

Identifying and Establishing Standard ODR Processes

Zbynek Loebel*

Abstract

This article describes future ODR standards. It differentiates between two layers of ODR standards: (i) access layer and (ii) integration layer. An access layer will contribute to achieving general access for individuals to the most convenient ODR system available, depending on circumstances and preferences of the parties involved. The integration layer will enable wide and flexible sharing of ODR know-how.

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This article is about online dispute resolution (ODR) standards for lower value disputes. ODR standards should contribute to enabling everybody to file a complaint online in his or her language about anything anywhere in the world with the probability that the complaint would be resolved fairly and quickly, and the process would be user-friendly.

I differentiate between two layers of ODR standards: (i) access layer and (ii) integration layer. An access layer will contribute to achieving *general access* for individuals to the most convenient ODR system available, depending on circumstances and preferences of the parties involved. The integration layer will enable wide and flexible *sharing* of ODR know-how.

1 Access Layer: How to Support Universal Access to ODR

The access layer will contain ODR door codes. ODR door code(s) are standard pieces of code that might be included in any ODR system. Corresponding door code(s) might be installed in any communication device (e.g., browsers, mobile phones), consumer apps (e.g., anti-virus apps) and customer relationship management (CRM) systems, systems for e-shops or other device or system. ODR door codes will enable easy access of consumers using such devices or apps or systems to complaint forms of various ODR systems used by different entities across sectors (e.g., service providers, retailers, banks, public authorities, hospitals). Users will also see statistics (if published) and possibly additional information (e.g., whether a money-back guarantee is available or not).

* zbynek@loebel.info.

Zbynek Loebel

ODR door codes will work as follows: Party A is browsing on the website of party B and clicks on feedback/complaint option in its browser. The browser will search for ODR codes on party B's website or CRM to learn whether party B has a recognizable ODR system.

If YES: the browser connects party A with the ODR system of party B by showing party B's feedback/complaint form. If more than one ODR system or complaint form is available, the browser connects party A with an ODR system selected according to preferences of both parties (e.g., party A might prefer No Consumer Arbitration and/or Low ODR Costs etc.). Party A then prepares and files its complaint; after filing the complaint, party B receives an email from its ODR system about a new complaint filed.

If NO: the browser will identify available open ODR systems in a similar area (e.g., ODR for restaurants) and languages of both parties (e.g., Czech and French and, if not available, in master language, i.e., English) and will take into account preferences of party A. The browser will offer the selected ODR system to party A. If there is none, the browser will offer to party A a generic ODR system (GOS). GOS is a generic ODR platform for any feedback/complaint from any sector.

Party A selects the system, and the browser connects party A with the selected ODR system by presenting its complaint form to party A; after filing the complaint, party B receives an email inviting party B to participate in the selected ODR system. If the browser cannot identify any ODR system at all, it will inform its user about it.

ODR door codes need not be issued to ODR systems by any central 'accreditation body'. Instead, they will be standard code values that can be applied freely as an industry standard by designers of ODR systems and programmers. It would be better if there is only one set of ODR door codes to prevent a "fight of plugins" without any material added value for the parties.

ODR door codes might be in the form of (i) a number of questions from one system to another; and (ii) a row of responses to the questions from the responding system in the form of positions with static and/or dynamic values, each of them having concrete pre-defined meaning. Both questions and responses will describe the following:

- 1 Identification of the communicating party (complainant, addressee, unrelated; "complainant" is a user who clicks on Complaint/Feedback button in the browser; "addressee" is operator of a website on which the user is browsing; other persons are "unrelated");
- 2 If I am a complainant, what my circumstances are: language, country, other circumstances;
- 3 If I am a complainant, what my ODR preferences (if any) are: ODR process (arbitration or mediation or another process), lowest possible ODR costs, other preferences;
- 4 If I am an addressee, whether I use an ODR system or not;

