

ONLINE DISPUTE RESOLUTION – WHAT IT MEANS FOR CONSUMERS

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1 Introduction

Much enthusiasm exists for the increased use of extra-judicial mechanisms for resolving disputes, particularly with respect to e-commerce.¹ The popularity of such mechanisms (hereinafter termed ‘alternative dispute resolution’ or ‘ADR’) hinges mainly upon their apparent speed, flexibility and affordability relative to traditional litigation in the courts, plus their ability to alleviate pressure on an already overloaded court system.

Some of this quick-fix enthusiasm is bubbling over to embrace the *online* facilitation of ADR (hereinafter termed ‘online (alternative) dispute resolution’ or ‘ODR’). By ‘ODR’ is meant, broadly speaking, a process whereby disputes are substantially handled (through negotiation, mediation, conciliation, arbitration or a combination of such) via electronic networks such as the Internet.² Enthusiasm for ODR rests on the view that it will significantly enhance the advantageous features of ADR relative to court litigation. This view is far from far-fetched. There can be little doubt that ODR is potentially able to provide parties to a dispute the opportunity of having the dispute resolved quickly and efficiently without the parties ever needing to physically meet in person or at a particular forum.

While the application of ODR need not be limited to disputes arising out of online transactions, it is often presumed that such disputes are best resolved online.³ This presumption pertains especially to disputes over transactions that are of the ‘high-volume, low-cost’ type. Indeed,

¹ See, eg, *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of Information Society services, in particular electronic commerce, in the Internal Market* (hereinafter termed ‘E-Commerce Directive’), Article 17(1) of which requires that EU Member States not ‘hamper the use of out-of-court schemes, available under national law, for dispute settlement, including appropriate electronic means’.

² Arguably, the term ‘electronic dispute resolution’ or ‘EDR’ would be equally as appropriate a nomenclature for this process. Indeed, ‘EDR’ is perhaps less misleading than ‘ODR’ since the adjective ‘online’ connotes an immediacy with the process which does not necessarily exist. Nevertheless, use of ‘online’ seems to have become ingrained in discourse in the field.

³ The presumption arguably underlies Article 17 of the E-Commerce Directive, *op cit.* See, eg, the preamble to the Directive, recital 52. Cf the general observations in National Alternative Dispute Resolution Advisory Council (NADRAC), *On-line ADR*, Background paper of January 2001, paragraphs 13 *et seq.*, <<http://law.gov.au/aghome/advisory/nadrac/ADR.html>>.

because online transactions between businesses and consumers (hereinafter termed ‘B2C’ transactions) are often of this sort, ODR has been trumpeted as a preferred avenue for consumers who seek redress from businesses with which they have dealt. Recourse to ODR (and other forms of ADR) is also seen as a convenient way of side-stepping the complex jurisdictional issues that can muddy court litigation over e-commerce disputes, particularly those revolving around cross-border B2C transactions.⁴

Nevertheless, it would be foolish to view ODR (or ADR generally) as a panacea for consumer (or business) difficulties. While recourse to such processes will tend to simplify the issue as to which forum should hear a dispute, it will usually not solve of itself the frequently troublesome issue as to which set of laws should be applied to settle the substantive part of the dispute.⁵

Further, the widespread use of ODR in relation to B2C transactions faces major hurdles. Some of these hurdles are primarily legal in nature. For example, many jurisdictions prevent the application of ODR (or ADR generally) if the scheme seeks to cut recourse to the court system by consumers *before* a dispute has arisen.⁶ Other hurdles are more a function of psychological, cultural and social factors, such as a lack of ‘Internet literacy’ and/or an abundance of ‘Internet wariness’ on the part of many consumers.⁷ The situation is not helped by increasing evidence that many, if not most, ODR schemes currently fall woefully short of meeting consumer needs.⁸ While some sets of standards have been drafted in an attempt to remedy this shortfall,⁹ they are unlikely to be sufficient without further measures.

