stable common beliefs have not been formed, it is difficult to embed in the society through legislation or amendment of the law in a short time [3]. But it is at least procedurally professional and provides services to the public through technical means. As for the evaluation mechanism between users in the way of democratic adjudication, the overall process relies on public review, while the platform is in a neutral third party position and acts according to the results of discussion among users. For example, in the service agreement of Taobao platform, once a consumer submits a dispute to the platform for mediation service, it means that the consumer acquiesces to accept the mediation decision made by the public review panel. In the process of review, both sides of the dispute and even the platform seem to be in a passive position, losing the active action. This is completely different from the traditional ODR process from application, acceptance, settlement, mediation and arbitration.

Therefore, anything that enables conflict resolution over networks can be considered an ODR only in the broad sense, but this only meets the formal requirements. This kind of simple and argumentative ODR rule based on user review results is in essence the democracy of the masses. Participants in the evaluation make decisions based on common rationality. In this paper, it is referred to as democratic adjudication model for short.

### **3. An analysis of the legitimacy of the democratic adjudication model**

In the capacity of the general public to engage in activities of a judicial nature, the results have to be worrying. The core procedure of the city-state democracy in ancient Greece is to take the general individual with plural existence as the judging subject and vote according to the simple formed judgment. Without the intervention of judicial experience, ordinary people vote only on the principle of habit or morality, and it is not clear whether they will get justice. The first question we must face is the legitimacy of such a popular verdict.

As a new technology is applied to dispute resolution, the question to be considered is the acceptability of the system. Generally speaking, there are at least three factors that cause public concern. First, whether the neutrality and impartiality of the system are guaranteed so that the application of technology is not biased in favor of the practical advantages of the parties to the conflict. Secondly, whether the system can fully respect the opinions of all parties and realize the free expression of meaning. Finally, whether the decision-making bodies in the system have the corresponding qualifications, and get people's recognition. It can be seen that the biggest problem of the democratic adjudicative model is that the decision-makers in the procedure (the judges selected by the platform according to the user's reputation level) basically do not have professional legal quality, and the results may also lose justice.

The average citizen sees things differently from the trained legal person. The former is mainly based on common sense or social morality as the standard, while the latter considers the legal factors in the event first, followed by the value judgment. Although it is difficult to accept that a legal person can exclude the influence of politics, policies, and ethics, the nature and experience of the work largely determine a legal person's judicial ability. Similarly, we have to suspect that the user judges selected by the platform may have favored one side's claims based on familiarity and similarity, while selectively ignoring some facts. In this way, the judgment does not depend on which side has the most comprehensive case, but on the number of its peers.

I believe that, while there may be some elements of favoritism, the wisdom of the masses as a whole is largely matched by the need for competence. For example, the result of some judicial decisions is quite different from the historical and practical experience that people are familiar with in daily life, which leads to the outbreak of social emotions. This phenomenon reflects the enhancement of people's awareness of the rule of law, as well as the concern and maintenance of social justice based on simple ethics and moral knowledge. To question the difference in professional skills, we should take into account a common feature of transaction contradictions on e-commerce platforms, that is, most of the conflicts are recurring situations. Behind such conflicts, some sort of unwritten principle of handling has evolved that is known to all users. Evaluation can be made by reference to past trading practices, which are themselves consistent with experience and legal norms. The public can put themselves in the other person's shoes or judge the value of the controversy based on normal life experience. In matters of life, ordinary people are no less competent judges than professional judges, who need neither consider the application of law nor weigh the inclination of judicial policy.

In addition, such a procedure has two advantages, namely, the advantage of effectiveness and the exclusion of undue interference. In practice, a major defect of the jury system is the high implementation cost. When jurors participate in the trial, they will incur costs such as travel expenses, food expenses and missed work, and scarce judicial resources cannot provide adequate subsidies. As a direct result, other subjects (such as the unit to which jurors belong) either share the burden or control the number of jurors. In such cases, jurors' enthusiasm and competence can be compromised, and short jury lists mean that the jury's results may not be trusted. By contrast, platform-initiated online reviews exclude cost considerations, and since the number of people who can vote can theoretically be unlimited, this limits the casual and personal preferences. While the process of adjudication is influenced by identity and interest, the number of participants can dilute this. It can be said that, from the point of view of procedure, the democratic adjudication model is reasonable on the whole.

#### **4. The fit between democratic adjudication model and judicial system**

From the perspective of demand, if the existing judicial resources can provide high-quality public goods, users of the platform do not need other ways to resolve disputes. What users need is a mechanism that can solve common transaction disputes with quick means or procedures. According to such demand, the small claims litigation procedure defined by China's Civil Procedure Law seems to be a good choice.

The reason why we chose to discuss small small claims is that such simple procedures can save judicial resources. From the perspective of the provisions, civil cases with clear facts, clear rights and obligations and little disputes are the prerequisite for the application of small claims procedures. Small claims also has small subject matter and adopts the characteristics of first instance and final trial. But whether this system design will monopolize the way of dealing with small disputes, the author gives a negative view.