- 5 If addressee has an ODR system available, what its principal characteristics are: sector specific or generic; language(s); ODR processes; ODR admin costs; other characteristics;
- 6 If addressee has more than one ODR system available, what addressee's preferences are;
- 7 If there is a match of preferences, connect complainant with the selected ODR system by presenting the ODR system's complaint form to the complainant;
- 8 If there are two or more matching ODR systems, let the complainant select the one which will be used;
- 9 If there is no match of preferences but addressee has an ODR system, link the complainant with that system;
- 10 If addressee does not have an identifiable ODR system, explore whether there is an ODR system of an unrelated party matching the complainant's circumstances and/or preferences;
- 11 If there is such ODR system, connect complainant with it;
- 12 If there is no match, identify GOS that matches the circumstances and connect the complainant with it;
- 13 Additional information might be presented to the complainant about every pre-selected ODR system (e.g., published statistics or special services) and
- 14 If no GOS can be identified, inform the user that no ODR is available for resolving its issues at the moment.

ODR door codes should also enable interconnection with "door codes" of other processes, for example, private clouds or systems for asserting individual users' rights online.

2 Integration Layer: How to Describe ODR Systems

Having a way how to describe any or almost any ODR system in any sector is the first step in enabling sharing of ODR apps (e.g., a hotel in Paris might share its ODR module for hotels in French with other hotels with different IT systems), documents (e.g., a customer online feedback form in the customer language in his or her private cloud might be shared with a CRM system of a website provider) or ODR systems (e.g., a public authority might participate in more ODR systems and still have a single ODR platform). Below is an attempt to prepare an initial set of questions that describe ODR systems for lower value dissatisfactions in any sector, private or public.

Very simply, you might describe an ODR system in this way: complainant files a complaint against respondent either from respondent's website or from the website of a third-party ODR system organizer. Respondent is either registered in the ODR system, or the organizer sends an email invitation to the not-yet-registered respondent; such email invitation is either manual or automatic.

Complainant and respondent negotiate. If they cannot agree, either one might escalate its case to a third-party ODR institution. ODR appoints one or

more neutrals who resolve the case. It depends on the setup of the ODR system by its organizer whether ODR escalation is allowed or not and also whether the ODR process is mediation, arbitration or something in between. The ODR system might also monitor whether or not agreement reached or the decision is implemented by the parties.

This simple outline has many detailed variations and options. Please find below a *set of questions* that will help in describing such variations.

The questions are divided into several parts on the basis of the main topics that need to be clarified before creating an ODR system. These are:

- Selecting features of an ODR system;
- Setting-up escalation to third-party ODR if this is desired;
- Setting-up access gates to the ODR system for third parties (integration) and interconnection with other systems; and
- Defining the necessary legal docs (user terms, privacy policy, user consents, informative notices and ODR rules – if applicable).

3 Selecting Features of an ODR System

Q 1: When should user registration/sign-in be requested?

Select from the following options:

- i Sign-in at the very beginning of the “filing a complaint” process; or
- ii Sign-in at the very end (usually one step before completion) of the “filing a complaint” process.

Q 2: Identify the parties of your desired ODR process(s). For example, for the retail sectors the parties include customers and retailers.

Q 3: Will a complaint be dealt with by the respondent solely via email and/or telephone or will there be an online platform?

Select from the following options:

- i Only communication via email and/or telephone;
- ii Only communication via online platform; or
- iii Both online platform and email/telephone available.

Q 4: Do you want to allow legal representatives that would represent either one or both of the parties to be included in your system?

Select from the following options:

- i Yes;
- ii No.

Q 5: Which languages will your ODR system use? Are there existing language localizations of the sector(s) you need? Or do you need to create a new language version for your sector module(s)?

Q 6: Will only one party be allowed to be a complainant (e.g., only a customer can file complaint against a retailer)? Or will only the other party be allowed to file

complaints (e.g., only retailer can file complaint against customer)? Or either party can file a complaint against the other party?

Select from the following options:

- i Only party A might file complaints;
- ii Only party B might file complaints; or
- iii Either party might file complaints.

Q 7: Should your ODR system include both feedbacks and complaints? Or only complaints? Or only feedbacks?

Select from the following options:

- i Both complaints and feedbacks;
- ii Feedbacks only; or
- iii Complaints only.