The current meaning of ODR for consumers can be teased out in summary fashion by drawing an analogy with much of the ‘fast food’ on offer at roadside kiosks and milkbars: at first glance, ODR looks finger-licking good but its nourishment value needs improving. At the same time, the ‘fast food’ of ODR tends currently to be offered through a new and relatively unknown chain of roadside kiosks; there is, as yet, no ODR McDonalds. Thus, many consumers travelling on the information highway drive past these kiosks without sampling the fare.

⁴ Further on these jurisdictional difficulties, see, eg, M Foss & LA Bygrave, ‘International Consumer Purchases through the Internet: Jurisdictional Issues pursuant to European Law’ (2000) 8 *International Journal of Law and Information Technology*, 99–138; LA Bygrave & D Svantesson, ‘Jurisdictional issues and consumer protection in cyberspace: the view from down under’ [2001] *Cyberspace Law Resources*, no 12, <<http://www.austlii.edu.au/au/other/CyberLRes/2001/12/>> (also available via <<http://folk.uio.no/lee/publications.html>>).

⁵ In theory at least, ODR/ADR schemes could bypass the latter issue by creating their own set of rules for resolving the substantive part of a dispute. In practice, though, it is difficult to escape the issue entirely. Exemplifying this difficulty is the Uniform Domain-Name Dispute-Resolution Policy (UDRP) developed by the Internet Corporation for Assigned Names and Numbers (ICANN) to resolve disputes over domain names: see <<http://www.icann.org/udrp/>>. While the UDRP is aimed at providing a set of rules that can be applied across and relatively independent of national jurisdictions, its application still tends to involve (and arguably necessitate) the arbitrator(s) making a choice as to which national legal standards (usually in the field of trademark protection) shall constitute the primary point of reference for determining, say, whether a domain name has been registered in ‘bad faith’. Especially problematic is that, despite this tendency, the UDRP provides little guidance on how such choices should be made. Of course, an ODR/ADR scheme could always bypass the issue of applicable (national) law by preemptively stipulating that the laws of a particular jurisdiction shall apply, but this measure would greatly undercut the flexibility and fairness of the scheme.

⁶ See further, *inter alia*, the analysis with respect to barriers under European law in C Kuner, ‘Legal Obstacles to ADR in European Business-to-Consumer Electronic Commerce’, available via <<http://www.kuner.com/>>.

⁷ See further the analysis in NADRAC, *op cit*, paragraphs 30 *et seq*.

⁸ See section 3 *infra*.

⁹ See section 4 *infra*.

2 *Consumer concerns and business dilemmas*

A reasonably representative list of what consumers desire of ODR can be derived from several sets of recommendations put together by consumer groups.¹⁰ In summary form, the list embraces:

- **Transparency** – ODR schemes should provide readily accessible information about all aspects of their services;
- **Independence** – ODR schemes should operate independently of vested business interests;
- **Impartiality** – ODR schemes should operate without bias favouring business interests;
- **Effectiveness** – there should be mechanisms to ensure business compliance with ODR outcomes;
- **Fairness/integrity** – ODR schemes should observe due-process standards ensuring, *inter alia*, that each party to a dispute has equal opportunity to express their point of view;
- **Accessibility** – ODR schemes should facilitate their easy use by consumers;
- **Flexibility** – ODR schemes should permit adaptation of their procedures to suit the circumstances of the particular dispute at hand; recourse to courts by consumers should not be precluded unless by prior and equitable agreement;
- **Affordability** – ODR schemes should be affordable for consumers, particularly in light of the amount of compensation being sought.
- **Speed** – ODR schemes should be run quickly and efficiently.

These listed points of concern should not be taken as hard and fast categories. There is considerable overlap between them – eg, the concern for affordability overlaps with the concern for accessibility; the concern for fairness and integrity overlaps with the concern for impartiality. Further, the concerns relate not just to ODR but ADR schemes generally. At the same time, they are also concerns that businesses tend to share.

