

## Recent ODR Developments in China

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The presentation topic I selected for the conference was based on a prediction made by Professor Richard Susskind, the Strategy and Technology Adviser to the Lord Chief Justice of England and Wales, after he visited Hangzhou West Lake Court in 2017. Professor Susskind said that he believed that China would become the next world leader in legal technology. I cannot quote this prediction without referring, by way of evidence, to the work of a number of Chinese lawyers for their contributions to recent online dispute resolution (ODR) developments in China who have all helped ODR to now become an essential part of ‘Diversified Dispute Resolution’ as promoted by the Supreme People’s Court (SPC). As a result of their contributions, ODR is no longer now just a theory but is beginning to form part of the accepted practice in China’s justice system.

Judge CHEN Liaomin, the vice president of West Lake Court, was the first Hangzhou judge to whom I showed ODR after I had learnt about it from attendance at the annual International Forum on Online Dispute Resolution a few years ago. Since then, she has promoted ODR enthusiastically. Judge CHEN is now known as China’s leading judicial protagonist of court technology.<sup>1</sup> In July 2017, Judge CHEN showed Professor Susskind how the legal technology worked in the court. Professor Susskind subsequently wrote:

I was hugely impressed with what I saw: online legal help for court users; facilities for the e-filing of documents; virtual courts (enabling hearings by video); speaker-independent voice recognition (they have no need now of stenographers); and a demonstration of their first-generation online court services. As I tweeted afterwards, a highlight at the end of the visit was a conversation with Judge Chen using a two-way, real-time voice recognition and translation system.<sup>2</sup>

After visiting Hangzhou Westlake Court, Professor Susskind expressed his impression:

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1 R. Susskind, ‘China as the Next Leader in Legal Technology?’, 12 August 2017, available at: <https://www.scl.org/articles/9979-china-as-the-next-leader-in-legal-technology>, last accessed 20 June 2018.

2 *Id.*

... it is not a huge leap to imagine Chinese leadership in AI and law. Many of the pieces are falling into place – political support, a growing community of home-grown innovators and enthusiasts, technical capability and infrastructure, the ability to invest and change at scale, and a clear appetite for change.

Professor Susskind had a chance “to imagine Chinese leadership in AI and law” after he had attended the ‘Legal+Technology New Champions Annual Convention’ organized by the Shanghai Bestone Information and Technology Company Ltd last July. Bestone is a mass customization dispute resolution service provider. Bestone issued the first ‘Research Report of the development trend of Legal AI’ in China. Two representatives from Bestone attended the Liverpool conference, one its vice president, a former judge at the SPC, the other an attorney who led her legal group to apply a ‘mass customization dispute resolution service’ mechanism to handle thousands of cases involved with Alibaba in Hangzhou several years ago.

It should be noted that Hangzhou is China’s e-commerce capital, being effectively a national-level cross-border e-commerce pilot zone, where companies like Alibaba and NetEase principally operate. It sets standards for procedures and the supervision of e-commerce transactions.

By way of an example of innovative development, an IT student under my instruction has developed a program that shows the advantages of ODR– confidentiality and security – as being suitable for the prevention and resolution of the dispute relating to sexual harassment on campus.

Another example is the application of blockchain technology to Hangzhou Westlake Court with a planned cooperation by the Hangzhou Blockchain Technology Research Institute to use blockchain technology to prevent tampering with digital evidence. In February 2018, the Guangzhou Arbitration Commission issued the first arbitral award based on the ‘Arbitration Chain’. This chain is based on the multicentric, tamper-resistant and trustable features of blockchains. The real-time preservation of data forms a chain of evidence through smart contracts, satisfying the requirements for authenticity, legality and relevance of evidence, standardization evidence and trials. In recent years, along with the development of e-commerce and Internet finance, China has put forward a standard for the storage of transaction data, requiring electronic data storage through third-party platforms according to a series of strict regulations and standards on the preservation of evidence.<sup>3</sup>

Judge DU Qian is the president of the Hangzhou Internet Court which was formed on 18 August 2017. It has political support from the central and local authorities. It was at the 36th meeting of the Central Leading Group for Deepening Overall Reform that the move for China’s first online Internet court was approved on 26 June 2017. The president of the Supreme Court and the CCP sec-

3 Security Time Reporter, ‘Blockchain technology is applied to arbitration by the court’, 12 March 2018, available at: <http://mini.eastday.com/mobile/180312210909363.html>, last accessed 20 June 2018.

FANG Xuhui

retary of Zhejiang province attended the opening ceremony of the Hangzhou Internet Court.

