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ONLINE DISPUTE RESOLUTION (ODR)

EXECUTIVE SUMMARY

Government of Canada Gouvernement du Canada

JSCA Executive Summary
"Online Dispute Resolution

The study presents a conceptual journey and an analysis of what is known as online dispute resolution (ODR) and digital justice (online or digital courts) or also "online judicial processes".

On the one hand, the study presents that ODR mechanisms include the design, implementation and adjustment of systems or processes of resolution, administration, or prevention of conflicts, inside and outside the courts and tribunals, which operate on the Internet and which use information and communications technologies: such as algorithms, big data and virtual communication systems. This broad definition of ODR does not differentiate with digital courts to the extent that they are part of it.

On the other hand, the notion of "online courts" or "digital courts" appears. These terms admit two meanings:
  i)   as a service of administration and resolution of disputes provided by the State and supported by information and communications technologies.
  ii)   as a process of decision-making and resolution of cases by a court and presented by the parties through online or digital services - not in physical courtrooms.

In Latin America, initiatives that demonstrate an attempt to incorporate ODR and digital systems into the administration of justice have begun to emerge. There is still a long path for effective implementation but having a roadmap in advance is a critical first step in understanding the scope and limits of ODR and digital courts.

The study describes the benefits of ODR mechanisms, such as time and economic efficiency and the possibilities of facilitating the relationship between the parties. Another advantage is adaptability, although this must be carefully analyzed, since ODR mechanisms are algorithmically designed and do not usually allow specific adjustments according to the case. Finally, the study highlights an advantage in relation to executability, since ODR can use technologies such as blockchain or ordered automatic payments based on what the parties agree during the process.

On the other hand, the disadvantages that ODR mechanisms imply are described: in the online system there is the possibility of documenting everything that happens, with the consequent risk that this implies for the privacy and confidentiality of the parties. Second, ODR mechanisms do not have foolproof security. The third disadvantage is the possibility of the parties to easily leave the sessions or fake some technical failure to avoid difficult conversations or moments in the dispute resolution processes that can be uncomfortable; the parties cannot be forced to continue participating in an online interaction if they do not want to. Fourth, it is harder to build trust in virtual contexts. Finally, the most difficult disadvantages of ODR mechanisms are the obstacles generated by the barriers to access to information technologies, connectivity problems, challenges for handling technological tools and problems of system compatibility.

In conclusion, ODR mechanism and online courts are a valid and relevant alternative to modernize dispute resolution in Latin America. In contemporary societies, interconnection, globalization and the rise of information and communication technologies have generated more human interactions and more frictions and, eventually, controversies. ODR mechanisms and

online courts present important benefits. ODR mechanisms and online courts are viable tools to resolve or manage disputes efficiently, satisfactorily and at a reasonable cost. Its application should contribute to strengthening access to justice for all people, and especially for those in situations of greatest vulnerability.