The most important point to be drawn from a consideration of the concerns is that, to a large extent, consumers (and many businesses) want the benefits of rule-of-law without the costs of rule-of-law. I use the notion ‘rule-of-law’ here not so much to denote the concern that processes be subject to legal regulation but rather the concern for ensuring that decision making complies with principles of due process; ie, that decision making is non-arbitrary, non-capricious, predictable and transparent and, concomitantly, that hearings leading up to decisions are based on principles of natural justice.

¹⁰ I refer here especially to the recommendations by Consumers International and the Trans Atlantic Consumer Dialogue: see *infra* sections 3 and 4 of this paper.

In wanting the benefits of rule-of-law without the costs of rule-of-law, might not consumers (and many businesses) be validly charged with wanting to have their cake and eat it too? (Or, in keeping with the ‘fast food’ analogy used earlier, is this not a situation of consumers wanting to have their roadside donut and eat it too?).

Undoubtedly, some of the above-listed concerns are in tension, if not at odds, with each other – at least if one considers the practicalities of running ODR schemes. Take, for instance, the issue of affordability: the consumer wants low-cost schemes but the ODR-provider ordinarily needs to cover its costs and deter the mounting of frivolous complaints. Who will pay arbitrators or mediators in cases involving consumer small claims? Potentially heightening this dilemma is the fact that, generally, the greater the skill and competence of arbitrators or mediators, the greater is the amount they charge for their services. A consumer is unlikely to be able or willing to foot their bill or even a substantial part of it. Thus, resolution of disputes about small claims might well end up being routed around the high-skilled end of the dispute-resolution market which might, in turn, detrimentally affect the fairness/integrity of the procedures.

Of course, there are ways to ameliorate the problem. For example, numerous small claims of the same kind could be merged into one relatively large claim for treatment by the ODR-provider. However, some ameliorative strategies will raise further problems. For instance, were an ODR-provider to meet its costs through substantial sponsorship from business, its ability to act independently and impartially – and/or, just as importantly, its ability to be *seen* as acting independently and impartially – might well be compromised.

Another instance of tension occurs with respect to the concern for transparency. Prospective parties to B2C transactions will tend to want information from ODR-providers on how previous disputes have been handled, including the outcomes and reasoning applied. Transparency at this level will help meet the general need for prescriptive guidance. Yet *actual* parties to disputes will frequently want the nature and outcomes of the dispute resolution proceedings kept confidential – this being usually to encourage transparency between each of the parties and thereby buttress the integrity of the proceedings.

Moreover, certain aspects of ODR raise dilemmas that ‘offline’ ADR either does not raise at all or does not raise as prominently. These dilemmas pertain to the relative difficulty with ODR of ensuring the requisite integrity and security of proceedings.¹¹ Guaranteeing that electronic communications between the parties are free from unauthorised access and/or alteration is especially difficult when using open networks, such as the Internet. Authentication difficulties also arise when parties are unfamiliar with each other and only deal at a distance. Additionally, the parties – particularly in conciliation and mediation processes – will tend to be robbed of many useful cues that they would otherwise have in face-to-face meetings. While all of these problems can be mitigated significantly through technological measures (eg, use of encryption mechanisms, video-conferencing facilities, new types of software),¹² it is doubtful that they can be eliminated.

¹¹ See further Alan L Limbury, ‘Online Dispute Resolution – A Practitioner’s View’, paper presented at this conference on ‘Domain Name Systems and Internet Governance’, Grace Hotel, Sydney, 7 May 2002.

¹² See further E Katsh, J Rifkin & A Gaitenby, ‘E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of “eBay Law”’ (2000) 15 *Ohio State Journal on Dispute Resolution*, 705, 718 *et seq.*

All of the above suggests that ODR is unlikely to produce a ‘win-win’ result for consumers (or, indeed, businesses). Rather, use of ODR will tend to be a case of ‘win some’ (eg, in terms of speed and convenience) and ‘lose some’ (eg, in terms of fairness and integrity).