The Hangzhou Internet Court can be distinguished from other courts in the matter of jurisdiction; it has jurisdiction only over Internet-related cases. According to “The Notice Issued by the SPC on “The Proposal of the Establishment of Hangzhou Internet Court”, since 18 August 2017, Hangzhou Internet Court has centralized jurisdiction over the following Internet-involved civil and administrative cases of the first instance originally under the jurisdiction of the Basic People’s Courts in Hangzhou City:

- 1 contract disputes arising from online shopping, online services, small finance loans, etc.;
- 2 disputes arising from Internet copyright ownership, infringement;
- 3 disputes arising from the use of the Internet to infringe another Person’s personal rights;
- 4 product liability disputes arising from online shopping;
- 5 Internet domain-name disputes;
- 6 administrative disputes arising from Internet administration.

In addition, the higher-level court may authorize Hangzhou Internet Court to have jurisdiction over other civil and administrative cases involving the Internet. If the judgement at the first trial is not satisfied by the litigant, a written order is appealed, or if the case is opposed by the People’s Procuratorate, then the Hangzhou Intermediate People’s Court adjudicates the case.

The Litigation Platform uses Internet technology to make a series of steps in the litigation process available on the Internet. These include complaint filing, the case filing Approval Process, service, mediation, evidence submission, direct or cross-examination, pre-trial preparation, trial, ruling and enforcement, etc. The records and documents are automatically generated. The videos of the hearing serve as trial records. The trial record is generated automatically by a speech recognition system. AI technology is used to draft judgements. In cases of online shopping disputes, digital evidence is transmitted from the online shopping websites such as Taobao.com to Hangzhou Internet Court database by just one click. The court clerks are not needed during an online court hearing. A speech recognition system turns spoken words into written documents at the end of the session, greatly improving the efficiency of the court. As of 30 April 2018, the Hangzhou Internet Court handled a total of 7,771 Internet-related disputes and closed 4,798 cases. The average time of a trial was 25 minutes, and the average trial period was 46 days, which saved between a quarter and three-fifths of the time compared with the traditional trial mode. A total of 98.5% of the cases are closed in the first instance without an appeal. The amount of disputed loan is not more than 500,000 yuan (£1 = 8.6 yuan). Thanks to legal technology, all of the cases were litigated under just six judges.

The first trial of an online copyright dispute was litigated at the Hangzhou Internet Court on 18 August 2017.<sup>4</sup> It involved a novelist suing a web company

4 <http://n.cztv.com/news/12640840.html?clearcache=1>.

that had transmitted her novel to online subscribers without her authorization. The plaintiff showed her evidence online.

Dr. Wang Li, the director of International Commercial Mediation Center for the Belt and Road Initiative in Beijing, has become the first law firm founder to put ODR theory into practice in China since I taught an ODR course at the Beijing Lawyer's Association 2014. The Belt and Road Initiative (BnR) is a development initiative proposed by the Chinese government which focuses on China's connectivity with the countries along the Silk Road Economic Belt and the 21st-century Maritime Silk Road. The role of the International Commercial Mediation Center for BnR is to provide mediation in disputes arising from international commerce in these countries along the BnR. In October, 2016, the mediation center formally announced the set-up of the ODR process and subsequently incorporated the UNCITRAL Technical Notes on ODR (Technical Notes) into the new mediation rule.<sup>5</sup> Moreover, the mediation center should have the cooperation with the courts for connecting litigation with mediation and the recognition and enforcement of a mediation settlement agreement. For example, in December 2016, the mediation center signed an agreement with the Fourth Intermediate People's Court of Beijing to promote the connection between litigation and mediation.<sup>6</sup> In addition, The Judicial Reform Office of the SPC designated the Mediation Center for the BnR as the organization responsible for a project focused on the reform of diverse dispute resolution mechanisms.

The aforementioned only shows that the political and government support that the center is receiving will promote the development of legal technology in China.

Ms. Du Jia, the director of Shenzhen Zhongxin Promotion Center for E-Commerce (E-business service), became particularly interested in ODR following her attendance at the 16th International Forum on ODR held in Beijing. She met with Professor Leah Wing, Ethan Katsh and other recognized experts in the field. Colin Rule introduced ODR mechanisms utilized in the United States to Ms. Du's colleagues when they visited The International Institute for Conflict Prevention and Resolution in 2017. Professor Susskind used Shenzhen an example of the rapid development in China: "I think of the rapid construction of Shenzhen and consider this aim for AI to be entirely feasible." Shenzhen is one of 12 cross-border e-commerce pilot zones approved by the State Council.<sup>7</sup> E-business Better Service is a professional organization dedicated to providing third-party service to e-commerce and establishing a set of regulations and standards to facilitate fair competition and healthy operation of e-commerce. Its website provides the

5 Mediation Center, 'What is the Principle of Online Dispute Resolution Adopted by the United Nations Commission on International Trade Law? Is there any Consistency with the Mediation Center's Mediation Rules?', available at: [www.bnrmediation.com/Home/Center/faqList/aid/191/p/17.html](http://www.bnrmediation.com/Home/Center/faqList/aid/191/p/17.html), last accessed 20 June 2018.