Q 8: If your ODR system is to include complaints, **select from the following options:**

- i Only direct negotiation between the parties (no third-party ODR involved);
- ii There will be no direct negotiation between the parties involved, and all complaints will go directly to third-party ODR;
- iii Both direct negotiation and escalation to a third-party ODR will be possible; or
- iv The complainant will decide whether to try direct negotiation with the respondent or skip the negotiation and immediately escalate to a third-party ODR without negotiation.

Q 9: If your ODR system is to include complaints, will there be structured options for issues, proposes for resolution, defences and counter-proposals from which the parties might select?

Select from the following options:

- i Yes;
- ii No;
- iii Combination of structured options and textual information.

Q 10: If your ODR system is to include structured options, what are the options provided for the parties as issues, defences, proposals for resolution and counter-proposals?

Q 11: What information should be included in the agreement reached among the parties?

Q 12: If your ODR system is to include feedbacks, what will be the feedback questions?

Q 13: Do you want to illustrate issues in the complaint/feedback by sounds or pictograms? Yes or no? If yes, which ones?

Select from the following options:

- i Pictograms/sounds – yes; or
- ii Pictograms/sounds – no.

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Q 14: If your ODR system includes complaints, who prepares the first proposals as to how to resolve the issues?

Select from the following options:

- i Complainant in its complaint; or
- ii Respondent in its first response to a complaint.

Q 15: Do the documents need to be filed only online, or will you allow also paper filings?

Select from the following options:

- i Only online filings; or
- ii Both online and paper filings, according to the preferences of the users.

Q 16: If you allow paper filings, select from the following options:

- i Paper filings will be manually converted into online forms;
- ii Paper filings will be automatically converted into online forms.

Q 17: Do you want to allow one or both parties to get online advice from third parties (e.g., consumer organizations)?

Select from the following options:

- i Free advice (for either party); or
- ii Free or paid advice (for either party).

Q 18: If you are a respondent (e.g., a public institution), do you want to be able to transfer the whole case to another entity within (e.g., a specific department) or outside (e.g., another institution) your organization?

Select from the following options:

- i Yes; or
- ii No.

Q 19: If you are a respondent (e.g., a mobile shopping assistant), do you want to ask another entity within or outside your organization about certain aspects of the case?

Select from the following options:

- i Yes; or
- ii No.

Q 20: Do you want to add an enforcement mechanism?

Select from the following options:

- i Monitor how parties implement outcomes of cases; or
- ii Other enforcement mechanism.

Q 21: Do you want to include messaging functionality in your ODR system? If yes, will the messages be accessible to both parties and the neutral panel or will it be possible for the parties to select to whom the messages will be accessible?

4 Setting-Up Escalation to Third-Party ODR if This Is Desired

Q 22: How would the parties select the ODR provider that decides the particular case?

Select from the following options:

- i Only one ODR provider;
- ii ODR provider selected by the complainant from those pre-selected for all cases by the respondent;
- iii Any ODR provider selected by the complainant from those pre-selected on the basis of fulfilment of the following conditions:
 - Dealing with particular types of cases (according to the sector modules);
 - Supporting arbitration;
 - Supporting mediation;
 - Supporting both arbitration and mediation;
 - Located within (EU, USA, other countries); or
 - Other.
- iv Other.

Q 23: A single neutral or more than one neutral will deal with the case. How do you want to resolve the appointment of neutral(s)?

Select from the following options:

- i ODR admin will appoint the neutral(s); or
- ii Parties will appoint the neutral(s).

Q 24: How will the number of neutrals to decide a case be determined?

- i By ODR rules for all the cases;
- ii By a party with a right to escalate to ODR in each case from options defined in the ODR rules.

Q 25: If the neutral(s) are to be appointed by ODR admin, do you want the appointment be automatic or manual?

Select from the following options:

- i Automatic appointment of neutral; or
- ii Manual appointment of neutral.

Q 26: If the neutral appointment is automatic, which criteria will decide which neutral will be chosen for a given case?