3 *Existing practices and problems*

The most up-to-date, comprehensive empirical research on ODR schemes for B2C transactions is (to my knowledge) that carried out by Consumers International, which has conducted two analyses of relevant schemes: the first in August 2000; the second in August 2001.¹³ The latter study canvasses just under thirty ODR services which (at least as of 31.8.2001) are potentially available to consumers in cross-jurisdictional disputes with businesses. Most of the services are based in North America; none are based in Australia.

The study results are troubling from a consumer viewpoint. Overall, the study suggests that the ODR market is largely geared towards catering for business needs, with businesses concomitantly enjoying a greater range of ODR options than consumers enjoy. Indeed, ODR for B2C disputes appear often to be an add-on to services catering primarily for B2B disputes. Hence, the ODR services canvassed in the study tend to be geared towards handling high-value claims – only thirteen of them can cover the typical B2C dispute involving a relatively low-value claim. Further, none of the services meet fully the points of concern listed in the previous section.

More specifically, major problems with the services relate to, *inter alia*,

- their non-transparency – there is often a paucity of detail provided about their governing structures (eg, lines of ownership; officers’ credentials), plus a paucity of readily available case-history information (eg, how many cases handled; how resolved; what reasoning applied);
- their expensiveness – only twelve are affordable for consumers pursuing low-value claims;
- their limited language options – most allow only for the use of English;
- their limited ability to assist consumers in obtaining redress from recalcitrant businesses – only seven services are able to provide any assistance in this respect (primarily through operation of trustmark schemes);
- their frequent failure to provide adequate assurance of their independence and impartiality *vis-à-vis* businesses – most of the services are private, for-profit enterprises that rely, at least in part, on business sponsorship; at the same time, few services seem to include consumer representatives in their governing bodies.

¹³ The findings of the most recent analysis are set out in Consumers International, *Disputes in Cyberspace 2001* (November 2001), <http://www.consumersinternational.org/campaigns/electronic/update_disputes_in_cyberspace_2001.pdf>.

4 *Developing rules*

There is, as yet, no legally binding international instrument setting out standards that deal specifically with ODR; neither is there a similar instrument dealing with ADR more generally. However, numerous sets of standards in the form of ‘soft rules’ (guidelines, recommendations and the like) are emerging internationally with relevance for both ODR and ADR schemes. An overview of these standards is given in the appendix to this paper. Particularly noteworthy is that all of the various sets of proposed standards are basically in harmony with each other. In other words, there is broad agreement – at least *prima facie* – in terms of ideals.

Arguably, the most influential of the standards for development of national government policy are contained in the OECD’s *Guidelines for Consumer Protection in the Context of Electronic Commerce* (December 1999).¹⁴ The provisions that directly concern ADR/ODR are contained in Part IV(B) which reads:

‘Consumers should be provided meaningful access to fair and timely alternative dispute resolution and redress without undue cost or burden.

Businesses, consumer representatives and governments should work together to continue to use and develop fair, effective and transparent self-regulatory and other policies and procedures, including alternative dispute resolution mechanisms, to address consumer complaints and to resolve consumer disputes arising from business-to-consumer electronic commerce, with special attention to cross-border transactions.

Businesses and consumer representatives should continue to establish fair, effective and transparent internal mechanisms to address and respond to consumer complaints and difficulties in a fair and timely manner and without undue cost or burden to the consumer. Consumers should be encouraged to take advantage of such mechanisms.

Businesses and consumer representatives should continue to establish co-operative self-regulatory programs to address consumer complaints and to assist consumers in resolving disputes arising from business-to-consumer electronic commerce.

Businesses, consumer representatives and governments should work together to continue to provide consumers with the option of alternative dispute resolution mechanisms that provide effective resolution of the dispute in a fair and timely manner and without undue cost or burden to the consumer.

In implementing the above, businesses, consumer representatives and governments should employ information technologies innovatively and use them to enhance consumer awareness and freedom of choice.

In addition, further study is required to meet the objectives of Section VI at an international level.’