6 Z. Hui, 'The Fourth Intermediate People's Court of Beijing Signed the Agreement with International Commercial Mediation Center for Belt and Road Initiative to Promote the Connection of Litigation and Mediation', 28 December 2017, available at: <http://bj4zy.chinacourt.org/article/detail/2016/12/id/2501190.shtml>, last accessed 20 June 2018.

7 EBS, 'Introduction', available at: <http://global.ebs.org.cn/>, last accessed 20 June 2018.

FANG Xuhui

End-to-end Process of ODR for the resolution of cross-border e-commerce transaction disputes. This will be a one-stop online service including legal consulting, consumer complaints, dispute reconciliation, mediation and arbitration for cross-border e-commerce disputes.<sup>8</sup>

Judge Long Fei, the director of Guidance Department in the SPC's Judicial Reform Office has enthusiastically promoted ODR. Since February 2017, the SPC has carried out online mediation pilot projects in four provinces (Zhejiang, Hebei, Anhui and Sichuan), two cities (Beijing and Shanghai) and the Shanghai Maritime Court.<sup>9</sup> The pilot higher courts should take the lead in establishing a unified online mediation platform at the provincial level. Judge Long Fei is just one of the SPC advocates for the use of ODR in people's courts. Her colleague, Judge Hu Shihao, director of the SPC Judicial Reform Office, uses the original term 'ODR' directly:

China's court will combine ODR with modern technology to establish online mediation, online judicial confirmation, online trial, and an electronic handling platform to promote the (ADR) mechanism.<sup>10</sup>

The courts in all over China are learning from the SPC pilot project. For example, the first diversified dispute resolution E-Platform in Jiangxi province started its experiment in the People's Intermediate Court of Fuzhou city, the People's Court of Nanfeng county and the People's Court of Lean County in June 2018. Jiangxi province is an agricultural area. If the courts in the less developed areas such as Jiangxi can use legal technology, then you can imagine how much legal technology will eventually be developed in China.

L.V. Minshu is a senior judge in charge of foreign affairs in the Higher People's Court of Zhejiang Province. She assisted Professor Susskind, Professor Janet Martinez, Colin Rule and other ODR experts when visiting the online courts in Hangzhou. Another contributor to ODR development in China is Ms. Wang Fang, Deputy Secretary General of the Mediation Association of China Council for the Promotion of International Trade, who invited several foreign ODR experts to give presentations at the 2017 International Mediation Summit held in Hangzhou.<sup>11</sup>

I do not mean that all of the legal technology developments have been contributed to by these people, who, incidentally, you will note are all women. I just offer up the contributions of these people as examples of the road map for the recent ODR developments in China. It is true that there are many other ODR con-

8 EBS, 'End-to-End Process of ODR', available at <http://global.ebs.org.cn/EntSearch/service6>, last accessed 20 June 2018.

9 Supreme People's Court, 'Online Mediation', available at: <http://tiaojie.court.gov.cn/>, last accessed 20 June 2018.

10 P. Welitzkin, 'Senior judge says China's judicial reform includes mediation', 23 October 2017, available at: [http://usa.chinadaily.com.cn/world/2017-10/23/content\\_33592342.htm](http://usa.chinadaily.com.cn/world/2017-10/23/content_33592342.htm), last accessed 20 June 2018.

11 Zhejiang Government, 'Hangzhou's Online Mediation Service Stars at Intl Summit', 20 September 2017, available at: [www.ezhejiang.gov.cn/2017-09/20/c\\_105613.htm](http://www.ezhejiang.gov.cn/2017-09/20/c_105613.htm), last accessed 20 June 2018.

tributors. I do not have time to mention all the ODR developments in China, but two others to reference are the online arbitration offered by the China International Economic and Trade Arbitration Commission,<sup>12</sup> and The National Internet Platform of Consumer Dispute Resolution in the State Administration for Industry and Commerce of the People's Republic of China.<sup>13</sup> I hope my presentation has given you some examples of recent ODR developments in China. I shall leave it to you to agree whether "China will become the Next Leader in Legal Technology."

12 CIETAC, 'Online Arbitration,' available at: [www.cietac.org/index.php?m=Article&a=index&id=179&l=en](http://www.cietac.org/index.php?m=Article&a=index&id=179&l=en), last accessed 20 June 2018.

13 SAIC, 'National Internet Platform of Consumer Dispute Resolution', available at: [www.12315.cn/](http://www.12315.cn/), last accessed 20 June 2018.