Select from the following options:

- i Alphabetical order;
- ii Least number of pending cases;
- iii Language of both parties;
- iv Area of expertise;
- v Least number of black points;
- vi Combination of more criteria above;
- vii Other.

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Q 27: If the neutral is to be appointed by the parties, which method will be used?

Select from the following options:

- i Each party scores neutrals, and the neutral with the highest score gets invited. If he or she does not accept, the second highest score gets invited and so forth;
- ii For three neutrals only: each party selects a neutral and the two neutrals select the third one;
- iii Another method.

Q 28: If cases are decided by a single neutral appointed by ODR admin, do you want to have the possibility of the parties to challenge the appointed single neutral to be included directly in the ODR system? Challenged neutral will be automatically terminated, and a new one will be appointed.

- i Yes; or
- ii No.

Q 29: How many neutral challenges per case should each party have?

- i One;
- ii Two;
- iii Three.

Q 30: When does a neutral's decision become effective?

Select from the following options:

- i When decision is issued (arbitration);
- ii When ODR provider confirms that the decision is effective (e.g., where special formalities are necessary for the decision to become effective and ODR provider certifies that the formalities occurred);
- iii When party A accepts it;
- iv When party B accepts it;
- v When both parties accept it (mediation); or
- vi If both parties need to accept the decision and one or both parties do not accept it, do you want to enable parties to continue with another ODR process, which ends with a decision that becomes effective once it is issued, or once it is accepted by the weaker party (e.g., customer)?

Q 31: When will the ODR costs be payable?

Select from the following options:

- i Before the case is accepted by ODR provider (cost allocation is part of ODR elevation or outside ODR platform);
- ii After decision is issued (cost allocation is part of decision).

Q 32: Who will cover costs of ODR?

Select from the following options:

- i Only complainant;
- ii Only respondent;
- iii Either one or both parties according to the cost allocation in the decision;
- iv If complainant is a consumer, only respondent;

- v Combination of (iii) and (iv) (if each party might be complainant as well as respondent);
- vi Respondent might decide to pay all or part of the costs of complainant for all cases;
- vii Same as in (vi) above but for each case separately; and/or
- viii Payment of ODR costs is separate from the ODR system app (e.g., special price packages by ODR provider).

Q 33: What information should be included in the decision?

Q 34: Should the decision include structured options for selection by the neutral panel?

Select from the following options:

- i Yes;
- ii No; or
- iii Combination of structured options and textual information.

5 Setting-Up Integration and Interconnection

Q 35: Where do you want to have access gates to your system?

Select from the following options:

- i On the website of the ODR system organizer; or
- ii On the website of potential respondents; or
- iii On both.

Q 36: How would you like to integrate your ODR system with the systems of its users?

Select from the following options:

- i Plugins (Magento, Prestashop, Shopify, WooCommerce etc.);
- ii Streamlined integration (a claim link), which the user easily integrates with its website (no transaction data except for the name of the entity and its email are carried); or
- iii Full integration.

Q 37: Which systems of third parties you would like to interconnect your ODR system?

Select from the following options:

- i CRM;
- ii Mobile apps;
- iii Payment/billing module of partner; or
- iv Payment/billing module of ODR provider(s).

6 Examples of Legal Documents You Need as a System Organizer:

- a Privacy policy for individual users;
- b Privacy policy for entities;

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- c Terms of use for individual users;
- d Terms of use for entities;
- e ODR rules;
- f ODR agreement with your ODR provider(s);
- g Website information notices regarding cookies;
- h Website information about how to conclude online contract;
- i Website information about fees;
- j Website information about the possibility to withdraw from the contract;
- k Information about possibility to go to court;
- l Information about service limitations (e.g., limited enforcement);
- m Acceptance notices;
- n Consents to use personal data.

There need not be a single set of questions describing ODR systems; there might be a number of such sets of questions or description methods, with each method leading to the gradual establishment of a pool of related ODR apps and systems. There will also be completely private, closed ODR systems. This is different from ODR door codes, where ideally there is only one set of standard ODR door codes as mentioned in Section 1.