Within the European Union (EU), several instruments have emerged which attempt to elaborate basic principles for the operation of ADR and ODR schemes in the context of B2C transactions. The first and perhaps most important is the *Commission Recommendation 98/257/EC of 30.3.1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes*. This recommendation contains principles for ADR schemes that engage in arbitration (as opposed to mere mediation, conciliation, etc). The principles are in terms of independence, transparency, adversary procedure, effectiveness, legality, liberty and representation.¹⁵

¹⁴ Available at <<http://www.oecd.org/pdf/M00000000/M00000363.pdf>>.

¹⁵ See the appendix to this paper for full details.

A more recent Commission Recommendation lays down broadly similar principles for mediation and other ADR processes offered by third parties.¹⁶

Both Recommendations are underpinned by Article 17 of the E-Commerce Directive which, *inter alia*, directs EU Member States to ‘encourage bodies responsible for the out-of-court settlement of, in particular, consumer disputes to operate in a way which provides adequate procedural guarantees for the parties concerned’. Member States are further directed (in Article 17(3)) to ‘encourage bodies responsible for out-of-court settlement to inform the Commission [of the European Communities] of the significant decisions they take regarding Information Society services and to transmit any other information on the practices, usages or customs relating to electronic commerce’. Indeed, at the international level, this is probably the closest one gets to *legally mandated* standards for ADR/ODR. At the same time, it is perhaps arguable that state-sponsored ODR/ADR schemes are legally bound to comply with standards enunciated pursuant to ‘fair trial’ provisions in human rights treaties,¹⁷ at least when the schemes are used to determine civil rights and obligations.

Apart from the OECD and EU instruments described above, there exist quite a number of relevant policy instruments issued by international consumer groups and international business groups. The most significant of these are:

- Trans Atlantic Consumer Dialogue (TACD), ‘ADR in Context of E-Commerce’ (February 2000);¹⁸
- Global Business Dialogue on Electronic Commerce (GBDe), ‘Consumer Confidence: Alternative Dispute Resolution’ (September 2001).¹⁹

In Australia, broadly similar standards to those expressed at the international level are to be found in the Federal Government’s *Benchmarks for Industry-Based Customer Dispute Resolution Schemes* (1997),²⁰ and in the ‘The Best Practice Model for Business’ issued by the Federal Minister for Financial Services and Regulation in *Building Consumer Sovereignty in Electronic Commerce* (May 2000).²¹ More recently, the National Alternative Dispute Resolution Advisory Council (NADRAC) has elaborated a framework for developing more detailed standards for ADR generally,²² and is in the process of working out principles for ODR specifically.²³

¹⁶ See *Commission Recommendation 2001/310/EC of 4.4.2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes*.

¹⁷ An example of such a clause is Article 6(1) of the 1950 *European Convention on Human Rights and Fundamental Freedoms* which states, ‘in the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law’.

¹⁸ Available at <http://www.tacd.org/db_files/files/files-82-filetag.pdf>.

¹⁹ Also known as the ‘Tokyo recommendations on ADR’: see <<http://consumerconfidence.gbde.org/adrtokyo2001.pdf>>.

²⁰ Available at <<http://www.selfregulation.gov.au/publications/BenchmarksForIndustry-BasedCustomerDisputeResolutionSchemes/index.asp>>. The Benchmarks are set out in summary form in the appendix to this paper.

²¹ Available at <<http://www.ecommerce.treasury.gov.au/publications/BuildingConsumerSovereigntyInElectronicCommerce-ABestPracticeModelForBusiness/context.htm>>. See also the appendix to this paper.

²² See NADRAC, *A Framework for ADR Standards* (April 2001), <http://www.law.gov.au/ahome/advisory/nadrac/frameworkreport/PDF/NADRAC_ReportBody.pdf>. The main thrust of the proposals are described in the appendix to this paper.

²³ See NADRAC, *Dispute Resolution and Information Technology: Principles for Good Practice*, draft of March 2002, <http://www.law.gov.au/ahome/advisory/nadrac/Technology_ADR2.htm>.

5 ***Some outstanding issues***

I do not have time to cover all outstanding issues. I shall attempt, however, to give a brief rundown on some of the major ones.