First of all, from the perspective of system design, small claims through the weakening of procedures to cope with the increasing demand for litigation. Some scholars believe that the benefits of small claims lie in the realization of an exchange relationship, in which the parties allow the court to adopt quick judgment and give up the guarantee of prudent judgment in exchange for the opportunity to access justice [4]. From a logical point of view, this point is valid. For example, contradictions and disputes on e-commerce platforms, most of the commodity and service disputes involve a relatively low amount of the subject matter, and the disputing party does not need or have the ability to complete the whole litigation process. The simplification of litigation procedure is

actually a win-win situation, the country realizes the wider distribution of judicial resources, and the parties in small claims satisfy their desire for rights. The problem is that welfare is a limited social resource, and the rational allocation of judicial resources is to maximize the social benefits, while the motivation of reform is that the increasing number of cases requires the judiciary to improve the trial efficiency. In terms of economic theory, the emergence of small claims system does not mean more input of resources, that is to say, the judicial cost is fixed. On the contrary, ordinary people get more convenient ways to Sue, which objectively encourages the number of lawsuits. Since the pie cannot be made larger, the overstretch of resources leads directly to two possible consequences: either to further limit the applicable standards for small claims, or to continue to adjust and simplify procedures. Although the design of small claims can better reduce the pressure of the court and the needs of the society through the separation of complexity and simplicity, it does not exclude the diversified dispute resolution mechanism, and any effective alternative way is welcome.

Second, the amount of small claims is less than 30 percent of the average annual salary of employees in provinces, autonomous regions and municipalities in the previous year. Take second-hand trading platform and food delivery platform as an example, the object of dispute is mainly about 100 yuan. Unless it is based on strong feelings of entitlement, the cost of resorting to the court is like salvaging lost coins in the river.

From the perspective of cost-benefit, if the object of dispute exceeds the daily cognitive price in the society, the parties will be willing to pay the corresponding litigation cost (fixed cost + floating cost). In the built-in dispute resolution mechanism of the platform, due to the adoption of the network process, the disputing party pays a stable and low fixed cost, and the revenue increases with the increase of the object. Therefore, both parties to the dispute will rationally choose the way to defend their rights according to the value of the subject matter. When the amount of money is higher, the conclusion of the small claims procedure is more reliable. In contrast, the results of online discussions are appropriate for the conflict of micro-transactions.

Finally, the mechanism of small claims itself also has some deficiencies. For example, some scholars point out that small claims is faced with the dilemma of low application rate, settlement and withdrawal of cases, or not obvious efficiency. In the development history of the system, it has even become a tool for strong plaintiffs to dominate the weak [5]. But this is not the focus of this article, the essence of the reform of the judicial system is to broaden the channels of civil relief, but the idea of convenience can not prevent people from self-government out of interests. Even if the process is simplified, factors including the cost of litigation and the time period are inevitable obstacles to the realization of rights. For the sake of efficiency, each person will make the best arrangement for his or her own situation, and we should welcome more feasible alternatives that allow the public to exercise their rights according to their will and characteristics.

## 5. Suggestions and Improvements

This paper analyzes the emerging argumentation ODR on the e-commerce platform, and this democratic adjudication model is worthy of support. On the one hand, in today's Internet environment, the conclusions of public reviewers can be trusted. Although most of the users who participated in the comments did not receive long legal experience, since the content of the comments is inseparable from the scope of daily life and experience, the general rationality of human beings is enough to deal with such affairs. On the other hand, the existing contents of the judicial system (such as small claims) are not enough to adjust the needs of the society, and they have certain defects. At this point, we need to open up a new road to meet the development of the network economy. But the current model of democratic adjudication is still in its infancy and needs to be improved.

First of all, the platform needs to conduct reasonable screening of reviewers. Both parties to the dispute are willing to accept the system provided by the platform because they believe that the operation of the system has the ability to produce value (such as democratic participation, distributive justice, or substantive equality). In order to prevent bias and non-neutral judgment, the platform needs to conduct reasonable screening of the judges. For example, reviewers must be made up of users who are independent of the platform team and have a good reputation over a period of time. The user may give up the qualification of voting and bear corresponding responsibilities for irresponsible participation (such as loss of qualification for evaluation, etc.).

Second, in the review process, the platform should not be a silent third party, but should play an active role. For example, if the facts are clear and clearly unreasonable, the platform should make its own judgment, rather than submitting all claims to public review. The qualification of the assessors shall be assessed according to certain standards, and the voting process shall be supervised.

Finally, it must be made clear that the review procedure is a way to resolve disputes spontaneously organized by the platform, and cannot be binding on any party. The reason is that the ODR is an internal adjudication channel formed by the group according to the consent of the group, rather than a general recognition by the public and the sovereign. The result of the ruling does not mean the loss of the right to dispute the method, litigation is still a viable way. The platform can establish a corresponding feedback mechanism to provide legal advice and help to those who object to the award.

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