The first issue pertains to the standards and principles described in section 4 above. As already noted, there appears to be broad consensus about the core ideals which ODR/ADR schemes should strive to meet. Does this mean, then, that the principles are sufficient?

In my view, while the basic thrust of the principles is fine, they suffer from several weaknesses. One weakness is their frequently high level of generality. Indeed, this characteristic might go a large way to explaining the apparent consensus about them – they are ‘feel good’ formulations that most people find difficult to reject. Some sets of principles are more diffuse than others. Examples of relatively diffuse recommendations are those contained in the OECD Guidelines and, *a fortiori*, in the ‘The Best Practice Model for Business’ issued by Australia’s Federal Minister for Financial Services and Regulation.

At the same time, those instruments that provide greater prescriptive guidance – such as the Federal Government’s *Benchmarks for Industry-Based Customer Dispute Resolution Schemes* of 1997 and the EU Commission Recommendation of 1998 – sometimes fall short in terms of their practicability. For example, the independence principle (Principle I) set down by that Commission Recommendation states that if an arbitrator ‘is appointed or remunerated by a professional association or an enterprise, he must not, during the three years prior to assuming his present function, have worked for this professional association or for one of its members or for the enterprise concerned.’ The three-year exclusion period is arguably too long relative to the goal being sought, particularly in a time when there would seem to be a shortage of arbitrators who are specialists in B2C transaction disputes.²⁴ Further, the legality principle (Principle V) seems to effectively require the application of mandatory rules of law of both the place where the arbitrator is established and of the country where the consumer resides – a requirement that is rightly criticised for being ‘both overly complicated and unnecessary’.²⁵

Also problematic is that none of the existing sets of standards specifically address the unique characteristics of ODR (as opposed to ‘offline’ ADR). Concomitantly, they fail to take express account of the problems (mentioned *supra* section 2) that these characteristics can entail. Given their newness and the vulnerability of their media, ODR schemes will only work if underpinned by technological-organisational mechanisms promoting certainty and trust. Thus, it is vital that existing sets of ADR standards be supplemented by principles specifically providing for the use of such mechanisms and elaborating on ways in which they can be implemented.

Last but certainly not least, I incline to the view that the existing sets of standards fail to take sufficient account of marketplace pressures facing ODR schemes. There is, I believe, considerable potential for businesses to put pressure on ODR-providers to arrive at business-

²⁴ See also Kuner, *op cit.*

²⁵ *Id.*

friendly outcomes. The pressure could result from a threat by a business to withdraw from a particular ODR-scheme. Obviously, this threat will have more bite the greater the ODR-provider is economically dependant on the business concerned.

We gain some idea of the potential for such pressure from an incident relating to the handling by two competing ODR-providers, TrustE and BBBOnline, of a privacy-related complaint about eBay in 2000.²⁶ The complaint in question was filed by a customer of eBay with TrustE and BBBOnline (eBay being a member of both the TrustE and BBBOnline privacy seal programs, each of which offer dispute resolution for privacy-related complaints by online consumers). BBBOnline and TrustE initially decided the complaint differently from each other, with the decision by TrustE being more favourable to eBay. The latter then allegedly threatened to withdraw from the BBBOnline program if BBBOnline did not change its initial decision. BBBOnline apparently succumbed to the threat and substituted a new new decision for its first decision (using the same docket number as the initial decision: 2000-03). The new decision evidently reads that the complaint has been resolved but provides no further details.²⁷ And the first decision has evidently been withdrawn from public view on the Internet.

The eBay case indicates that business membership of two (or more) competing seal programs with separate dispute resolution schemes may be inappropriate, though (as Gellman points out) we cannot judge whether the result of the eBay case was fair as we do not know the exact nature of the decision reached by TrustE in that case. It could be that, objectively, the TrustE decision was the better one, such that BBBOnline's vacation of its original decision was proper. Yet the case illustrates the potential for businesses with considerable commercial clout to encourage what are for them sympathetic arbitration outcomes by threatening withdrawal from an arbitration scheme.

How, then could we go about countering the potential for businesses to pressure ODR-providers into facilitating business-friendly outcomes? The existing sets of standards provide little guidance apart from the obvious 'feel-good' admonitions that ADR schemes operate independently, impartially etc. Obviously, the most direct solution is to cut back the operation of marketplace dynamics in the provision of B2C ODR. That means minimising the extent to which B2C ODR schemes are set up and run essentially as business ventures with a profit-taking concern. Concomitantly, it means minimising the financial dependency of B2C ODR-providers on funding from a small number of businesses that have large economic clout. It might also mean providing more public/government sponsorship of dispute resolution schemes. Alternatively, it could mean providing greater business sponsorship but on an industry-wide basis, wherein members of an industry association set up and fund one dispute resolution scheme for the industry concerned. The latter option remains vulnerable to the potential for business bias, yet arguably the experience with some industry-sponsored ombudsman schemes (eg, for the banking or telecommunications sectors within a particular country) shows that broad-based business funding does not necessarily compromise the impartiality of complaints resolution.

More generally, we need to encourage the establishment of national and international 'Clearing

²⁶ The incident is described in R Gellman, 'Online privacy dispute resolution: BBBOnline' (2000) 7 *Privacy Law & Policy Reporter*, 145.

²⁷ I have been unable to find the decision on the BBBOnline website and am relying on Gellman's report (*op cit*) of the facts.

Houses' that can assist consumers in assessing and accessing ODR schemes. Some such initiatives are already underway, particularly in Europe.²⁸ Such initiatives need to involve or be supplemented by systems for assessing the extent to which ODR-providers comply with 'best-practice' principles as laid down in, eg, the EU Commission Recommendations or the Australian Benchmarks for Industry-Based Customer Dispute Resolution Schemes. The systems must also facilitate public disclosure of these compliance checks. To a large extent, Consumers International is carrying out this sort of function already – which is most welcome from a consumer perspective. Yet there is probably a need for the participation of another body that is not aimed at one-sidedly promoting the consumer (or business) agenda.

More ambitiously, we ought to consider the desirability of a system of public accreditation of ODR-providers somewhat similar to the Gatekeeper scheme that operates in Australia with respect to Public Key Infrastructure. Few accreditation schemes seem to exist for ODR-providers.²⁹ Indeed, establishment of *mandatory* accreditation schemes in this context is likely to fly in the face of the self-regulatory principles for e-commerce which major international business groups propound.³⁰ An accreditation system could manifest itself in a seal/trustmark program whereby accredited ODR-providers would be entitled to bear a stamp or seal of approval. A major problem with such a system would be finding an appropriate body to implement it. At the national level here in Australia, a possible contender would be the National Office for the Information Economy (NOIE) which already manages the Gatekeeper scheme for accrediting bodies that seek to function as Certification and/or Registration Authorities for e-authentication purposes.

²⁸ See especially *Council Resolution of 25.5.2000 on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes*, encouraging the creation of the 'European Extra-Judicial Network' ('EEJ-Net'). The latter is intended to provide a network of national contact points ('Clearing Houses') in EU Member States which can assist consumers wishing to file a complaint with an ADR scheme. Supplementing the EEJ-Net is a similar scheme recently launched for complaints in relation to financial services – the 'Financial Services Complaints Network' ('FIN-NET'): see <http://europa.eu.int/comm/internal_market/en/finances/consumer/adr.htm>.

²⁹ In the UK, a national accreditation scheme is run by TrustUK (a government-endorsed, non-profit body) for ODR-providers that operate within the framework of a trustmark program: see further <<http://www.trustuk.org.uk>>. Otherwise, there seems to be a paucity of formalised oversight schemes. See further Consumers International, *op cit*, 13.

³⁰ See, eg, International Chamber of Commerce *et al*, 'A Global Action Plan for Electronic Commerce' (October 1999, 2nd ed), <http://www.iccwbo.org/home/electronic_commerce/word_documents/SJAPFIN.doc>.